3-10-1894

In the Senate of the United States. Letter from the Secretary of the Interior, in response to the Senate resolution of January 4, 1894, transmitting a copy of a communication from the Commissioner of Indian Affairs, with papers bearing upon the Sioux mixed-blood question, together with correspondence had with the Attorney-General in relation thereto.

IN THE SENATE OF THE UNITED STATES.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

IN RESPONSE TO

The Senate resolution of January 4, 1894, transmitting a copy of a communication from the Commissioner of Indian Affairs, with papers bearing upon the Sioux mixed-blood question, together with correspondence had with the Attorney-General in relation thereto.

MARCH 12, 1894.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, March 10, 1894.

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate in the following words:

Resolved, That the Secretary of the Interior be, and he is hereby, directed to transmit to the Senate copies of all orders, opinions, and directions that he has given in respect to the Sioux mixed-blood Indians, or either of them or of their families or any member thereof, together with copies of all reports, letters, documents, and written papers pertaining thereto.

In response thereto I transmit herewith copy of a communication of 8th ultimo from the Commissioner of Indian Affairs, containing copies of papers bearing upon the Sioux mixed-blood question, together with correspondence had with the honorable the Attorney-General in relation to this matter.

I have the honor to be, very respectfully,

HOKE SMITH,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 8, 1894.

SIR: I have the honor to acknowledge the receipt, by Department reference for report, of Senate resolution dated January 4, 1894, directing the Secretary of the Interior to transmit to the Senate copies

of all orders, opinions, and directions that he has given in respect to the Sioux mixed-blood Indians, or either of them, or of their families, or any member thereof, together with copies of all reports, letters, documents, and written papers pertaining thereto.

In connection with the said resolution I have to state that the Department, on January 12, 1894, forwarded to this office the papers in the case of Black Tomahawk *v.* Jane E. Waldron, with instructions that copies of same be made, in compliance with the Senate resolution relating to the subject, and also that the papers in said case be returned to the files of the Department.

I therefore transmit herewith copies of all the papers in the said case, except decisions rendered thereon by the Department and Department correspondence, which I am informally advised you have in printed form and will supply upon receipt of copies of the other papers in the case.

I also transmit copies of reports, letters, papers, etc., of record and on file in this office, in the case of Barney Travircie, a Sioux mixed blood, who received an allotment upon the ceded portion of the Great Sioux Reservation, S. Dak., and was allowed to relinquish same upon certain terms and conditions and for certain reasons fully explained in the correspondence.

Copies of instructions approved by the Department to the special allotting agent, appointed to make allotments to Indians located upon the ceded portion of the said Great Sioux Reservation, and to the agent appointed to make allotments to Rosebud Indians (instructions to Crow Creek and Lower Brule allotting agents being similar), are also inclosed, as having a direct bearing upon the Sioux half-breed or mixed-blood question.

It is thought that the scope of the resolution is intended to embrace only orders, opinions, directions, letters, reports, papers, documents, etc., bearing upon the Sioux mixed-blood question from the date when the Sioux act of March 2, 1889 (25 Stat., 888), took effect by proclamation of the President, viz, February 10, 1890, and the copies herewith furnished are therefore of such papers and documents only.

I return herewith the resolution.

The papers in the case of Black Tomahawk *v.* Jane E. Waldron were returned to the Department January 30, 1894, as requested in your communication of the 12th of that month, renewed informally on the 29th ultimo.

Very respectfully, your obedient servant,

D. M. BROWNING,
Commissioner.

The SECRETARY OF THE INTERIOR.

STATE OF SOUTH DAKOTA, *Hughes County, ss:*

Received of John Van Metre copy of brief "*in re* Jane Waldron, claim of allotment as a member of the Sioux Nation of Indians, based upon the treaty of 1868 and the act of Congress approved March 2, A. D. 1889," this 20th day of April, 1891.

H. E. DEWEY,
Attorney for Black Tomahawk.

PIERRE, *April 21, 1891.*

SIR: I have been served with a brief by one Jane E. Waldron. This brief purports to be made by one Robert Christy, attorney, etc., on hearing before you. I don't know anything about the hearing nor anything about the purpose in serving

the brief, but I have supposed I might be expected to answer it. I have already submitted a brief that covers Tomahawk's case. But I now transmit an answer to Mr. Christy. That part of the brief that refers to the papers on file in Washington, we can not answer because we have never been permitted access to them. Mr. Christy seems to know just what is reported favorably to his side. I believe favorable reports have been made on Tomahawk's side, but have never seen them and can not therefore call attention to them. Tomahawk has no money to have his brief printed; he has no money to pay me. It is utterly false that there is anyone behind this but Tomahawk himself. If there were, there would be money both to make and print briefs. There seems, however, no trouble of that kind on the other side, and they seem to have R. F. Pettigrew, U. S. Senator from this State, to help them. I call attention to this phase of the case in view of the false charges of want of faith by Tomahawk.

Yours, truly,

H. E. DEWEY,
Attorney for Tomahawk.

Hon. GEO. H. H. SHIELDS,
Washington.

BLACK TOMAHAWK *v.* MRS. CHARLES WALDRON.

Tomahawk's brief.

ADMITTED FACTS.

1. Tomahawk is a full-blooded Sioux Indian.
2. Is married and has a wife and 2 children.
3. That he took up his residence on the land in controversy January 10, 1890, and has ever since lived there with his wife and family.
4. That Mrs. Charles Waldron is a woman three-fourths white and one-fourth Indian—Santee.
5. That she is married and living with Charles Waldron, a full-blooded white man.

Tomahawk claims under the above-admitted facts—

That neither Charles Waldron nor his wife are entitled to land under the act of Congress.

Charles Waldron is not an Indian.

His wife is not the head of a family.

She is not a single person over 18 years.

She is not an orphan child under 18.

She is not any other person under 18.

Charles Waldron is not an Indian; the father of his wife is a white man, lives as a white man; and Waldron always lived as a white man.

The Supreme Court of the United States in the case of United States *v.* Rogers (4 Howard, 572), in commenting on the claim of a white man who had been regularly incorporated into the Cherokee Nation, says: "And we think it very clear that a white man who, at a mature age, is adopted into an Indian tribe does not thereby become an Indian and was not intended to be embraced in" the law (the law being an exception in favor of Indians).

"He may by such adoption become entitled to certain privileges in the tribe, * * * *yet he is not an Indian, &c.*"

Tomahawk asserts and offers to prove that Waldron is not an Indian by race or adoption nor by the customs of the nation.

That Mrs. Waldron is the daughter of Van Meter, a white man, of the full blood, by a half breed Indian woman of the Santee Indians, whose pedigree is as follows: Col. Dixon, a white man, intermarried with a Santee woman of full blood. The issue of the marriage was three children, 1 son and 2 daughters. One of these daughters married a man by the name of Ougzhay, whose father was a white man intermarried with another Santee woman of the full blood, his mother thus making Ougzhay of the half blood. The issue of this marriage of Ougzhay with the daughter of Col. Dixon was Mrs. Van Meter, the mother of Mrs. Waldron.

Under the well-known rule that the children follow the status of the father and not of the mother, unless they are illegitimate, which is not claimed in this case, not only is Mrs. Waldron a white woman, but so is her mother, and so were her father and her mother.

So these people, Mrs. Waldron and her ancestors, for three generations, have been white people and not Indians.

Tomahawk offers to show that neither Van Meter, the father, nor Mrs. Van Meter, the mother, nor Charles Waldron, the son-in-law, nor Mrs. Waldron, the daughter,

have ever lived as Indians, or with the Indians, but, on the contrary, have lived apart as white people and with white people.

That Mrs. Waldron, whose maiden name was Jennie Van Meter, lived with the whites, and, like the whites, attended their schools, and afterwards taught them—gave music lessons, which she is competent to do—and that her status, so far from being an Indian, is the reverse, and her station far above thousands of white women.

If the Supreme Court says that a white man, regularly adopted into an Indian tribe, is not an Indian, nor entitled to Indian rights, how shall it be said that Charles Waldron, a white man, who has never been adopted, can have them?

The act of Congress approved March 2, 1889, proclaimed Feb'y 10, 1890, sec. 8, gives land to the following persons and no other: "Indians receiving rations," etc.

"To each head of a family, 320 acres; to each single person over 18, 160 acres; to each orphan child under 18, 160 acres; to each other person under 18, 40 acres."

Charles Waldron is none of these.

Mrs. Charles Waldron is none of these.

Sec. 13 gives to "any Indian *receiving* and *entitled* to rations," etc., an option of one year after being notified on the land where they were residing when the President issued his proclamation.

It seems that Mrs. Waldron was "receiving" but was not "entitled" to rations.

Tomahawk was both "receiving" and "entitled."

Tomahawk was residing on his land on that day with his wife, family, and stock.

Waldron and his wife *were not*, and, while they had a house, had never lived in it until after the proclamation.

The common law makes the husband the "head of the family."

The code of Dakota makes the husband the head of the family. Civil Code, sec. 76.

Tomahawk offers to show that this rule also prevails in the Sioux Nation, and that the husband and not the wife is always the head of the family.

Then, by the law of Congress as well as by the custom of the Sioux Nation, a married woman of the full blood of the Sioux Nation can take no land under the act of March 2, *supra*, even if her husband be an *Indian of the full blood.*

How much less then can a woman of quarter blood married to a white man of full blood, take from Tomahawk, the head of a family of the full blood, this land on which he lived on the 10th of February, 1890, and on which Mrs. Waldron had never lived?

BLACK TOMAHAWK.
By H. E. DEWEY,
Attorney.

PIERRE, S. DAK., *July 29, 1891.*

DEAR SIR: I have just run across the case of United States *v.* Ward in the forty-second volume of the Federal Reporter, p. 320, which conclusively disposes of Mrs. Jane Waldron's claim of rights as an Indian in her contest with Tomahawk. Our claim that she is not an Indian but a white woman is fully sustained by the law stated and affirmed in that case. Why, permit me to inquire, do we have to wait such an interminable length of time for a decision in this case? It is now approaching two years since this question was submitted for decision to the authorities at Washington and from all appearances we are no nearer a decision than we were before it was submitted. Can any hope be given my client that this question will be decided sometime in the near future?

Yours, truly,

H. E. DEWEY,
Attorney for Black Tomahawk.

Hon. GEO. H. SHIELDS,
Washington.

BLACK TOMAHAWK *v.* CHARLES WALDRON

Qualifications for holding land under the Sioux bill.

First and foremost. A person must be an Indian receiving and entitled to rations and annuities at one of the following named agencies: Pine Ridge, Standing Rock, Cheyenne River or Crow Creek, Rosebud, Lower Brule. *Vide* sec. 13 of the bill.

Second. The person must be one of those described by the bill which, for convenience, are classed as follows, viz:

Class A. The head of a family. B. A single person over 18 years of age. C. An orphan child under 18 years of age. D. Some other Indian child under 18 years of age. No other persons are entitled to allotments. (Sec. 8 of the bill.)

The quantities they take are as follows:

Class A. Heads of families—320 a. Class B. Single persons over 18—160 a. Class C. Each orphan child under 18—160 a. Class D. Each other person under 18—40 a. (Sec. 8 bill.)

Mrs. Waldron not entitled, because—

1. She is not an Indian either receiving or entitled to either rations or annuities at any of the agencies named.

She receives neither rations nor annuities, and if she did she would have to get them at the Santee Agency, in Nebr., her Indian ancestors being Santees.

2. She is not the head of a family, and if she were married to a full-blooded Sioux she would not be entitled, as no Sioux Indian woman who is married is entitled to any land under the bill.

3. She is not a single person over 18.

4. She is not an orphan child under 18.

5. She is not any other person under 18.

She in no way comes within the provisions of the bill.

Further, she is a white woman and no trace of Indian blood is discernable in her appearance. She is educated and accomplished, is the wife of a white man, if not of wealth at least in circumstances beyond most of his neighbors, while Black Tomahawk, her competitor for this land, is not only a full-blooded Sioux Indian, but poor and a cripple at that; but of sufficient intelligence to have acted with great wisdom in making this selection of land, which he did in the faith he had in the promises of the Government made through the commissioners who negotiated the late treaty, who expressly told him he had a right to select any land on the reservation as his home, and that he would be entitled to keep it if he saw fit, even after the reservation was opened to the whites.

Further, he selected this land before Waldron did, and while Waldron had his house up first it was only because of Tomakawk's poverty and crippled condition, and while Waldron's house was built first he had never inhabited it until long after Tomahawk had built his house and barn, until long after Tomahawk had taken up his residence, with his wife and family, on the land.

When the President's proclamation was issued Tomahawk had been living with his wife and children for more than six weeks on this land, and at that time neither Mrs. Waldron nor her husband, nor anyone for them, had ever passed a night or eaten a meal, or in any manner lived upon this land, but on receipt of the news of the President's proclamation Waldron hastened to take his residence in the vacant house he had built on the land and then for the first time made any pretense of living there.

BLACK TOMAHAWK,
By H. E. DEWEY,
His Attorney.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, November 27, 1891.

SIR: I have the honor to acknowledge the receipt, by reference, of the letter of the Commissioner of Indian Affairs, dated March 14, 1891, submitting the report of Indian Inspector Cisney, relative to the case of Black Tomahawk *v.* Jane E. Waldron, involving the right of the respective parties to a tract of land within what was the Great Sioux Indian Reservation, with a request for an opinion upon the questions presented.

The questions, as formulated by the Commissioner, are as follows:

"First. Whether under the laws cited and the evidence furnished Jane E. Waldron, a Santee Sioux Indian, was, at the time the act of March 2, 1889, took effect, entitled to receive rations and annuities at the Cheyenne River Agency, S. Dak., where she appears to have received rations and annuities for the greater part of the time since the year 1883.

"Second. If it is decided that she was so entitled to receive rations and annuities, whether, under the laws cited and the evidence presented, she is entitled to the allotment of lands on the ceded portion of the Great Sioux Reservation for which she is contending against Black Tomahawk."

The evidence furnished,' from which an opinion is to be formed, consists of a large number of *ex parte* affidavits made by and in behalf of the respective parties, which are contradictory in the extreme, and, as to many points, wholly irreconcilable. The matter is also further complicated by antagonistic reports of agents of the General Land Office, and of the Office of Indian Affairs, and charges and countercharges of fraud and corruption on the part of the claimants, their attorneys and friends, and the agents of the Government.

It is insisted, however, that Mrs. Waldron is not an Indian, and, therefore, is not entitled to an allotment within said reservation. It seems but proper that this question as to the status of one of these claimants under said law should be first disposed of. The Commissioner of Indian Affairs seems to have taken it for granted that Mrs. Waldron is an Indian within the meaning of the law in question.

The facts affecting Mrs. Waldron's status as to nationality are not so fully and clearly set forth as they might and ought to be, with the numerous investigations and reports that have been made. It is clearly shown, however, that Mrs. Waldron's father, Arthur C. Van Meter, is a white man and a citizen of the United States. Her mother is a half-blood Indian, being born of half-blood parents, each of whom was the offspring of a union between a white man and an Indian woman. Where these parents of Mrs. Van Meter lived, whether with the Indians as members of some tribe or among the whites as citizens of the United States, is not shown.

It is admitted by all that Mrs. Waldron's name has, since 1883 or 1884, been borne upon the rolls at the Cheyenne River Agency, and that she has since then been receiving rations at that agency. Prior to that time her name had not been upon the roll of any agency as entitled to receive rations, nor had she received any rations. In fact, neither her mother nor any member of her father's family had, prior to that time, been drawing rations at any agency. The father has never become a member of any tribe of Indians, but the family seems to have lived among the whites.

The relations existing between the various tribes and nations of Indians within our boundaries and the Government of the United States are peculiar and have furnished the material for much discussion in the courts. It is unnecessary to cite the long line of cases, beginning with the Cherokee Nation *v.* The State of Georgia (5 Peters, 1), and running down to the present time, wherein the status of these tribes and the members thereof have been considered. Two propositions may be stated as well settled by these decisions: (1) The members of the various nations and tribes of Indians, although living within the geographical limits of the United States, are not by birth citizens thereof; and (2) these people constitute separate and distinct though independent nations, and their individual members are freemen.

The status of the parents of Mrs. Waldron's mother is not sufficiently shown to justify a positive conclusion thereon, but for the purposes of this opinion she may be considered an Indian. We have then to determine, whether the child of a white man, a citizen of the United States, and an Indian woman his wife, is an Indian within the purview of the act of March 2, 1889 (25 Stats., 888).

In the case of *ex-parte* Reynolds (5 Dill., 394) the question: Who is an Indian? was presented and quite fully discussed. It was concluded that, the Indians, being free persons, the common law rule, that the offspring of free persons follows the condition of the father, prevails in determining the status of the offspring of a white man, a citizen of the United States, and an Indian woman.

This ruling was cited and followed in the case of the United States *v.* Ward (42 Fed. Rep., 320).

These cases arose under laws defining the jurisdiction of the courts of the United States, but the rule laid down is general. It was there sought to determine what persons were included in the general term "Indians," and the same term is under consideration here. It is a question not depending for its solution upon the proportion of Indian blood flowing in the veins of the person whose status is in question.

Under the rule laid down in the decisions cited, which rule is, in my opinion, a sound one and applicable to the case under consideration, Mrs. Waldron was born a citizen of the United States.

Her claim that she is an Indian by virtue of being born of an Indian mother can not be allowed. There is no allegation that she has taken steps to renounce her allegiance to the United States or to assume the rights and duties of a citizen of any other nation, tribe, or people. The mere fact that her name was placed upon the roll of the Cheyenne River Agency and that she has for several years received rations as an Indian is not sufficient to sustain a claim of membership in that tribe. The authorities cited in the brief filed in behalf of Mrs. Waldron hold simply that one born a member of an Indian tribe is not a citizen of the United States. That proposition will not be disputed, but, as shown herein, it does not control in this case.

The conclusion that Mrs. Waldron is not an Indian carries with it the answer to both questions propounded by the Commissioner of Indian Affairs. In reply to the first question, I would say Mrs. Waldron was not, at the date of the act of March 2, 1889, entitled to receive rations and annuities at the Cheyenne River Agency. This also disposes of the second question, which is hypothetical, dependent upon the first question being answered favorably to Mrs. Waldron's claim.

The papers submitted are herewith returned.

Very respectfully,

GEO. H. SHIELDS,
Assistant Attorney-General.

The SECRETARY OF THE INTERIOR.

FORT PIERRE, S. DAK., *January 9, 1892.*

SIR: The recent decision of Assistant Attorney-General George H. Shields, in regard to the status of Mrs. Jane E. Waldron, a part-blood Indian, has virtually established the status of every part-blood Indian in the United States. While I have always contended they were citizens of the United States, from the reason laid down in Mr. Shields's decision, yet it seems to me all part-blood Indians should be entitled to all the rights the Government has accorded to them heretofore, as they have been recognized as Indians in all the treaties from the foundation of our Government and prior thereto up to the present time.

The only question passed upon in the case of Mrs. Jane E. Waldron was citizenship; and on account of being a citizen of the United States was not entitled to any rights as an Indian, and being deprived of inheriting property from her Indian ancestors which was acquired through Indian titles. Part of section 6 of an act of Congress approved February 8, 1887, provides:

"And every Indian born within the Territorial limits of the United States who has voluntarily taken within said limits his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the Territorial limits of the United States *without* in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property."

It seems to me the question is "have the part-blood Indians of the United States property rights as Indians?" From the above act of Congress quoted, we see that an Indian may become a citizen of the United States and still retain all the rights he had as an Indian. We go back as far as the first colonial settlement in the United States and find the lands obtained from Indians was by purchase; and the Government of the United States, since the period of our independence, has never insisted upon any other claim to the Indian lands than the right of preemption, upon fair terms; and the fact is evidenced by numerous treaties made with different nations of Indians of recent date. There is no question but what the children of a foreign mother who married a citizen of the United States can inherit land to which their mother was heir; and the same is true of all part-blood Indians unless all Indians and part-blood Indians are disqualified from inheriting property.

The Indians now occupying the various reservations throughout the United States have no title to the land they occupy, unless they inherited it from their ancestors; for unless the land which was acceded to have belonged to the Indians, by virtue of the first treaties, descended to their heirs, the Indian titles were extinguished upon the death of such Indian, which seems to have never been the case; but rather that they were entitled to inherit land in common from their ancestors as far back as our national independence dates.

And such being the case, why are not part-blood Indians entitled to the same rights of inheritance. There is not a person who has a particle of Indian and white blood coursing through his veins but whose consanguinity can be traced back to the union of a white father and a full-blood Indian mother.

Referring to the hypothetical case of the foreign mother above stated, I find no reason laid down why the descendants of one should be deprived of any rights the others are entitled to. The law of inheritance should govern in one case as well as another. The Government has ever recognized the fact that the title to Indian lands was in common prior to their taking land in allotment, regardless of the increase or decrease in population.

All the part-blood Indians and white men married into Indian families of the Cheyenne River Agency signed the act of March 2, 1889, and did good work in advising the full-blood Indians to sign the treaty as being to their best interests; and I believe independent of their exertions, as well as their signatures, the required three-fourths of all male adults would not have been obtained.

The Attorney-General being limited to the case as presented, which was incomplete as to the facts, I believe there are many material facts yet to be produced in deciding a question of so much importance.

I would most humbly ask, as one of the great many who are interested in the decision, that your honor consider the matter, and if in your judgment it is best grant a rehearing of the case of Mrs. Jane E. Waldron.

I have the honor to be, yours, respectfully,

J. TODD VAN METRE.

The SECRETARY OF THE INTERIOR.

In re GREAT SIOUX RESERVATION.

Under the provisions of an act of Congress approved March 2d, 1889, entitled "An act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations, and to secure the relinquishment of the Indian title to the remainder, and for other purposes," the following gentlemen were appointed a commission to carry out the provisions of said act, namely:

Charles Foster, of Ohio; William Warner, of Missouri, and Gen. George Crook, of the U. S. Army (p. 1, Ex. Doc. No. 51).

The President of the United States by his message to Congress dated Februray 10, 1890, (Fifty-first Congress first session, Executive Document No. 51) amongst other things reports as follows, to wit:

"It appears from the report of the commission that the consent of more than three-fourths of the adult Indians to the terms of the act last named was secured (the act of March 2, 1889), as required by section 12 of the treaty of 1868, and upon a careful examination of the papers submitted I find such to be the fact that such consent is properly evidenced by the signatures of more than three-fourths of such Indians" (p. 1, Ex. Doc. No. 51).

"Good faith demands that if the United States accepts the land ceded the beneficial construction of the act given by our agents should be also admitted and observed" (p. 2, Ex. Doc. No. 51).

"There was some dispute among the Indians as to the right of the Santee Poncas and Flandreaus to participate in the benefit secured by the bill; but it was apparent that inasmuch as these last-named Indians were parties to the treaties of 1868 and 1876 their rights should not be ignored. The deed submitted herewith is executed and signed by 4,463, being over three-quarters of the adult male Indians occupying or interested in the Great Sioux Reservation, the whole number being 5,678." (Letters of Secretary Noble to President, p. 8, Ex. Doc. No. 51.)

"The commission left Chicago May 29, arriving at the Rosebud Agency May 31. It was soon discovered that there was strong opposition on the part of the Indians. Very few, if any, of the prominent men were in favor of the acceptance of the proposition offered, and its only friends were the squaw men, half-breeds, and a few of the more progressive Indians." (Report of the Sioux commission, p. 16, Ex. Doc. No. 51.)

"The commission next visited the Cheyenne River Agency, arriving on July 13. The conditions at this agency differed from those at the agencies hitherto visited, in that it seemed there was almost unanimous opposition to the ratification of the bill. At this agency the influence of the mixed bloods was in part unfriendly, and it became a question of great difficulty how best to convince the Indians that their true interests dictated an acceptance of the proposition of the Government." (Report of commission, p. 20, Ex. Doc. No. 51)

"But Louis Richard and all the rest of the half-breeds can read and write, and they know what is going on. They can see that it is coming, and the reason they sign and want their friends to sign is so that when they are dead and gone their children can have something that nobody can take away from them." (Gen. Crook, p. 50, Ex. Doc. No. 51.)

"If you accept the bill and the Great Father finds that we have not told you the truth all that is done goes for nothing." (Gov. Foster, p. 74, Ex. Doc. No. 51.)

"But I say that it is one of the good blessings which God has stored upon the poor red race of North America, because the half-breeds and their fathers were the people who have made peace with the red men for you, and have helped them more toward civilization than any other class, and from this fact the half-breeds and their fathers should be recognized as the helpers of the Indians.

"I am very glad to learn that the Great Father wants the positions to be filled by people who belong here, and who are capable of holding such positions. I think there are half-breeds, their fathers, and full bloods here who are competent to hold the positions fully as well as the majority of the whites who are now holding positions."

(Charles C. Clifford, letter to commission, p. 83, Ex. Doc. No. 51.)

And we long for the day when your daughters shall be school teachers among your people, when your citizens squaw men, as you call them half-breeds or Indians, shall be your mechanics, and they shall receive the money that is paid by the Great Father of the money that comes among you. (Gen. Warner, p. 84, Ex. Doc. No. 51.)

The requisite number is three-fourths. We have put our own construction upon all the different articles. All that is put in writing and sent to the President. If he approves it, then it becomes a law; and if not, then it falls to the ground, so your signing is not the end of it. In that way there can be no mistake, because if he approves it, he must approve the words we have said to the Indians. (Gen. Crook, p. 90, Ex. Doc. No. 51.)

Since I have been adopted into the tribe, I have been trying to figure up my property, to see what I might be worth. (Gov. Foster, p. 92, Ex. Doc. No. 51.)

According to the treaty of 1868, every white man living with an Indian woman was held to be incorporated into the Indian tribe that participated in the benefits of that treaty. Every squaw man of 1868 has a right to vote here and without question. There is no question or doubt as to them. (Gov. Foster.)

AMERICAN HORSE. Does our agent or any other agents consider these squaw men in that same way?

Governor FOSTER. Those of 1868?

AMERICAN HORSE. I ask you (Agent Galligher) our agent, if you are satisfied and think these things are right in regard to what these commissioners say with regard to these squaw men?

Agent GALLIGHER. Yes; so far as I have heard.

Governor FOSTER. You have squaw men who have come into relations with you by marrying an Indian woman since 1868. They have never been recognized by the agent, I believe, as entitled to the provisions of the treaty of 1868 as *squaw men* were before that time. Now the language of the treaty may possibly, if when considered by our court, include them. We don't know. Now we let them sign, but we don't count them; so that if the court in the future should hold that they are entitled to vote here, that they can be counted, and for that reason we take their vote.

So far as the half-breeds are concerned, that is to say, every half-breed that has an Indian mother, is entitled to all the rights and privileges of an Indian. Those rights descend with the mother, American Horse. "Our Indians have understood it in the past and have seen it this way: that when the commission from the Government comes out here this way, they always got the consent of the half-breeds and squaw men in the first place. But after they are gone away these agents decide that they have no rights, and that is the end of it. They are not recognized any more. My friends, there is one thing pleases me so well that I have a notion to say it, and that is this: I hope that now since you say these squaw men and half-breeds are fully entitled on this reservation, no such classes as you say are entitled and will speak for them, now if they are entitled, there is something like fifteen positions on this reservation. Now I hope they will be given these positions. So this money that will be given to them for filling these positions will be left here without being sent out to somebody else." (Report of Commission, p. 94, Ex. Doc.)

AMERICAN HORSE (Continued, same page). "My friends, there is one thing you will please me very much, and that I will always feel very greatful for. As you said our Indian mixed-blood that are from our Indian women are fully entitled to rights here."

AMERICAN HORES (Continued). "I speak of full-blooded Indians, half-breeds, and squaw men. There was a time when they had a right to set up a store and make a living, and some person came along and cut their heads off and stopped us in civilization. We would like to know who he was. If that can be stopped to such parties as I spoke of allowed to keep stores, every ten cents we spend in that store, of our own nation, and that ten cents will be kept in circulation among our own people, and not be going out somewhere else."

RED CLOUD. "My friends, I just give you this to show these squaw men that helped to conclude the treaty of 1868. I just give them to you so you will know them." (Handing a list of names to the commissioners.)

AMERICAN HORSE. We were speaking of the rights of squaw men and half-breeds and educating the children. I suppose we have 200 of them here (Pine Ridge Agency) and not one of them is occupying a position yet. (Report of Commission, p. 101, Ex. Doc. 51.)

NO FLESH. All of these mixed bloods and men incorporated in the tribe; I look at them the same as myself on this reservation. (Report of Commission, p. 105, Ex. Doc. 51.)

BEAR NOSE. Brother, all three, white men, mixed blood, and Indian are here together, and I consider as one, and we must come to a conclusion what we are going to do. (Report of Commission, p. 110, Ex. Doc. 51.)

SWIFT BIRD. We don't want to consider them half-breeds of another nation, but we want the half-breeds to be the same as us and all be in one body. We don't want them to get ahead of us, but let them follow us. (Report of Commission, p. 165, Ex. Doc. 51.)

WHITE SWAN. Now there is one thing I would like to find out on the old treaties that are past. We want to find out if there are any half breeds or white men who have made themselves citizens since those treaties. (1868.)

General CROOK. All the white men who had married Indian women in 1868 were incorporated into the tribe and they have the same rights that the Indians have. After that treaty the law does not say clearly whether they have or have not, but their families will have their rights here. (Report of Commission, Ex. Doc. 51, p. 173.)

CHARGER. The old timers that have married into the tribe you think are oppos-

ing this bill, but they are not, for they went ahead of the chiefs and signed and that you must have seen. We have told them to go and sign this bill if they were in favor of it, and if it was not perfect not to sign it. They are white men and know. The reason I say this I saw the policemen standing up and disputing. (Report of Commission, p. 179, Ex. Doc. 51.)

Gen. CROOK. Now everything that is said and all the construction we have placed upon this bill are taken down and will go to the President, so that if he opens the reservation he will have to open it upon the construction we put upon this bill, otherwise it will fall to the ground. (Report of Commission, p. 207, Ex. Doc. 51.)

JOHN GRASS. I also want to mention in regard to mixed bloods having the privilege of trading with the Indians here. What I mean is so that they will not have to procure a license to trade with the Indians. A full-blooded Indian has a perfect right to start a trading store anywhere, and why should not a mixed blood have the same privilege?

Gen. WARNER. As to the traders, that is fixed by law of Congress, and I am willing to say for myself, and I am willing to say for the commission, that I don't see any reason why a half blood should not be given the same right as a full blood. He is one of you, and has the same right to his rations, his clothing, and the lands as any other one, and there is no reason, as I see, why he should not be given the same right to trade. (Report of Commission, pp. 212–218, Ex. Doc. 51.)

JOHN GRASS. I don't know whether it is in the treaty of 1868 or 1876, but I think the treaty of 1876, where it mentions that whenever an Indian or mixed blood is able to perform any of the duties on the agency he shall have the preference.

Gen. WARNER. It is in the treaty of 1876. (Report of Commission, p. 214, Ex. Doc. 51.)

AMERICAN HORSE. Any persons who are outside of the agency now, who has Indian blood, whether a man or a woman, that has anything to do with any of the agencies, we would like for them to have the right to come back and take land on our reservation or any other reservation. (Address to the President, Washington, December 19, 1889, p. 233, Ex. Doc. 51.)

SANTEE SIOUX

Governor FOSTER. I am asked the question if you share with the Sioux Indians, share and share alike. In the sale of these lands you do. Each Santee Indian receives as much as each Sioux Indian. Now I want to be perfectly fair and explain to you this much further about it. Under this act the Sioux reservation is divided into separate reservations. * * * Now as to the land here, it seems that Congress did not understand that this land was all taken up. It is my opinion that Congress will either give you land where you want it, or give you the money value of it. That, of course, means to those who have not received lands as yet.

CHARLES ZIMMERMAN. I understand that the Indians have gone to Washington and at the time they went to Washington they did not want us to go into this treaty and wanted to scroutch us out.

Governor FOSTER. Yes they did.

CHARLES ZIMMERMAN. And this spring my father (the agent) got a paper from Washington telling us that we had an interest in this above here, and that we had lots of friends to get into this. We think, ourselves, we had a right because of the treaty of the Black Hills and at Long Neck Greek. I believe we made the treaty at that time that the heads of families were to get 320 acres of land at Long Neck Creek and Black Hills.

Governor FOSTER. One hundred and sixty acres only. (Report of Commissioners, p. 121, Ex. Doc. 51.)

ELI ABRAHAM. I have two things to ask you. First, you spoke yesterday of a mistake Congress had made in allotting land to the Santees in this reservation. There is no land to be allotted in this reservation.

Governor FOSTER. Yes; it seems Congress made a mistake. I was not aware of it till I came here yesterday. I supposed there was land to spare in the Santee Reservation. I feel perfectly safe in saying Congress will rectify this mistake. It will either find land for Santees who have none, or it will pay them the money value of the land. (Report of Commissioners, p. 124, Ex. Doc. 51.)

CHARGER. Of all the nations of Indians, it doesn't make any difference of what tribe, but we consider we are of one nation. Now, this could not be our fault, for we did not divide it ourselves (the land), but the Great Father's council divided us and put us in different portions of the country. Now they have us scattered all over and we are considered of different nations. Now the Great Father wants to put us all together in one nation again. (Report of Commissioners, p. 163, Ex. Doc. 51.)

SWIFT BIRD. We are all of the Sioux Nation and all of one nation, and all together and alike. (Ex. Doc. 164.)

No. 1420 NEW YORK AVENUE,
Washington, D. C., February 5, 1892.

MY DEAR SIR: Assuming that you are advised of the present status of the case of Black Tomahawk *v.* Mrs. Jane E. Waldron, I would inquire whether you desire to offer any additional evidence or to present further argument on behalf of your client, Black Tomahawk.

Mr. Shields, who rendered the opinion in respect to which I was allowed a rehearing, treats the matter as a case in which you are the actor, or plaintiff, and I infer this position entitles you to the opening of the discussion, unless you should see proper to waive it.

Will you be kind enough to forward me a copy of your additional brief, as your former one was not brought to my attention for some weeks after it had been filed, and then only casually. This caused some considerable delay. I inclose a copy of my motion for rehearing, and upon request from you will furnish any other papers you may desire.

This seemingly unimportant matter in the beginning has assumed enlarged proportions and undoubtedly assails the rights of thousands of mixed bloods among the Indians, and challenges the integrity of many important treaties if the conclusions announced by the assistant attorney-general are sound in reason and law.

Very respectfully, yours,

ROBERT CHRISTY,
Attorney for Mrs. Jane E. Waldron.

H. E. DEWEY,
Attorney for Black Tomahawk.

PIERRE, *February 29, 1892.*

Received of P. Oakes letter and papers from Robert Christy, of Washington, attorney for Jane E. Waldron, in case of Black Tomahawk *v.* Jane E. Waldron.

H. E. DEWEY,
Attorney for B. Tomahawk.

FORT PIERRE, STANLEY COUNTY, S. DAK., *February 29, 1892.*

I, W. P. Oakes, having been duly sworn according to law, do depose and say, that on the 29th day of February, 1892, I delivered to H. E. Dewey, esq., attorney for Black Tomahawk, what purports to be a copy of a motion made by Robert Christy, esq., attorney for Mrs. Jane E. Waldron, addressed to the Secretary of the Interior, for rehearing before Assistant Attorney-General Shields in the case of Black Tomahawk *v.* Mrs. Jane E. Waldron; and I also, at the same time, gave the said Dewey the original letter from said Christy, a true copy of which is attached to this my affidavit.

WM. P. OAKES.

Subscribed and sworn to before me the day and year above written.

[SEAL.] W. H. FROST,
Register of Deeds.

No. 1420 NEW YORK AVENUE,
Washington, D. C., February 18, 1892.

DEAR SIR: Your favor of this instant received. I send copy of my motion for rehearing to the city of Pierre, S. Dak., to be served upon Mr. Dewey, attorney for Black Tomahawk; also a letter fully explaining the existing status of the controversy, and requesting Mr. Dewey to indicate his preference as to order of filing briefs. His client being the actor, I did not know but that Mr. Dewey would prefer to have the advantage of areply.

There has been no intentional delay, and the evidences of service will be furnished as soon as received. They are now overdue, but we must consider the distance and the uncertainty of winter mail service.

The subject is so important that I am spending an unusual labor in preparing my brief.

With great respect,

ROBERT CHRISTY,
Attorney for Jane E. Waldron.

HON. GEO. H. SHIELDS,
Assistant Attorney-General.

PIERRE, S. DAK., *March 2, 1892.*

SIR: I am in receipt of a communication this day from Robert Christy, esq., of Washington, D. C., stating that a rehearing had been granted in the case of Black Tomahawk *v.* Jane Waldron, and accompanying the same a copy (I suppose) of a communication headed as follows, viz: "*In re* Jane E. Waldron, Sioux allotment, Washington, D. C., January2, 1892. To the honorable the SECRETARY OF THE INTERIOR."

This paper proceeds to set out at length the reasons why a rehearing should be granted and this communication is the first information I have had that a rehearing had been granted. It seems to me that I should have had notice that the application would be made and an opportunity of being heard in opposition thereto, and I now take opportunity of objecting to a rehearing, and will review, as briefly as possible, the grounds set up by Mr. Christy.

I take it from the language of the application that it is in the nature of a motion for a new trial on the ground of newly-discovered evidence which consists of certain statements found in the message of the President of the United States to the Senate transmitting the report of the Sioux commissioners relative to the (then) proposed division of the great Sioux reservation, and published as a public document and known as Ex. Doc. No. 51, Fifty-first Congress, Senate, first session, which statements he sets out, and upon their strength asks this rehearing, and I hope to show that these statements, undisputed, will not help his client, and that a further reference to the same document will conclusively show that no rehearing should be granted, and that your former opinion is sound in law and not in the least affected by this document, but that, on the contrary, it confirms it.

The inquiry in this case is, first: Who is an Indian within the purview of the act of March 2, 1889; and, second: What Indians are entitled thereunder to take land in allotment on the ceded lands? Now (*a*) no one is an Indian unless born so; or (*b*) unless made so by some valid law. Mrs. Waldron was not born an Indian; that is already settled. Has any valid law made her so?

A treaty is a valid law and binding on the parties to it, but it is exceedingly novel to claim that because a treaty between the United States on the one hand and the Sioux Nation of Indians on the other contains a provision that certain white men who have taken Indian women for wives are granted the privilege of holding 320 acres of land on the reservation so long as they continue to occupy it with their families and farm it; that this privilege changes the status in which they were born, deprives them of their citizenship, its rights and its duties, and converts them into Indians, who are not citizens, and who, at the date of the treaty of 1868, were not answerable to the laws of the United States for crimes committed in their own country but only to their own Indian customs.

But the act of March 2, 1889, as Mr. Christy seems to assume, is not a treaty. If it were it would not be a treaty between the United States, and its own citizens, the squaw men, but between the United States and the Sioux Nation of Indians, who are not citizens. But it is not a treaty; it is a law of the United States, to be construed like other laws, excepting that where the Indians themselves are concerned to have such construction put upon it as the commissioners put on it when they secured the consent of the Indians to the extinguishment of their title in the ceded land, and that only.

Its purpose was to divide the Great Sioux Reservation into separate reservations and to extinguish the Indian title in the remainder. (*See* the title.) This Indian title could not be extinguished without the consent of the Indians, because the Government had obligated itself to the Indians (not to the white men who had married certain of their women) never to take any more of their land without the consent of three-fourths of their adult males, not the adult males of the white men, but of them, the Indians.

The treaty of 1868, article 6, contains a provision that any Indian who desires to commence farming may select 320 acres of land on the reservation and, by having it recorded with the agent, thus segregate it from the land held in common by the tribe and hold it individually so long as he continues to occupy it, and no longer. (Art. 6, Rev. Treaties United States, p. 916.)

When this treaty was made, at the request of the Indians, this privilege was extended to certain white men who had married Indian women. (Art. 6.)

These men had never renounced their citizenship of the United States and the Indians did not intend they should. They asked that this privilege be granted them and nothing more—did not intend to confer any other right thereby nor change them from white men to Indians—who were not citizens, and this privilege, which might or might not be accepted by the white men, in no sense made Indians of them.

A simple illustration will prove this. Supposing the treaty of 1868, instead of providing for three-fourths of the adult male siguatures, had provided for the signature of one adult male Indian from each band and under such provision the commissioners had visited the agencies, as they did, and taken the signature of one white

man at each agency, to whom this privilege of taking land had been extended by the treaty of 1868, and called that a compliance with the treaty, on the ground that, as that treaty allowed these men the privilege of taking land in allotment, that they were therefore Indians and had a right to sign away the Indian lands against their protest, the Indians, and against their consent? Does any one believe such a thing? It would be mere mockery.

The provisions of the treaty granting these privileges to white men must be construed strictly against the white men, the grantees, and liberally in favor of the Indians. Such is always the rule in construing grants of privileges, and especially those that are without any consideration, like these from the Indian to the white men, and were mere acts of grace by the Indians, who of their bounty asked these privileges for these white men.

These white men have no rights excepting those granted in express terms. They have no right to rations, annuities, or any other right against the protest of a single Indian. The Supreme Court of the United States has frequently held that such persons are not Indians. That they can not be tried as Indians for crimes committed, but must stand trial as white men. (*See* ——— U. S. *v.* Rogers, 4 How., 567.)

The children of such persons married to Indian women are, as we have seen in the cases cited in this case (*Ex parte* Reynolds and United States *v.* Ward), not Indians.

This rule is constantly followed by both the Federal and State courts in all this Western country where these questions are constantly rising, and is universally accepted by the bench and bar as sound. No one has challenged it or dared to carry it to the Supreme Court.

It must be conceded, then, that a person must have been born an Indian or must have been made one by some valid law, prior to the act of March 2, 1889, or such person can not have an allotment of land under that act, because that act provides that only "Indians receiving, etc., may have allotments, etc.," unless some other part of the act gives such persons a right to an allotment. The only other part of the act that the least pretense could be set up to that effect would be section 19.

This section provides that all the provisions of the treaty of 1868, not in conflict with the provisions of the act are continued in force.

Now, we submit, if there were no other considerations, that this provision would not allow Mrs. Waldron to receive this land. Had she (or any other person) been entitled, and had she selected and resided on, improved, and cultivated this land and had it recorded in the land book at the agency before the reservation was opened, then, under the provisions of the treaty of 1868, it might fairly be claimed that the provision of the treaty of 1868 was extended so as to include her. But having admitted in her examination that she did not go on to this land until after the act of March 2, 1889, had been signed (by the President) for many months (viz., July, 1889), that it was under this law, section 13, and as an Indian, and not as a white person entitled to take land by virtue of the treaty of 1868 (whose provisions had been extended by section 19 of the act of March 2, 1889), that she left her ranch on Bad River, where she and her husband kept a cattle ranch and a store (as she does in her testimony), and settled on this land only after the success of the commissioners in getting the signatures of the Indians had been assured, and, having conclusively shown that it is by virtue of her claim of being an Indian within the meaning of section 13 that she claims this land, it is utterly idle to set up a claim for her under the treaty of 1868.

But to extend the provisions of the treaty of 1868 so as to allow an allotment of land as provided in section 13 would be in direct conflict with section 13, for that allows land only to Indians and the treaty of 1868 allows it to whites also.

Now, as we have shown, the privilege granted to white men to take allotments of land under article 6 did not make Indians of them. They were white men, citizens, entitled to all rights as such the same as before.

The privilege or rights granted by section 13 are expressly limited to Indians "receiving and entitled to receive rations," etc.

They are not given to these white men who had the privilege under the treaty of 1868 in any manner or form; and any attempt to extend the privileges granted by the treaty of 1868 to white men so as to allow them to claim land, not under the treaty of 1868, but under the new law—act of March 2, 1889—would be directly in conflict with the provisions of section 13, for that is limited solely and exclusively to Indians.

I admit that a white man qualified by the treaty of 1868, who had entered land under its provisions and was living on and cultivating it as required by that treaty, would still have the right to hold it by virtue of the provisions of section 19 of the act of March 2, 1889.

But I do deny most emphatically that any white man can come in under section 13, assert that he is an Indian, and, contrary to the fact, have any land whatever allotted to him.

With Mr. Christy's eulogy of the half-breeds I have nothing to say except that,

possibly, "distance lends enchantment," etc. Nearer by I have heard another opinion expressed, and that is, as a rule, they have the faults and vices of both races without the redeeming qualities of either; that they exist by preying upon the Indians, and that when a white man has fallen to the lowest depths possible that then he becomes a squaw man.

Be that as it may, this is a question of law and not of sentiment, and is to be settled on legal principles.

I will now answer in detail the arguments raised by Mr. Christy from the report of the Sioux Commissioners, found in Ex. Doc. No. 51, Senate, Fifty-first Congress, first session; and I will proceed to do it seriatim, page by page, and reference by reference, as he has done.

EXHIBIT A.

It is entirely immaterial whether any person signed the law or not. The signing of the law could not create any rights. Mr. Christy seems to think that because certain unauthorized persons signed this bill that thereby they secured all the rights of a Sioux Indian. I shall have more to say of this farther on.

It was entirely immaterial how many Indians signed the bill (act of March 2, 1889) for the reason that the President was constituted by that law the sole judge of the sufficiency of the evidence that the law had been signed as required. This evidence was presented to the President, he passed on it, and whether good, bad, or indifferent, he found it sufficient, issued his proclamation and the bill became a law. (Sec. 28, act of March 2, 1889.) That question has passed out of the domain of inquiry and can not now be considered.

To attempt to (now) would be to attack the law collaterally. The law is—we must determine the disputed rights under it.

Again, the treaty of 1868, that required the act to be submitted for ratification to the Indians, was between the United States and the Sioux Indians and not between the United States and the squaw men. The granting of the privilege to the squaw men to take land did not make them a party to the treaty. They were beneficiaries only, and that by the grace (and without consideration) of both parties. Black Tomahawk, one of the signers of the treaty of 1868 and the act of March 2, 1889, affirms the latter—no squaw men can dispute it. The Indians being satisfied, no one else can complain.

[Page 74.]

I have, heretofore, fully explained that the construction put on this law should be the ordinary rules of construction, except that where the Indians themselves are concerned it should have the construction put upon it that the commissioners adopted. Now, where Governor Foster says "we understand that all white men that were incorporated in the tribe in 1868 are entitled to the benefits of this act," he means no more than he says. He does not mean that the act has made Indians of them. He means that those of them that acquired rights under the treaty of 1868 are continued in those rights under this law. He does not mean that any new rights or privileges are created under this law, for such is not the fact, and such a meaning can not be imputed to him or put in his mouth.

Now, whether these men had a right to vote or not is now immaterial. They did vote, but whether rightfully or wrongfully confers on them no new privileges. Governor Foster construed the act that they had the right to, because the treaty of 1868 gave them the privilege of taking land, and by the 19th section of the bill, any of them who had availed themselves of the privileges granted by article 6, and selected land, and were still living there and cultivating it, as required by the treaty, were allowed to continue to hold such land—not to take new allotments—under section 13, which is confined exclusively to Indians. They voted; that's all there was of it and that ended it.

[Page 80.]

Commissioner Warner's reply must be construed the same as Governor Foster's.

[Page 82.]

The sentiment of the half breed, Clifford, may be very beautiful but it can not make or unmake this law.

[Page 84.]

Neither can the flight of oratory of Commissioner Warner, which was no attempt at a construction of the law but glittering generalities, delivered in a speech before the assemblage of half bloods, squaw men, and Indians.

The rights of persons to land under this law is not a question of inheritance but one of status.

A person acquires a homestead under the laws of the United States by reason of his status as an American citizen. These Indians acquire allotments the same way because they are Indians.

A person might be the son of an American mother and not be qualified to take a homestead—not being a citizen—and still be entitled to inherit, through her, land acquired by her father as a homestead. The offspring of Indian mothers may inherit but can not take under the law, for they are not qualified.

[Page 84.]

Governor Foster expressly says:

"You have squaw men who have come into relations with you by marrying an Indian woman since 1868. They have never been recognized by the agent, I believe, as entitled to the provisions of the treaty of 1868, as squaw men were before that time. Now the language of the treaty may, possibly, if when construed by our court, include them; we don't know. Now, we let them sign but we don't count them, so that if the court in the future should hold that they are entitled to vote here, they can then be counted, and for that reason we take their vote."

Here is an express statement by Governor Foster that the squawmen who have intermarried with Indian women since 1868 are not entitled to any rights and that their votes are only taken contingently.

He then adds that these rights descend through the mother, which is not the law nor never has been as we have seen, except in the case of slave mothers and unmarried mothers. He also adds "so far as the half-breeds are concerned, that is to say, every half-breed that has an Indian mother is entitled to all the rights and privileges of an Indian."

Now this statement, absolutely without foundation in law, as we have seen, was made by Governor Foster and the question is what effect has it or must it have on the construction of this law.

Every statement made by the commissioners in their negotiations with the Indians can not be considered as a construction put on this law.

The parties to this negotiation, as stated, under the treaty of 1868, where the adult male Indians of the Sioux nation (not the white citizens of the United States who had married Indian wives) on the one side and the United States on the other. Now, the only construction placed on this law by the commissioners that should have influence in determining this question is that placed on the law affecting the rights of the Indians, who alone could consent to a cession of their land. Any construction put on the law with reference to third parties was irrelevant and immaterial and beyond the powers of the commissioners and utterly void.

The privilege granted to the white citizens of the United States who had married Indian wives—by the treaty of 1868—did not make Indians of them, as we have seen, neither did it give their offspring all the rights of Indians, as we have seen, neither is this a question of descent, as Governor Foster seems to have thought as we have seen, neither were the rights of the offspring of these squawmen the subject of the negotiations as we have seen; but it was the rights of the Indians themselves in the land; and their consent to its cession that was the subject of the negotiations and the commissioners had no authority to bring in a third class or party in the half-breeds and whatever they said on that point was wholly irrelevant and immaterial and can not and ought not, to stand against the protest of Black Tomahawk or any other Indian who was a qualified party to the treaty of 1868 and the act of March 2, 1889.

The act of March 2 neither directly nor indirectly nor by implication includes any person within its benefits, excepting Indians receiving and entitled to receive rations and annuities. The treaty of 1868 conferred on the white men who had married Indian women the single and sole privilege of occupying 320 acres of land on the reservation so long as they cultivated it. It did not confer on them the right to draw either rations or annuities, and every one of them that was on the rolls was there in wrong of the Indian. A horde of them, and those who have married Indian women since 1868, have been for years illegally drawing the rations the Indians needed for themselves, and it would be the capsheaf in a pyramid of wrong to now hold that any one of this army of leeches could oust Black Tomahawk from his rightful possession of this land, and take this last tract of the domain of his ancestors from him and give it to one of them.

[Page 308.]

Mr. Christy concludes with a quotation from the certificate of the commissioners that, "to the best information attainable and to the belief of the commissioners, the persons who signed were authorized to sign," etc., and that Charles Waldron,

the husband, and Arthur Van Meter, the father of Mrs. Waldron, signed this bill, and proceeds to argue therefrom that this signing by these persons settles the matter whether they were qualified to sign or not, and from the simple fact that they did sign gives them all the rights and privileges of a Sioux Indian under the law.

I now call attention again to what Governor Foster says about these unauthorized persons signing (on p. 94); that those names (the squaw men since 1868) were only taken contingently and not to be counted unless the count should hold in the future that they are Indians, and the courts have held that they are not Indians, and the assistant attorney-general has held that they are not Indians.

And Arthur Van Meter, the father of Mrs. Waldron, and Charles Waldron, her husband, both of whom she swears never lived with the Indians in any manner or form, are both counted as Indians because they wrongfully signed this bill, both white men, both citizens of the United States, and that Black Tomahawk must be ousted from this land and it be given over to this white man, who became an Indian because he illegally signed his name to the law ceding away the Indian's land.

But there are other considerations why Mrs. Waldron can not prevail in this matter.

The treaty of 1868 allows only the heads of families to take allotments. (Article 6.)

I.

Mrs. Waldron is not the head of a family. She testifies that she is married to, living with, and being supported by her husband.

The act of March 2 allows only heads of families of married persons. (*See* sec. 13.)

It allows only Indians, and even if half-breeds were entitled, as Governor Foster says, Mrs. Waldron can not prevail, because she is only quarter-blood, as she testifies. Her mother was only a half-blood and was the daughter of a citizen, and her father is a full-blood white man.

Again, she is of the Santees, and they have no rights to take land in Dakota. This question came up between the commissioners and the Indians again and again, the Indians constantly protesting against the Santees being allowed to participate, and the commissioners constantly assured them that Santees could have no rights in the land in Dakota.

See what Little Bear says, pp. 183; John Grass, p. 195; Governor Foster, pp. 196 and 197; Gen. Crook, p. 136; Governor Foster, p. 145; White Ghost, p. 150.

Besides section 7 of the act of March 2, 1889, expressly provides for the Santee allotments in Nebraska, and if Mrs. Waldron were entitled she would have to go there.

So it appears conclusively that—

1. Mrs. Waldron is not entitled to an allotment under section 13 because she is not the head of a family, nor a single person.
2. That she is not entitled because she is not an Indian.
3. That she is not entitled because she is not even a half-breed.
4. That she is not entitled as a white person because she was not one of the persons to whom the privilege was extended by the treaty of 1868; that was only to white men who had become incorporated into Indian tribes by marriage of their women—heads of families only.
5. She was never incorporated into any tribe, nor ever lived with them.
6. Her father was never incorporated into any tribe nor lived with them.
7. Her husband was never incorporated into any tribe nor lived with them. Her own testimony shows all this.

On the general proposition as to whether a half-breed is an Indian within the meaning of section 13 of the act of March 2, 1889, Tomahawk has no particular personal interest, as it does not affect him either way in this case, but I respectfully submit that the law in that regard is as follows, viz:

1. All persons are Indians who are born so.
2. The offspring of all married people follow the status of the father, and from the fact that they may inherit through the mother, in nowise affects this rule.
3. The offspring of married fathers, other than Indians, and Indian mothers, are not Indians but are of the status of the father.
4. The offspring of unmarried Indian mothers are Indians, whether of the half or full blood; and Governor Foster's expression that half-breeds are Indians must be held to mean such half-breeds as are the offspring of unmarried Indian mothers.
5. The privilege extended to white men who had married Indian women to take an allotment of land under the treaty of 1868 did not deprive them of citizenship in the United States nor change their status or condition in any manner, and they are not, therefore, Indians. And the privilege of taking land did not give them the other privilege of drawing rations or receiving annuities.

6. Consequently they are not Indians, and their offspring are not Indians within the meaning of the act of March 2, 1889.

7. There is not the shadow of a pretense that the squaw men, since 1868, are Indians, for Governor Foster expressly says they are not to be counted unless the court holds in the future that they are Indians.

8. The half-breeds ought to be allowed the mother's share of the proceeds of the sale of the Indian lands, no more. This they take by inheritance.

9. That the foregoing are the correct rules of interpretation, there can be no question. We next come to consider the point as to whether the statement of Governor Foster, that the half-breeds are entitled to all the benefits and privileges of an Indian, is sound or not, and whether it has any influence on the construction of this law.

As before stated, this negotiation was between the Government of the United States and the Indians, and not the Government and the squaw-men, and every construction made (by the commissioners) favorable to the Indians, of the law, ought to be sacredly followed, and every one made unfavorable, that was wrong, ought to be rigidly rejected. Had the Indians asked that these squaw-men be admitted to the benefits and privileges of the law, and had it been promised them, in violation of the law, nevertheless it ought to be fulfilled. But how are we to regard an unlawful construction by the commissioners, made against the will and the protest of the Indians?

The argument of Mr. Christy is that this too must be kept. That, as the commissioners made an unlawful construction of the law at Pine Ridge and crammed it down the throats of the Indians, that now the Department of Justice of the United States at Washington must do the same thing and follow this unlawful construction, and again cram it down the throats of the Indians. Look at the circumstances under which Governor Foster put this construction on the law! The Indians themselves who alone could consent to a cession of their land through their chief, American Horse, were protesting against these leeches and barnacles, the half-breeds, having any voice in the proceedings. American Horse, while showing the utmost friendliness to the Government in the persons of the commissioners (embracing Governor Foster, before the assembled multitude, as the report says), was bitterly arraigning and scathingly denouncing the half-breeds. "What are they? Buffalo flies? Or what kind of insects are they?" he demands. Buffalo flies! The fierce, blood-sucking insects that fatten on the life-blood of the buffalo, as the swarm of squaw-men fatten on the substance of the Indian. And this construction, contrary to law and against the protest of the Indians—made not here only, but at the other agencies, (see what White Swan says, p. 173, and Little Bear, p. 183)—Mr. Christy argues, must now be followed, and the rule of a thousand years overturned so as to let these "buffalo flies" consume the substance of the Indian. Governor Foster said it; so it must be the law. The squaw-men did not own the land; still it is the law. They were not ceding it; still it is the law. They were no party to the treaty; still it is the law. They were citizens of the United States and not Indians; still it is the law. They were a brood of leeches and blood-suckers that American Horse likens to buffalo flies, that had preyed on the Indians for years; still it is the law.

10. It was not the law.

11. All the facts herein claimed as to Mrs. Waldron, are, I understand, admitted by her or fully proved in the testimony heretofore taken in this case.

If they are not, Tomahawk offers to prove them fully.

Therefore, the opinion of the Attorney-General that "Mrs. Waldron was not, at the date of the act of March 2, 1889, entitled to receive rations and annuities at the Cheyenne River Agency," is sound in law, not only for the reasons not given, but for those that are given and ought to be adhered to.

H. E. DEWEY,
Attorney for Black Tomahawk.

Hon. GEO. H. SHIELDS,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 16, 1892.

SIR: Questions involving the rights of mixed and half blood Indians arise almost every day in matters coming before this office for consideration. I am aware that the question of the rights of those classes of persons is now pending consideration before the Department, and inasmuch as it is one so far-reaching, involving such grave consequences to so large a body of persons (many of whom have for a long time been considered and treated as Indians), and affecting their rights to lands and moneys which have been secured to the tribes to which they belong by treaties

and agreements in the negotiation of which some of them have taken a prominent part, I have given much anxious thought to the matter, and beg leave herewith to submit my views thereon.

After considering the matter for a long time, and with the view only of ascertaining what are the actual rights of half-breeds and mixed-bloods, I have reached the following conclusions:

First. "Indians" is the name given by Columbus, in the early voyages, to the natives of America under the mistaken impression that the newly discovered country was a part of India. This mistaken impression was due to the theory of Columbus, as frequently stated in history, that by sailing westward the eastern part of India would eventually be reached, and doubtless also to the swarthy complexion and other physical likenesses of the American to the East Indians.

Second. As used at the present time, the term "Indian" is generally understood to mean a member of one of the several nations, tribes, or bands of native Americans. These nations, tribes, or bands were treated by the English settlers and by the European countries under whose authority America was settled, and subsequently by the United States which succeeded to the rights of all these countries, as distinct political communities, at first independent, but now dependent upon our Government for protection in their rights. An Indian is one, therefore, who owes allegiance, primarily, to one of these political communities; and secondarily, if at all, to the United States. He is one who is practically identified with the native Americans, and is thereby, in his ordinary relations of life, separated from all other people of the Republic.

Third. On account of their ignorance, their savage condition, and their customs and habits the Indians were never deemed to have any right of property in the soil of the portion of country over which the tribe or band had established by force or strength the right to roam in search of game, etc., or which had been set apart for its use by treaty with the United States, act of Congress, or Executive order, but only to have the right to occupy said portion of country. The fee in the lands of the country occupied and roamed over by the Indians was deemed to be first in the European sovereign or countries, but is not held to be in the Government of the United States. The right of occupancy, however, was a valuable right, and one which the early settlers and the Government of the United States have always respected, and for the relinquishment of which in certain portions of America valuable considerations have been paid. This right has been treated as an incumbrance upon the fee, and grants made of land to which the Indian right of occupancy had not been extinguished by the Government have been made subject to this right. Each member of an Indian tribe has been deemed to have an equal interest in the property of his tribe, whether it be in the occupancy of lands or right in the lands or moneys.

In a property sense, therefore, an Indian is one who is by right of blood, inheritance, or adoption entitled to receive the pro rata share of the common property of the tribe.

Fourth. In the early history of America many white men were adopted into Indian tribes, and in accordance with the customs of those tribes became recognized by the authorities thereof as members and entitled to all the rights therein that the members of the Indian blood were entitled to and enjoyed.

After the relations between this Government and the Indian tribes assumed the form which has been likened to that of guardian and ward, provision was made in many of the Indian treaties for the regulation of such adoption of whites into Indian tribes as well as for the regulation of adoption therein of Indians of different tribes, nations, or bands, and in many cases the United States have been given the right to supervise and approve or disapprove such adoption thereafter made as the best interests of the Indian tribes would seem to demand.

Even as early as 1638 the English of Connecticut entered into a treaty with the Quinnipacs, a small band located in the vicinity of the Bay of New Haven, in which the Indians covenanted to admit no other Indians among them without first having leave from the English. (*See* De Forrest's History of the Indians of Connecticut, p. 162, *et seq.*) Those white men who were adopted into Indian tribes, as above stated, in nearly all cases contracted marriages with members of the tribe in which they had become incorporated, and the issue of these marriages were always regarded by the Indians as members of the tribe to which their Indian parent belonged by blood. Of course the illegitimate issue of white men and Indian women would follow the status of the Indian mother.

Fifth. Besides the case of white persons adopted into Indian tribes, many white men have gone among the Indians, and, without becoming adopted, married members of the tribe according to the Indian custom. While the authorities of the tribe in these cases always deemed and treated the issue of such marriages as members of the tribe, and while such issue would seem in the light of the decision of the circuit court for the northern district of Oregon, *in re* Camille (6 Federal Report 256), not to

be white persons in the sense in which that expression is used in the naturalization laws of the United States (sec. 2169, Rev. Stat.), yet in the light of the rule of common law, as laid down in *ex parte* Reynolds (5 Dillon, 394), they are citizens of the United States in the sense that the courts of the United States would have jurisdiction to try and punish them for crimes committed by them in the Indian country. They have, however, been uniformly treated by the Executive of the Government as Indians in all respects; in other words, as having a right by inheritance to receive a pro rata benefit from the property of the tribe to which their Indian parent belonged, both lands and funds.

There appears to have been no adjudication of the rights of these persons commonly known as half-breeds and mixed bloods by the courts; but under date of July 5, 1856, Attorney-General Cushing expressed the opinion (7 Opinions, 46) that half-breeds (and, in his opinion, he seems to use the expression half-breeds and mixed bloods interchangeably) should be treated by the Executive as Indians in all respects so long as they retain their tribal relations. One of the most intelligent Indians known in the history of our dealings with the Indians was John Ross, a Cherokee chief, who was a half-breed, yet he was always treated as an Indian, and his descendants are now regarded and treated as Indians.

Sixth. Under the rule upon which a family is constructed among civilized nations the predominant principle is descent through the father. The father is the head of the family. When a man marries, his wife separates herself from her family and kindred and takes up her abode with her husband, assumes his name, and becomes subordinate, in a sense, to him. In many cases the eldest son becomes the heir, and in all social and political arrangements the relationship through the father is the dominant one.

Among the North American Indians, however, the line of descent in many tribes (though not in all at the present day) is through the mother, and in many instances the wife and not the husband is recognized as the head of the family. Often when an Indian marries, instead of taking his wife to his home he goes to hers and becomes absorbed in her family. But even among tribes having descent in the male line there are notable survivals "of mother right," as it is called by some; for example, the Dakota mother-in-law (even among the Santees in 1871) can take her daughter from the husband and give her to another man.

This radical difference in tracing descent, establishing relationship, constituting towns and communities, and determining inheritance must be taken into account in construing any question like that under discussion.

In his history of the Indians of Connecticut De Forrest recites that, although the chieftianship among these Indians was an hereditary office, the sons of the chief would not inherit unless their mother was of noble blood. He says that this custom was also in vogue among the Iroquois and the Indians of the Antilles, and doubtless among most of the aborigines of America, and he cites the case of the sons of Momojoshuck, the earliest grand sachem of the Nehantics, whose name has descended to our times, who did not succeed to the chieftianship of their father because they were not of pure royal blood, their mother not being noble.

The old English common law, which makes the father the controlling factor and determines relationship through him, does not seem applicable to the condition of things such as is found among the American Indians, where the mother and not the father is the chief factor.

STATUS OF INDIAN WOMEN MARRIED TO CITIZENS OF THE UNITED STATES.

Seventh. Under date of February 10, 1855, an act of Congress was approved (10 Stats., 604) which provides that "any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed herself a citizen." As the courts have declared that an Indian can not be naturalized under our general naturalization law (6th Federal Reporter, 256), an Indian woman under the statute just quoted could not, by marriage with a citizen of the United States, become a citizen herself. By the act of August 9, 1888 (25 Stats., 392), Congress declared that any Indian woman (except a member of the five civilized tribes) who should thereafter marry a citizen of the United States should be deemed a citizen herself by virtue of such marriage, but that in thus becoming a citizen she should in no way forfeit any of her rights to an interest in the property of her tribe.

According to this an Indian woman married to a citizen of the United States prior to August 9, 1888, not only did not become a citizen herself by reason of such marriage, but she did not lose her connection with her tribe nor cease to be an Indian, so that the law of descent among the Indians, which is often through the mother, would seem to have included her offspring as members of her tribe.

Since the passage of that act, however, the effect of the marriage of an Indian woman to a citizen of the United States upon the status and rights in her tribe of her

offspring by such marriage is totally different. Now and hereafter by her marriage to a citizen she separates herself from her tribe and becomes identified with the people of the United States as distinguished from the people of her tribe. Her children will be citizens of the United States in all respects, and in no respect can they be deemed to be members of her tribe. They are Americans, not Indians. They would therefore have no right to share in the property of the tribe except such as they might take by representation of the mother.

As long as the mother remains a member of the tribe her interest in the tribal property is only a personal interest, and at her death reverts to the benefit of the tribe. This would seem right in view of the fact that her children are also deemed to be members of the tribe and have status and rights of their own therein. They belong to the tribe in case of her death, and are cared for and supported by it. But as shown above when she separates herself from her tribe and becomes a citizen of the United States by intermarriage her children will be citizens and will not have any status or rights of their own by law in the mother's tribe. They could not take allotments or receive annuities in the absence of treaty provision to that effect, but they could inherit the land allotted to the mother and the moneys payable to her. In such an instance I think that justice would demand that the joint tenancy feature of survivorship which is present in all Indian tenures, so long as tribal relation is in force should be deemed to be eliminated so far as regards her undivided as well as her divided proportion of the tribal property, and her interest should be permitted to descend to her children in case of her death before partition occurs and a settlement of tribal matters is made.

By this I mean that where an Indian woman has by virtue of the act of August 9, 1888, become a citizen of the United States and dies before allotment of the lands of her tribe occurs, or before the final distribution of the tribal fund takes place, such children (the issue of the marriage by virtue of which she became a citizen of the United States) as may survive her, should be allowed to take by representation the allotment she would be entitled to receive if alive, and her pro rata of the funds of the tribe; but they should not be permitted to receive allotments in their own right or any pro rata of their own of said lands or funds.

Another provision is made in the act of August 9, 1888, which I regard as significant, and that is where in section 1 Congress declares "That no white man not otherwise a member of any tribe of Indians who may hereafter marry an Indian woman a member of any Indian tribe in the United States or any of its Territories, except the five civilized tribes in the Indian Territory, shall by such marriage hereafter acquire any right to any tribal property, privilege, or interest whatever to which any member of such tribe is entitled."

This is an evidence to my mind that Congress not only regarded mixed bloods of a tribe as having rights in the tribal property, privileges and interests in the tribe, but it is implied also that the white father had by his marriage with an Indian acquired certain rights, privileges, and interests in the tribe.

Eighth. In view of the peculiar relations of Indian tribes with the United States it is a question whether a citizen of the United States can, by becoming a member of one of the tribes without the consent of the Government, be said to have expatriated himself in the sense that he would if he had been naturalized into a foreign nation, but I do not think it can be denied that citizens of the United States who have become incorporated into an Indian tribe with the consent of the United States have expatriated themselves to the extent that they thereafter become entitled to recognition as members of the Indian tribe into which they have been adopted and become entitled to an equal interest in the common property of the tribe. This principle appears to be recognized by the court in the decision *Ex Parte* Reynolds, above referred to.

The issue of marriages between such white persons and Indians of the tribe into which they have been adopted are, therefore, to all intents and purposes, just as much members of the tribe as are the issue of marriages of Indian members of the tribe of the full blood and just as much entitled to benefits from the common property of the tribe.

Ninth. In dealing with Indian matters the Government has treated with Indian nations, tribes, or bands, as solid bodies politic, and prior to 1871, so far as individuals composing them have been concerned, in the same manner as it would with any foreign power; that is, through the treaty-making power. The individuals of the tribe or nation have not been known in our dealings with the tribe, as for instance, all persons recognized by the Indian authorities as members of the Sioux Nation, whether full bloods, half-breeds, mixed bloods, or whites, have been treated as the Sioux Nation, and rights have vested under treaties and agreements in half-breeds, mixed bloods, and whites that can not be taken away or ignored by the Government.

Where by treaty or law it has been required that three-fourths of an Indian tribe shall sign any subsequent agreement to give it validity, we have accepted the signatures of mixed bloods of the tribes as sufficient, and have treated said agreements

as valid for the purpose of the relinquishment of the rights of the tribe in lands owned, occupied, or claimed by it, and large sums of money have been appropriated and paid to the Indians, including mixed bloods and whites, in consideration for the relinquishment or cession of lands made thereunder. Also where Congress has required a census to be taken of an Indian tribe (as in the case of the Chippewas, 25 Stats., 642) the roll of names submitted of those recognized by the Indians as members of their tribe, including half-breeds and mixed bloods, has been accepted by the executive department of the Government without question as conforming to the requirements of the statute.

These acts of the Government—acceptance of their signatures to agreements relinquishing rights in lands and their enrollment as beneficiaries under an agreement with an Indian tribe—have fixed the status of mixed bloods as Indians, in the sense that they have an interest in the common property of the tribe to which they severally claim to belong. To decide at this time that such mixed bloods are not Indians, so that they can not claim a right in the property of the tribe of which they claim and are recognized to be members, would unsettle and endanger the titles to much of the lands that have been relinquished by Indian tribes and patented to citizens of the United States.

Tenth. Under the general-allotment act, as well as under special acts and agreements, lands have been allotted and patented to the Indians by the Government, recognizing as Indians full bloods, half-breeds, and mixed bloods without distinction. Allotting agents have been instructed that where an Indian woman is married to a white man she is to be regarded as the head of a family, and while her husband is excluded from the direct benefits of the law she and her children are to have its full benefits.

Eleventh. It is also worthy of consideration in this connection that the United States Government has been and is the trustee of vast sums of Indian money, and that it has from time to time disbursed this money by paying it per capita to the Indians, recognizing as Indians all who are borne upon the rolls and recognized by the Indians themselves as members of their tribes, including half-breeds and mixed bloods. If, therefore, these latter are not Indians and as such are not entitled to share in the Indian money, it is a serious question whether the "real Indians" to whom the money rightfully belongs have not an equitable claim against the United States for misappropriation of their funds.

In view of these considerations it seems to me with my present light that in determining the rights and privileges of mixed bloods we must give to the term "Indian" a liberal and not a technical or restrictive construction. It must be construed in its historical and not in its ethnological significance. The law of descent must be determined not after Roman or English precedents, but in accordance with Indian usage and our American administrative sanction.

Any other conclusions announced now as a binding rule having retroactive consequences would result in invalidating treaties and agreements, disregarding vested rights, and introducing confusion into the entire Indian question.

Of course when the Indians shall have become citizens of the United States by taking allotments, or otherwise, the law of inheritance, where not fixed by specific statutes, will be determined by the common law as applied to all other classes of people.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

No. 1420 NEW YORK AVENUE,
Washington, D. C., April 1, 1892.

SIR: H. E. Dewey, esq., attorney for Black Tomahawk, advises me by letter that it will be entirely satisfactory to him to submit the case on oral argument, if it be practicable for him to attend the letting in Washington City. He further advises that he will at once correspond with his friends, and notify me of his determination.

As soon as practicable I will notify the Department of his determination.

The convenience of course of the Assistant Attorney-General, Mr. Shields, to be consulted.

Very respectfully,

ROBERT CHRISTY,
Attorney for Jane E. Waldron.

The SECRETARY OF THE INTERIOR.

WASHINGTON, *May 25, 1889.*

[Black Tomahawk *v.* Jane Waldron.]

How far does the action of the agent allowing Waldron enrollment control as a judgment of an authorized representation of the Government? (4 Howard, 567, Rogers. Letter of Commr. of Indian Affairs to Dawes. Argument May 25, 1892.)

No. 1420 NEW YORK AVENUE,
Washington, D. C., June 10, 1892.

SIR: Deeming it of value to the case of Black Tomahawk *v.* Jane E. Waldron that the defendant's *status* should be clearly defined, I have procured and beg leave to file among the papers in the case the inclosed affidavit of Mrs. Jane E. Waldron. The facts stated in the affidavit are undoubtedly of record, yet I believe I add to your convenience by presenting them in this form.

Very truly yours,

ROBERT CHRISTY.

The SECRETARY OF THE INTERIOR.

STATE OF SOUTH DAKOTA, *County of Stanley, ss:*

Jane E. Waldron, of lawful age, being first duly and solemnly sworn, upon oath deposeth and saith as follows, to wit: I was born September 21, 1861; was married to Chas. W. Waldron on the 30th of June, 1885; my maiden name was Jane E. Van Metre; my husband was 39 years of age the 22d of January last. I have borne three children; the first, Carl Prentis Waldron, was born at Fort Pierre, April 13, 1886, and died August 24, 1887; the second, Arthur Westbrook Waldron, was born at Fort Pierre, February 3, 1889; the third, Alice Island Waldron, was born at my home on my allotment joining the city of Fort Pierre on the north, on November 3, 1890. At the time of my marriage I resided with my parents near Fort Pierre, but for a year previous I taught a Government school on the Cheyenne River, under U. S. Indian Agent William A. Swan.

At that time I bore the relation of ward to the Government and drew rations and annuities at the Cheyenne River Agency, and have continued to do so ever since. My children's names are on the rolls and draw rations and annuities. My eldest child's name was erased from the rolls after death. Of the two living, Arthur Westbrook has been allotted land on the Bad River about seven miles west of Nowlin, in Nowlin County. Since I selected mine and my little son's allotments I have resided most of the time on mine, but have spent some time on his, where we have made substantial improvements for him.

JANE E. WALDRON.

Subscribed and sworn to before me this 6th day of June, A. D. 1892.

JOSEPH DONAHUE,
[SEAL.] *Clerk of Courts, Stanley County, S. Dak.*

[Interior Department of the United States. Black Tomahawk *v.* Jane Waldron. Hearing before Assistant Attorney-General George H. Shields.]

PLAINTIFF'S BRIEF IN REPLY TO DEFENDANT.

[H. E. Dewey, attorney for defendant.]

In reply to the defendant's brief I wish to join in the admission made by her attorney "that the question involved must be solved by the proper construction of the act approved March 2, 1889."

But I do not mean, by that, the construction given it by the employés of the Government, whether it be the honorable Commissioner of Indian Affairs, his employés, or anyone else.

The law is a public law, the same as any other law and subject to the same rules of construction, and the evidence of those rules is the adjudications of courts, and not what Inspector Cisney or Special Agent Lounsberry or even Commissioner Morgan may have thought, said, or held.

As I understand it, this question is referred from the Interior to the Law Department for the express reason that the opinion of the Law Department, based on legal

Missouri River

Line of Posts 4 rods apart

W P Oaks

W P Oaks

Line of Posts 4 rods apart

Tomahawk

C. Waldron

Missouri River

Planted Timber

North Side mile Square

Cemetery Lot

Main St.

Bad River

Joe Wardell's House

Travers

Luther Van Meter 80 Acres

Luther Van Meter 80 Acres

South Line mile Square

South side Addition or South Portion

Joe Wardell

John Van Meter's House

Bert Porter's House

Corn Field enclosed by Wire Fence

Chas Rood's House

Wire Fence

A. C. Van Meter's House

Bad River

Scale 800 ft. = 1 Inch.

S Ex 59 53 2

rules and knowledge, is necessary to determine the question, which is now in doubt in the Interior Department. If no regard is to be had to legal rules, but the opinions of the (nonprofessional) employés and the (erroneous) practices of the honorable Commissioner are to prevail, why go through the farce of asking an opinion of the Law Department?

I call attention to the fact that not one decision of any court is cited by the defendant in support of her claim.

In lieu thereof is a mass of irrelevant matter having no bearing whatever on the question. I shall not follow it nor attempt to follow it. The question turns on the meaning of the word "Indian."

This word has such a well-known, common, every day use in the language of the people of this country that it would be idle to quote an authority on its meaning. All lexicographers agree that it is the word applied to the aborigines of this continent to distinguish them from all other races. The word had been so used since the discovery of America, and must be so taken in the act of March 2, 1889.

When the word first came into use there was not a half-breed nor a mixed-blood on the continent to whom it could be applied, and the whole course of the defendant's reasoning conclusively shows that the word had the above-stated definite sense then, and has continued to have the same sense ever since. And that, during the whole period of Government dealings with the Indians, whenever any half-breed or mixed-blood has received any advantage, benefit or privilege, under any law or treaty, that he has not received it under the name or word "Indian," but always under the name of half-breed or mixed-blood.

Considering, then, the Indians and the mixed-bloods together, there is as definite a line between them as there is between them and the whites. They, the latter, or mixed-bloods, are not Indians and are not whites. This fact, as above stated, has heretofore been unchallenged, hence no benefit has ever been taken or ever could be, under any law or treaty by a mixed-blood unless specifically mentioned as such therein; hence the necessity of the various provisions in the different treaties giving privileges to the mixed-bloods by name whenever the Government has desired to confer them, for it was because they could not take, under the word "Indian," that it was necessary to provide for them specifically.

That the half-bloods have often been provided for no one denies. So often, indeed, have they been provided for by name, in treaties and statutes, that it is now mere stultification to say that they are entitled to all benefits granted to "Indians," under that word, when the universal practice has been to provide for them under their specific names, for the universally recognized reason that they could no more take under the word "Indians," than a white man could. These facts, alone, ought to free this question of every doubt.

That the mixed-bloods are not provided for under section 13 of the act of March 2, 1889, is too apparent for controversy. They are provided for under section 21, and that by name, and that but emphasizes the fact of their omission from section 13.

The reason for their being omitted from section 13 and admitted into section 21 is as follows, viz:

Article 6 of the treaty of 1868, in providing for the allotment of land, did not confine it to "Indians," by name, and I call particular attention to the words used in this article, as distinguished from the words used in article 12 of the treaty and section 13 of the act of March 2, 1889. Article 6 of the treaty provides for allotments, not to "Indians", but to "individuals" and "persons" belonging to the tribes, thus admitting half, quarter, or any other fraction of blood or even white men, if they belonged to the tribe.

Article 12, however, which is the compact between the United States and the Indians—binding the United States to never take the land without the written assent of three-fourths of the adult males—does not contain the word "individuals" or "persons" belonging to the tribes, but the word there used, on the principle of the command—"put none but Americans on guard to-night"—is "Indians."

Hence Governor Foster was mistaken in supposing that because the "individuals" and "persons" belonging to the tribes must have allotments they might also sign away the land. A reference to Ex. Doc. 50 will show the Indians constantly protested against this construction and were as constantly overruled—"a war measure."

The truth is, the commissioners probably knew that none but Indians could sign, under the provisions of article 12, but it was a "war necessity," and they took the signatures of the half-breeds, part of which they, themselves, admit they had no right to take. They said they would not count them, but they did count them (*see* Ex. Doc. 50), and on this violation of their word and this violation of the treaty the defendant bases her argument to oust the plaintiff. Nevertheless, as the law has gone into effect and as we are not attacking its validity, but seeking to determine the rights of the several parties under it, we must take it as we find it.

We find that section 13 gives the right of option to "Indians" and to them alone. The defendant is not an "Indian" and, consequently, can not claim the option.

The provisions of section 21 are not for an option. Any mixed blood, otherwise entitled, might take an allotment under article 6 of the treaty, and if any allotment had been taken on "Farm Island" it would have been under that article. Hence it was necessary to provide in section 21 of the law for compensation to any Indian or mixed blood who had taken an allotment there. This conclusively shows that the right of option under section 13 was not intended to be extended to mixed bloods, else they would have been mentioned, as in section 21. And the reason was that Indians only could sign the land away, and, as the one year option of section 13 was put in as an inducement to get signatures, it was not necessary to hold the inducement out to half-breeds, who had no signatures to give, under article 12, but to Indians alone, for they alone could legally sign.

"But," complains the defendant, "the honor of the Government is pledged to carry out the representations of the commissioners."

The honor of the Government is a good deal more concerned in keeping the letter and spirit of the written treaties. The letter of the treaty of 1868, article 12, was overridden by the commissioners, and that against the violent opposition of the Indians (when the commissioners decided that half-bloods—not quarter—could sign and participate). That being true this statement of the commissioners, so far as this matter is concerned, must be repudiated *in toto*.

I commend to the law department the example of the Supreme Court in the Bering Sea and Chilean matters. The Department of Justice, as well as the Supreme Court, is above lending itself in furtherance of any questions of state, either domestic or international.

No consideration mentioned in section 13 of the act of March 2, 1889 (or any other section), moved from the Government to the half-breeds. They were in no way a party and could not bind nor be bound. Had any part of the act given them rights and the commissioners construed such part favorable to the Indians, then such construction ought to stand; that is what the commissioners bound the Government to, and not to what they may have said to third parties that had no rights under the law. Supposing the commissioners had told the Italians in Chicago that they, too, had a right to participate in the benefits of the act, would that make it so, or would that bind the Indians?

The construction of the treaty of 1868 allowing the half-breeds to sign and to participate in the act of March 2 is not a construction of the latter act, but of the treaty of 1868, and an erroneous one at that.

With what the commissioners told the half-breeds the Indians have nothing to do. The Indians protested against the ruling and are not bound by it.

The policy of the Government is not to have more Indians but less, and it is no advantage to these Indians to have their numbers augmented by the addition of degenerate whites, to become pensioners on the bounty of the Government for the sole reason of having married an Indian woman.

So far as the promises made by the commissioners to the half-breeds are concerned, that is something that can not have anything to do in determining this question. If they have not been rewarded it is not for the Department of Justice to reward them by a misconstruction of the law.

Whatever value the cession may or may not have been can have no weight in determining this purely legal question.

I do not see the application of the general Indian history quoted by the gentleman on the other side, and shall, therefore, say nothing about it, except that, if there is any purpose to insinuate that the women of the Sioux Nation, instead of the men, are the heads of families, or own or control the property, it is as rank and false as some of the other statements presently to be referred to.

If it were so it would be irrelevant and immaterial, because the defendant never was a member of the Sioux Nation—she nor her parents—in any manner or form.

Even if she had been it would be immaterial, for she is now a citizen of the United States and its laws control.

It is too bad to rudely disturb the gentle romance of the defendant entitled, in her brief, "mother right," especially as that romance furnishes us the first intimation of the real basis of her claim. Unfortunately for the defendant, however, while the romance is very interesting, it can not be recognized as a law of the United States giving her the plaintiff's land, and we shall still be compelled to confine ourselves, as the lamented A. Ward puts it, to the "statoots."

Likewise the family history of the defendant, which, put in other language, might not look quite so romantic, especially as to "real good," when he reels along the streets of Pierre or Fort Pierre with his usual load of "benzine." The Indians have a habit of naming every white person with whom they come in contact. I did not know before that this practice made Indians of them. If it does, the undersigned, who has received an Indian name, would like his share of annuities and allotments.

I now call attention to a couple of false statements in the defendant's brief. They are that the plaintiff has exhausted his rights under the treaty of 1868; and, second,

that he is an Arapaho Indian (strange paradox—if an Arapaho, how could he have rights under the treaty of 1868?); and a third statement that these lying charges are in the former brief; and a fourth that a syndicate of Pierre bankers are using plaintiff as a tool, etc. These charges are not only false, but willfully so. A reference to the former brief will show that no such statements as the two former are contained therein and that these lies are of recent origin. The last lie is not new. The misfortune of the plaintiff is that he has no one to back him. If he had, there would be money to employ Washington lawyers, money to pay for printing, briefs, etc., instead of which there is none.

What syndicate pays the expenses of Charles Waldron to and fro between Pierre and Washington several times on this matter? What syndicate pays his Washington lawyer? What syndicate pays his printing bills and other numerous expenses about this matter?

These syndicate lies are about three years old, yet during none of that time has any money come forth from the syndicate to pay these expenses. They are irrelevant and immaterial, but get tiresome by repetition.

In conclusion the case stands as we left it before.

The defendant can not prevail because:

(1) She is not an Indian.

(2) She is not even a half-breed.

(3) She is not the head of a family.

(4) She is not a single person over 18, etc.

(5) If she were an Indian she would be a Santee, and therefore not entitled to an option in Dakota.

(6) She is a white woman in appearance, condition, education, habits of living, and every other distinguishing characteristic of the white race as compared with the Indians. The wife of a citizen, white, of the United States, married to, living with, and being supported by him—herself a citizen, the daughter of a citizen, who is regularly married to and living with and supporting her mother, while the plaintiff, Black Tomahawk, is a full-blood Sioux Indian, whose ancestors have possessed this land for generations. The defendant sets up the fact that Charles Waldron took up his residence on this particular tract before Black Tomahawk did. That is true to the extent that he built a house thereon, but Charles Waldron did this in defiance of the following language of the treaty of 1868, viz:

"And the United States now solemnly agrees that no person, except those herein designated, etc., shall ever be permitted to pass over, settle upon, or reside in the Territory described in this article." (Art. 2, p. 915, Rev. Tr. U. S.) It was in defiance of that provision of the treaty that Charles Waldron unlawfully invaded the lands of the reservation and built the house in question. And upon this unlawful invasion the defendant bases her claim of priority and seek to oust the plaintiff, whose people were in the lawful possession of this land and had been for generations.

The defendant talks of the half-breed and the faith of the Government.

Before Black Tomahawk went on this land—this particular selection—he armed himself with a letter of authority from the commissioners, which is on file in this case. This matter is widely known among the Indians. It has been talked of by them from Pine Ridge to Standing Rock, and they are watching to see if an Indian can prevail over a white man and to see if the Government can keep faith with an Indian as against a white man. And he who argues that the clear provisions of the compact between the Indians and the Government, contained in the act of March 2, 1889, should be overridden in behalf of a half-breed, or any one else, is arguing for an act that would cause more dissatisfaction among the Indians than anything that could happen—that might, indeed, result in war.

Swift Bird says, p. 165, Ex. Doc. 50, in speaking of the half-breeds, "We don't want them to get ahead of us, but let them follow us;" and he voiced the sentiment of the nation.

The moment a half-breed gets ahead of an Indian, or in opposition to him, there is trouble. As witness the invective of American Horse when they opposed the Indians in their determination not to sign.

When the signing was an accomplished fact and it was useless to resist fate longer and American Horse had got warmed up on Washington hospitality, and whatever else he got there, he opened his heart to the half-breeds. There was the same reservation, however, in what he said there, only it was not expressed, that Swift-Bird made when he said, "We don't want them to get ahead of us, but let them follow us."

Much contention has been made about persons of Indian blood having rights of inheritance.

It has heretofore been pointed out that this was not a question of inheritance, but one of *status*. There is a well-known rule of law that no one can inherit from

a person still living, and the mother of the defendant—through whom she claims—is still living. It would seem as though all such talk was simple nonsense.

Considering these various things, I conclude, as before, that the opinion of the Attorney-General is sound in law and ought to be adhered to, no matter what the consequences may be. It is not the office of either the courts or the Department of Justice to make the law, but to declare it. If anything is wrong with the law Congress is the proper body to remedy it, and not the courts or the Department.

H. E. DEWEY,
Attorney for Black Tomahawk.

WASHINGTON, D. C., *October 20, 1893.*

SIR: I learn through the public press that a decision has been announced *in re* Black Tomahawk *v.* Jane E. Waldron.

As the case was a typical one, and the questions involved momentous to a large number of persons, similarly situated with Mrs. Waldron, I beg leave to "pray an appeal" to the head of the Department of Justice, the honorable Attorney-General of the United States, from the opinion rendered or decision reached.

With great respect,

ROBERT CHRISTY,
Attorney for Mrs. Jane E. Waldron.

The SECRETARY OF THE INTERIOR.

WASHINGTON, D. C., *November 14, 1893.*

SIR: Assuming that Jane E. Waldron is not entitled to an appeal, as an absolute right, to the head of the Department of Justice, the Attorney-General, from the recent "opinion" sanctioned by yourself, as the Secretary of the Interior, in case of Black Tomahawk *v.* Jane E. Waldron, permit me to pray a reference of the cause to the Attorney-General, in view of the novelty and importance of the questions involved, that you may have the benefit of his construction of the laws of the United States relating to the matters at issue in this cause.

An appeal was allowed by your immediate predecessor, in the office of Secretary of the Interior, in this very cause, but was not prosecuted to effect by reason of the fact that it was deemed prudent to retain the cause within the jurisdiction and control of the Department of the Interior until certain testimony deemed material on behalf of Mrs. Waldron had been submitted and made a part of the record in the cause.

As at present advised I feel that Mrs. Waldron is remediless in the premises unless this present application for further consideration of her cause is allowed.

With great respect,

ROBERT CHRISTY,
Attorney for Mrs. Jane E. Waldron.

Hon. HOKE SMITH,
Secretary of the Interior.

SIOUX FALLS, S. DAK., *November 14, 1893.*

DEAR SIR: A number of the half-breed Sioux Indians write me saying that they have learned that a decision has been rendered that those Indians to whom half-breed scrip was issued are not entitled to allotments of land. If such decision has been rendered, will you send me a copy of it, in fact I should like two copies.

Very respectfully, yours,

R. F. PETTIGREW.

Hon. HOKE SMITH,
Secretary of the Interior, Washington, D. C.

September 29, 1817.

In the treaty with the Wyandots, September 29, 1817, occur the following provisions:

ART. 8. "At the special request of the said Indians the United States agrees to grant, by patent, in fee simple, to the persons hereinafter mentioned, all of whom

are connected with the said Indians by blood or adoption, the tracts of land herein described.

"To the children of the late William McCulloch, who was killed in August, 1812, near Waugaugon, and who are *quarter-blood* Wyandot Indians, one section to contain 640 acres of land.

"To John Van Meter, who was taken prisoner by the Wyandots and who has ever since lived among them, and who has married a Seneca woman, and to his wife's three brothers, Senecas, who now reside on Honey Creek, etc."

October 6, 1818.

In the treaty with the Miami Nation of Indians, October 6, 1818, occurs the following provisions:

"The United States also agrees to grant to each of the following persons, being Miami Indians by birth, and their heirs, the tracts of land herein described:

"To Ann Turner, a half-blooded Miami, one section.

"To Rebecca Hackley, a half-blood Miami, one section.

"To Jane Turner Wells, a half-blooded Miami, one section."

July 15, 1830.

Treaty with the Sacs and Foxes; the Medawakanton, Wahpacoota, Wahpeton, and Sissetong bands or tribes of Sioux; the Omahas, Ioways, Otoes, and Missourias, July 15, 1830:

ART. 9. Reservation for other half-breeds.

ART. 10. Reservation for other half-breeds.

The assent of the Yancton and Santee bands of Sioux to the foregoing treaty is given, October 13, 1830.

Done and signed at Prairie du Chien, Territory of Michigan, July 15, 1830.

September 21, 1833.

The following is Article I of the agreement and convention made September 21, 1833, in behalf of the United States, and the united bands of Otoes and Missourias dwelling on the Platte.

ARTICLE I. The said Otoes and Missourias cede and relinquish to the United States all their right and title to the lands lying south of the following line, viz: Beginning on the Little Nemehaw River, at the northwest corner of the land reserved by treaty at Prairie du Chien, on the 15th of July, 1830, in favor of certain *half-breeds* of the Omahas, Iowas, Otoes, Yankton and Santee bands of Sioux, and running westerly with said Little Nemehaw to the head branches of the same, and thence running in a due west line as far west as said Otoes and Missourias have or pretend to have any claim.

1833.

Schedule A to the treaty with the Chippewas, etc., 1833, contains a list of the persons (many of whom are women and children of the mixed blood), and the amounts of their sums in lieu of reservations.

1834.

Article VII of the treaty with the Chickasaws, 1834, reads as follows:

"Where any white man, before the date hereof, has married an Indian woman, the reservation he may be entitled to under this treaty, she being alive, shall be in her name, and no right of alienation of the same shall *pertain* to the husband unless he divest her of the title, after the mode and manner that feme coverts usually divest themselves of title to real estate—that is, by acknowledgment of the wife, which may be taken before the agent and certified by him, that she consents to the same freely and without compulsion from her husband, who shall at the same time certify that the head of such family is prudent and competent to care of and manage his affairs; otherwise the proceeds of said sale shall be subject to the provisions and restrictions contained in the fourth article of this agreement. Rights to reservations as are herein and in other articles of this agreement secured will *pertain* to those who have heretofore intermarried with the Chickasaws and are residents of the nation."

September 29, 1837.

Articles of a treaty made at the city of Washington with certain chiefs and braves of the Sioux Nation of Indians, September 29, 1837, as follows:

ARTICLE I. The chiefs and braves representing parties having an interest therein cede to the United States all their land east of the Mississippi River and all their islands in the said river.

ART. II. In consideration of the cession contained in the preceding article the United States agree to the following stipulations on their part:

First. To invest the sum of $300,000, etc.

Second. To pay to the relatives and friends of the chiefs and braves as aforesaid, having not less than *one quarter* of Sioux blood, $110,000, to be distributed by the proper authorities of said tribe upon principles to be determined by the chiefs and braves signing this treaty and the War Department.

July 17, 1854.

HALF-BREED OR MIXED BLOOD SCRIP.

An act was approved July 17, 1854, with the following title:

"An act to authorize the President of the United States to cause to be surveyed the tract of land in the Territory of Minnesota, belonging to the *half-breeds or mixed bloods* of the Dacotah or Sioux Nation of Indians, and for other purposes."

Under this act the President was authorized to ascertain the number and names of the half-breeds or *mixed bloods* who are entitled to participate in the benefits of the grant or reservation lying on the west side of Lake Pepin and the Mississippi River in the Territory of Minnesota which was set apart and granted for their use and benefit by the ninth article of the treaty of Prairie du Chien, July 15, 1830, to issue to such persons, upon their relinquishment of their rights in such grant or reservation, certificates or scrip for the same amount of land to which each individual would be entitled in case of a division of such grant or reservation pro rata among the claimants.

[U. S. Stat. L., 10, p. 304.]

"Provided no transfer or conveyance of any of said certificates or scrip shall be valid."

By the ninth article of the treaty of July 15, 1830 (7 Stat., p. 330), the Sioux bands in council solicited that a tract (as above) be set apart for the half-breeds of their nation.

September 24, 1857.

HALF-BREEDS, PAWNEES.

By Article IX of the treaty with the Pawnees (September 24, 1857) provision was made for the half-breeds of the tribe, securing to them equal rights and privileges with other members of the tribe. (U. S. Stat. L., Vol. II, p, 731.)

April 19, 1858.

YANCTON TRIBE OF SIOUX.

By Article VII of the treaty with the Yancton tribe of Sioux (April 19, 1858) a half section of land was secured to each of the following-named persons:

"To the half-breed Yancton wife of Charles Kenlo and her two sisters, the wives of Eli Bedaud and Augustus Traverse, and to Louis Le Count." (In this article the term "mixed bloods" is used.

October 20, 1865.

BLACK TOMAHAWK.

Tad chouk Pee sappah, the Black Tomahawk, signed the treaty with the Yanktonai band of Dakota or Sioux Indians, October 20, 1865. (14 Stat. L., p. 736.)

April 29, 1868.

Can hpi sa pa, Black Tomahawk, signs Sioux treaty, April 29, 1868, as a member of the Yanctonais band of Sioux. (Stat. L., vol. 15, p. 1868.)

February 28, 1877.

As cauh pi sapa, Black Tomahawk, he signs the agreement of February 28, 1877, as a "Lower Yanctonnais." (U. S. Stat. L., vol. 19, p. 258.)

The Santee Sioux also sign this agreement.

[*In re* Jane E. Waldron, claim of allotment, as a member of the Sioux Nation of Indians, based upon the treaty of 1868 and the act of Congress approved March 2, A. D. 1889. On hearing before George H. Shields, Assistant Attorney-General, Interior Department, U. S.]

BRIEF IN SUPPORT OF THE CLAIM OF MRS. JANE E. WALDRON.

I.

Construction of Indian treaties.

The treaty between the United States and different tribes of Sioux Indians was concluded April 29, *et seq.*, 1868; ratified February 16, 1869, and proclaimed February 24, 1869. (Statutes at large, vol. 15, p. 635.)

By the provisions of this treaty, the territory embraced therein was set apart "for the *absolute and undisturbed use and occupation of the Indians named*," and for such other friendly tribes or individual Indians as from time to time they (the Indians named) might be willing, with the consent of the United States, to admit amongst them. (See Article II of said treaty.)

This treaty and all acts of Congress of the United States passed to carry it into effect are to be liberally construed, and all the rights, privileges, and immunities of the Sioux Nation of Indians thereby intended to be conferred, sacredly preserved and permanently secured.

The Supreme Court of the United States, in the case of The Choctaw Nation *v.* The United States (119, U. S. 1), has established the following rule of construction, namely:

"The recognized relation between the parties to an Indian treaty is that between a superior and inferior, whereby the latter is placed under the care and control of the former. The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right without regard to technical rules."

II.

Does the act of March 2, 1889, embrace Indians both of the full and mixed blood?

1. This question is answered affirmatively by the 21st section of the act itself.

This section relates to certain islands donated to certain cities, and confers precisely the same rights and privileges upon both the full and mixed bloods. It is to be assumed that Congress, desiring to leave no possible ground for evasion or misconstruction, as vested rights were disturbed by this section, employed more precise and exact language than was deemed necessary in the other sections of the act, although the generic terms of Indians of the Sioux Nation elsewhere used was sufficiently comprehensive to include the same classes of persons.

For convenience we here quote a portion of the language of this section, to wit:

"*And provided further*, That if any full or mixed-blood Indian of the Sioux Nation shall have located upon Farm Island, American Island, or Neobrara Island before the passage of this act, it shall be the duty of the Secretary of the Interior, within three months from the time this act shall have taken effect, to cause all improvements made by any such Indian so located upon either of said islands, and all damage that may accrue to him by a removal therefrom, to be appraised, and upon the payment of the sum so determined, within six months after notice thereof by the city to which the island is herein donated to such Indian, said Indian shall be required to move from said island, and shall be entitled to select instead of such location his allotment, according to the provisions of this act, upon any of the reservations herein established, or upon any land opened to settlement by this act not lready located upon."

There can be no question but that the Indian of the "full blood" and the Indian of the "mixed blood" referred to in this section each derived the rights thus protected from the same source, to wit, the treaty between the Sioux Nation and the United States above mentioned.

There is significance, too, in the words, "his allotment according to the provision of this act." In other words, any Indian of the "full" or "mixed blood" who had prior to the passage of this act, located upon either of the designated islands and

afterwards surrendered such location, should be restored to his original right to select his allotment as if he had not surrendered his right to such allotment by his location upon one of these islands.

2. Jane E. Waldron, who selected the allotment in controversy, is an Indian of "mixed blood" of the Sioux Nation. She is not a citizen of the United States by birth nor has she ever been naturalized.

We think the authorities are conclusive upon this subject, and we beg leave to refer to the following:

"An Indian is not a citizen, but a domestic subject." (7 Op. Atty. Genl., 756.)

"Inasmuch as the Indian tribes within the territories of the United States are independent political communities, a child born in one of such tribes is not a citizen of the United States, although born within its territories." (District of Oregon, 1871; McKay *v.* Campbell, 5 Am. L. T., 487; 2 Sawyer, 118.)

"An Indian born in tribal relations is not a citizen because not born 'subject to the jurisdiction of the United States,' and can not make himself a citizen by leaving his tribe and settling among citizens. It is competent to Congress to confer citizenship upon Indians, but consent of the Government in some form is necessary." (Dist. of Oregon, 1881; United States *v.* Osborn, 6 Sawyer, 406.)

3. The last clause of Article II of the treaty of 1868, already referred to, clearly expresses the intent of the contracting parties as to the persons to be embraced in and excluded from the benefits of the treaty. It reads as follows:

"And the United States now solemnly agrees that no person except those herein designated and authorized so to do, and except such officers, agents, and employés of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation for the use of said Indians, and henceforth they will and do hereby relinquish all claims or right in and to any portion of the United States or Territories except such as is embraced within the limits aforesaid and except as hereinafter provided."

It is a fact admitted, or certainly to be taken as one proven, by the testimony on file in this matter, that the Indian mother of the claimant was fully and equally entitled to the rights and privileges secured by this treaty in common with all other members of the Sioux Nation of Indians, and that she parted with an interest in the remaining lands theretofore held from time immemorial by the Sioux Nation of Indians, which were ceded by the treaty to the United States.

It must further be admitted that Jane E. Waldron inherited from her maternal ancestors, who had married white men of the whole blood, all such rights as they were seized and possessed of, in common with their other descendants. So it appears from the testimony that Mrs. Jane E. Waldron, born within the limits of the Great Sioux Reservation, has continuously been entitled to reside thereon, as matter of legal right and as matter of fact; that she has so resided and been received and treated in a manner similar to that extended to Sioux Indians of the whole blood by the "officers, agents, and employés of the United States, authorized to enter upon Indian reservations in discharge of duties enjoined by law." And it further appears that for several years prior to the passage of the act of Congress approved March 2, 1889, she was regularly enrolled as a member of the Sioux Nation of Indians, at the appropriate agency, and from time to time drew rations and annuities as such Indian, for herself and children.

This construction of the treaty and the acts of Congress passed in pursuance thereof, and to carry it into effect by duly constituted departmental officers and agents of the Government, is now to be accepted as the true and proper construction, if any doubt or ambiguity is found in the language of such treaty or acts of Congress.

The Supreme Court of the United States (1882), in Hahn *v.* United States (107 U. S., 402), held as follows:

"Contemporaneous construction of a statute or general usage under it for a considerable period of time may properly be considered in determining the meaning and intent of doubtful provisions in it."

And again, in 1883, the Supreme Court say, in United States *v.* McDaniel (7 Pet., 1, 14):

"While usage in a public office or department of the Government can not alter the law, it may be evidence of a construction placed upon it, which may bind the office or department as to transactions had before the usage is changed."

The following language is found in 2 Op. Atty. Genl., 558:

"Whenever an act of Congress has, by actual decision or by continued usage and practice, received a construction at the proper department, and that construction has been acted on for a succession of years, there must be strong and palpable error and injustice to justify changing the interpretation."

III.

Cheyenne River Agency.

Section 4 of the act approved March 2, 1889, provides:

"That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Cheyenne River Agency, in the said Territory of Dakota."

This language is clear and explicit. All Indians receiving rations and annuities at the Cheyenne River Agency, belonging to the Sioux Nation of Indians, are entitled to make their respective selections of allotments, as provided in section 9 of said act. (The allotment in controversy is in the Cheyenne River Reservation.)

It must be conceded, under the testimony on file and the records of the Indian Department, that Mrs. Jane E. Waldron demanded and received rations and annuities for several years prior to the passage of the act and continuously to its passage. And that she was so entitled to demand and receive such rations and annuities for the reasons heretofore assigned.

The language employed in said section 4 indicates a clear intent to confer the right of selection of allotments upon the Indians receiving rations and annuities at the date of the passage of the act, at the given agency, without regard to his original tribal relations; the only condition being that such Indians must belong to the Sioux Nation of Indians. If the intent of the legislator had been otherwise, he would have employed terms indicating that such right was confined to such Indians as belonged to some designated tribe or band of Indians of the Sioux Nation of Indians.

"As confirmatory of this view, we need only refer to the first clause of section 7, which confines the privileges therein conferred to members of the Santee Sioux tribe of Indians, *now occupying* a reservation in the State of Nebraska, such Indians being restricted in the selection of their allotments to the reserve in the State of Nebraska that they were occupying at the date of the passage of the act.

"It would not only be unjust, but unreasonable, to deny to Santee Sioux Indians not occupying such reserve the right to select allotments if they happened at the date of the passage of the act to be absent from the reservation mentioned in the State of Nebraska, and yet within the limits of some other reservation.

"It is clear that it was the design of the act to carry out the obligations of the treaty of 1868, and confer similar privileges upon all members of the Sioux Nation of Indians wherever they might be, and this without regard for the original tribal relations.

"But it is not necessary to enlarge upon this, because the claimant, Mrs. Jane E. Waldron, was a Sioux Indian, born in the Territory of Dakota, and residing upon the Cheyenne River Reservation, and clearly not within the inhibition of section 7."

IV.

A Sioux Indian woman married to a white man, for all the purposes of the act of March 2, 1889, is the head of a family.

It appears from the testimony on file that the claimant was married to a full-blooded white man; but we submit that such marriage did not deprive her of any rights whatever derived from her Indian origin, nor in any degree impair her privileges as a member of the Sioux Nation of Indians, conferred by the said act of March 2, 1889.

In Elk *v.* Wilkins, 112 U. S., 94 (1884), the Supreme Court of the United States say:

"An Indian born a member of one of the Indian tribes, although he has voluntarily separated himself from his tribe and taken up his residence among the white citizens, but has not been naturalized or taxed, or recognized as a citizen, is not a citizen of the United States within the 14th amendment."

It was not until the passage of the act of Congress approved August 9, 1888, that an Indian woman (except a member of one of the five civilized tribes in the Indian Territory) married to a citizen of the United States became by such marriage herself a citizen of the United States. And, for prudential reasons, a proviso was attached to the act, "that nothing in this act contained shall impair or in any manner affect the right or title of such married woman to any tribal property or any interest therein." It goes without saying, that if no legal marriage existed the Indian woman's right or title to tribal property or any interest therein would not be impaired or affected by her cohabiting with a white man.

We may, therefore, safely conclude, that the claimant, having borne children as the fruit of such marriage, and residing with them, is as much the head of a family under the law and in contemplation of the act of March 2, 1889, as if her husband had deceased before she made her selection of the allotment in controversy.

We submit the following case as conclusive upon this subject, decided by the Supreme Court of the United States in 1844, in which it was held, "a grandmother with her grandchildren compose a 'family' within the meaning of a treaty allowing chiefs and 'heads of families' to select lands, and as such she has a right to such selection." The court construed the treaty of March 24, 1832, with the Creek Indians. (Ladiga *v.* Rowland, 2 Howard, 581.)

V.

Statement of facts.

1. Mrs. Jane E. Waldron, the claimant, was born in the State of South Dakota (then one of the Territories of the United States); her mother, a half-breed Sioux Indian, was born at St. George's Island, about 16 miles below the town of Fort Pierre, in the same Territory (the allotment in controversy is situate near said town); the claimant has relatives at every agency named in said act of March 2, 1889, some of them being full-blooded Sioux Indians. Early in the year 1884, or in the latter part of 1883, the claimant applied for a "ticket" at the Cheyenne River Agency (Maj. W. A. Swan being then agent of the United States at such agency), as a member of the Sioux Indian Nation, and thereafter and until the selection of the allotment aforesaid, drew rations and annuities as such Sioux Indian, without objection from any quarter.

2. The right of the claimant to make the selection of the allotment in controversy was questioned by certain interested parties desiring the allotment as a town site, because, as they alleged, the claimant was a descendant of the Santee Tribe of Sioux Indians. We submit that this objection is without force for the reasons hereinbefore assigned, and for the additional reason that there are descendants of this tribe of Sioux Indians scattered throughout the various reservations mentioned in said act of March 2, 1889, who have selected their allotments in the respective reservations, as they were entitled to do and without question.

3. The brothers of the claimant were received and educated at the Indian schools, located in the States of Virginia and Pennsylvania, and as Indians of the Sioux Indian Nation, and one of them was sent to Europe as one of a delegation of American Indians to show their advancement in education and civilization.

4. We submit the report of Special Agent Lounsberry in connection herewith, and claim with confidence that the findings therein are consistent with the true facts of the case.

His impartial and intelligent report states that all the requirements of the act of March 2, 1889, have been fully and strictly complied with by the claimant.

The following are his special findings, viz: The claimant's right to the land began in February, 1889; her residence was established July 9, 1889, and has been continuous in contemplation of law ever since.

5. The other claimant to the said allotment is one Black Tomahawk, an alleged full-blood Sioux Indian. But as to this unfounded claim it is only necessary to refer to the same report of said special Indian agent, from which it appears that although Black Tomahawk went upon said allotment without complying with any of the requirements of the law essential to inaugurate a claim of title, yet his residence dates only from January 3, 1890, almost an entire year after the claimant's rights began, and attached irrevocably.

That Black Tomahawk's improvements, so called, were cheap and unsubstantial, whilst the claimant's were expensive (for that section of country) and durable.

But the claim of Black Tomahawk is entirely destroyed, because, as reported by said special agent, he had long before, as he was permitted to do by the provisions of said treaty of 1868 (Article VI), selected his land in conformity with said treaty, caused a house to be built thereon by an agent at the expense of the United States, and his land to be fenced and stocked, both likewise at the expense of the United States. He must be held to have exhausted by these acts his rights to select an allotment.

6. The claim of Black Tomahawk should not be allowed for an additional reason that appears from the testimony on file, namely, that the said Black Tomahawk is not a *bona fide* claimant, but simply an instrument in the hands of a combination of white persons who desire to defeat the title of Mrs. Waldron, that the allotment selected by her may serve as a town site to be exploited by a band of speculating adventurers.

Conclusion.

In conclusion we most respectfully but earnestly submit that every consideration of right and justice supports the claim of Mrs. Waldron. She is an educated and cultivated woman, deservedly possessing the esteem and confidence of the best citizens

of the State of South Dakota. Her entire life has been spent usefully amongst the Indians of the Sioux Nation, and she deserves well of the Republic. It is true she is of the "mixed blood," but this does not, as we have shown, lessen her claims upon the Government, nor render her ineligible to select an allotment under the treaties with her kinsmen and the laws passed to carry them into effect. The "mixed-bloods" have been faithful to the United States in peace and war, and have, by their example, encouraged the hostile Indians to seek a higher civilization and cultivate the arts of peace.

To deprive Mrs. Waldron of her allotment will cause widespread distress and ruin, for there are many worthy persons and families on the reservations similarly situated, and tend to destroy that important factor of civilization and improvement, the intermarriages between white citizens and Indian women.

The Indians are properly called the wards of the nation, and these "allotments," where the law permits, should be bestowed upon the Indian maidens as their dowries.

The language employed by Baldwin, J., in Ladiga *v.* Roland, already cited, seems to us to be abundantly appropriate to the matter on hearing, to wit:

"We can not seriously discuss the question, whether a grandmother and her grandchildren compose a family in the meaning of that word in the treaty; it must shock the common sense of all mankind even to doubt it. It is incompatible with the good faith and honor of the United States, and as repugnant to the Indian character, to suppose that either party to the treaty could contemplate such a construction to their solemn compact as to exclude such persons from its protection and authorize any officer to force her from her home into the wilds of the far West. Such an exercise of power is not warranted by the compact, and the pretext on which it was exercised is wholly unsanctioned by any principle of law or justice."

ROBERT CHRISTY,
Attorney for Mrs. Jane E. Waldron.

PIERRE, S. DAK., *March 5, 1889.*

DEAR SIR: Inclosed I hand you my argument in the matter of the rehearing of Black Tomahawk *v.* Jane Waldron. The propositions in this matter are so exceedingly simple that I hope we may have an early decision of them. It is over two years now since this matter was submitted to the Department and seems as though we ought to get to the end some time.

Yours truly,

H. E. DEWEY.

HON. GEO. W. SHIELDS,
Assistant Attorney-General, Washington, D. C.

FORT PIERRE, S. DAK., *June 19, 1893.*

SIR: I would respectfully call your attention to the case of Black Tomahawk *v.* Jane E. Waldron, which has been in litigation ever since the opening of the Great Sioux Reserve by the proclamation of ex-President Harrison. I will make as short and as lucid an explanation of my case as I can, so that you may get the substance of it without taking too much of your valuable time.

I am a part-blood Sioux Indian woman registered at the Cheyenne River Agency, where I have, with my mother, sisters, and brothers, and others, and my children, as well as a great many more of my immediate relations, drawn rations and annuities for years.

In February, 1889, I located the land whereon I reside. A few months later I had a house constructed and had been an actual resident therein for six months when a lawyer of Pierre, S. Dak., H. E. Dewey by name, induced the Indian Black Tomahawk to leave his claim, 22 miles up the Bad River, where he had a good house and barn and farm, and where he had been supplied with implements and wire and horses by the Government, to come here and jump my claim, to use him as a tool against me. This transpired January 3, 1890, while I was absent on business, and, too, when the issuance of the proclamation was hourly expected. But I returned January 9, 1890, and the proclamation was not issued till February 10, 1890. Then they, i. e., Dewey and his backers, speculators in Pierre, who intended buying Tomahawk off and throwing the land into town property, raise the question of my right as an Indian to serve their purpose, knowing it were useless to contest my right of priority.

I took the land in good faith, believing I had the right, as I and all my people have ever since I can remember anything at all. I have two little children who will soon be eligible for school. I desire to live contiguous to civilization, so that

I may give them all and more of the advantages given me by my parents. I would like to improve my house, and fence and cultivate the land, but this cloud of uncertainty prevents me. When we attempted to cultivate the soil Black Tomahawk, under the instructions of Dewey, employed force to stop us.

It is now four years and a half since I first took the land, and I am still waiting in suspense. At first I depended on the proper authorities and the affidavits by responsible persons to render me justice, but my adversaries not only maligned me and mine through the press, to influence public sentiment, but so grossly misrepresented us to the Department that I was compelled to employ counsel in the person of Col. Robert Christy, of Washington, D. C.

Through a lack of sufficient testimony ex-Assistant Attorney-General Shields rendered an opinion in this case adverse to the rights of mixed-blood Indians, and the case was up for rehearing before him but he went out of office, thus leaving the duty to his successor.

I most earnestly appeal to you to see that the new Assistant Attorney-General does not give his opinion till he has seen all the testimony on file in the Indian Office and ex-Secretary Foster's letter to ex-Secretary Noble, and thoroughly acquainted himself with the rights and positions of part bloods in the Sioux Nation for more than a century at least. A permanent decision against me cannot affect me alone, as Shields thought, but thousands like myself must share the same fate.

In a recent court at Reno, Okla., in a parallel case to mine, Judge Berford, of the circuit court, decided in favor of the part blood. But in another parallel case in Helena, Mont., the judge of the land office, using Shields as authority, decided against the part blood.

My mother and all her people have always had the same privileges as their full-blood relatives. All her sisters and brother and their children have been allotted their land, and in fact most of our relatives, of whom we have some at every agency named in the Sioux bill.

My mother, both sisters, my younger brother, and their children, and my little son, Arthur Westbrook Waldron, were allotted land two years ago this month by Allotting Agent McKean. But my brother, John T. Van Meter, and myself took land adjoining the town of Fort Pierre, and in both cases Indians are used as tools by Pierreites against us. My brother John is widely known as the Sioux lawyer, and in 1887 was sent by the Lincoln Institute in Philadelphia to the Queen's Jubilee as a representative of our nation.

Pardon me for writing at so great length, and I do beseech you that you will give this matter early consideration, as it is of importance to me.

Very respectfully,

JANE E. WALDRON.

The SECRETARY OF THE INTERIOR.

In re JANE E. WALDRON—PRELIMINARY.

The testimony in this case shows that Charles Waldron is the husband of Jane E. Waldron, that they are living together, that he is a citizen of the United States entitled to all rights of a citizen.

Section 2289 of the Revised Statutes, United States (being the homestead law), says:

"Every person who is the head of a family * * * shall be entitled to enter one quarter section or less of unappropriated public lands, etc."

Now is Charles Waldron the head of a family, so as to be able to enter one-quarter of a section of land under the law, or is his wife the head of the family, and must they enter the land in her name in order to get the benefit of the homestead law?

If he is the head of the family, and the one entitled to enter land under the homestead law, then she cannot be.

Is Jane E. Waldron the head of a family, being married, living with and supported by her husband; and, if so, can she, being an Indian, take 320 acres of land under the act of March 2, 1889?

If yea, then the family has two heads, for her husband, an American citizen entitled to all rights, cannot be debarred from the benefits of the homstead law, and she is also the head of the family, then they have double rights, and if they have them every other family has double rights equally.

Every squaw man on the late reservation claims 160 acres in his own right, as the head of a family, and 320 acres in the right of his wife as the head of the family.

This may be law, but a court that would so hold would be a curiosity rare enough for a museum.

[Before George H. Shields, Assistant Attorney-General, Interior Department, United States.]

REPLY TO BRIEF OF ROBERT CHRISTY, ATTORNEY FOR MRS. JANE E. WALDRON.

I.

"The construction of Indian treaties."

To this proposition Tomahawk fully assents and calls attention to the fact that he is the son of Mah-to-non-pah, "Catch the enemy," Little Chief, one of the signers of the treaty of 1868 referred to.

As he understands it, no Santee signed that treaty, as they had been provided with land in Nebraska.

Whether they had or not makes no difference, as by the 5th article of the treaty with his band, proclaimed March 17, 1866, Revised Treaties of United States, p. 896, the United States Government solemnly covenanted that "should the Two Kettle band desire to locate permanently on any part of the land claimed by said band for the purpose of agricultural or *other pursuits* it is hereby agreed that such individual or individuals shall be protected in such locations against any annoyance or molestation on the part of whites *or Indians*.

The land in controversy has been a part of the domain on which the Two Kettle band have lived for a great many years and long prior to that treaty.

If Mrs. Waldron were an Indian she would be a Santee, and a liberal construction of this treaty would be in favor of the Two Kettle band that was a party to it, and not the Santee band, which was not a party to it.

Besides this the act of March 2, 1889, section 7, gives Santees land in Nebraska, and not in Dakota (*see* Section 7).

Van Meter, the father of Mrs. Waldron was living in the village of Fort Pierre, on the mile square of land secured by the Dakota Central Railway. He was a new comer there, having formerly lived at Vermillion, across the river from Nebraska, in which is the reserve of the Santees. There he married his wife. See testimony of Mrs. Waldron.

Neither he nor his family had any right on the rolls and were on wrongfully, and Mrs. Waldron's presence on the lands of the Two Kettle band is in direct violation of the treaty with the Two Kettle band, *supra*.

II.

"Does the act of March 2, 1889, embrace Indians * * * of the mixed blood?"

For the purpose of the argument Tomahawk might admit the proposition fully, for the query has nothing to do with the case.

The act is a law of the United States, to be construed the same as all other laws.

The rule is a very old one, both by the Roman civil law and the English common law, too elementary to require authorities, that the offspring of unmarried mothers takes the status of the mother, while the offspring of married parents takes the status of the father.

The result is that Mrs. Waldron is not an Indian and not a mixed-blood, as those terms are used in legal parlance.

The "mixed-bloods" are, and always have been, the offspring of Indian women living in a state of concubinage with white men.

In the earlier treaties with the Indians they were never recognized as having any rights, but we frequently find by express stipulation with the Indians that these half-breeds were permitted, as an act of sufferance and compassion, and not as a matter of right, to participate in certain benefits under the treaties. (*See* the Sacs and Foxes and Santees treaty, sec. 10, p. 783, Rev. Treaties, U. S). The language there used is, "they may be suffered" to remain, etc. This explains the language in section 21 in reference to the Islands.

But now, according to the contention of the attorney for Mrs. Waldron, the half-breeds have rights equal, if not superior, to the full-bloods.

In other words, the son and heir may be dispossessed by the beggar who has been given, out of charity, a seat in the corner of the fireplace.

But Mrs. Waldron is not an Indian.

She is not even of mixed blood.

She is not the illegitimate offspring of anyone, and she must be to come within the legal significance of those words.

Her maternal great-grandfather was a citizen of the United States, regularly married to an Indian woman.

Her maternal grandfather was therefore a citizen of the United States.

He was regularly married to his wife, whose daughter is Mrs. Waldron's mother.

Her father, who is a white man, a citizen of the United States, was regularly married to Mrs. Waldron's mother, and Mrs. Waldron is, herself, regularly married to a

white man, a citizen of the United States, and herself a citizen. (See her testimony taken before Inspector Cisney.)

Arthur Van Meter, the father of Mrs. Waldron and several other sons and daughters, all born in regular wedlock, is a citizen of the United States.

His sons are citizens of the United States and Mrs. Waldron is a citizen. She is regularly married, living with and being supported by her husband, vide her testimony.

By section 76, Civil Code of Dakota, he, and not she, is the head of the family.

This is the law among all civilized people as well as by the Indian customs.

Section 8 of the act of March 2 gives to the head of the family land, but that head must be an Indian, and Mrs. Waldron is not the head of a family and her husband is not an Indian.

How, then, can they prevail against this full-blooded Sioux Indian chieftain, on his own ancestral lands, that he has not only a natural right to but one guaranteed over and over again by the most solemn treaties?

Any such holding would be a mockery of justice.

There are two ways in which Indian women form connections with white men:

1. When white men "take up" with them; and—rarely, very rarely—when they marry, according to the Indian custom, and live with the tribes.

2. When the Indian woman—who in this case is usually half-breed—walks out of the tribe and becomes the wife of a white man by regular marriage and takes her place in the family and among the families of white people.

Mrs. Waldron is of the fourth generation of this second class. (See her testimony taken before Inspector Cisney.)

Her father lived first in the village of Vermillion, then in the village of Fort Pierre.

She taught school in white schools.

She taught music to white pupils. (See her testimony.)

She would inherit from her father. Her father, her brother, and her husband are citizens, entitled to the elective franchise, eligible to any office in the United States, from constable to President.

According to the citations of Mr. Christy, if she were an Indian neither she nor her brothers would be citizens.

III.

Section 4 of the act of March 2 is not the section that defines who is entitled to land under the law. It is section 13 that does that, and the language is, "That any Indian receiving and *entitled;*" what goes before, in section 4 and section 8, is merely preliminary. It is under this section 13 that both these parties claim, and this section must control.

As to section 7 and the words "now occupying," we submit that if Mrs. Waldron is an Indian, being a Santee, she could gain no rights by living off of her own reservation (where the law and the treaties require her to be if she were an Indian) in her own wrong.

If she were an Indian, being a Santee, she had no right to be off her reservation without the permission of her agent, and this violation of the regulations would deprive her of the benefits of the bill. A mere consideration of this proposition, however, shows the ludicrousness of her claim set up here.

She was not entitled to rations anywhere. If she had been it would have been at the Santee Agency. But they never, any of them, had drawn rations until they wrongfully got on the roll at Cheyenne. (*See* Mrs. Waldron's testimony before Cisney.)

IV.

The cases of Elk *v.* Wilkins (112 U. S., 94) is not in point, because that was the case of an *Indian*. Mrs. Waldron is not an Indian, as we have seen.

And in the case of the grandmother, Ladiga *v.* Rowland (2 Howe, 581): First, the grandmother was not the daughter of a white man, regularly married to her mother—she did not have a white husband with whom she was living and being supported by—and, finally, she was the head of a family. There may be trifling differences in Mr. Christy's view, but they seem material to us.

V.

"STATEMENT OF FACTS."

This should be headed "Statement of facts and fiction." The second allegation is wholly and unqualifiedly false.

The fourth we know nothing of, never having seen it—the report by Lounsberry.

The sixth is unqualifiedly false.

In conclusion, Tomahawk has to say that if it is right for a white man, by virtue of a strain of Indian blood of a Nebraska tribe in the veins of his wife, if it is right for him to first intrude on the ancestral lands of the Two Kettle Indians, then through that wife to get on to the rolls of the agency and take from the already scanty allowance of rations food to feed his family that belongs to the Indians; if it is then right and just, after first having wrongfully and unlawfully intruded on the reservation then wrongfully got his wife on the rolls; if it is right, under these circumstances, for him to have this land, then "right and justice support the claim of Mrs. Waldron," otherwise not.

It is true that Mrs. Waldron is an "educated and cultivated woman," and it is equally true that she is not an Indian.

It is not true that "her entire life has been spent amongst the Indians of the Sioux Nation." The reverse is true, vide her testimony,

If "she deserves well of the Republic" let the Republic reward her, but not at the expense of Tomahawk or in violation of treaties or violation of law. Tomahawk is not waging a war against the mixed-bloods; in this contest he is defending his own rights. And if the mixed-bloods have been faithful to the United States, Tomahawk proposes to be faithful to himself. He has never violated any treaty; many provisions and treaties that have been made with him have been violated. What he wants is what the law and the treaty guarantee to him, nothing more; with nothing less will he be content.

H. E. DEWEY,
Attorney for Black Tomahawk.

OFFICE OF JUDGE OF THE U. S. DISTRICT COURT,
SECOND JUDICIAL DISTRICT,
El Reno, Okla., January 11, 1893.

DEAR SIR: In response to your telegram, 6th instant, I inclose copy of decision in case of Morrison *v.* Wilson. I do not think this case involves the question that the press reports stated. However, I am glad to furnish you with a copy. The answer of defendant will present the question direct as to whether a half-breed offspring of white father and Indian mother is entitled to allotments under the C. & A. treaty.

Yours truly,

JNO. H. BURFORD.

Hon. GEO. CHANDLER,
Assistant Secretary of the Interior, Washington, D. C.

[Interior Department of the United States. Black Tomahawk *v.* Jane E. Waldron. Hearing before Assistant Attorney-General George H. Shields.]

BRIEF ON BEHALF OF THE DEFENDANT.

[Robert Christy, attorney for Mrs. Jane E. Waldron.]

I.

The questions involved must be solved by the proper construction of the following sections in the act approved March 2, 1889, to wit:

Section 4, which reads as follows:

"That the following tract of land, being a part of the said great reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians *receiving rations and annuities* at the Cheyenne River Agency in the said Territory of Dakota."

And section 13, which reads as follows:

"That any Indian *receiving and entitled* to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing upon any portion of said great reservation not included in either of the separate reservations herein established, may, at his option, within one year from the time when this act shall take effect, and within one year after he has been notified of his said right of option, in such manner as the Secretary of the Interior shall direct, by recording his election with the proper agent at the agency to which he belongs, have the allotment to which he would be otherwise entitled on one of said separate reservations, upon the land where such Indian may then reside, such allotment in all other respects to conform to the allotments hereinbefore provided."

2. It appears from the proofs on file that Mrs. Jane E. Waldron's condition falls within both the letter and spirit of the terms of said section 4, for

(1) She was regularly enrolled as an Indian of the Sioux nation and was receiving rations and annuities at said Cheyenne River Agency at and long prior to the passage of said act.

(3) It is further shown by such proofs that she was not only receiving but was *entitled* to receive such rations and annuities at said Cheyenne River Agency; thus fully responding to the requirements of said section 13.

(4) It further appears from such proofs that Mrs. Waldron, residing upon a portion of said great reservation, not included in either of the separate reservations established by said act of March 2, 1889, exercised her option within the period prescribed by said act, by recording her election with the "proper agent at the agency" to which she belonged, and thereby secured to herself as the head of an Indian Sioux family the allotment in controversy.

"The claimant's" (Mrs. Jane E. Waldron's) right to the land began in February, 1889; her residence was established July 9, 1889.

"All the requirements of the act of March 2, 1889, have been fully and strictly complied with by the claimant" (Mrs. Waldron). (See report of Special Agent Lounsberry.)

(5) It is likewise clearly shown by the proofs on file and the reports of the special agents that the residence of the plaintiff, Black Tomahawk, did not begin until January 3, 1890, almost an entire year after Mrs. Waldron's rights began and had irrevocably attached.

(6) Mrs. Waldron again asserts the charges fully set forth in her former brief, that Black Tomahawk was not eligible to make a selection of this allotment, independently of her rights therein, because—

He had already exhausted his right of selection under the treaty of 1868; was not an Indian of the Sioux Nation, but an Arapaho, and not therefor entitled to the privileges of said act of March 2, 1889, touching allotments, and was and is not a bona fide claimant, but a mere instrument used to secure the land in controversy for a syndicate of speculating bankers, residents of the city of Pierre.

7. It will be well to remember in this connection that the plaintiff must recover not upon the weakness of Mrs. Waldron's title, but upon the strength of his own, for "*Potior est conditio defendentis*" et "*potior est conditio possidentis*," both maxims applying with full force to the condition of the defendant and possessor of the property in dispute.—(Mrs. Waldron).

8. As a matter of fact the occupation of the allotment in controversy was begun by Mrs. Waldron prior to the report of the commission aforesaid, as evidenced by "staking it out," as is customary in such cases, and the hauling and depositing building materials thereon, which occupation, open and notorious, has continued ever since hitherto.

9. The attorney for Black Tomahawk has evidently fallen into an error in respect to the construction of the language "receiving and entitled to rations and annuities at either of the agencies mentioned in this act." It was not the intention of the legislators to provide that the person embraced thereunder should be both entitled and receiving, because this intention would have deprived those who were fully entitled to the provisions of the act, unless they at the time the act took effect were actually *receiving* such rations and annuities. Some were in fact in Europe when the act took effect by permission of the proper authorities.

10. That Mrs Jane E. Waldron was rightfully entitled to make the selection as the head of an Indian family is established by precedent and by the opinion of the Government agent, recording her notice, and that of other eminent authorities.

Indian Commissioner Morgan, who has long been a student of the Indian problems has held, "In the Indian family the line of descent is through the mother, and in many instances the wife and not the husband is the recognized head of the family. Often when an Indian marries, instead of taking his wife home he goes to her's and becomes absorbed in her family."

Indian Inspector James H. Cisney, who examined officially into this question touching Mrs. Waldron, reports as follows:

"I can't see how the head of a family question can enter into this case. Of course, a white man can not acquire any benefits of an Indian in any way from the Government on his own account. And I can't see how or why an Indian woman, because she is married to a white man, can be deprived of any benefits she may be entitled to as an Indian. She must certainly be considered the *head of the family so far as her Indian rights are concerned.*"

11. The following instance shows the construction placed upon the act by the governmental officers (section 21, act of March 2, 1889):

The case of Mrs. Lafferty, who was living with her husband and several children, at the time of the passage of the act, on "Farm Island." Subsequently, under the provisions of said 21st section, her improvements were appraised and she and her children given, by the appropriate officers of the Government, allotments elsewhere.

But if a marriage between an Indian woman and a white man disinherits the

woman and offspring, as to tribal Indian rights, the cruel hardship follows, the allotments are void, rations and annuities must be withheld, and the family of unfortunates ejected from "Indian Territory"; for the benefits of the section are restricted to "Indians of the full and mixed bloods."

But it is not possible that any such result is consistent with the legislative intent, that undoubtedly framed the bill in the interest of justice and humanity.

12. It was not until the passage of the act of Congress approved August 9, 1888, that an Indian woman (except a member of one of the civilized tribes in the Indian Territory) married to a citizen of the United States became by such marriage herself a citizen of the United States. And for prudential reasons a proviso was added "that nothing in this act contained shall impair or in any manner affect the right or title of such married woman to any tribal property or any interest therein." Certainly the inference follows irresistibly—rights must have theretofore existed that the act declared protected.

II.

THE SIOUX INDIAN COMMISSION. (1889.)

The following propositions of fact are fully and clearly established by the official report of the Commission authorized and appointed under the provisions of the act of March 2, 1889, by the approval of the President of such report and the subsequent ratification thereof by Congressional enactments.

First. The honor of the Government is pledged to carry out in good faith the assurances given and representations made by its duly accredited representatives, whereby the Indians were induced to divide their great reservation and cede many millions of acres to the people of the United States.

Second. That such cession, of inestimable advantage to the people of the United States, could not have been secured without the intelligent, laborious, and earnest coöperation of the mixed-bloods descended from, and white men intermarried with, the women of the Sioux nation.

Third. That the mothers of such mixed-bloods and the children of such white fathers were assured in the most explicit and positive manner by such duly accredited representatives that they should fully and equally share in the privileges and advantages touching such reservation, with the Indians of the whole blood, on terms of absolute equality.

Fourth. That a denial of the rights of the defendant, Jane E. Waldron, in the allotment in question, because she is not a full-blooded Sioux Indian, will establish a principle that will injuriously and ruinously affect thousands of helpless women and children similarly situated, and dishonor the United States, because it involves a violation of pledges solemnly made by its duly authorized agents and representatives.

Fifth. To eject Mrs. Jane E. Waldron from such allotment, and to withhold from her and her children rations and annuities accustomed to be issued and paid, because she is the wife of a white male citizen of the United States, is to treat with cruel ingratitude the very white men and mixed-bloods by whose labors and influence the United States obtained a large portion of the "Great Sioux Reservation."

Sixth. The full-blooded Indians were not only willing, but magnanimously and earnestly insisted, that the white fathers and the mixed-bloods should share equally with themselves, as one great family, in all the benefits and advantages to accrue from the agreement of cession.

The following special references are made to said executive document No. 51, in support of the foregoing propositions:

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1. The message of the President	1, 2
2. Letter of Secretary of the Interor	8
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III.

INDIAN TREATIES AND AGREEMENTS.

In all treaties between the United States and the Indian tribes the mixed bloods have been regarded as Indians, and their interest in the tribal property as such uniformly recognized and preserved.

1. In the treaty with the Wyandots, September 29, 1817, the children of William McCollock, "who are *quarter-blood* Wyandot Indians," received one section of land.

2. In the treaty with the Miami Nation of Indians, October 6, 1818, one section of land was granted to each of a number of *half-blooded* Miamis "as *Miami Indians by birth* and their heirs."

3. In the treaty with the Sacs and Foxes and certain bands of Sioux, July 15, 1830, a reservation was set apart for "*the Sioux half-breeds*."

4. By Article I of the treaty between the Otoes and certain other bands of Indians, September 21, 1833, a reservation was ceded to the United States in favor of certain *half-breeds* of the Omahas, Otoes, Yancton, and Santee bands of Sioux.

5. Schedule A to the treaty with the Chippewas sets forth the names and amounts given to the mixed bloods, many of whom are women and children.

6. Article VII of the treaty with the Chickasaws, 1834, contains the following provision singularly applicable to the present inquiry:

"Where any white man, before the date hereof, has married an Indian woman, the reservation he may be entitled to under this treaty, she being alive, shall be in her name, and no right of alienation of the same shall pertain to the husband unless he divest her of the title after the mode and manner that *feme coverts* usually divest themselves, that is, by acknowledgment of the wife.

7. By Article II of a treaty made at the city of Washington with certain chiefs and braves of the Sioux Nation of Indians, September 29, 1837, a fund was set apart to pay to the relatives and friends of said chiefs and braves "having not less than *one-quarter* of Sioux blood.

8. An act was passed July 17, 1874, entitled "An act to authorize the President of the United States to cause to be surveyed the tract of land in the Territory of Minnesota belonging to the *half-breeds* or *mixed bloods* of the Dacotah or Sioux Nation of Indians, and for other purposes."

9. By Article IX of the treaty with the Pawnees, September 24, 1857, provision was made for the *half-breeds* of the tribe, securing to them equal rights and privileges with other members of the tribe.

10. By Article VII of the treaty with the Yancton tribe of Sioux, April 19, 1858, a half section of land was secured to each of several *half-breeds* of said tribe. The term *mixed bloods* is used likewise in the same article.

11. The twenty-first section of the act of March 2, 1889, in the clearest and most explicit terms, recognizes the rights of the *mixed-blood* Indians of the Sioux Nation as equal to those of the full-blood. It reads as follows:

"*And provided further*, That if any *full or mixed blood* Indian of the Sioux Nation shall have located upon Farm Island, American Island, or Neobrara Island, before the passage of this act, it shall be the duty of the Secretary of the Interior, within three months from the time this act shall have taken effect, to cause all improvements made by any such Indian so located upon either of said islands, and all damage that may accrue to him by a removal therefrom, to be appraised and upon payment of the sum so determined, within six months after notice thereof by the city to which the island is herein donated to such Indian, said Indian shall be required to remove from said island, and shall be entitled to select instead of such location his allotment, according to the provisions of this act, upon any of the reservations herein established or upon any land opened to settlement by this act not already located upon."

There is a significance in the words "his allotment according to the provisions of this act." In other words, any Indian of the "*full*" or "*mixed blood*," who had, prior to the passage of the act, located upon either of the designated islands and afterwards surrendered such location, should be restored to his original right to select his allotment as if he had not surrendered his right to such allotment by his location upon one of these islands.

12. The Attorney-General of the United States (1851) held in respect to the distribution of the money due from the United States to the Cherokee Nation of Indians as follows:

The distribution to be made per capita. "The shares of children to be paid to heads of families to which they belong, whether those heads of families be male or female, father or mother, or persons standing in *loco parentis*." (5 Opin. Atty. Genl., 320.)

IV.

THE INDIAN WOMEN, THEIR TRIBAL STATUS AND RIGHTS OF PROPERTY.

The marriage ceremony is very simple, and in most tribes there is none at all.

Divorces are frequent and at the pleasure of the contracting parties. In such cases the wife is usually left to provide for the children as she may.

With all or almost all the Indian tribes the sole care of the men is to provide food. The labor is the exclusive lot of the women. The use of the ax or hoe is beneath the dignity of the male sex. It belongs to the females to plant corn and cultivate and gather it; to make and mend garments and moccasins, to cure the skin of animals; to build and to pitch tents, cut wood, bring water; to tend horses and dogs, and on a march to carry the baggage. The management of children is left mostly to women. They sit next the door, as they have all the drudgery to do. The women do not murmur at this, but consider it a natural and equitable distribution of family duties and cares.

Polygamy is countenanced amongst all of the North American Indians. By reason of their continual wars the males are killed off, and polygamy provides homes for the women, who greatly outnumber the men.

They have no surnames, but always live near each other. They have a degree of relationship three or four generations back. The old women generally keep this account and are very correct; they also have much to say on the manners and customs.

As to government amongst them there is none. They have no laws, but there are customs which every Indian scrupulously observes.

"Where maternal descent prevailed it was the wife who owned the property of the pair and could control it as she listed. It passed at her death to her blood relatives and not to his. Her children looked upon her as their parent, but esteemed the father as no relative whatever, and the women thus made good for themselves the power of property and this could not but compel respect. Their lives were rated at equal or greater value than a man's." (Daniel G. Britton's American Race, pp. 48, 49, A. D. 1891.)

The foregoing statements of fact are taken from the histories of the Indian tribes of North America, written by men of high character and great learning, some of whom resided for years among the Dacotah Nation of Indians. They are accepted authorities. (Schoolcraft and Catlin and others.)

DEDUCTIONS.

Assuming the truth of these well-authenticated historical facts, it follows that the interest of the female in the tribal property is as great, and certainly better founded, than that of the male, be he chief or warrior, by immemorial custom and usage. And if equitable considerations are to prevail the industry, devotion, and faithfulness of the Indian woman entitle her to the greater share, if inequality is to exist, in the distribution of the benefits and privileges attaching to the cession of the great Sioux reservation.

The innate sense of justice characteristic of the Dacotah Indian before influenced by civilization (?) voiced itself in the significant expression, "Mother-right." And this "mother-right" is the basis of the claim of Mrs. Waldron to a homestead for herself and children, if her nation is to be disintegrated and its property parceled out.

V.

THE FAMILY HISTORY OF THE DEFENDANT.

Arthur C. Van Meter, the father of Mrs. Jane E. Waldron, had married a Sioux Indian woman prior to the treaty of 1868; had participated in the treaty with the Yankton Sioux of 1858; never after left the Dacotah or Sioux Indian country; had gone to it before it was treated for, and before there was any settlement of whites therein. At one period it might be said he lived amongst the whites, but it was only because the whites gradually entered the Indian territory and formed settlements around him. He never abandoned the Indians to seek a home amongst the whites. His Indian name was and is *Wasta E Yapick*, meaning the "*Real Good.*"

Mrs. Waldron's mother's people are scattered throughout the various Indian reservations of Sioux Indians as members of the several tribes occupying the same.

Her father with his family, including Mrs. Waldron, have resided upon the Cheyenne River Reservation continuously since. Mrs. Waldron was married subsequent to 1883 to Charles Waldron, the latter having lived amongst and intermingled with the

Sioux Indians since his childhood days. Both the husband and wife are conversant with the Sioux language, one of the most difficult of the Indian languages to acquire, the latter speaking it with remarkable fluency. Her life has been devoted to the Indians and their advancement in intelligence and civilization. Her family and herself have for years been enrolled at the Cheyenne River Agency, and have been received and treated as members of that nation in respect to rations and annuities as such. The record kept by the appropriate officers of the United States establishes beyond question her Indian *status* to be as we claim. She has never severed her tribal relations nor surrendered any of her rights of inheritance derived from and through her maternal ancestors.

Her brothers both attended the Government schools at Philadelphia, as Indians, and one of them was sent to Lincoln Institute to the Queen's Jubilee as a representative of the Sioux Nation.

We have the conduct, too, of the full bloods showing the estimate in which they held the part bloods as to their tribal rights and relations, for in all their wars with the whites the full bloods recognized them as Indians and in no instance have they h: ruced a part blood as though he were a white man.

VI.

WHO IS AN INDIAN?

The following is a very satisfactory definition:

"In a property sense, an Indian is one who is, by right of blood, inheritance or adoption, entitled to receive a pro rata share of the common property of the tribe."—(Commissioner Morgan, 1892.)

THE PRACTICE OF THE INDIAN BUREAU.

1. The following opinion has been long acquiesced in as the rule of departmental construction:

"Whenever an act of Congress has by actual decision or by continued usage or practice received a construction at the proper department, and that construction has been acted on for a succession of years, there must be strong and palpable error and injustice to justify changing the interpretation."—(2 Op. Atty. Genl., 558.)

2. The practice of the present Bureau of Indian Affairs, distinguished for its just and broad and enlightened views touching the various Indian questions, will greatly enlighten the present discussion.

"The individuals of the tribes or nation have not been known in our dealings with that tribe, as, for instance, all persons recognized by the Indian authorities as members of the Sioux Nation, whether full bloods, half bloods, mixed bloods, or whites, have been treated with as the Sioux Nation, and rights have vested under treaties and agreements in the half bloods, mixed bloods and whites, that can not be taken away or ignored.

"Where by treaty or law it has been required that three-fourths of an Indian tribe shall sign any subsequent agreement to give it validity, we have accepted the signatures of the mixed bloods of the tribe as sufficient. * * * Also, where Congress has required a census to be made of an Indian tribe, the roll of names submitted of those recognized by the Indians as members of their tribe, including half-breeds and mixed bloods, has been accepted by the executive branch of the Government without question as conforming to the requirements of the statute.

"Under the general allotment act, as well as under special acts and agreements, lands have been allotted and patented by the Government, recognizing as Indians full bloods, half-breeds, and mixed bloods without distinction. Allotting agents have been instructed that where an Indian woman is married to a white man she is to be regarded as the head of a family where there are children, and while her husband is excluded from the direct benefit of the laws, she and her children are to have its full benefits."

VII.

SANTEE FACTOR.

It seems to me quite immaterial whether Mrs. Jane E. Waldron is of Santee descent or not, although learned counsel for Black Tomahawk, with seeming earnestness, presses this as a conclusive defect in the title of Mrs. Waldron to the disputed allotment.

Cogent reasons have been assigned elsewhere in this brief why the location of Mrs. Waldron at the time the act of March 2, 1889, took effect fixed her *status* as to the

selection of the allotment, but assuming that the question is material, I submit the following reasons as constituting a complete and satisfactory answer:

1. The Santees are one of the bands of the Sioux Nation.

2. They were invited to sign the agreement of cession as eligible adult males, and did so sign without exception.

3. There was a full discussion of the subject between the members of the commission and some of the leading members of the Santee band before they consented to sign, and they were assured they had a like interest with all other bands of the Sioux in the great reservation, and that they were eligible and necessary parties. It should be remembered, too, that the signatures of the Santees were indispensable to constitute the three-fourths majority that gave validity to the agreement of cession.

4. There is no ambiguity about this language of Governor Foster. Speaking in answer to a question propounded by Eli Abraham, he says:

"Yes, it seems Congress made a mistake. I was not aware of it until I came here yesterday. I supposed there was land to spare in the Santee Reservation. I feel perfectly safe in saying that Congress will rectify this mistake. It will either find land for Santees who have none or it will pay them the money value of the land." (P. 124, Ex. Doc.)

5. The term *Dacotah* means allied or banded together, and Swift Bird had the right conception when he said, "We are all of the Sioux Nation and all of one nation." (P. 164, Ex. Doc.)

Charger expressed himself to the same effect, as follows: "Of all the nations of Indians, it does not make any difference of what tribe, but we consider we are of one nation. * * * Now they have us scattered all over and we are considered of different nations. Now the Great Father wants to put us all together in one nation again." (P. 163, Ex. Doc.)

It would not only be unjust, but unreasonable and ungrateful to deny to Santee Sioux Indians not occupying such reserve the right to select allotments if they happened at the date of the passage of the act to be absent from the reservation mentioned, in the State of Nebraska, and yet within the limits of some other reservation.

It is clear that it was the design of the act to carry out the obligations of the treaty of 1868, and confer similar privileges upon all members of the Sioux Nation of Indians, wherever they might be, and this without regard to the original tribal relations.

But it is not necessary to enlarge upon this, because the claimant, Mrs. Jane E. Waldron, was a Sioux Indian, born in the Territory of Dakota, and enrolled at the Cheyenne River Reservation, and clearly not within the inhibition of section 7.

VIII.

JUDICIAL DECISIONS.

Upon a careful examination of the decisions of the Federal courts touching the *status* of white American citizens and their Indian families, it will be found that they in no degree trench upon the doctrine of inheritance, from and through maternal ancestors, contended for by Mrs. Waldron.

Selecting the fixed judicial star to guide our course, that though the criminal law of the Federal Government may follow the white citizen, yet it cannot interfere with the rights acquired by himself and family in tribal property, born of long established usage and custom, in the Indian nation where he has intermarried.

1. The utmost extent of the doctrine laid down in United States *v.* Rogers (4 Howard 567) is, that—

"A white man adopted into an Indian tribe is not an Indian within the exception of the act of 1834, as to crimes committed by one Indian against another. * * * The treaty with the Cherokees provided that the laws enacted for their own people should not be inconsistent with acts of Congress."

Remark:—Rogers had been indicted by the circuit court of the United States for the district of Arkansas for an alleged homicide upon one Nicholson, a white man.

2. In *ex parte* Reynolds (5 Dillon, Cir. Ct. Rep. 394, it appeared from the evidence that the deceased, one Purryear, had married a wife whose mother had some Indian blood, but that her paternal grandfather was a full-blooded white man, living in the State of Mississippi and not with an Indian tribe; that the wife was born and raised in the State of Mississippi, and married to Mr. Purryear in that State.

The contention was that Purryear was an Indian by reason of his marriage to a person of the remote connection to the tribe above described, he having been born an American citizen of white parents.

May I not well exclaim, How dissimilar to the case at bar!

3. In the United States *v.* Thomas Ragsdale (Hemp., Cir. Ct. Rep. 498, April, 1847), it was held (Hon. Peter V. Daniel, associate justice of the Supreme Court of the United States sitting with the district judge), that,

"A white man who is incorporated with an Indian tribe at mature age, by adoption, does not thereby become an Indian, so as to cease to be amenable to the laws of the United States. He may ,however, by such adoption become entitled to certain privileges in the tribe, and make himself amenable to their laws and usages."

Ragsdale's marriage with a member of the Cherokee Nation of Indians secured to him the rights and privileges which belonged to any other citizen of that nation, including the protection of a pardon under the treaty of August 6, 1846.

4. In United States *v.* Sanders (Hemp., Cir. Ct. Rep. 483, 1847) it was held,

"The child must partake of the condition of the mother, and if the mother is an Indian the child will be so considered for the purpose of the intercourse act of 1834, whether the father is a white man or an Indian. The child of a white woman by an Indian father would be deemed of the white race; the condition of the mother and not the quantity of Indian blood in the veins determining the condition of the offspring."

"The rule *partus sequitur ventrem* generally obtains in this country.

5. In United States *v.* Ward, circuit court, California (May 1, 1890), no question of inheritance from the Indian parent was involved, and it may be appropriate to remark that this is true of all this line of cases. The facts are unsatisfactorily preserved, the controlling one, however, being that, though born within the reservation of an Indian nation, Ward, the defendant, had been taken at an early age by his father to Los Angeles City, Cal., and had lived with him there for a number of years, presumably as a citizen of that State.

6. The Supreme Court of the United States declare in United States *v.* Holliday (3 Wall., 407) that "Neither the constitution of the State nor any act of its legislature can withdraw Indians from the influence of an act of Congress which that body has the authority to pass concerning them." But this does not extend, of course, to tribal rights of property.

7. In Chouteau *v.* Molony (16 How., 203) the Supreme Court held "by the laws of Spain the Indians had a right of occupancy, but they could not part with their right except in the mode pointed out by Spanish laws.

In Johnson *v.* McIntosh (8 Wheat., 543) it was declared "the claim of the Government to lands of the Indian tribes extends to the complete ultimate title, charged with their right of possession and to the exclusive power of acquiring that right."

8. In *In re* Camilla (6 Sawyer, 541) it was decided that "a person of half white and half Indian blood is not a white person within the meaning of this phrase as used in the naturalization laws, and therefore not entitled to citizenship." This broad doctrine is found in 7th Opinions Attorney-General, to wit, "But the statutes of naturalization do not apply to Indians."

9. The following admirable résumé of the doctrine of the decisions upon the *status* of white men intermarried with Indian women and of their offspring, is from the pen of the present Indian Commissioner.

"Besides cases of white persons adopted into Indian tribes, many white men have gone among the Indians and, without being adopted, married memebers of the tribe. While the authorities of the tribe in these cases also deemed and treated the issue of such marriages as members of the tribe, and while such issue would seem in the light of the decision of the circuit court of the northern district of Oregon (*in re* Camilla, 6 Federal Rep., 256) not to be white persons, in the sense in which that expression is used in the naturalization laws of the United States (sec. 2169, Rev. Stat.), yet in the rule laid down in *ex parte* Reynolds (5 Dillon, 394) they are in a political sense citizens of the United States and subject to the jurisdiction of the courts of the United States in criminal prosecutions. They have been treated, however, by the Executive of the Government as Indians in all respects; in other words, as having a right of inheritance to receive a pro rata benefit from the property of the tribe to which they belong, both land and funds."

CONCLUSION.

In view of the foregoing facts and legal principles, I submit with confidence the case on the part of Mrs. Jane E. Waldron, the defendant.

ROBERT CHRISTY,
Attorney for Mrs. Jane E. Waldron.

EL RENO, OKLA., *September 28, 1892.*

SIR: I write you regarding a decision reported in the 13 Land Decisions, at page 683, titled Black Tomahawk *v.* Waldron.

It has been said, and it comes from very good authority, that this decision was immediately recalled after its rendition.

Will you please inform me as to the facts, and if it has been recalled, as to whether it is now under advisement or consideration, and if so, when in your opinion will it finally be adjudicated?

This case in effect decides as follows: that a person born of a white father and an Indian mother is a citizen of the United States and not entitled to allotment.

If this decision has been recalled I find no record of it.

Yours, very truly,

B. J. HOWLAND,
El Reno, Okla.

COMMISSIONER OF THE GENERAL LAND OFFICE,
Washington, D. C.

PIERRE, S. DAK., *November 23, 1892.*

DEAR SIR: Your favor of the 17th at hand, and contents noted. You say, "the rehearing was ordered on averments of new facts that were not before the Department when the matter was first decided," etc. You will pardon me if I take occasion of differing from you on this proposition. The inquiry that was submitted to your office was whether or not Jane Waldron "is entitled to an allotment of lands on the ceded portion of the Great Sioux Reservation, for which she is contending against Black Tomahawk." To be entitled to an allotment she must come within the following provision of the law, viz:

"SEC. 13. That any *Indian* receiving, etc., may at his option, etc."

With this inquiry was submitted a statement of facts concerning her parentage, lineage &c., about which there is no dispute.

That statement showed her, under the authorities cited, conclusively to be a white woman and not an Indian. On this point no new facts and no new authorities have been presented or cited on the rehearing.

In lieu of that, however, a vast field of discussion and inquiry, under the treaty or negotiations of the commissioners was entered, which was totally irrelevant and immaterial to the inquiry. To demonstrate this, permit me to submit a few inquiries for your consideration in the hope that such consideration may aid in throwing light on this matter.

(1) Is the word "Indian" as used in the act to have any different meaning than the ordinary and accepted signification of the word; if so, why?

(2) If Congress intended it should have a different meaning and contrary to long settled and very ancient rules of construction to be held to include all persons who had Indian blood in their veins, no matter what their status in that respect might be under the law, where do we find the evidence of that intention?

(3) Can we presume, without such evidence, that Congress intended that it should have any such meaning as the commissioners saw fit to give it in negotiating with the Indians and be held to include Indians, negroes, mulattoes, Chinamen, Mexicans, half-breeds, quarter-breeds, eighth-breeds, and all other classes or specimens of humanity that they found on the reservations and whom they may or may not have promised participation in the benefits of the law as an inducement to secure their assistance in getting signatures? Can we presume this when the law creating the commission hadn't even passed when the act of March 2 passed Congress?

(4) If we can not make this presumption and Mrs. Waldron was not an Indian when this law was passed where do the commissioners get the power to make her one?

(5) Do you know of any rule of constriction that will permit you to construe this word "Indian" differently than as stated in the first inquiry above?

(6) If the construction of this word is taken out of the usual rules of construction, and such construction given to it as will carry out the statements of the commissioners who negotiated for the signatures, how could it then be held to include Mrs. Waldron, who is a quarter-blood, when the outside limit of the commissioners was only those of the half-blood?

(7) If you abandon the well beaten paths of construction of statutes, as Commissioner Morgan seems to think you ought, and, without warrant or authority, resort to the conversations of the commissioners to the Indians and, maybe, their promises to the third and outside persons, not a party, or in any way interested in the matter to determine the meaning of the word "Indian" as used in this public law—how can you avoid the repeated statement of the commissioners to the Indians, who were

a party to the negotiations, that no Santee could have any land in Dakota, and on the strength of this statement secured the consent of the Indians.

It is conceded by all that Mrs. Waldron is a Santee—if Indian at all.

My position is that the law must stand or fall according to its context. It must be construed the same as any other law.

By its own terms it was not a law until ratified by the Indians "in manner and form as prescribed by the twelfth article of the treaty of 1868."

This clause of the law had nothing whatever to do with reference to other provisions and could neither enlarge nor diminish their scope. It went simply to the manner of signing or ratifying or consenting to the law and not to changing or construing its provisions.

The twelfth article of the treaty of 1868 provides that "no cession of any portion of this reservation shall be valid or binding unless three-fourths of the adult male Indians occupying the same shall consent."

The proof that this "consent" had been given was to be made to the President of the United States and was to be satisfactory to him—and that was the only test and he was sole judge—and when it was presented and found satisfactory he was to issue his proclamation. Then the act became law. The consent was obtained, satisfactory proof was furnished and the President issued his proclamation and the act became public law to be judged and construed like any other law.

No word in it nor in the treaty changes the meaning of the word "Indian" or gives the commissioners power to enlarge or diminish the meaning of that word. The sixth article of that treaty permits any person "legally incorporated" into any tribe of these Indians being the head of a family to have an allotment of land. The claim is not made by Mrs. Waldron that her father from whom she takes her status ever lived with or ever was "legally incorporated" with these Indians and they set up no claims and assert no rights under that treaty.

But their claim is entirely a new one, founded on the words of section 13 of the present act of March 2, 1889.

Now I insist that her claims must be determined by the act of March 2, 1889.

The facts often reiterated are:

She was not an Indian.

She was not the head of a family.

She was not any other person entitled *under the law.*

The attempt now is to show, not that she is entitled under the law, not that she is entitled under any treaty, but that because certain half-breeds were promised by the commissioners a share in the benefits of the law, that therefore she, being a quarter-blood Santee, whom the same commissioners said could not share, that she is entitled.

She says her white husband signed this law, and gave the consent of an Indian thereby to this cession of land, and that entitles him to claim this particular tract from Black Tomahawk, whose ancestors for generations have occupied this section.

Now these may be new facts and new points, but if they are, I must say I can not see them that way.

At all events, it is now about three years since Black Tomahawk asked to have his rights defined in this matter, and after making all allowances for the delays that must be suffered in the public offices of the nation, I submit that this matter should be brought to a close.

Yours, very respectfully,

H. E. DEWEY.

Hon. GEO. H. SHIELDS,
Washington.

WASHINGTON, D. C., *December 13, 1892.*

SIR: I inclose a letter received from Mr. A. C. Van Meter, of South Dakota. As an act of fairness and justice I comply with his request, hence this letter to you.

I met Mr. Van Meter personally on last Saturday and recall meeting him at the Cheyenne Agency, S. Dak., at the time signatures were obtained to the treaty.

There was a great and unusual opposition at that agency to executing the treaty on the part of the whole-blood Indians; much bad blood was shown; angry threats made; hostile demonstrations were indulged in.

The commissioners were greatly aided by the mixed bloods and white men with Indian wives (commonly known as squaw men). The commissioners so state generally in their official reports.

I do not believe the requisite number of signatures under the treaty of 1868 could have been obtained without the active and courageous assistance rendered by the mixed bloods and squaw men.

I and my associates undoubtedly gave them assurances that they and their fam-

ilies would share in the benefits of the treaty equally with the whole bloods, if the treaty was approved by the President.

If the names of A. C. Van Meter, the father of Mrs. Jane E. Waldron, and Charles W. Waldron, her husband, appear signed to the treaty we reported, then I feel it to be but right to add that they and Mrs. Jane E. Waldron and her children come within the spirit and letter of our promises.

In fact I am of the opinion that the necessary three-fourths of signatures required by the treaty of 1868 have not been affixed to the late treaty unless those of the mixed bloods and squawmen are accepted and included.

It is essential therefore to the preservation of the integrity of the cession of several million acres of land that these mixed bloods and squawmen should be considered and treated as Sioux Indians.

Very truly yours,

CHARLES FOSTER.

The SECRETARY OF THE INTERIOR.

1805 FOURTEENTH STREET, NW.,
Washington, D. C., December 12, 1892.

MY DEAR SIR: Availing myself of your kind permission, given during our interview on Saturday last, I write this note.

I am the father of Mrs. Jane E. Waldron (wife of Charles W. Waldron), of Fort Pierre, S. Dak., who is interested in a so-called "allotment case" pending in the Interior Department.

I would not think of asking your influence in any way in regard to the case, yet I feel it would be right and an act of simple justice to Mrs. Waldron and her children to obtain a statement in writing from you addressed to the Secretary of the Interior, in regard to the signing of the late Sioux treaty by whole and mixed-blood Indians and "squawmen" at the Cheyenne River Agency, S. Dak.

As for myself, I went with Gen. Harney to the Dakotas in 1855; married in 1859 into the Sioux Nation; resided amongst them at the making of the treaty of 1868 and since.

My daughter was married on the Cheyenne River Agency before 1868; her children were born there and ever since carried on the rolls as Indians at that agency.

Most respectfully yours,

A. C. VAN METER.

Hon. CHARLES FOSTER.

DECEMBER, 1892.

DEAR SIR: It is my desire to write you in regard to the decision made by your assistant, Mr. Shields, about half-breed rights. He decides Jane Waldron, who was born of an Indian mother and a white father, to be a citizen of the United States, and therefore allows her no Indian rights whatever. Now I believe there are exceptions to be made among the mix-bloods. There are some half-breeds of Indians who have been so fortunate as to have married well to whites and who do no longer live on the reservations. Well, in the course of time, after having some misfortune, they wish to return. Now in case exceptions should be made, in my opinion, the best way to settle that would be to allow only those mix-bloods who were on roll with the full bloods at the agencies on the reservation before or *at the time* the treaty of 1889 was signed.

I want to find out if Mr. Shields' decision for Jane Waldron is intended for all of the mix-bloods on the reservation at present? The white people out here say it is, and they are taking advantage of our lands that have been allotted to us by the Government through the treaty. Please, dear sir, consider this matter before you take a step and see what suffering this land business would cause many poor families among the mix-bloods. Remember there are many mix-bloods no more civilized than the full bloods, and if they are deprived of their Indian rights what then will become of them? Here we are with our Indian blood, and when we are among the Indians they call us white, and when we are among the white people they call us Indians, and snub us for our blood, and we can not get work from the whites because we are Indians, no matter if we are capable of doing it.

We have Indian blood and we can't help it. It injures us, and therefore let the Government help us, as it has already agreed to do. When the commissioners were here to make the treaty, they said to the mix bloods as they did to the full bloods, that if they would make the treaty with them the Government would allow them and their children so much land a head, annuities, and whatever else they offered. The most of the full bloods were against it, and had it not been for the mix bloods

the treaty would not have been made. So now, if Mr. Shields cause the Government to deprive the mix bloods of their rights, please tell me how the treaty, that treaty of 1889, can remain unbroken and stand good?

Very respectfully,

Z. RULO,
Niobrara, Nebr.

Attorney-General W. H. H. MILLER,
Washington, D. C.

FORT PIERRE, *December 23, 1889.*

SIR: I wish to call your attention to case of land fraud here at Fort Pierre by a party by the name of Charles Waldron, married to a quarter-breed, living at Bad River, about 60 miles, on a stock ranch. Last spring he built a small frame house on 320 acres of land joining what is known as the square mile at Fort Pierre, to speculate on when said land is thrown open for settlement; has never lived on said land, nor don't intend to, as all his stock and belongings are at Bad River. He, said Charles Waldron, is now negotiating with a party by name of Pettegrew for said 320 acres. Now, will he be allowed to beat honest citizens out of those 320 acres when it comes to market? He intends to slip right out, off, go up Bad River, where his ranch is, still hold 320 acres there, where he has always lived, making a fortune out of honest taxpayers, who are already supporting him; and, honorable Commissioner, will this be allowed? We would like you to look this matter up. This man Pettegrew is to pay one $4,000 for this claim as soon as he (Pettegrew) can file on land. There are parties at Fort Pierre who can give your special agent particulars. Names of a few are Buck Williams, John Heald, Elgin Brown, Tollis Maupin, Joseph Leighen, James McGary.

Yours, respectfully,

CHARLES RANSOM.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

WASHINGTON, D. C., 12, 7, 1889.

To MCCHESNEY,
Cheyenne River Agency, S. Dak.:

Suspend order for removal of the Waldrons until further order.

T. J. MORGAN,
Commissioner.

WASHINGTON, D. C., 12, 7.

To MCCHESNEY,
Agent, Cheyenne River Agency, Dak.:

Waldron must not be disturbed. Revoke any order for his removal.

R. F. PETTIGREW.

A true copy of letters and telegrams received at Cheyenne River Agency, relative to removal of Waldron and family from the reservation.

FRANK C. ARMSTRONG,
U. S. Indian Inspector.

DEPARTMENT OF THE INTERIOR,
Washington, November 15, 1889.

SIR: I have considered your report of 14th instant, wherein you recommend that authority be granted under section 2149, Revised Statutes, for the removal of George P. Waldron and Charles W. Waldron, with their horses, cattle, and other property, from the Cheyenne River Reservation, Dakota, and also for the removal of Mrs. C. W. Waldron, a one-eighth or one-quarter Santee Sioux, should she continue to be a disturbing element at the agency.

In May, 1888, the Department directed that Mrs. Waldron and her family be warned that if they do not conduct themselves so that their presence on the reservation will not be detrimental to the peace and welfare of the Indians, and to the quiet and orderly conduct and management of the service, they will be, with their property and effects, removed from the reservation.

From the reports of Agent McChesney and Inspector Tinker it appears that they have disregarded the warning of the Department; that they are constantly interfering in the affairs of the agency, thereby creating among some of the Indians dissatisfaction and discontent.

In view of these reports and in compliance with your recommendation, authority is hereby granted for the removal of George P. Waldron and Charles W. Waldron, with their horses, cattle, and other property, from the reservation, and also for the removal therefrom of Mrs. C. W. Waldron should she continue to be a disturbing element at the agency.

The papers accompanying your communication are herewith returned.

Very respectfully,

JOHN W. NOBLE,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

[Black Tomahawk *v.* Charles W. Waldron and Jennie Waldron, his wife.]

FACTS CLAIMED FOR BLACK TOMAHAWK.

That he is a Sioux Indian of the full blood, with a wife and two children, the head of a family, receiving, and entitled to receive, rations and annuities at the Cheyenne River Agency, in South Dakota, and was so at the time the law opening the Sioux Reservation took effect.

That he selected the land in controversy as a home prior to the taking effect of the law, and at that time was actually residing on the land with his wife and children and with his horses and other property, and that he had no other home.

FACTS CLAIMED CONCERNING CHARLES W. WALDRON AND WIFE.

1. That Charles W. Waldron is a white man and has never, in any manner or form, been incorporated with any Indian tribe nor never lived with them.

2. That his wife, Jennie Van Meter Waldron, is a white woman, although having Indian ancestry on the mother's side, she is the daughter of a white man, regularly married to, and living with the mother of Mrs. Waldron, who is herself, in law, a white woman, although of the half blood, her father and mother being of the half blood, but both the offspring of white fathers, married to Indian mothers.

The father of Mrs. Waldron being a white man regularly married to and living with a white woman (in law, although in fact of the half blood), Mrs. Waldron can claim nothing under any law or treaty. If she were receiving rations she was receiving them wrongfully, as she was not entitled.

3. Her right to receive rations being in this contest challenged, the burden is on her to show how she was entitled. It must be by some law or treaty; no other showing will qualify her, under the act of Congress, for the word there used means lawfully "entitled" and of right, and not because some agent, through favor or mistake, has put her name on the rolls.

4. Even if Mrs. Waldron were an Indian woman of the full blood she can take nothing under the bill, for the reason that she is a married woman, living with her husband and being supported by him, for no married woman, under such circumstances, takes land under the bill.

The law provides (sections Nos. 8 and 13) for the following four classes of persons—being Indians and receiving and entitled to receive rations, etc., and no others, and grants land to those four classes and no others; they are as follows:

(1) To all heads of families, 320 acres.
(2) To all single persons over 18, 160 acres.
(3) To all orphan children under 18, 160 acres.
(4) To all other (children) under 18, 40 acres.

Mrs. Waldron comes within none of these classes.

(1) She is not the head of a family, either by the white man's law or the Indian's law.
(2) She is not a single person under 18.
(3) She is not an orphan child under 18.
(4) She is not any other person under 18.

5. Even if Mrs. Waldron were entitled to take land under the law, she has no claims, as against Black Tomahawk, to this land, because it was not the home of either herself or her husband when the law took effect and never has been.

(1) Because she never had inhabited it in good faith as a home.

(2) Because herself and husband had another home that they inhabit in good faith—a home on Bad River, where they had a house, a store, and a cattle ranch.

For these reasons the land should be awarded to Black Tomahawk and he be given undisputed possession of it, to make such use as the law and the commissioners who solicited and secured his consent to the bill allow him to make, if he so elects.

STATE OF SOUTH DAKOTA, *Hughes County, ss:*

H. E. Dewey, being duly sworn, deposes and says that he is well acquainted with Black Tomahawk; that he has known him for the past nine years. Deponent further says that during the said time said Black Tomahawk was often in deponent's office on business for himself, or in bringing other Indians to do business with deponent, and that deponent frequently had conversations with said Black Tomahawk about the opening of the Sioux reservation, and solicited him to consent thereto whenever the bill should be presented to the Indians for their signatures. That after the bill had become a law on March 2, 1889, deponent had a talk with said Tomahawk on said subject, and urged him to sign said bill and to use his influence to get other Indians to sign it, and told him, as an inducement for him to sign, that if he signed and the bill became a law there would be an opportunity for said Black Tomahawk to acquire land that might be, and probably would be, of great value; and that this deponent would assist said Tomahawk in selecting said land.

That thereupon said Tomahawk did sign the bill when the commissioners presented the same, and thereafter, when he returned to his home, near Pierre, came to deponent's office and counseled with deponent, and deponent advised him to select the land, now in controversy at his home. That about the same or shortly before said time Charles Waldron selected the same land and before Tomahawk could build his house said Waldron had a house erected on the same land, but nearly a half mile from the site of Tomahawk's house. After said Waldron had so erected his house said Tomahawk did nothing further with said land, and deponent did not advise him to do anything about it until it appeared to this deponent that said Waldron had not taken up his home thereon, and did not intend to—then this deponent advised said Tomahawk to make it his home, notwithstanding the house Waldron had built. This the said Black Tomahawk did. He began the erection of his house in January, 1890, and on the 9th of said month his house and stable were completed and ready for occupancy, and he moved in with his wife and two children and household effects and brought his horses, wagon, harness, and other portable property, took up his home there and has ever since lived there continuously bona fide and honestly, *having no other home anywhere.*

Deponent further says that he is acquainted with said Charles Waldron and with his wife, formerly Jennie Van Meter; also with her father, whom he has known many years, and that said Charles Waldron is a white man; that A. C. Van Meter, the father of said Mrs. Waldron, is a white man; that said Jennie Van Meter Waldron is, in fact as well as in law, to all intents and purposes, a white woman, although having Indian ancestry on the mother's side; that said Jennie Van Meter, prior to her marriage to Waldron, was a teacher of the school and of music also in Fort Pierre Village—white schools, not Indian—and has always associated with the whites and in no manner or form with the Indians, and finally married Charles Waldron, the son of G. P. Waldron, for many years United States commissioner at Fort Pierre.

Deponent further says that it is a well known fact that Charles Waldron has a ranch, store, and home on Bad River, several miles from this land; that he has lived there for several years; that he built the house on this land in controversy without intending to make the same his home, and that he never did make the same his home, and that his pretense of so doing was a mere sham for speculative purposes only, as his home was and continued to be on Bad River during all the time he pretended to have it on the land in controversy.

Deponent further says that the house of Waldron, on this land, stood vacant all the summer, fall, and winter, and until after the President had issued his proclamation, and without any pretense of occupancy; and, although Waldron now claims that they, his family, spent some few nights therein, deponent says there was at no time any occupancy of said house sufficient to give it a character as such, and from the time it was built until after the President's proclamation it was known, deemed, and regarded as an uninhabited house, and had no outward and visible signs of inhabitancy, and that, at the same time and all the while, the home of said Waldron on Bad River was directly the reverse, at all times having signs of life and inhabitancy about it, even when Waldron and his wife were away—he having been ordered to leave the reservation for the reservation's good.

Deponent further says the foregoing facts being to him apparent, and that said Waldron was not nor had not made the said land his home; in any manner or form; that his pretense of building a house was a mere sham or cover to keep others off the land until said Waldron could carry out his schemes, as set forth in the affidavit of A. O. Cummins, hereto attached; that thereupon deponent advised Tomahawk to take the land, notwithstanding Waldron had built the house thereon, and to make the same his home; and the said Tomahawk did so take it and did build his home thereon as stated. The said Cummins is vice-president of the First National Bank of Pierre.

H. E. DEWEY.

Subscribed and sworn to before me this 26th day of March, 1890, at Pierre, S. Dak.

FRANK C. ARMSTRONG,
U. S. Indian Inspector.

STATE OF SOUTH DAKOTA, *Hughes County, ss:*

Albert O. Cummins, being first duly sworn, deposes and says as follows, viz:

That on or about 20th of August, 1889, I had a conversation with Charles W. Waldron at Fort Pierre. Myself and Mr. Eugene Steere were out walking about Fort Pierre. We were standing on the hill just south of Deadwood street when Waldron came up and entered into conversation. After some remarks he made me a proposition to the following effect, viz, that if I would get an ex-soldier who had served in the war of the rebellion, and could use the time he had served in making final proof on land, and pay all expenses of keeping him until the land could be proven upon, that he would get another ex-soldier who had the same rights, and that to the two of them he would relinquish all the land that he now claims through his wife on the west side of the Missouri River, adjoining the "mile square," being the same land claimed by Black Tomahawk. He further said that he had such a soldier in mind who lived, I think he said, in Minnesota.

I accepted the proposition, and he then proposed that I should furnish money *to buy cattle and put in his possession to be kept and fattened on the reservation*, and we should divide the profits of the said transaction. This proposition I took under consideration. I subsequently went to Vermont and expended about $100 and considerable time in attempting to find such an ex-soldier. While I was there I had several letters, which are now at my home in Vermont, from Waldron, written by a person who signed them C. W. Waldron, per J. E. W., and I believe the said J. E. W. was his wife, Jennie Waldron. These letters were about this land and transaction. When the title through the ex-soldiers was obtained from the Government said land was to be deeded to us and we were to own the same equally, share and share alike, and this was the bargain between us.

A. O. CUMMINS.

Subscribed and sworn to before me this 7th day of March, 1890.

H. E. DEWEY,
Notary Public.

I further certify that said A. O. Cummins is a person of repute and standing, being vice-president of the First National Bank of this city (Pierre), and his statements entitled to full credit and belief.

H. E. DEWEY,
Notary Public.

Eugene Steere, being duly sworn, says: I was present at the conversation mentioned in the within affidavit and heard the same, and the within statement of the same is true.

EUGENE STEERE.

Subscribed and sworn to before me this 17th day of March, 1889.

H. E. DEWEY,
Notary Public.

STATE OF SOUTH DAKOTA, *Hughes County, ss:*

I hereby certify that the foregoing is a true copy of an affidavit on file in my office with the genuine signatures of the affiants thereto attached. In witness whereof I have hereunto set my seal this 26th day of March, 1890.

H. E. DEWEY,
Notary Public, Hughes County, S. Dak.

True copy of the original, and also of copy filed with report of investigation of charge, against McChesney.

FRANK C. ARMSTRONG,
U. S. Indian Inspector.

PIERRE, S. DAK., *March 26, 1890.*

A. C. Van Meter, being duly sworn, deposes and says that he resides at Fort Pierre, S. Dak.; that he has resided at or near Bad River for six years last past; that he is well acquainted with John Holland, an employé of the Government as farmer to the Indians who reside along Bad River; that said Holland, in his official capacity as superintendent or farmer over the Two Kettle band of Indians who reside along said Bad River, has at divers times and places promoted, aided, and abetted certain ones of said Indians to remove from their former homes along said river and to locate and claim a location on lands heretofore and now occupied and resided upon by others of their people, thereby creating discord and strife—all of which acts are contrary to law and the peace and good order among said Indians. Affiant further says, upon information and belief, that Charles E. McChesney, the agent of the Government at the Cheyenne Agency, is cognizant of all the facts as herein stated and has assisted said Holland in carrying on said wrongful acts by employment of Indian police, who, by force of arms and threats of violence, propose to carry out their plans, whatever they may be, and have even gone so far as to burn two houses belonging to white persons who are innocent of any intent to trespass upon or wrong any of the Indians who have claims upon the land; and, furthermore, the carpenters employed to erect the houses upon land as herein stated and proposed to be built by said trespassing Indians are the ones sent from the Cheyenne Agency, and the lumber used is believed to be Government lumber.

All of said acts are believed to be willful and malicious and done for the purpose of defrauding certain half or quarter breed Indians from the peaceful possession of their land. That the said John Holland is of a vicious, violent temper, and wholly unfit to exercise any control over said Indians, and has lost their confidence and respect. Affiant further believes that the said Chas. E. McChesney, agent, and John Holland, farmer, allow their prejudice against certain ones to govern their actions in their effort to deprive them of their lands.

All of the above facts are well known to the people of Fort Pierre and vicinity.

A. C. VAN METER.

Subscribed and sworn to before me this 18th day of February, 1890.

[SEAL.] FRANK R. KETCHAM,
Notary Public.

STATE OF SOUTH DAKOTA, *Stanley County, ss:*

Also appeared at the same time and place W. S. Knappen, W. O. Brown, E. B. Grilley, who, being each by me duly and severally sworn, depose and say that they have heard read the foregoing affidavit of A. C. Van Meter, and are well acquainted with the facts set forth therein and believe the same to be true.

WILLIAM O. BROWN.
E. B. GRILLEY.
W. S. KNAPPEN.

Subscribed and sworn to before me this 18th day of February, 1890.

[SEAL.] FRANK R. KETCHAM,
Notary Public.

STATE OF SOUTH DAKOTA, *County of Stanley, ss:*

F. W. Pettigrew, being duly sworn, deposes and says that he is acquainted with the matter in controversy between Tomahawk and Waldron over a certain tract of land in Stanley County; that he is personally acquainted with the parties thereto and all the circumstances connected therewith; that he has frequently passed by the residence of the Waldron's and of his own knowledge the Waldron family were residing on said land both prior and since the 10th day of February last past. Affiant further says that on the 27th day of March he called upon ——— Litchfield, a special agent of the Interior Department, and was informed by him that one ——— Armstrong, another special agent of the Interior Department, had made a report upon the merits of said case, as also upon the matter in difference between Crow Eagle and John Van Meter. The circumstances and facts of said last-mentioned case affiant is also familiar.

Said Armstrong could not make a fair and impartial report in either case, as it is true that he did not make himself familiar with the facts and circumstances attending it. That if said report is accepted as true report it may be misleading, as it certainly is not founded upon facts, as a full and complete investigation will show.

F. W. PETTIGREW.

Subscribed and sworn to before me this 27th day of March, 1890.

[SEAL.] D. C. BRACKNEY,
Notary Public, South Dakota.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

I, Black Tomahawk, being duly sworn, do say: I am a member of Two Kettle band of Sioux Indians, and on the 10th day of February, 1890, was receiving and entitled to receive rations at the Cheyenne River Agency, S. Dak., and resided at that time on a piece of land on the west bank of the Missouri River, above and immediately adjoining the mile square claimed by the Dakota Central Railroad. I settled upon that land January 3, 1890. At that time I began the erection of a house, and moved into it about the 10th of January, and have lived there since that date with my wife and 2 children. The house is an ordinary frame house, 14 by 16, shed roof, double floor, double boards on side and roof, with oil paper between, one panel door, one window, double sash; the house worth about $100. I built a stable for 6 head of horses. It is a board stable, worth $25. I have 3 cows and 6 horses; 2 are American mares, 3 are colts, and 1 a pony. I own also 1 wagon, 1 mower, and 1 horserake.

I am the identical Black Tomahawk to whom the paper was given, when I signed the treaty, by Charles Foster, chairman Sioux Commission, which reads as follows:

DEPARTMENT OF THE INTERIOR, SIOUX COMMISSION,
Cheyenne River Agency, Dak., July 22, 1889.

TO BLACK TOMAHAWK:

The act we are presenting for your acceptance provides that you have one year after the act becomes a law to decide whether you will take your land in severalty on the lands on which you now reside, being outside of the new Cheyenne River Reservation.

Respectfully,

CHARLES FOSTER,
Chairman Sioux Commission.

On July 22, 1889, I resided on Bad River, about 20 miles above where I now reside. I am the head of a family and have two children. One is six years old and one is one year old. My wife is a full-blood Sioux. I selected the land on which I now reside right after I got the paper from Mr. Foster. My brother and I went on to the land about that time and drove twelve stakes very near where my house now is and piled up four stakes to mark the spot where I was going to build. There was no improvement on this land when I selected it in July, 1889. There was no one living on it. There were no stakes to mark a selection made by any person. The land is the same as that claimed by Charles Waldron. Charles Waldron is a white man; his wife is one-quarter Indian. Her mother was a Santee half-breed and lived at Santee Agency. She was the daughter of Van Meter.

BLACK (his x mark) TOMAHAWK.

Witness:
H. E. DEWEY.

Sworn and subscribed to before me this 20th day of February, 1890.

C. A. LOUNSBERRY,
Special Agent General Land Office.

PIERRE, S. DAK., *February 21, 1890.*

DEAR SIR: I wish to call your attention to the case of Black Tomahawk, an Indian living on the land recently opened to settlement under the act of Congress, dividing the Great Sioux Reservation in Dakota, and to ask if possible the good offices of the association to which you belong in his behalf. The facts I wish to present are these: Tomahawk, whom I have known for many years, had always been opposed to the ceding of any more land by the Indians to the Government, and in the past eight years in which we have been laboring for the opening of the reservation I have had many talks with him about it, and have always urged upon him the wisdom of opening the land. Last summer when the commissioners were here he finally decided to sign.

The bill was thoroughly explained to him, and among the other statements made by the commissioners was that one in the law providing that Indians could select any 320 acres of land they saw fit, and make their home (that is, 320 acres if they were heads of families, which he is) upon it, and they should have a year after the President's proclamation was issued in which to decide whether they would take such land as their allotment or give it up and go on one of the separate reservations. Before the commissioners were here I explained to Tomahawk the value of this provision in the bill to him as an Indian. I told him if the bill became a law I would show him a piece of land that would be worth a great deal of money. So when he

finally decided to sign he had this in mind and requested the commission to put that part of their statement into writing and give to him. This Mr. Foster, as chairman, did and gave it to Tomahawk. Thereupon Tomahawk signed the treaty and at once came home from the agency and selected the land that I pointed out to him, marked a building place by driving twelve stakes and heaping up a pile of stones.

At that time no person was on the land, and it was wholly and entirely unappropriated. Tomahawk did nothing further with the land until some time in January, but about the first of the month he had succeeded in raising a sufficient sum of money to build him a house and barn, which he did, and about the 10th had it completed, and moved in with his wife and two children—his horses, wagons, and farming implements which he had. Between the time when he first selected the land, however, and the building of his house, a white man man by the name of Charles Waldron built a small house on the same land, but had never occupied it nor inhabited it in any manner when Tomahawk took up his home on the land.

Tomahawk continued to reside upon the land from the time he took up his residence up to the present time, and still lives there. When the President issued his proclamation the white man for the first time moved on the land.

The white man claims the land by virtue of his wife, who is a quarter-breed Santee Indian woman, being the daughter of a white man, one Van Meter, whose wife is a half-breed Santee.

Now, Tomahawk claims that Waldron has no rights under the bill through his wife, because, even if she were entitled at all, she must get her land in Nebraska and not Dakota, as it is there the Santees get their land, and that she is not entitled at all, for even a Sioux married woman is not entitled under the bill—not if she is married to a Sioux man, and if a woman married to a Sioux man is not entitled, much less is a Santee woman married to a white man.

The bill gives land to certain enumerated classes. They are first, all heads of families, 320 acres; second, all single persons over 18, 160 acres; third, all orphan children under 18, 160 acres; fourth, each other person under 18, 40 acres.

Now, Mrs. Waldron is not the head of a family; she is not a single person over 18; she is not an orphan under 18, and she is not any other person under 18. Her husband is a white man, and neither of them are entitled to land under the law. Col. Louisberry, an agent of the Government, is here and has taken the statement of each party and will forward it to the Department, and if the association has any one in Washington who would look after Tomahawk's interests there I hope it may be done. The contest is really between him and the white man, who has very influential friends in Washington and who will leave no stone unturned in their efforts to get this land away from him.

Tomahawk, besides being fully entitled under the bill, is a progressive Indian, has peculiar claims on the Government for past services; as a scout, was shot once through the body, from breast to back, and is a cripple for life from a gunshot wound in the thigh, both received in the service of the Government, as above stated, and it would be a lasting shame if he were deprived of one acre of this land on the flimsy pretext raised by this white man.

Yours, truly,

H. E. DEWEY.

HERBERT WELSH, Esq.,
Corresponding Secretary Indian Rights Association, Philadelphia, Pa.

STATE OF SOUTH DAKOTA, *County of Hughes*, ss:

I, Chas. W. Waldron, being duly sworn, do say: I am the husband of Jane E. Waldron, a part-blood Indian who is receiving and entitled to receive rations and annuities at the Cheyenne River Agency, and is borne on the rolls of said agency as the head of a family. My wife's mother was born of half-blood parents at Old Fort George, and her father is a white man who was incorporated in said tribe by marriage in 1858. Having selected the ground she desired to take, separate and apart from other Indians, under the treaty of 1868, at her request I went to Agent McChesney and said to him at her request: "Major, my wife has determined to take the land which she has caused to be staked, and I come to you as the proper one to come to for information to enable me to secure her rights. I want you to tell me what is necessary for me to do to secure her rights." He replied: "One person can not take two places." I replied: "We do not want two places and are not trying to hold two places. As far as the place is concerned up Bad River, where we have kept our cattle and horses, we would like to have allotted to our child if the Government is willing, but if not, if it is necessary, I'll drive down every hoof we own, even to the last chicken and pig, and keep them on this land." He replied: "It seems there is a

great deal of speculation in the land around here," and said he didn't think that the Grand River would make a very good farm, and gave me no information whatever.

As we separated I told him we intended to keep the place if it was a possible thing. We were standing in what is known as the Deadwood road in the outskirts of Pierre, near the land. It was in early spring after the bill passed. I think it was in March.

The ground was then selected and staked, and the lumber to build with in part on the ground. It was at the time the agent come down to see about claims being taken, right after the bill passed. We moved onto the claim in July, 1889, and we have made that our home ever since. I have been away a great deal. I kept my stock up on Bad River where we had a camp, but we never selected land there or pretended to select land there. We cut hay there and fed our stock in winter, and grazed them there in summer. We had a log-house shed, or hay sheds and corral, and we lived there until we selected this ground.

The present agent, McChesney, offered to issue us lumber for our place on Bad River, but we refused to receive it, telling him that we did not intend to stay there. Maj. Swan issued to my wife a yoke of cattle before she was married, but not for use on that land; and the present agent took them back and agreed in writing to give her cows for them, and has instructions from the Commissioner of Indian Affairs to do so, but he has never done it. He sent his boss farmer and two of the police to get them, and he promised two cows in their stead.

My herd consists of 400 cattle, of which 70 head belong to Mr. Riggs, the missionary. I have about 150 head of horses and colts. I have had the herd on the reservation since 1885, and have put up hay for them at my camp on Bad River.

On the 2d day of December, 1889, I was ordered off the reservation with my stock by Agent McChesney because he claimed I was detrimental to the welfare of the Indians. He alleged I was causing contention and strife among the Indians. He gave me until December 25 to get off. On the 9th I went to Washington with my wife and child. The order was revoked or suspended by the Secretary of the Interior, notice of which reached him before I left, but did not reach me until I got to Washington. That order cost me at least $500, besides 60 hogs, and cattle, and calves I lost, and other damages to stock. My wife was also warned that she would be ordered off, and while we were gone to Washington Tomahawk was induced to come down and jump my land, an account of which was published in the Pierre Daily Free Press of January 4, which account I desire to make a part of this affidavit. It was in words and figures as follows:

"Tomahawk's 'Tip'—Ft. Pierreits, South Pierreites, and other Mile Square Owners' Claims Jumped—By a Sioux Buck who has Settled There and will Contest Their Rights—A Round of the State House Displays the Officials in Their Various Duties—The Locke Opened to the Public Last Night by a Feast and a Grand Ball—Other News About the City Which Shows a Lively Nature at the Legislature Coming."

TOMAHAWK WANTS IT.—A FULL-BLOODED SIOUX NAMED TOMAHAWK CLAIMS FORT PIERRE.

And now comes another source of probable trouble to the citizens of Fort Pierre. This time it is a full-blooded, blue-blooded, regular old Sioux warrior by the name of Tomahawk. He has jumped the good portion of the townsite of Fort Pierre, including a portion or all of the Waldron claim, taking 320 acres under the severalty law.

Learning H. E. Dewey, one of Pierre's well-known lawyers, had been employed by Tomahawk in the matter, we hunted him up and gathered from him the following in substance: He said he had been Tomahawk's lawyer for five or six years, in fact had done considerable legal work for many of the Indians.

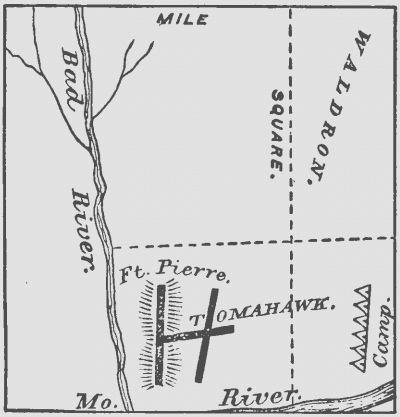
Joining the townsite, or rather the mile square, on the west, or up the river, is what is known as the Waldron claim. This Waldron is the one who married Ada Van Meter, who formerly taught school in Pierre, and though possessing some Indian blood is as white looking as any woman. He and his father, Geo. W. Waldron, got in some trouble with the Government and were ordered off the reservation; but the order was finally suspended.

Geo. Waldron, jr., lives on a ranch up Bad River. After the Sioux had signed the bill sufficiently last summer he erected a house on this claim joining the "mile square," and Mr. Dewey says has never slept in it. Tomahawk, who also lives up Bad River and is a pretty shrewd Indian, had laid claim to this same land and commenced improvements thereon, leaving his ax and some lumber there—but not having money enough to build a house with, left temporarily until he could raise the money.

Recently he raised the money, and yesterday had Mr. Dewey go over to Fort Pierre and confer with Lieut. Poore, in command of the troops. Dr. Dewey explained

the matter to Lieut. Poore, and stated Tomahawk wanted his carpenter, a white man, protected from any possible interference. Lieut. Poore saw no reason for interfering in the matter, and Tomahawk now has his house well under construction—at present writing, anyway.

Mr. Dewey says Tomahawk claims all the land along the river front to where it will meet what the Northwestern Railroad Company will claim. As it is generally understood that there is all the land east of Bad River which this company can rightfully claim, Tomahawk's claim then goes to the Bad River. This will, of course, include all there is of the present town of Fort Pierre, on Tomahawk's claim. The accompanying diagram tells the story as it was mapped out to us:



The land is claimed by my wife as the head of an Indian family, entitled to take 320 acres of land under the act of March 2, 1889, upon ceded land under section 13 of said act, as we resided upon, occupied and possessed said land when the act took effect, and had resided upon, occupied and possessed said land since about the 9th of July, 1889, and no adverse claim was made known to us until January 3, 1890, when Black Tomahawk moved on to said land. The land was not taken for speculation and was selected before the passage of said act of March 2, 1889. I was advised that the commissioners to make the treaty desired my signature to said treaty and I rode 100 miles to sign said treaty, the commissioners recognizing my right to do so.

C. W. WALDRON.

Sworn and subscribed to before me this 24th day of February, 1890.

C. A. LOUNSBERRY,
Special Agent General Land Office.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

I, Arthur C. Van Meter, being duly sworn, do say: I reside at Fort Pierre, S. Dak.: I am the father of Mrs. Chas. W. Waldron. I know she selected her claim on which she now resides in February 1889, and just after the 4th of July 1889, I moved a stove and some other things up to her house at her request. The carpenters were not quite through when I took the things up. Mr. Briggs and Mr. Currous were building it. She moved in right away after the house was finished and has lived in it ever since, except that she was absent up Bad River at the hay camp about a month last fall, and went to Washington in December and was gone about a month, and has been occasionally to my house for a day or two, and occasionally at Mr. Waldron's father's. She was also away in September 1889, and part of August, on account of a broken arm and other injuries received from being thrown out of a wagon, but her household goods have never been moved away, and she has never had her home anywhere else.

I have known Black Tomahawk since 1881, and since about 1886 he has lived up Bad River, where he had a farm. I have been to his house often. He had a good log cabin and a stable, a shed, and hay corral. There is 4 or 5 acres broke on the place and fenced with wire issued to him by the agency. Him and his brother,

Little Skunk, lived there together. He had some cattle and some horses and put up hay last fall at his Bad River place. He has two mares issued to him by the agent for his Bad River farm.

My wife is the daughter of Henry and Mary Aungie, both of whom were half bloods. She has been borne on the rolls of the Cheyenne River Agency as the head of the family since 1883, and is receiving and is entitled to receive rations at the agency.

A. C. VAN METER.

Sworn and subscribed to before me this 24th day of February, 1890.

C. A. LOUNSBERRY,
Special Agent, General Land Office.

FOSTORIA, OHIO, *February 24, 1890.*

BLACK TOMAHAWK,
(Care H. E. Dewey), *Pierre, S. Dak.*:

I have been absent for the past two weeks, which will account for my delay in answering your letter of the 8th instant. The law is perfectly clear; if you have selected the land, my advice to you is to hold on to it; under the law you have a right to it, and I am sure the Department intends that the rights of the Indians shall be fully respected. Do not allow anyone to bulldoze you out of it.

Yours, truly,

CHAS. FOSTER.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

I, Hosea F. Briggs, being duly sworn, do say: I reside at Fort Pierre, S. Dak. On or about the last of April, 1889, I commenced building the house on the land now claimed by Mrs. Waldron; Martin Curran was helping me; I know we worked on it all day the 4th of July; we wanted to lay off; but to accommodate Mrs. Waldron we worked all day the 4th.

The house is 14 by 16, built of dressed boards, clapboarded on the outside, with tar paper between gable roof, shingled, single-jointed floor, with addition 10 by 14. There are two full windows and one half window and three doors. The building was completed on or about the 7th of July. Before we got done they moved up a stove and several other things; I know because I helped them unload the things. I saw them living there a few days afterward; I lost some milch cows on the bottom, and I was at the house when I was after them. My niece, Bessie Hobeough, used to go up and stay with Mrs. Waldron; I knew of her being up there several nights.

The house was worth not less than $150. It was painted and fixed up in good shape. Mrs. Waldron paid me for my work.

HOSEA F. BRIGGS.

Sworn and subscribed to before me this 24th day of February, 1890.

C. A. LOUNSBERRY,
Special Agent, General Land Office.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

I, Jane E. Waldron, being duly sworn, do say: I was born at Vermillion, Dak.; I am the daughter of Mary Aungie (or Auge), who was born of half-breed parents at Fort George; she has been receiving and entitled to receive rations at the Cheyenne River Agency since 1883, and since that time I have been borne on the rolls of the agency. Since 1884 I have had a separate ticket from my parents and am now borne on the rolls as the head of a family and am drawing rations for myself and child. I have had two children, one of which is dead. I reside upon the land immediately adjoining the mile square, so called, embracing Fort Pierre on the north, extending up the river one-half mile and back from the river one mile. I chose this land seven years ago, but took no steps to record this selection until the week following the 22d of February, 1889, and before the passage of the bill for the opening of the Sioux Reservation; I selected the site for the house, put a portion of the lumber on the ground for building, and my brother-in-law, Patrick Oaks, staked the land selected. I directed him to stake the south line along the northern boundary of the mile square, and my north line one-half mile north from that, along the southern boundary of his claim, and the west line one mile west from the river.

My husband, Chas. W. Waldron, the next week after my selection, reported it to the Indian agent, who was then on the ground, and applied to him for information as to what it would be necessary for us to do to secure our title, but the agent gave us no information.

I selected the land for my homestead and for agricultural purposes. In the latter part of June, 1889, I continued my improvements and in July completed my house, which is a frame 14 by 16, with a lean, to about 10 by 12. It is habitable all seasons of the year, and is of double boards and tar-papered, painted on the outside. It cost $150. I established my residence in the latter part of July, 1889, and was residing in the house when the commission visited the agency. My husband is engaged in cattle-growing and keeps his herd up on Bad River, about 60 miles from its mouth, and went to Chicago at one time with cattle and was away at other times buying cattle, and sometimes, rather than stay alone, I visited my mother's family or my husband's father's family, but always stayed at my house when he was at home or when I could have some one stay with me, except that I stayed at my father-in-law's house during the latter part of August and all of September, 1889, when I was suffering with a broken arm and other injuries resulting from being thrown out of a wagon by a runaway team.

Before I was hurt I was there at my home nearly all of the time, but would stay away sometimes at night. My household goods have never been moved away from my home since they were first moved in. After I recovered from my injuries I went up Bad River to cook while my husband made hay, and I was absent about a month when the Indian agent ordered my husband and our stock off of the reservation, claiming that we were making a disturbance on the reservation.

Some of the stock was owned by me before we were married and some was owned by the children and some by my husband. We had about 400 head of cattle, including 71 head owned by Missionary Riggs, and 150 head of horses. We were ordered to get off the reservation in mid-winter—to vacate by December 25. We also had about 60 head of hogs which we lost through being called away to protect our interests. Most of them starved. We left for Washington on the 9th of December to lay our case before the Commissioner, through our Congressional delegation, for it would have ruined us to have left with our stock and the provision we had made for them at that season of the year. We were detained by sickness so that we did not return until January 9, when we went to my mother's with the baby, who was also sick, and when the baby was able to move we went to our own house and have lived there continuously since.

It was six weeks ago yesterday when we moved into the house after it became safe to move the baby, and I was living there on and before the 10th day of February, 1889, with my child and my husband, and no one claimed the land I had selected, or pretended to claim it until sometime while I was in Washington—about the time the military was sent to remove the South Pierre boomers. About January 3, 1890, as I am informed and believe, Black Tomahawk moved on to the land. That is, he had a shanty and a stable built for him in which I understand he now resides. About a week after I came home Little Skunk, or Little Chief, a brother of Black Tomahawk, was at my house and said that was his house that had been put up on our land, that Tomahawk still claimed his house up on Bad River where he had lived three or four years.

My mother is the wife of Arthur C. Van Metre, who is my father.

I made it a point to select the land before the passage of the bill because I wanted to claim my rights under the treaty of 1868, and now claim the land under the act of March 2, 1889.

JANE E. WALDRON.

Sworn and subscribed before me this 24th day of February, 1890.

C. A. LOUNSBERRY,
Special Agent, General Land Office.

STATE OF SOUTH DAKOTA, *County of Hughes, ss.:*

I, George M. Waters, being duly sworn, do say: I reside at Fort Pierre, S. Dak. I have resided there about eight years. I know A. C. Van Metre and the land claimed by his family adjoining the mile square at Fort Pierre claimed by the railroad company. I know his house, described by Mr. Curran in his affidavit, and I was present when he made the same; was built in the winter of 1883 and 1884. It was built about 60 rods from where it now stands, and moved two years ago to where it now stands because it would be in a better place to get water, but it is in the same bend of the river it was in before, and on the same flat. His family has lived there continuously since 1888, in the spring. They lived there over a year after the house was built in 1883 and 1884, and then went up to the Cow Camp, on

Bad River, and was gone until two years ago, when they came back and they have lived there ever since. I was employed by the Northwestern Stage Company. Noticed particularly the substantial character of his buildings, especially his stable and corrals. I helped to build them where they now stand in August, 1888.

The horse corral was built in June. His buildings are worth $1,000 or $1,200. I never knew of any one claiming this land aside from Mr. Van Metre's folks until after the President's proclamation. Crow Eagle now claims it. Crow Eagle has a ranch up Bad River 12 to 15 miles. I herded cattle there last fall, and was there this winter in charge of the cattle, and was near Crow Eagle's house almost every day. His family lived there until after the 10th of February. I left there on the 11th and they were there then. Crow Eagle had 10 acres broken—a good log house, board floor, panel door, 2 windows, good stable and corral, with 40 or 50 acres fenced. It is the best Indian ranch on Bad River. He had cattle and horses there. He came down from Bad River on the 13th and moved a shanty, built at the agency barn, out on the Van Metre land and moved into it. I know it was the day after the military stopped interfering with settlers, and they stopped settlers two days after the proclamation was issued.

Chase the Crow moved some lumber on to another part of the Van Metre claim at the same time; I was at the agency barn and saw the lumber which had been put there during the night before. He never lived there. He and his family lived until after the 10th on Bad River, adjoining Crow Eagle's ranch. He has a log house and corral and about 20 acres fenced, and had lived there three years. His family was still living at the Bad River ranch on the 10th. I was at his ranch on the 10th and also at Crow Eagle's and saw their families there that day. I was riding the cattle range and was careful to keep the cattle from trespassing on the Indian claims.

GEO. M. WATERS.

Sworn and subscribed to before me this 27th day of February, 1890.

C. A. LOUNSBERRY,
Special Agent, General Land Office.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

I, E. H. Allison, being duly sworn, do say: I resided at Fort Pierre, S. Dak. I have resided on the Great Sioux Reservation most of the time for twenty-four years. I understand and speak the Sioux language perfectly. About the 1st of December, 1889, Black Tomahawk told me he had a splendid claim about 20 miles up Bad River, a little above Lance Creek; that knowing me as well as he did he desired me to take land adjoining him; that, in fact, he had selected a piece for me and set stakes. I asked him if the agent had approved his location there, and he told me the agent had approved his location. Toward the last of December I came into the office of the Fort Pierre house about noon, and I found there, besides several white men, Black Tomahawk and an interpreter, Sam Bruigher, and Mr. Dewey.

They were just entering into conversation when I came in. I heard Dewey say, "Ask Tomahawk how he wants his doors, on which side of the house." The interpreter asked the question. Tomahawk replied, "Why, just as he pleases," meaning Mr. Dewey, and added, "I shall only occupy the place temporarily," and what he said meant, it "is a matter of indifference to me," or "suit yourself, I'll just be there a little while." The interpreter did not interpret his reply, but said to Tomahawk, "No, but you are to say where it shall be," and Tomahawk said, "Oh yes," and then directed where the door should be.

Tomahawk had a log house, stable and shed, and a field fenced with wire at his place on Bad River. He had about five acres fenced and had lived there for several years. He lived there fourteen years ago; I took the census of these Indians then and found Tomahawk near that place. He was then living in a tepee.

E. H. ALLISON.

Sworn and subscribed to before me this 24th day of February, 1890.

C. A. LOUNSBERRY,
Special Agent General Land Office.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

I, William Patrick Oaks, being duly sworn, do say: I reside at Fort Pierre, or rather 1½ miles north of Fort Pierre. I staked the claim lying between my place and the mile square for Mrs. Waldron when she made her selection of the land she now claims. The line of the mile square was indicated by a stake or stone, at the north-

west corner, and another at the northeast. I measured half a mile north up the river along the river front and one mile mile back, and reached the line by putting in three stakes; one at the northeast corner on the river, one at the northwest corner one mile back from the river, and one midway between the two. Later on, in the fall of 1889, there was a fence erected—or rather a line of cedar posts four rods apart were set on the line half a mile square between Waldron's claim and mine. This line of posts started at the river and run back one mile; Waldron and I had agreed to build the fence together, and I set the posts, and was waiting for him to come back to furnish the wire or pin in the fence. This line of posts was on the line marked by me to indicate the north line of Mrs. Waldron's claim, and the fence would have been completed last fall but for the agent ordering Mrs. Waldron off of the reservation.

This line was located by me the last week in February, 1889. I know it was before my little niece's birthday, which was on the 24th, because Arthur Maupin intended to take the land and I talked with him about it on that day, and he was disappointed when he learned Mrs. Waldron had taken the claim. It was the day of the races when I staked the ground and hauled part of the lumber on the ground for the house. The house was completed about the 7th of July, 1889, and they moved in about that time. I moved a table and some bedding and some other furniture, and hauled water to the family after they moved in. On the 4th of July I hauled some lumber and tar paper for the house. I have been to the house since and know that they have lived there ever since.

My little girl used to go and stay with Mrs. Waldron nights when Mr. Waldron was absent. She was there about every day or two before Mrs. Waldron was hurt, after she moved on to the claim.

W. P. OAKS.

Sworn and subscribed to before me this 24th day of February, 1890.

C. A. LOUNSBERRY,
Special Agent, General Land Office.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 1, 1890.

SIR: I have the honor to transmit herewith a copy of office letter of this date to Special Agent Litchfield, directing him to investigate the case of Tomahawk, a Sioux Indian, who claims a certain tract of land within the ceded Sioux territory, and to which one Waldron, a white man, also lays claim through his Santee Sioux wife.

The case was brought to my attention by a letter filed in this office by the agent of the Indian Rights Association of Philadelphia, from H. E. Dewey, of Pierre, S. Dak., a copy of which is herewith inclosed, together with a copy of a letter dated December 23, 1889, from Charles Ransom, of Fort Pierre, S. Dak., which may have some bearing on the case.

I would respectfully recommend that the papers be referred to Inspector Armstrong, with instructions to confer with Special Agent Litchfield, to the end that the case may receive prompt and careful attention.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 1, 1890.

SIR: I inclose herewith a copy of a letter dated February 21, 1890, from H. E. Dewey, of Pierre, S. Dak., left here by Rev. C. C. Painter, agent of the Indian Rights Association of Philadelphia, relative to the claim of Tomahawk, a Sioux Indian, to a certain tract of land within the ceded lands of the Great Sioux Reservation, and to which it appears one Charles Waldron, a white man, lays claim, through his wife, who is said to be a Santee half-breed Indian woman.

In connection with the duties assigned you in office instructions of February 28, 1889, I desire you to investigate this case and take steps to protect the Indian, Tomahawk, in the peaceable possession of the land he claims, and have him formally declare his election to take an allotment, if under the law—section 13 of the Sioux act of March 2, 1889—he is entitled to have the same allotted to him. I also inclose

a copy of a letter, dated December 23, 1889, from Charles Ransom, of Pierre, Dak., which may have a direct bearing on this case.

I have asked the Department to call the attention of Inspector Armstrong to Tomahawk's case in order that you may confer together in respect of his lawful rights.

Very respectfully,

T. J. MORGAN,
Commissioner.

GEO. P. LITCHFIELD, Esq.,
U. S. Special Indian Agent, Cheyenne River Agency, S. Dak.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

I, Chase the Crow, a Sioux Indian, receiving and entitled to receive rations and annuities at the Cheyenne River Agency, being duly sworn, do say: My lodge is on the land claimed by me on Bad River, above Van Meter's house; over half a mile from his house; pretty close to one mile. I claim Van Meter has no right there, and that is the reason I claim the land. No one else that I know of claims the land that I claim that I know of. I put some logs on the land three days before the proclamation. Two days before that I was on the land. I just kept watch there to see that no one else should get onto the land, and three days before the proclamation, when I put the logs there, Dave Trovisee wrote my name on a board and I stuck it in the ground and leaned it up against the foundation.

I had no other improvements before the 10th, but on that day in the forenoon I hauled a load of lumber on to the place. It was a big load and cost $8. The next day I put up my lodge, a tent, and lived in it two days, and my wife and child took sick and I sent them up to my uncle's place, and they haven't been back since. They are still sick. They are at Hawk's place. I bought $15 worth of lumber yesterday and hauled it on to my place.

Van Meter's family were living where they now reside when I took my claim, but it is quite a long way from where my lodge is. They have lived where they now live two years. They had a house where my lodge is, but they moved it away two years ago.

his
CHASING X CROW.
mark.

Sworn and subscribed to before me this 5th day of March, 1890.

C. A. LOUNSBERRY,
Special Agent General Land Office.

PIERRE, S. DAK., *March 8, 1890.*

SIR: In the matter of the claim of Black Tomahawk to land, also claimed by Jane E. Waldron, adjoining the city of Fort Pierre, or rather the mile square supposed to be reserved for railroad purposes at Fort Pierre, H. E. Dewey, attorney for Tomahawk, having forwarded a statement of the case, as I learn from Inspector Armstrong, I hand you herewith the evidence I have taken in the matter.

Mr. Dewey was distinctly informed that I was engaged in investigating this case under general instructions, that in due time the facts would be laid before the Commissioner, who, however, would not attempt to dispose of the merits of the case except after a full hearing at the local land office, though a knowledge of this case might aid the Commissioner in fixing his general regulations.

Being dissatisfied because I did not submit the case before a full investigation, he said, he should forward his affidavits at once, unless I was willing to forward them. I said to him, I am not willing to forward affidavits furnished by you touching the case, unless I can have the opportunity to examine the witnesses touching their knowledge of the matters embraced in said affidavits, as affidavits taken by me in the course of my investigations, unless good reason is shown why the witnesses can not be produced, I do not regard such affidavits of any value whatever.

When Black Tomahawk presented a letter from Mr. Foster, dated last July, to the effect that Tomahawk was entitled to the land on which he was residing, I informed Tomahawk that that paper referred to his farm up Bad River; that his right to that was and is undisputed, and that if he went back there, the Government would defend him against all persons and give him that land just as Mr. Foster told him, but here he comes in conflict with one claiming Indian rights, and the Commissioner would first determine whether that person had rights, and then whether his right to this land was equal to or better than the other, that he might decide that Mrs. Waldron had no rights and that Tomahawk had all of the land, or he might

decide that as both were actually residing upon the land when the law took effect, their rights were equal or it might finally be determined that Tomahawk's was not a settlement in good faith, or that Mrs. Waldron had complete possession and occupancy before Tomahawk came upon the land.

In my investigations I avoided testimony offered to show bad faith on Tomahawk's part, except as it was incidental to other investigations, believing that not a proper thing for me to inquire into at this time. In fact, I did not feel justified in making thorough investigation until Tomahawk's attorney filed with me his brief, herewith inclosed, marked Exhibit A, in which it is charged that Mrs. Waldron is not an Indian, either receiving, or entitled to receive rations or annuities, and that if she were entitled she should receive her rations at the Santee Agency.

It was also denied that she is the head of a family, and denied that she is entitled to land for herself and children under any provisions of the act of March 2, 1889.

It is also alleged that she is a white woman, with no trace of Indian blood in her veins discoverable in her appearance.

And it was further alleged that Tomahawk selected the land first and established residence first.

These charges seemed to justify a full investigation. I first saw Agent McChesney, who informs me that Mrs. Waldron is the daughter of a half-blood mother; that she is borne on the rolls of the agency as the head of a family, and is receiving and entitled to receive rations and annuities at the Cheyenne River Agency, and that he regards her entitled to select land as the head of a family for herself and children under the rules and regulations of the Department, as he understands them, and he further stated that Tomahawk was fully aware that Mrs. Waldron claimed this land prior to the date when he first went on to the land, in July, 1889, and that Mrs. Waldron's house was built prior to July 22, 1889, the date of Foster's letter to Tomahawk.

Learning of his error as to the status of Mrs. Waldron on the rolls of the agency, Tomahawk's attorney filed a supplemental brief, marked Exhibit B, in which he admits that Mrs. Waldron is receiving but denies that she is entitled to receive rations, etc.

Black Tomahawk's affidavit, Exhibit 6, puts his case fully and fairly and in form satisfactory to his attorney, who was present when he was examined and signed it, as a witness. It is true except that he states that when he went upon the land in July, there was no house or other improvements upon the land, when informed in the presence of Inspector Armstrong, that the house was completed before that date he said: "Well, there was no one living in it." In his affidavit he claims that he is qualified; that he settled upon the land January 3, 1890, and moved his family on January 10, and has resided thereon continuously since that date; that the house built by him is worth $100 ($40 would be a fair estimate of its value), and the stable $25; that on the 22d day of July, Chairman Foster, of the Sioux Commission, gave him a letter or paper telling him he would be entitled to the land he was then living on; and that immediately after receiving said letter, he selected the land he now resides upon, and drove twelve stakes to mark the spot; that there was then no improvements on the land, and no one living on it. He also alleges that Mrs. Waldron's mother was a Santee half-blood and lived at Santee Agency (it is not true that she was ever attached to said agency) and from subsequent conversation it is apparent that he intended to add that having through her mother received Lake Peppin half-breed scrip, is not now entitled to Indian rights for herself or children.

In his brief Tomahawk's attorney speaks of admitted facts; but there was no understanding as to admitted facts. Tomahawk's statement as to the time of his selection and settlement, as to the character of his improvements and continuity of his residence since January 10, 1890, is not disputed. In neither case was the land selected with the advice or assistance of the agent. Mrs. Waldron's mother was a mixed blood, and admits that she received Lake Peppin scrip, alleged to be No. 375. for 180 acres, it is supposed under the treaty of February 24, 1831, and that Tomahawk was residing upon the land when the act of March 2, 1889, took effect

Mrs. Waldron's statement, marked Exhibit D, shows that she is the daughter of a half-blood mother by a full white father; that she is receiving and entitled to receive rations and annuities, and has been borne on the rolls at the Cheyenne River Agency since 1883, and since 1884 as the head of a family; that she is now, and was on the 10th day of February, 1890, residing upon the land now claimed by her, and has been residing upon said land since July, 1889, except when necessarily absent; that she selected said land in February, 1889, prior to the passage and approval of the act of March 2, 1889, and took the necessary steps to have such selection recorded and to secure the assistance of the agent in such selection. That at that time she selected a site for the house and caused to be placed thereon a part of the lumber for building a house, and that at that time Patrick Oaks staked for her the boundaries of her claim; that additional improvements were made in June, and the house was completed in July, when residence was established.

The house is a substantial frame and cost $150. She claims she was residing in the house when the Sioux Commission visited the Cheyenne River Agency; that her husband being absent she often visited her mother, but always stayed upon the land when her husband was at home or when she could have some one stay with her, except as stated. She was at her father-in-law's house with a broken arm during part of August and all of September, 1889. During October she was cooking at her husband's hay camp, and from December 9 to January 9 she was absent on a trip to Washington with her husband, who had been ordered off of the reservation (which order was rescinded), and for three weeks after her return she was absent on account of the illness of her babe; and that since then they have continuously occupied their house, and were occupying it and residing in it February 10, 1890, and that from the time they moved into the house in July till the present time, their household goods have remained in the house, and that they have had no other home.

Charles Waldron's statement, marked Exhibit E, shows that he is the husband of Jane E. Waldron; that he reported the selection made to the agent, and asked his advice in March, 1889; that the ground was then staked and the lumber to build the house was then in part on the ground; that the house was completed in July, 1889, and his residence was immediately after its completion established therein. He is engaged in cattle growing on the reservation, and being ordered off the reservation with his stock in winter, he went to Washington to lay his case before the Department, and that during his absence Tomahawk came upon and occupied the land. He, with others who have intermarried with the Sioux, signed the treaty for the opening of the reservation. He submits an article clipped from the Pierre Free Press, January 4, entitled "Tomahawk's Tip," to show that his occupation of the land was a matter of public notoriety before Tomahawk came upon the land.

Mrs. Van Metre states that she is the mother of Mrs. Waldron; that she was born of half-blood parents at Fort George about 1842; that she lived at the agencies until about 11 years old, and then lived at Sioux City and Vermillion, Dak., until 1878, and her husband meeting with misfortune she has been borne on the rolls of the Cheyenne River Agency since 1883, as entitled to receive rations and annuities, and as the head of an Indian family. That she is the daughter of Mary Angie, who was the daughter of Col. Wm. Dixon by a full-blood Indian woman. That she was married to Arthur C. Van Metre, a full-blood white man, father of Mrs. Waldron, in 1858; statement filed in another case.

Arthur C. Van Metre, statement marked Exhibit F, says he is the father of Mrs. Waldron; that he knew of his own knowledge that she selected the ground where she now resides in February, 1889, and that just after the 4th of July, 1889, he moved a stove and some other things up to the house.

The carpenters were still at work at the house when he took the things up. Mr. Curran and Mr. Briggs were building it. She moved in right away after the house was finished, and has since resided there, except when she was away with her broken arm, when she was cooking in her husband's hay camp, when she was absent on her trip to Washington, and when absent on account of the sickness of her babe; but her household goods have never been moved away and she has never had her home anywhere else. He has known Black Tomahawk since 1881, and that since 1886 he (Tomahawk) has lived up Bad River, where he had a farm on which he was living when the Sioux Commission visited the agency.

* * * He (Tomahawk) had a good log cabin and stable, shed and hay corral, and four or five acres broken and fenced with wire issued by the Indian agent. He had cattle and horses, and put up hay last fall. He has two issued mares.

Hosea F. Briggs' statement, Exhibit G, says: I commenced building the house on the land claimed by Mrs. Waldron on July 4, 1889. I know we worked on it all day July 4. We wanted to lay off, but to accommodate Mrs. Waldron we worked all day the 4th. * * * The house was completed on or about July 9. Before we got done they moved up a stove and several other things. I know because I helped them unload the things. I saw them living there a few days afterwards. * * * Bessie Hobrough used to go up and stay with Mrs. Waldron. I know of her being up there several nights. The house was worth not less than $150.

W. P. Oaks' statement, marked Exhibit H, says: I staked the claim lying between my claim and the mile square for Mrs. Waldron when she made the selection of the land she now claims, * * * and marked the line by putting in three stakes. * * * Later on, in the fall of 1889, there was a line of cedar posts set 4 rods apart, * * * between Waldron's claim and mine. This line of posts started at the river and ran back one mile. Waldron and I had agreed to build the fence together, and I set the posts and was waiting for him to furnish the wire.

This line of posts was on the line marked by me to indicate the north line of Mrs. Waldron's claim, and the fence would have been completed last fall but for the agent ordering Waldron off of the reservation. This line was located by me the last week in February, 1889. I knew it was before my little niece's birthday, which

was on the 24th day of February, because Arthur Mangine intended to take the land, and I talked with him about it on that day, and he was disappointed when he heard Mrs. Waldron had taken it. It was the day of the races when I staked the ground, and hauled part of the lumber for the house on to the ground. The house was completed about the 9th of July, 1889, and they moved in about that time. I moved a table and some bedding and some other furniture and hauled water to the family after they moved in.

On the 4th of July I hauled some lumber and tar paper for the house. I have been to the house since, and know that they have lived there. * * * My little girl used to go and stay with Mrs. Waldron when Mr. Waldron was absent. She was there about every day or two before Mrs. Waldron was hurt, after she moved on to the claim.

E. H. Allison's statement, marked Exhibit J, shows that affiant understands perfectly the Sioux language, and that about the 1st of December, 1889, he had a talk with Tomahawk and Tomahawk wanted him to take land adjoining his on Bad River. Toward the last of December at the Fort Pierre House, he heard Dewey and Tomahawk arrange for the buildings on the Waldron claim, and Tomahawk said they could put them where they pleased; "I'll be there just a little while," or words to that effect were used. Tomahawk had a log house, stable and shed, and a field fenced with wire at his place on Bad River. He had lived there several years. He lived there fourteen years ago. "I took a census of these Indians then and found Tomahawk near that place. He was living in a tepee."

Further investigation shows that Waldron has a trading post, a herd of cattle, horses, etc., with house, corrals, and stables at a point up Bad River, and has moved from point to point as it became necessary to accommodate his stock-growing interest, but he does not claim the land so occupied unless he should be entitled to select land for his child on ceded land.

Tomahawk's attorney offered to submit affidavits that Waldron never lived on the land now claimed by him, until after Tomahawk moved on with his family. I refused to receive these affidavits unless I was permitted to examine the persons making them, or to forward them as a part of this investigation, and therefore no evidence has been submitted on this point.

I am satisfied that if the Waldron's are found to have the right to enter ceded land, under section 13, act of March 2, 1889, that their right to this land began in February, 1889; that their residence was established about July 9, 1889, and that under the decision in the case of Patric Manning, L. D., 7-144, has been of unbroken, legal continuity since that time, while Tomahawk's residence dates only from January 3, 1890, even though he did go on to the land in July, after receiving the letter from Chairman Foster, which is dated July 22, though he does not admit it, it is proved by his agent that Waldron's house was there on the land, and by others that she was occupying and residing upon the land at that time.

The Waldron house is permanent in character. Tomahawk's is temporary and is not worth to exceed $40, though valued at $100. His stable "large enough for six horses," valued at $25, is not worth to exceed $15, and is a shed roof structure about 12 by 14.

As I understand the law, both claimants are qualified, and both are borne on the rolls of the agency as the head of a family, and are receiving and presumed to be entitled to receive rations and annuities, and both were residing upon the land in dispute when the law took effect, but in my judgment Tomahawk is more properly entitled to his home on Bad River which was selected with the advice and assistance of his agent under the provisions of the treaty of 1868, and having selected his land, his house was built for him by the agent; his cultivated land was fenced by the agent at the expense of the Government, and at its expense he was there instructed in the art of farming, and at its expense he was there furnished with mares and cows, and there are his stables and haystacks.

He was neither advised by his agent as to his present location nor assisted in making his selection, but was advised by an attorney at Pierre in the interest. I am convinced, of a town-site scheme. Having been misled by whites, to his detriment, contrary to the advice of his agent, I am of the opinion that he did not leave his land on Bad River with the intention of abandoning it, and that he should be held to have the right to enter that land, notwithstanding his temporary residence on this.

The case in Howard, 4, referred to by Mr. Dewey, is the case of a white man tried for murder of another white man, who claimed immunity on the ground that to the Indian council was guaranteed the right to try all crimes committed by one Indian against the persons or property of another Indian.

In the same bound volume, Howard, 2, 580, will be found a construction as to who is the head of a family, in a case growing out of the allotment of lands under a treaty somewhat similar to this. A grandmother living with orphan children is held to be the head of the family. The land decisions are full of cases where the wife or even minor heirs are held to be the head of a family.

Here is an Indian family receiving and entitled to receive rations and annuities, and unquestionably entitled to land under this treaty. If it is held that the husband is not the head, then the wife and mother surely is. The father was called upon, though white, to sign the treaty, and his name, with that of others like him, was used to swell the majority necessary to secure the ratification of this treaty. The influence of squaw men upon the reservation is sometimes pernicious. There are those among them whose example is very bad, who are leeches living upon the Indians, and robbing them of their substance, but the objection to this family is that they are educated—competent to teach and they are teachers. By their example they teach good morals and thrift. Waldron is a sober, industrious man, whose herds are envied by those who would pull him down that they may prosper. The Indians need more such men as Waldron and the Van Metres among them. They need to come in contact with educated, moral, and thrifty whites, that good may follow.

After all, the question is what is meant by the language in the treaty of 1868, under which they claim this land, "any individual belonging to said tribe or incorporated with them, being the head of a family." The act of March 2, 1889, is intended to preserve every right guaranteed by that treaty, unless expressly waived in the new.

Respectfully,

C. A. LOUNSBERRY,
Special Agent, General Land Office.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

In re Jane E. Waldron. Claim of allotment as a member of the Sioux Nation of Indians. Based upon treaty of 1868 and act of Congress approved March 2, 1889.

REPLY TO BRIEF OF BLACK TOMAHAWK.

I.

We object to entitling this cause as "Jane E. Waldron *v.* Black Tomahawk," as has been done by Mr. Dewey, attorney, in his brief in behalf of Tomahawk.

Black Tomahawk has no legal or equitable interest in the allotment in controversy. He had already exhausted his rights by selecting land as provided in the treaty of 1868. (See paragraph 5, p. 10, original brief of Mrs. Waldron.)

The controversy is exclusively between Jane E. Waldron and the United States; the question to be determined, Shall the Government, through its departmental officers, secure to Jane E. Waldron the rights and privileges dedicated to her by the treaty of 1868 and the act of Congress approved March 2, 1889?

So much for the prologue to Mr. Dewey's brief.

II.

Mr. Dewey insists that Mrs. Waldron is not the head of a family in the sense used by Congress.

In addition to the arguments of our original brief upon this subject, permit us to present the views of Mr. Cisney, the Indian inspector, to whose report such frequent references are made in Mr. Dewey's brief, and uniformly with commendation.

He says and reports, "I can't see how the head of a family question can enter into this case. Of course a white man cannot acquire any benefits of an Indian in any way from the Government on his own account. And I can't see how or why an Indian woman because she is married to a white man can be deprived of any benefits she may be entitled to as an Indian; she certainly must be considered *the head of a family so far as her rights are concerned.*"

(See seventh page, report of Cisney.)

When the husband demands homestead privileges, it will be time to discuss his rights; they are not involved in this discussion.

III.

Mr. Dewey with apparent seriousness asserts as follows:

"If Mrs. Waldron were an Indian, she would be a Santee, and a liberal construction of this treaty would be in favor of the Two Kettle Band, that was a party to it, and not the Santee which was not a party to it."

"Tomahawk calls attention to the fact that he is a son of Wah-to-non-pah (Catch the enemy), Little Chief, one of the signers of the treaty of 1868, referred to."

Mr. Dewey under inspiration of the son of "Catch the enemy," states the things that are not.

It appears from the signatures to the treaty of 1868 by the Two Kettle Band, (see p. 646, Statutes at Large, vol. 15), that but three persons signed the treaty on the part of this band of Indians, namely, Long Mandan, Red War Club, and The Log; which seven chiefs signed on the part of the Santee Band of Sioux, namely, Red Ensign, Shooter, Red Legs, Scarlet All Over, Big Eagle, Flute Player, and His Iron Dog.

(See p. 647, *Idem.*)

Little Chief signed as an Arapahoe, and not as a member of the Two Kettle Band at all, as asserted by Black Tomahawk. (See p. 644, *Idem.*)

Mah to non pah, Two Bears, moreover signed as of the Yanctonais band. We look in vain for the signature of "Catch the Enemy" unless he appeared as "Two Bears," as above.

We submit, in view of this record, that the following assertion of Mr. Dewey is without force, to wit:

"The land in controversy has been a part of the domain on which the Two Kettle Band have lived for a great many years and long prior to that treaty." There is no evidence in the case supporting this preposterous statement.

IV.

On the tenth page of Mr. Dewey's brief is the following language: "Statement of facts." This should be headed, "statement of facts and fictions." "The second allegation is wholly and unqualifiedly false."

We need only appeal to the affidavits of some of the most respectable citizens of South Dakota, on file amongst the papers in the cause as a complete refutation of the attempted wit of the one paragraph and the insolent mendacity of the other

These affidavits show conclusively that this Mr. Dewey is the chief promoter of the corrupt conspiracy charged in the original brief of Mrs. Waldron. (See pp. 9 *et seq.*)

V.

As to the charge in this disingenuous and misleading brief of the attorney of Black Tomahawk (who proposes "to be faithful to himself" alone, see peroration to Dewey brief, p. 11), that "they," Mrs. Waldron's family, "never, any of them, had drawn rations until they wrongfully got on the roll at Cheyenne," we need only say that it is a baseless assertion, and assails not only the character for honesty of this excellent woman, but the integrity of the representatives of the Government at this agency, who entered the names of this family upon appropriate rolls, and supplied it with rations and annuities for several years.

We rely upon "the cold neutrality of an impartial judge" to do justice, and hereby submit the case.

ROBERT CHRISTY,
Attorney for Jane E. Waldron.

PIERRE, S. DAK., *March 26, 1890.*

SIR: I inclose herewith a statement of facts and the affidavit of H. E. Dewey relative to the right of Indian Tomahawk to the land where he now resides and had resided prior to the proclamation opening the ceded land of the Sioux Reservation. Tomahawk is entitled to the 320 acres under the law. Waldron should be made to vacate. This Charles W. Waldron has no just right or claim to the land in question. He has resided and does yet reside at his cattle ranch on Bad River. His wife could not hold both places as a residence, and it is a question whether she is entitled to hold any place as an Indian, or to be on the rolls of the agency at all. The accompanying affidavit of A. O. Cummins, vice-president of the First National Bank, shows the true inwardness of the scheme of Charles W. Waldron as far back as August, 1889. It also shows that he was ready to do anything to defraud the Indians and the Government. Waldron has been holding stock on the reservation in violation of the regulations and the law. He is now trying to get a show of title, and Tomahawk's right to this land revoked, that he may sell it to the town-site managers of Fort Pierre. Inspector Tinker and Agent McChesney recommended the removal of old man Van Meter and the Waldron family last fall.

The order was issued by the honorable Secretary and Commissioner of Indian Affairs, and notice regularly served by the Indian agent, but through the influence of Senator Pettigrew it was afterward suspended by the Commissioner in Decem-

ber, 1889; copy of telegrams filed with my report in McChesney's case, from the Commissioner and also from Senator Pettigrew to Agent McChesney. The Indians would have been bettered by the removal of these parties and the execution of the order. Another of the Van Meter family claims the land occupied by Crow Eagle, and which was, up to the opening of the ceded land, February 10, 1890, held for agency purposes, and occupied by the farmer and not claimed by any of this family. This case will be reported on by Special Agent Litchfield, of the Indian Office. Young Van Meter, Waldron, and old man Van Meter have attempted to get hold of or claim all the land around this mile square for the purpose of letting it fall into the possession of the town-site managers booming Fort Pierre.

This scheme was concocted before the President's proclamation was issued and the reservation opened. So far it has failed in Tomahawk's case by the persistent efforts of H. E. Dewey, and in Crow Eagle's case by the protection of Agent McChesney and Farmer Holland, of the Cheyenne River Agency, *located on the land* that now belongs to Crow Eagle. The official scalps of the last two men are now wanted to satisfy the managers of Fort Pierre boom because they would not allow Crow Eagle's claim to be gobbled up by town-site boomers and the Indians' rights ignored. It is for the Government to decide whether its employès shall be sacrificed for doing their duty, or whether the combination to defraud the Indian—on account of his ignorance—shall be recognized and strengthened in their schemes.

I hope the Department will act promptly in this matter.

Respectfully,

FRANK C. ARMSTRONG,
U. S. Indian Inspector.

The SECRETARY OF THE INTERIOR.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

Philip Dunning, being duly sworn, deposes and says that he is familiar with the land in controversy between Waldron and Tomahawk and situated adjoining the mile square on the north, in Stanley County, S. Dak. Affiant further says that prior and since the 10th day of February last past Charles Waldron and his wife and child resided upon said land; affiant is knowing to this fact, as he slept in the same house at the same time; that he visited the house in January, 1890, and secured a room there, and that he slept there on the night of the 7th, 8th, 9th, and 10th of February, and has roomed there most of the time since and knows from that that Waldron and his family were residing there at that time and since, and that their rooms are carpeted and that they had beds, bedding, stove, cooking utensils, rugs on the floor, books and papers on the center table, rocking chair, lounge to lie down on, album on the table, and I remember seeing most of those articles there on my visit in January. I also remember seeing at that time a lot of soiled linen, such as towels, dishrags, babies' diapers, and other clothing of the family. Mrs. Waldron at that time at her father's house with her child, which was very sick.

PHILIP H. DUNNING.

Subscribed and sworn to before me this 28th day of March, 1890.

[SEAL.] JOHN F. HUGHES,
Notary Public.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

F. W. Pettigrew, being duly sworn, deposes and says, that he has read the foregoing affidavit of Philip Dunning and is acquainted with the facts set forth therein, having frequently visited the Waldron house when he was there, and was with him when he was there in January and noticed the soiled linen that he speaks of, and further states that everything about the house indicated that they had established a residence there prior to that date, which was about the 12th to the 15th of January, as Waldron returned from Washington about the 9th.

F. W. PETTIGREW.

Subscribed and sworn to before me this 28th day of March, 1890.

[SEAL.] JOHN F. HUGHES,
Notary Public.

STATE OF SOUTH DAKOTA, *County of Stanley, ss:*

John P. Van Meter, being duly sworn, deposes and says, that he is the claimant to the tract of land now in controversy between Crow Eagle and himself. That he has been informed through his attorney, F. W. Pettigrew, that F. E. Armstrong, special

agent of the Interior Department, has made a report in said case, the nature of said report affiant does not know.

Affiant further says that he has certain rights in and to the land in question and has relied upon a full, fair, and impartial investigation of all the facts relating thereto, which he is satisfied would substantiate his claim. That he has not been allowed by himself or witnesses to present any evidence before said Special Agent Armstrong, without which a fair and impartial report could not be made.

He therefore asks that no action be taken in the matter until he has been allowed a hearing.

JOHN P. VAN METER.

Subscribed and sworn to before me this 27th day of March, 1890.

[SEAL.] D. C. BRACKNEY,
Notary Public, South Dakota.

UNITED STATES INDIAN SERVICE, CHEYENNE RIVER AGENCY,
Fort Bennett, S. Dak., March 29, 1890.

SIR: I submit this report for the week ending March 29. Since my last report Inspector F. C. Armstrong has given me the benefit of his findings in the matter of disputed claims around Fort Pierre and the nature of his report upon the two cases, as there are but two where full-blood Indians are trying to hold claims near the town site, and these are being claimed by mixed bloods. I think the inspector has reported correctly and strongly. I will watch the matter and see if there are any new developments. If so, I will keep you informed. The above cases referred to are that of Tomahawk and Crow Eagle. Rev. T. L. Riggs has reported, but finds that he can not devote his whole time to the work, and Agent McChesney has asked authority to place his name on the irregular roll of employés. I do not think it will take many weeks with favorable weather for this work, but the weather is uncertain, owing to high winds that prevail here at times that make it unpleasant and almost unsafe to travel. Hoping to find this work less troublesome than was at first expected and that it may prove a success is my earnest wish.

Yours, respectfully,

GEO. P. LITCHFIELD,
U. S. Special Indian Agent.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

STATE OF SOUTH DAKOTA, *County of Douglas, ss:*

I, Charles Waldron, being duly sworn, do say: In the matter involving the land lying north of and adjacent to the mile square, Fort Pierre, in conflict between Black Tomahawk and myself or my wife, it is a matter of common notoriety that Tomahawk is not claiming the land in good faith; that he does not expect to claim it as his allotment, but is holding it for a syndicate represented by H. E. Dewey, one of whom is a Mr. Cummins, of the First National Bank at Pierre, S. Dak., who came to me some time last summer, after I had built my house and established residence on the land, and offered to furnish a soldier who had served four years in the Army to prove up on the land, and said he would be responsible for him and would deed me half the land after final proof and put up $10,000 with me into the cattle business. I was at first inclined to regard with favor his proposition, and had some correspondence with him in relation to the subject, but never had any agreement with him to turn the land over to him or into any deal he might make, and did not reply to his last letter.

I went upon the land in good faith intending to take it for the benefit for my family and not under an arrangement with any man to hold it for his benefit or with any man or set of men to hold it for their benefit or use it in any manner for their benefit, and when I went upon said land I moved my family to the land, established my residence thereon and have resided there since except when unavoidably absent for sickness or other good reason, and I have not resided with my family at the place on Bad River where they formerly resided since February, 1889, when we first determined to take the land now claimed by us. And though we have continued to use the old ranch for stock headquarters because there were no Indians in the vicinity occupying or grazing stock upon the land, my wife has not even visited the ranch but twice since then, once in June, 1889, to pack things preparatory to moving onto the land at Fort Pierre, where we now reside, which we did in July, 1889, and once afterwards when she cooked a few days in the hay camp at the ranch headquarters. I

kept a few goods in a room 12 feet by 14 feet occupying 4½ feet of counter space and shelving, the shelving standing on the bench which was used for a counter, and sold them to Indians, ranchmen, and others as they came along.

About the first of December, 1889, the agent ordered me off of the reservation with my stock, on the ground that I was detrimental to the Indians. This was because my wife had acted as interpreter for Iron Moccasin's wife, who accused John Holland, the agency farmer, of having committed an indecent assault upon her. The agency farmer was not a married man living upon the reservation with his family, as it was agreed in the treaty of 1876 should be in the case of all agents and employés of the agency. She was also the interpreter for Black Tomahawk, who made complaints to the inspector concerning the boss farmer, who was drunk and abusive to the Indians. And that is why I was ordered off of the reservation, and why Tomahawk was conciliated and used to jump our claim while we were in Washington to protect our rights.

It is a matter of common remark that Tomahawk was brought down from his Bad River home to defeat our claim and use him for speculation purposes; and those are concerned in it who tried to work me into the old soldier deal.

And further: Inspector Armstrong did not give me any opportunity to make a statement before him, or present any facts to him, but took ready made affidavits prepared by Tomahawk's attorney, without himself even examining the witnesses, being prejudiced by the agent and the farmer.

C. W. WALDRON.

SOUTH DAKOTA, *County of Hughes, ss:*

On this first day of April, in the year one thousand eight hundred and ninety, before me, C. D. Crouch, a notary public in and for said county and State, personally appeared C. W. Waldron, known to me to be the person who is described in and who executed the annexed instrument, and acknowledged to me that he executed the same.

[SEAL.]

C. D. CROUCH,
Notary Public.

PIERRE, S. DAK., *April 3, 1890.*

C. C. PAINTER, Esq.,
Washington, D. C.

DEAR SIR: In the matter of Black Tomahawk *v.* Chas. Waldron, the special agents of the Government have investigated the matter and advise me that they have awarded the land to Tomahawk and have so reported to the Secretary of the Interior.

One F. W. Pettigrew, a brother of Senator Pettigrew, of this State, is interested with Waldron in this land, and I am advised has undertaken to defeat the action of the special agents by interference at Washington. Can you look after the matter there and see that no unfair means are used against Tomahawk? I do not know whether Senator Pettigrew will allow himself to be used in the matter or not, but I do know the brother will use him if he can; hence the necessity of looking after it.

Hoping you may be able to give it attention, I am, yours, truly,

H. E. DEWEY.

U. S. SENATE,
Washington, D. C., April 15, 1890.

DEAR SIR: I inclose herewith some affidavits in relation to the case of Waldron *v.* Tomahawk, which I desire to file and have considered in connection with that matter. It appears that the special agent, Armstrong, did not interview Waldron or Van Meter, but took purely evidence on the other side of the case, making it *ex parte* entirely, and there is a suspicion at Pierre that he is connected with the agent in an effort to secure title to some of this land himself. I desire to be heard before this matter is disposed of in any event.

Yours, truly,

R. F. PETTIGREW.

The SECRETARY OF THE INTERIOR,
Washington, D. C.

PIERRE, *April 8, 1890.*

DEAR SIR: I wish to call your attention to the case of Black Tomahawk, who lives just above the land known as the "mile square," opposite this city. He is an Indian who claims the land as his home and is living there with his wife and family. One Charles Waldron, a white man, claims the same land, and said Waldron and his friends abuse said Tomahawk on every occasion when they have an opportunity and endeavor to intimidate him so as to force him to abandon said land. To-day the said Waldron with a team of 3 horses set in to plow so near Tomahawk's house that Tomahawk sent his brother to remonstrate with him, when Waldron struck him, or struck at him, with a whip. He also violently abused Tomahawk, his wife and children, and Tomahawk appeals to the Government, through you, for protection from the bulldozing and intimidation of said Waldron, and asks that he may be afforded a quiet enjoyment of his said home free from interference by said Waldron.

Yours, truly,

H. E. DEWEY,
For Black Tomahawk.

C. A. LOUNSBERRY,
Special Agent, etc., Pierre, S. Dak.

PIERRE, S. DAK., *April 11, 1890.*

SIR: In response to the inclosed letter from H. E. Dewey, attorney for Black Tomahawk, claiming certain lands adjoining the town site of Fort Pierre, in conflict with Charles Waldron, a white man having an Indian family, alleging that said Waldron and his friends not only abuse said Indian (Black Tomahawk), but on the 7th instant struck his brother, or struck at him, with a whip, and violently abused Tomahawk, his wife, and children, and that Tomahawk appeals to the Government through me for protection from the bulldozing and intimidation of said Waldron, and asks that he may be afforded a quiet enjoyment of his home, free from interference by said Waldron. I proceeded to the premises in company with Mr. Dewey, who, at Tomahawk's request, procured Fred La Plant as an interpreter, and I learned the facts to be as follows:

Waldron started to plow a piece of land suitable for cultivation, being a basin-like tract where there is a good sod, while most of the remainder of the flat is sage-brush land. The piece lies between Tomahawk's and Waldron's house. When Waldron started from the lower point nearest his house Tomahawk's brother called to him to stop, but he paid no attention, and proceeded north along the east edge of the basin toward Tomahawk's house. Little Skunk, Tomahawk's brother, met him and told him to stop. Waldron said to him: "This will not affect your rights. I know Tomahawk claims the land, and if it is decided in his favor he will get the plowing too." Little Skunk then struck at him with a small stick about the size of one's finger, and as Waldron threw up his hand to ward off the blow the stick struck his hand and broke. Little Skunk then went to the horses and struck them over the head, driving them back on to the plow. Waldron did not strike, or threaten or abuse his family in any way, though he may have applied the usual choice cow-boy epithets to Little Skunk.

I said to Tomahawk: "Now choose the ground either on the north or east side of the claim," as he resides on the northeast part, "which you desire to cultivate, and I'll see that you are protected from insult or interference until the case between you is decided. I am not to decide whether Waldron has Indian rights, or stake your claims, if you both have rights. It does not hurt your rights if he cultivates a part, or him if you cultivate a part, until it is decided."

Little Skunk replied: "You were sent here to settle this case. You do not do it. You do not do your duty. You must drive this man off."

"No," I replied, "I am instructed not to interfere in any matter between persons, whether white or Indians. I am here to learn the truth and tell it to the Commissioner. You can wait until he decides what shall be done. Show me what grounds you want to use on this side of the claim and I will see that he keeps off, and you keep off of the other side till it is decided. Do this so there may be no trouble."

I then said to him: "Let Waldron plow half of the land he has marked out and you plow the other half and wait patiently till orders come."

Mr. Dewey was satisfied with my action except that he desired me to place stakes. "No," said I, "I will not do anything that can be tortured into the appearance of interference in this case, except to keep peace between the two. If I were to set stakes, the Indians would assume that I had settled it. I will not set any stakes or give them any paper, but I will protect them from interference and from abuse."

Mr. Dewey said: "I misunderstood Tomahawk about the striking; I had no interpreter. I thought Waldron struck at him. He did just what I told Tomahawk

to do. I told him to take a club and drive off any one who came around here to do anything or to interfere in any way with him."

When the sympathetic side of this case is presented by the Indian rights people or others for the consideration of the Department, it may be well to know that the land is duly valuable for town site purposes, and that one party is using Tomahawk in the hope of dispossessing the other party who are supposed to be backing Waldron. A third party is doing everything that can be done to keep up the strife in order to gain time and in the end defeat both, while a fourth party is likely to organize a town site scheme on the basis of a compromise between all of the parties. It will be a town site in the end. No agriculturist would be justified in trying to make a farm of it, or Indian in taking it for his allotment.

Respectfully,

C. A. LOUNSBERRY,
Special Agent General Land Office.

COMMISSIONER OF THE GENERAL LAND OFFICE,
Washington, D. C.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

I, Black Tomahawk, do say: "The Government asked me to give up part of our land and take land for ourselves and our children, and I took the land they wanted me to take, and I claim it for my own. I claim 320 acres. The Indians want to know when the surveys will be made. They want to take claims and the white men are crowding them.

his
BLACK X TOMAHAWK.
mark.

In my presence,
C. A. LOUNSBERRY,
Special Agent General Land Office.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 15, 1890.

Memorandum dictated by T. A. Bland.

Jennie E. Waldron, of Fort Pierre, a Sioux half-breed married to a white man, writes that she and her husband had located a claim on a portion of the reservation which has recently been opened to settlement; that two years ago they built a house and were living upon it; that during December she was in Washington and while here some speculators at Pierre got an Indian by the name of Tomahawk to jump their claim, evidently in the interest of speculators.

On their return they protested against such action, but Agent McChesney is unfriendly and ruled against them. They appealed to the Department and Armstrong was sent out. He conferred with the agent and made some sort of a report which they suppose is against them because he did not listen to them or give them or their friends an opportunity to make a statement of the case. She claims that if the report is against them it is an injustice that ought not to stand, and she appeals to the Indian Defense Association to see that the matter is reopened and a proper investigation made.

Senator Pettigrew, with whom I talked, says that he is thoroughly convinced that it is a put-up job on the part of speculators to rob them of their home, and that Tomahawk is only a tool in the hands of designing men. He corroborates Mrs. Waldron's statement fully, and says he does so on pretty extensive knowledge of the matter.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 23, 1890.

SIR: I transmit herewith, for your information, the following-described papers relative to the case of Black Tomahawk *v.* Chas. and Jane Waldron, involving a tract of unsurveyed land near Fort Pierre, S. Dak., viz:

Report dated March 8, 1890, of C. A. Lounsberry, special agent for this office (1890–31605). Brief of the attorney for Black Tomahawk, Exhibit A; additional

brief of the attorney for Black Tomahawk, Exhibit B; affidavit of Black Tomahawk with supplemental statement, Exhibit C; affidavit of Jane E. Waldron, Exhibit D; affidavit of Chas. Waldron, Exhibit E; affidavit of A. C. Van Metre, Exhibit F; affidavit of Hosea F. Briggs, Exhibit G; affidavit of W. P. Oaks, Exhibit H; affidavit of E. H. Allison, Exhibit I; letter dated April 11, 1890, from C. A. Lounsberry, special agent for this office, with inclosure (1890–47041).

Please acknowledge the receipt.

Very respectfully,

LEWIS A. GROFF,
Commissioner.

The COMMISSIONER OF INDIAN AFFAIRS, *Washington, D. C.*

PIERRE, S. DAK., *June 21, 1890.*

SIR: Will you kindly inform me whether anything has or will be done in the case of the Indian, Black Tomahawk, who has appealed to the Department many times during the past four months in relation to his land adjoining what is known as the "mile square" (that being the section of land reserved for the Dakota Central Railway by the act opening the Sioux Reservation)? This land was the home of Black Tomahawk when the law went into effect, but was claimed by a white man, one Charles Waldron. The Department sent Inspector Armstrong and Agent Litchfield here to examine the matter and they informed me at the time that they had awarded the land to Tomahawk and had so reported to the Department. That was a long time ago, and Tomahawk has been looking for a decision of the matter from day to day for a great many days, but still it does not come. He would very much like to know whether the Department will allow him his rights under the law or whether he has got to give up the land. In the latter case he wishes to know as soon as possible, so that he may go on the lands still reserved and try it again. Kindly give him some information in regard to the matter.

Yours, truly,

H. E. DEWEY,
Attorney for Black Tomahawk.

The SECRETARY OF THE INTERIOR,
Washington.

WASHINGTON, *September 20, 1890.*

SIR: In compliance with your informal request I have carefully considered the evidence and reports presented in the Waldron-Tomahawk controversy over a tract of land opposite the city of Pierre, S. Dak., and I have the honor to present herewith my conclusions in the matter, together with a brief history of the case.

This office received on December 27, 1889, a communication from Charles Ransom stating that Charles W. Waldron, a white man living up Bad River about 60 miles and married to a quarter-blood Indian woman, had built a small house on the 320 acres adjoining the "mile square" at Fort Pierre; that said Waldron had taken this land for speculative purposes; that he had never lived on it; that he was at that time negotiating with a party by the name of Pettigrew for the sale of the land.

On April 7 this office received by Department reference a letter addressed to Herbert Welsh, esq., corresponding secretary of Indian Rights Association, calling attention to the case of Black Tomahawk, stating that immediately after the Sioux commission was there Tomahawk selected the 320 acres of land in question and marked out a building place by driving 12 stakes in the ground and piling up stones to otherwise mark the place; that he did nothing further with the land until January 10, 1890, when he built a house and barn and moved into it with his wife and two children; that between the time of making his selection and the 1st of January a white man by the name of Charles Waldron had built a small house on the land but had never occupied it; that said Waldron claimed the land by virtue of his wife, who is a quarter-breed Santee Sioux.

The matter was reported to the Department on March 1, with copies of letters of Ransom and Dewey. On the same date this office directed Special Agent Litchfield to investigate the case, and it was recommended that the papers be referred to Inspector Armstrong with instructions to confer with Special Agent Litchfield, to the end that the case may receive prompt and careful attention.

On April 6 this office received a report of Inspector Armstrong as follows: * * * "Black Tomahawk is entitled to the land—I do not think Mrs. Waldron is properly on the roll of the Cheyenne River Agency." The inspector further states in

regard to the right of Indian Tomahawk to the land where he now resides, and had resided prior to the proclamation opening the ceded land of the Sioux Reservation, that "Tomahawk is entitled to the 320 acres under the law. Waldron should be made to vacate. This Charles W. Waldron has no just right or claim to the land in question. He has resided and even yet resides on his cattle ranch on Bad River. His wife could not hold both places as a residence, and it is a question whether she is entitled to hold any place as an Indian, or to be on the rolls of the agency at all." That Waldron was trying to get a show of title and Tomahawk's right to this land revoked that he may sell it to the town-site managers of Fort Pierre. The inspector reports in favor of awarding the land to Tomahawk.

The report of Inspector Litchfield was filed in this office on the 4th of April and concurs in Inspector Armstrong's report. No evidence was submitted by Inspector Armstrong except what was furnished by Tomahawk and his witnesses. The evidence furnished was entirely *ex parte*. The inspector states that Mrs. Waldron is not properly borne on the rolls of the Cheyenne River Agency. How he succeeded in reaching this conclusion or what facts were presented to him that would lead him to reach this determination he does not state.

On April 8 last this office received, by Departmental reference, a communication from the Hon. R. F. Pettigrew stating that "Special Agent Armstrong did not interview Waldron or Van Meter, but took, purely, evidence on the other side of the case, making it *ex parte* entirely, and there is a suspicion at Pierre that he is connected with the agent in an effort to secure title to some of this land himself. I desire to be heard before this matter is disposed of in any event."

Mr. Pettigrew submits affidavits of Philip Dunning, F. W. Pettigrew, and others, showing that Mrs. Waldron had resided on the tract in controversy since the 10th of February, 1890, and prior to that time. They also allege that Inspector Armstrong could not make a fair and impartial report in the matter, for the reason that he had not thoroughly familiarized himself with the case.

On April 24 last this office received from the General Land Office the report of Special Agent C. A. Lounsberry, who submitted a very full and exhaustive report of this matter. Mr. Lounsberry submits the statements of Black Tomahawk and his witnesses, also a brief prepared by H. E. Dewey, attorney for Black Tomahawk. He also submits evidence of Jane E. Waldron, showing the date of her selection and settlement, the character, and extent of her improvements.

This evidence shows that Jane E. Waldron is a quarter-blood Santee Sioux; that she was enrolled at the Cheyenne River (South Dakota) Agency in 1883, and has received rations since that date; that in 1883 she selected the land in question; that in July, 1889, she built a house thereon and established her residence there; that she has made that her residence ever since; that Charles W. Waldron, her husband, applied to Agent McChesney in March, 1889, to have the land in question allotted to his wife; that the ground was then selected and staked, and the lumber to build with in part on the ground; that at the time she built her house (July, 1889), the land was unoccupied and not claimed by any other person.

The evidence of Tomahawk and his witnesses shows that Tomahawk made his selection of the land in question after the adjournment of the Sioux commission. The report of that commission (Ex. Doc. No. 51, Fifty-first Congress, first session, p. 185) shows that the council closed at the Cheyenne River Agency on July 23, 1889, hence Tomahawk must have made his selection after that date; that his improvements were not put on said land until January, 1890; that he settled on said tract January 3, 1890. The evidence shows that Tomahawk is a member of the Two Kettle Band of Sioux Indians, and that he was receiving and entitled to receive rations at the Cheyenne River Agency.

I have carefully examined all the evidence submitted to this office with a view of determining the rights of the respective parties. The question raised by Inspector Armstrong that Mrs. Waldron was not properly borne on the rolls of the Cheyenne River Agency is not sustained by the facts presented. The evidence submitted shows clearly that she is a quarter-blood Santee Sioux; that she was enrolled at the Cheyenne River Agency in 1883 and her right to receive rations and annuities at that agency has never been disputed. No evidence has been produced to show that she is not fully entitled to all the rights conferred on members of the Sioux Nation by the agreement provided for by act of Congress approved March 2, 1889 (25 Stats., p. 888). Section 16 of said act provides

"That the acceptanee of this act by the Indians in manner and form as required by the said treaty concluded between the different bands of the Sioux Nation of Indians and the United States, April twenty-ninth, eighteen hundred and sixty-eight, and proclaimed by the President February twenty-fourth, eighteen hundred and sixty-nine, as hereinafter provided, shall be taken and held to be a release of all title on the part of the Indians receiving rations and annuities on each of the said separate reservations to the lands described in each of the other separate reservations so created, and shall be held to confirm in the Indians entitled to receive

rations at each of said separate reservations, respectively, to their separate and exclusive use and benefit, all the title and interest of every name and nature secured therein to the different bands of the Sioux Nation by said treaty of April twenty-ninth, eighteen hundred and sixty-eight. This release shall not affect the title of any individual Indian to his separate allotment on land not included in any of said separate reservations provided for in this act, which title is hereby confirmed."

While Mrs. Waldron properly belongs to the Santee tribe of Sioux Indians, Article 16 of said act confirms her right to receive rations at the Cheyenne River Agency and all the title and interest of every name and nature secured therein to the different bands of the Sioux Nation by said treaty of April 29, 1868; and further, "This release shall not affect the title of any individual Indian to his separate allotment on land not included in any of said separate reservations provided for in this act."

Under section 13 of said act the rights of the Indians to take allotments on the ceded portion of the reservation is clearly defined.

Said section provides:

"That any Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing upon any portion of said great reservation not included in either of the separate reservations herein established, may, at his option, within one year from the time when this act shall take effect, and within one year after he has been notified of his said right of option, in such manner as the Secretary of the Interior shall direct, by recording his election with the proper agent at the agency to which he belongs, have the allotment to which he would be otherwise entitled on one of said separate reservations upon the land where such Indian may then reside, such allotment in all other respects to conform to the allotments hereinbefore provided."

Under this section the Indians receiving and entitled to receive rations at the Cheyenne River Agency, have the right to make their selection within one year from the time when said act shall take effect; and under this section Mrs. Waldron was competent to make her selection as therein provided. That she made such selection and has fully complied with all the requirements of the act of March 2, 1889, is clearly shown by the evidence submitted to this office.

In view of the facts presented to this office, I am clearly of the opinion that Mrs. Waldron should be allowed to record her selection, and that the land therein described should be allotted to her under the provisions of the act of March 2, 1889, subject to the right of Black Tomahawk to contest such selection under the rules and regulations prescribed by the Department.

Very respectfully, your obedient servant,

FRANK ALEXANDER,
Chief of Division.

Hon. V. R. BELT,
Acting Commissioner of Indian Affairs.

MEMORANDUM.

Tomahawk *v.* Waldron.

Two parties, both claiming to be Sioux Indians and both claiming the same tract of 320 acres of land, within the ceded lands under the Sioux act of March 2, 1889 (25 Stats., 888).

In this contest there are several important questions to be considered and determined: First, the right of the contesting parties under the act of March 2, 1889, to make selections on the ceded Sioux lands; second, priority of selection; third, priority of recordation of selection; fourth, priority of bona fide occupancy upon the selected tract.

Tomahawk's right to make a selection under the act is not disputed. It is disputed that he made priority of selection, and also that he was a bona fide prior occupant.

Mrs. Waldron's right under the act to make a selection is disputed—first, because if a Sioux Indian at all she is of Santee-Sioux blood, and the Santees are provided for under section 7 of the act of March 2, 1889, which gives them no right to make selections on ceded lands; second, because she is a married woman, for which class of persons no provision for allotments is made under the Sioux act; third, because though she is and has been receiving rations at the Cheyenne River Agency she is not entitled to so receive rations there for the reason that she is an Indian of Santee-Sioux blood, and has no rights to rations and annuities at the Cheyenne River Agency; fourth, section 13 of the act of March 2, 1889, under which she claims right to make selection, provides—

"That any Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing

upon any portion of said great reservation not included in either of the separate reservations herein established, may, at his option, within one year from the time when this act shall take effect, and within one year after he has been notified of his said right of option, in such manner as the Secretary of the Interior shall direct, by recording his election with the proper agent at the agency to which he belongs, have the allotment to which he would be otherwise entitled on one of said separate reservations upon the land where such Indian may then reside, such allotment in all other respects to conform to the allotments hereinbefore provided."

It is necessary that the person should be an Indian, and that he must not only be receiving but must be *entitled to receive rations and annuities* at either of the agencies mentioned in the act, and the question as to whether she was at that time entitled to receive rations must be determined. While the fact that she was receiving rations is prima facie proof of her right to so receive them, it can not be accepted as absolute proof of her legal right thereto. The case has not been presented fully by evidence which satisfactorily shows the rights of Mrs. Waldron under the act.

This is an important matter and the question should be put in shape, and the case placed in the hands of one of the special agents to take testimony, investigate, and report the facts found, to this office, so that a just and proper disposition of the subject may be had.

R. V. BELT,
Acting Commissioner.

OCTOBER 3, 1890.

FORT PIERRE, S. DAK., *December 15, 1890.*

DEAR COUSIN: We have been in consultation as to the next step to take regarding our claims. February 28 is drawing nearer every day and so far as we know nothing has been done toward a settlement. We concluded to impose upon you the task of bringing the matter before the proper authorities, you being in a position where you can do so without expense and the loss of a great deal of time and knowing you would labor disinterestedly in our behalf. We do not ask partiality shown us. All we ask is justice, and we feel if our cases were properly understood justice would not tarry so long. Hence we make statements of our cases so you will understand them thoroughly and wish this information, together with the indorsement of some of our best people to help you substantiate our characters, you can proceed in any manner you deem best, and whether you succeed or not you will forever be entitled to our warmest gratitude.

If you think it advisable you can find at the office of the Commissioner of the Land Office the affidavits sent on there last winter by Col. Lounsberry, as well as his report. In my case there is one made by W. P. Oakes, who staked my claim for me, and hauled the first lumber; one by H. F. Briggs, who helped to build my house; one by my father; one by Col. Allison, who unwillingly overheard a conversation between Dewey and Tomahawk when they were making the bargain; one by my husband, and one by myself. Subsequently I wrote the facts in two letters to Dr. T. A. Bland, whom I implored to get the affair before the Commissioner of Indian Affairs, and which you can see, no doubt, if he has them yet in his possession. They were written when the whole matter was fresh in my mind, and may contain information which I have omitted in my statement to you.

In February, about the 22d, 1889, I located a piece of land adjoining the town of Fort Pierre on the north; no person had ever laid claim to it at that time. I manifested my intention to locate by putting building lumber upon it, and having it staked at the four corners, beginning at the so-called mile square, and running a half mile north, and 1 mile west, 320 acres in all.

I further manifested my good intention by asking ex-Agent McChesney for instructions as to what more I needed to make my title good, to which I received no satisfactory answer.

This was before the passage of the act of March 2, 1889. The following June I had a neat little house built, which cost me over $150 (since then I have spent more than $100 in additional improvements), and established my residence early in July, and ever since it has been my home.

In December, 1889, through malice on the part of ex-Indian Agent McChesney, an order was issued for the removal of my husband with all our effects from the reservation by Christmas, an order which, had it been executed, would have been our ultimate ruin financially. In order to right our wrongs, my husband, child, and myself made a journey to Washington, and, although through the interference of the Iowa and Dakota delegations the order was suspended at once, we were detained in your home on account of the sickness of my husband and child with la grippe. It was while there, a diabolical scheme was concocted to defraud me of my home and birthright. One H. E. Dewey, a lawyer residing in Pierre, S. Dak., induced an Indian,

Black Tomahawk by name, to leave a good, comfortable home on Bad River, 22 miles from its mouth, where he had resided more than three years, and where Government lumber, fence wire, agricultural implements, mares, etc., had been issued to him, and come here to jump my claim. This Dewey furnished means to buy lumber and pay a carpenter to erect a little shanty for Tomahawk to live in.

The lumber was brought on the land the 3d day of January, 1890, after I had located nearly a year, and had been an actual resident six months, and the excuse for a residence was constructed a day or so later; and this was done at a time when the President's proclamation was hourly expected. We returned home the 9th day of January, 1890, and Tomahawk was not yet occupying the shanty, and did not do so until a week before the 10th day of February, which was the date of the President's proclamation. Dewey's plan was to get complete possession of my land during our absence, the scheme being to retain Tomahawk on the land only till the reservation expired by virtue of the President's proclamation which did not issue until we had been home a month. The contract between Dewey and Tomahawk was a transfer of a stated sum of money to the latter on his vacating the land, when the former would take immediate possession.

Dewey is the representative of a combination which intended to throw the land into a town site for speculation.

Soon after the opening of the reservation Col. Lounsberry was sent here by the Land Office Department to investigate fraudulent land titles, and it was before him we first stated our cases. Since then to Capt. Norvells, who was sent in Col. Lounsberry's stead, and later to Rev. T. L. Riggs, who is, I believe, even yet in the Indian service, but if any action has been taken we have not been informed of it.

On April 9, 1890, my husband began to plow a field on the bottom between our house and the river, which is also between our house and Tomahawk's, but before he had gone across the field once, Little Chief, better known as Little Skunk, a brother to Tomahawk, came out and attempted to stop him and then struck him with a club. The same day Tomahawk went over to Pierre and reported this affair to Dewey, but he, Dewey, understood that it was my husband who did the striking, which greatly exasperated him. He reported to Col. Lounsberry and the next day both came over to investigate the matter and then learned the truth. They requested that we confine our plowing to a line one-half way between our houses, to which we agreed, not wishing a personal quarrel with Tomahawk. It was at that time that Dewey admitted, in the presence of my brother and husband, that he induced Tomahawk to jump my claim for the money he expected to make out of it. Previous to this he admitted in an affidavit that he furnished the money to buy lumber and pay a carpenter for erecting the shanty for Tomahawk.

Tomahawk has never added to the improvements of January 3, neither has he ever put a plow in the ground on my claim; but, instead, at seedtime returned to his old home on Bad River, where he, with the assistance of the agency "plow gang," put in a crop and soon after sold out his claim and improvements to one Joseph Mathieson, the son of a prominent merchant here. Most of the time since he has spent visiting among the Indians on Bad River and the new reserve, returning to the shanty occasionally to remain a few days, just to keep up the semblance of a residence. At one time he was gone more than a month to the new reserve, looking for a suitable location for a permanent home. He employs his time in idleness and his support comes from the Government and donations from the Dewey combination. A rumor is afloat that he has now filed a notice of application to file on the place he sold to Joseph Mathieson, and for which he was well compensated.

Now, I do not look upon this controversy as between myself and Tomahawk, but a combination of mercenary men in whose hands he is but a mere tool. It is against these that I ask protection.

I took this land in good faith. Had there been any other claimant it would never have occurred to me to be a claimant too. In selecting it I held in view the advantages of a home contiguous to civilization. I am averse to seeking an allotment on the reservation, where I could not feel justified in taking a growing family. Again, I see the advantage of time gained in securing an allotment on the ceded portion of the Great Sioux Reserve, since it rests entirely with the Secretary of the Interior when the new reserve shall be subject to allotments in severalty. Hence, I filed a notice of application with our new agent, Maj. Palmer, early in September, immediately after he took his position. I also filed a notice of application to file on a piece of land for my little boy, the place where we keep our stock, and where we had made improvements for him prior to the passage of the act of March 2, 1889, and as soon as the returns are made from Washington to the local land office, I am ready to have these registered, provided there is no contest. In case of same, I maintain all the rights of an Indian that Tomahawk does, the right of priority and good intention.

The idea of a division has several times been suggested. I would consider that an injustice, since it would secure to land sharks the best portion of my claim—that is,

the part best adapted to farming—and Tomahawk would pocket his money and run off to the reservation, if not his, to his old home on Bad River.

All the facts I have stated I can prove by a large number of respectable citizens.

Please give my love to all and tell cousin Mollie and Belle that I will write them soon.

I hope I have not asked too much of you. If at any time I can be of service to you you have but to mention it.

Sincerely your cousin,

JENNIE E. WALDRON.

J. B. BROWN,
Washington, D. C.

FORT PIERRE, S. DAK., *December 15, 1890.*

DEAR COUSIN JIMMIE: It is but a little more than two months before the 28th of February will be here. That is the day to which our time is limited by virtue of the President's proclamation of February 10, 1890, in order that we may have the privilege to avail ourselves of the right to take land in severalty on the ceded portion of the great Sioux Reservation.

The quarter section to which I lay claim to has been wrapped up in controversy ever since the opening of the reservation. Shortly after the opening of the reservation Col. C. A. Lounsberry, from the Land Office Department, took affidavits relative to the claims in controversy, the same being not on file in the Land Office in Washington, D. C.

As my sisters and I have heard nothing concerning our rights in particular we concluded to impose upon your good will inasmuch as to state our case and ask you to lay them before the Department in whatever way you may think best. I have always contended that if my case be properly brought before the Department in its true light that I could not but feel that my rights will be protected. But until a short time ago we were living under one, Agent Charles E. McChesney, at whose hands I lay the cause of our rights being infringed upon, and from the fact that he has tried to deprive us of our birthright, he would not hesitate to lay the cases before the Department in a falsified manner.

I have written several times to the Commissioner of Indian Affairs, but have heard nothing from there, and as the time of our limitation is not far off I can not but feel that I must make one more attempt to get the matter before the Department, and whatever may be your success in this matter we shall not cease to thank you for the effort you shall make in our behalf.

I here inclose a copy of the protest which I filed at the Cheyenne River Agency, and ask you to have it put on file in the office of the Commissioner of Indian Affairs. Early in October of 1889 I went to Buffalo, N. Y., for medical treatment, and on my departure requested father to stake out my corners for me. Shortly thereafter he undertook to do so, but was prevented by Agent McChesney, who said that the Government buildings and the land (inclosed by a fence and the river, containing about 175 acres) would be reserved for Government purposes after the remainder would be thrown open for settlement, and that he would have to object to any one setting stakes inside of the inclosure.

Father informed me of what had transpired, and I thereupon immediately went down to Washington, which you distinctly remember.

On that occasion, which was the 25th or 26th of November, 1889, I interviewed the Assistant Commissioner of Indian Affairs, and told him of what I had done in the way of making improvements, and what father had informed me of what Agent McChesney had said.

He read me a letter, which was in reply to one the Commissioner had written to him, (Agent McChesney), asking what buildings he would recommend to be reserved for future purposes. He said he would recommend all buildings to be reserved except the farmer's buildings at the mouth of Bad River, which was too far from the agency to be of any service. The Assistant Commissioner informed me that they would, without a doubt, act upon the suggestion of Agent McChesney, and if I was located there first, I would have the prior right of anyone.

All went along smoothly until the 11th day of February when, to my surprise, the agency carpenter commenced the construction of a small house immediately in front of the agency farmer's barn. I asked the carpenter who the building belonged to, and he said he supposed it belonged to the Government, as it was being made of Government lumber, and by Government labor, but that Crow Eagle claimed it. I asked Crow Eagle by what authority he claimed it, and he said it was issued to him by the Department through Agent McChesney. Crow Eagle has made no improvements with the exception of the house, and has cultivated three acres of ground

which had been broken by the agency farmer. He is still in the possession of the premises, but spends most of his time some 15 miles up Bad River on the claim he occupied prior to the 11th day of February, 1890.

On account of Crow Eagle being in possession I could cultivate none of the land, which I would like to have done.

As I understand the interpretation of section 13 of the act of March 2, 1889, one had to be living and residing upon the land, to which he is entitled, on the 10th day of February, 1890, and if he fails to present his declaration within the time prescribed, he will have to repair to the separate reservation in order to take his land. Now, Crow Eagle filed his declaration as I did mine, and if he is defeated in his claim to this particular piece of land he has the right to take that upon Bad River on which he was living the 10th day of February, 1890. But if I am defeated, I will have to go to the reservation to take my land, as I was living on no other than this particular piece.

According to section 9 of said act, "when the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree," a provisional line may be run dividing said land.

I construct said section to apply only where Indians have equal rights to the same piece of land. In my case I honestly believe that I have the right paramount, and think that the subject of division ought not to enter into the matter.

The subject of, whether Indian children and part-bloods had the same rights as full-blood Indians or not, has been much discussed, but I see by a late decision from the Land Office that they have, and suppose that has now been definitely settled.

Give my love to all. I remain, your cousin,

JOHN VAN METRE.

J. B. BROWN, Esq.,
Washington, D. C.

We feel a satisfaction in being able to say that we have known Mrs. Jennie E. Waldron for a number of years; that she is a graduate of one of the best schools in the West; that she paid the expenses of her education by her own industry, and that she is to-day the peer of any lady in the State.

Respectfully,

S. S. CLOUGH,
President Citizens' Bank.
EUGENE STEERE,
President First National Bank.
JOHN G. ARNOW,
Postmaster.
WM. R. ERVIN,
Mayor of Fort Pierre.
D. C. BRACKNEY,
State's Attorney.
M. E. CURRAN,
County Treasurer.

FORT PIERRE, S. DAK., *December 13, 1890.*

We have known Mrs. Viola Bentley for many years. Her husband is a farmer and stock-raiser, and they are both people that are highly respected in this community. Mrs. Bentley, for her motherly, womanly, and ladylike deportment, is worthy of the confidence of all who know her.

Respectfully,

S. S. CLOUGH,
President Citizens' Bank.
EUGENE STEERE,
President First National Bank.
WM. R. ERVIN,
Mayor of Fort Pierre.
W. W. HOLLENBECK,
County Commissioner.
R. P. FALES,
City Alderman.

FORT PIERRE, S. DAK., *December 15, 1890.*

The undersigned, having known John Van Metre since his boyhood, would respectfully say that he is a young man of integrity and ability, a member of the South Dakota bar of good standing, and one who stands high in the estimation of this community.

Respectfully,

T. S. CLOUGH,
President Citizens' Bank.
EUGENE STEERE,
President First National Bank.
WM. R. ERVIN,
Mayor of Fort Pierre.
D. C. BRACKNEY,
State's Attorney.
M. E. CURRAN,
County Treasurer.

FORT PIERRE, S. DAK., *December 15, 1890.*
(Certificate.)

Before the U. S. Indian agent, at Cheyenne River Agency, S. Dak.

In the matter of John Meter *v.* Crow Eagle, protesting the application of Crow Eagle to enter certain lands near the mouth of Bad River, Stanley County, S. Dak., accompanied by an application to select the same as an Indian allotment under the provisions of section 13, act of March 2, 1890, opening the Sioux Reservation.

Now comes John Van Meter, an Indian, receiving and entitled to receive rations and annuities at the Cheyenne River Agency, S. Dak., in person, and files an application under section 13, act of March 2, 1890, opening the Sioux Reservation, to enter the 160 acres of land upon which he resided when said act of March 2, 1889, took effect, viz, on the 10th day of February, 1890.

He protests against the application heretofore filed by Crow Eagle to enter the same land for the following reasons:

Because the said Crow Eagle did not reside upon the land on the 10th day of February, 1890, or at any time prior to that time, and therefore is not qualified under the law to enter said land, and he asserts and offers to prove that on the 10th day of February, 1890, and prior to that time the said Crow Eagle and family resided upon land selected by him with the advice and assistance of the agent at the Cheyenne River Agency, about 15 miles from this land up Bad River, where he had a house built by the agent, ten acres fenced by the agent and under cultivation, and where he had been assisted with teams and seeds through the agent, as contemplated by the treaty of 1868.

That the said Crow Eagle did not leave said land and come upon the land in question for the purpose of making it his home, to the exclusion of the one 15 miles up Bad River, until the 10th day of February, 1890. That on the 11th day of February, 1890, a shanty was built for him at the agency farmer's barn, which was on the 12th hauled to its present position, and on the 13th Crow Eagle moved into the same with his family; and that up to the 10th day of February, 1890, the said Crow Eagle had performed no act of settlement beyond staying over night twice at the agency building, occupied by the agency farmer, with a private understanding that he should move his family onto the land and claim the same. The object being to defeat the claim of this protestant who was there residing upon the land, having selected the same under the provisions of section 6 of the treaty of 1868, prior to the passage of said act of March 2, 1889.

He offers to show in his own behalf—

First: That he settled upon said land on or about February 22, 1889. That his first noticeable act of settlement consisted in hauling lumber upon said land to build a house; that said lumber was hauled upon said land on or about February 22, 1889. That this protestant following that date was sick and went to Buffalo, N. Y., for treatment at Dr. Pierce's World's Dispensary; and that during his absence, viz, between the 5th day of October and the 31st day of October, 1889, the house for which lumber was hauled in February, 1889, was completed, and on his return, viz, on the 9th day of December, 1889, he established his residence therein. He had in the meantime purchased the improvements of one Peter Leyer, the original occupant of the land, paying therefor a team, wagon, and harness, valued at about $275. The house erected by the protestant was 12 by 16, boards tar papered, and battened sides, and roof of same material; gable roof, 8-foot studding, floor, door, window, habitable at all seasons of the year, costing about $100. That up to December 9, 1889, when he established residence on the land in good faith, that it was his privi-

lege to do under the treaty of 1868, under which he was acting; that it was not his fault that his selection was not recorded, as provided for in said treaty, because no "land books," were kept at the agency.

He further offers to prove that a portion of the land in question, especially that occupied by the agency farm buildings and the ground under cultivation and fenced and known as the agency farm, was occupied by the Indian family of Peter Leyer at the time said act of March 2, 1889, was passed. That the said Leyer was occupying the same under section 6 of the treaty of 1868, and that his selection was made with the advice and assistance of a former agent; that he had been assisted to build his house, break and fence his land, and with seed, etc., and that he never consented to give up the land for the purpose for which it was taken, or for any other purpose, except as he arranged with this protestant to enter the same, as he, the said Leyer, was authorized to do under section 9 of said act of March 2, 1889, which allows Indians having conflicting claims to agree.

He desires to call attention to section 12, treaty of 1868, intended to protect the individval rights of Indians, and insists that Indian Agent McChesney had no right to appropriate ground claimed by an individual Indian, without his consent, for any purpose; that he had no right to expend an appropriation made for the benefit of all upon any individual Indian, and that, having caused buildings to be erected upon ground not reserved for the purpose, he had no right to issue said buildings to any individual, and that the mere issue of said buildings to said Crow Eagle, even if he had the right to do it, could not impair the right of another individual to the land.

JOHN VAN METRE.

Subscribed and sworn to before me this 16th day of December, A. D. 1890.
[SEAL.] R. H. THEILMANN,
Clerk of the Circuit Court.

FORT PIERRE, S. DAK., *December 16, 1890.*

DEAR COUSIN: When the Sioux commission visited the Cheyenne River Agency, they interpreted the bill to the effect that or children whose parents where residents on this portion of the Great Sioux reserve at the time when the Sioux bill should take effect, would be entitled to allotments in severalty as well as the parents, and of course we are all thinking for the best interest of our children. So, in accordance with the Sioux bill, I located an island in the Missouri River west of the main channel and about a quarter of a mile from the town of Fort Pierre, from which it is separated by an arm of the river, for my two boys, Arthur C. and Roy Lee Bently, aged 9 and 5 years. I manifested my intention to do so first by staking corners and writing notices thereon the 12th day of October, 1889.

At that time no other Indian had ever laid claim to it, and none since. But at the time I located there was a trespasser thereon, a Frenchman by the name of Marion, in whose veins there runs no Indian blood. He had been a trespasser, and carried on gardening as a business, from which he derived a large competency annually, and it was generally understood that he secretly bounced our former agents, so that he was permitted to remain there unmolested.

The morning following the day we staked the claims Marion came to our home and, in an agitated manner, asked us if we intended to put him off at once. He said he had been expecting every day some Indian or part blood would claim the island, and he was very glad that it was us, for he wanted to see some good person secure it. He told us it would be a great expense for him to be compelled to move at that time of the year, as he had all his vegetables stored in bins and pits there, and if we permitted him to remain until the following spring it would be an act of kindness to him. We told him we did not want to remove him preemptorily, but that we wanted to make the selection while the Indians' rights were paramount, and that we certainly would not object to his living there through the winter, but that we would want him to vacate in the spring, as we should want to put in a crop and begin improvements for our children.

He then asked if he could rent of us for two years, to which we replied that we were open to no negotiations whatever. So far everything was amicable enough. But, to our surprise, early in the following November a notice appeared in a Pierre paper, in which Marion claimed that he had occupied the island for six or seven years, and his rights were better than my children and that he would contest them in their claim. This was three months before the President's proclamation. I wrote at once to Indian Agent McChesney, telling him of my selection for my children, of Marion's intention to contest them, and asking him for advice and instruction as to what I should do to protect the rights of my children. I waited a reasonable length of time for a reply, but, receiving none, I made a journey to the agency, where I made a verbal statement of the matter to him.

This was on or about the 28th of November, 1889, I told him that I should like to have Marion removed (which was the agent's duty, according to the U. S. Statutes) since he had made himself a contestant to the rights of Indians. When he answered that he would write the facts to the Department, but that it would be a month or more before he could get instructions from there, but that I need give myself no uneasiness, that when the proper time came all these matters would be looked into by the Government, and that the rights of Indians would be protected.

I waited patiently till the month was up, but heard nothing more from the agent. When I sent him word by the Bad River farmer that I wanted Marion removed before the President's proclamation was issued, and that I desired to erect a building on the island, he sent back word to go ahead and build; that it would be all right, but said nothing of removing the trespasser. About that time my husband was taken with la grippe; and, although we wanted to build at once, he was not able to attend to it till a short time before February 10. Then he took $50 worth of building material on the land, and engaged two carpenters to build the house. The day following he went to see how the carpenters were progressing, when he learned that Marion had scattered the lumber about, and threw most of it in the brush, and told the carpenters they could build there, if they liked. Then my husband hired two other workmen and instructed them where to erect the house. These Marion ordered off with threats. We let the matter rest till after the opening of the reservation, when the agent came to our house to inquire into the particulars of our conflict with Marion. He said he would make a report of the whole affair and send it at once to the Indian Department, and told me that Marion's offensive manner did not impair the rights of my children; that the attempt to build the house was as good as if it had been built.

He further advised us to go before Col. Lounsberry who was sent to Pierre to investigate conflicting claims and state our case, which we did. Later I explained all to Rev. T. L. Riggs, who said he would report to Washington. We left the building material on the ground, hoping the matter would soon be settled when we could use it, and most of it has been stolen and destroyed. Marion has gone on erecting buildings and put in another garden from which he supplied Pierre and Fort Pierre with vegetables. He also located his wife's mother on the north end of my children's claim, and in fact has manifested in every way that he is determined to defeat my children. In the meantime other evils crept in. Long before the reservation opened, and before any white person had the right to select or survey lands, two surveyors, Logan and Hollenbeck, whom the citizens of Fort Pierre engaged to survey and plat the town, extended their work to the island and laid the south end out into lots which were sold to unsuspecting parties and several families are living there to-day. Marion contests these as well as my children and persecutes them continually.

Hoping for some action from the Indian Department we waited till July 7, 1890, when my husband filed notices of application to file allotments in severalty for both of our boys with Indian Agent McChesney and as soon as the land office is ready to receive filings, I will have these registered, but I will have this party, Marion, as well as these victims of land speculators, to contend with unless some action is taken by the proper authorities. It is on this account that I with my sister and brother make one more effort to get our cases before the powers that be. I hope you will get justice rendered, but whatever your success I shall be very grateful for all you attempt in our behalf. I should be very, very sorry if my children lose this opportunity, for then their only hope is to go to the reservation for allotments, and I believe I would rather they forfeit allotments altogether than to spend their lives on the reservation. If I secure this island for them they will have the means of a livelihood in the earth and the means of an education at their own door, as well as the advantages of a daily intercourse with civilized humanity.

Will close, hoping this will find you and family well as it leaves us the same.

With very, very much love to you all, I remain, your faraway cousin,

VIOLA BENTLY.

I. B. BROWN,
Washington, D. C.

WASHINGTON, D. C., *January 2, 1891.*

SIR: Certain questions, as you are aware, were submitted to your Department, touching the right of Mrs. Jane E. Waldron, a Sioux Indian of mixed blood, to an allotment within the Great Sioux Reservation, under the provisions of a treaty made by the authority of the act of Congress approved March 2, 1889.

These questions were answered adversely to the claim of Mrs. Waldron, and subsequently, with my cordial acquiescence, the opinion of the legal adviser of your Department was referred to the Attorney-General for his consideration.

I am now advised by the Attorney-General, that by departmental usage, he is limited to the case as presented by the Secretary of the Interior, which is confessedly incomplete as to the facts.

For this incompleteness, I as the attorney of Mrs. Waldron, am chiefly responsible.

As the questions involved in this controversy are important and far-reaching, involving the rights, as they undoubtedly do, of several hundred persons similarly situated with Mrs. Waldron, I am constrained by my professional duty to ask for a rehearing before your Mr. Shields, in whose impartiality and sense of justice I have every confidence. In no other way is it possible, in my judgment, to present the case fully and sufficiently as to the law and the facts to the Attorney-General.

Since the opinion of Mr. Shields was announced my attention has been called to the report and proceedings of the Sioux Commission of December 24, 1889, and I have found in that report many facts pertinent and material to the present controversy. As I am advised this report, having been transmitted by the President to the Senate and House of Representatives, becomes a document of which judicial notice will be taken by the several Departments of the Government. I ask the rereference out of abundant caution; also, as it occurs to me that some testimony may be required to be taken to identify parties referred to in the report of the commission.

It is my desire before the final decision of the questions, in the interest of all parties, to have the material and essential facts presented.

I beg leave to call attention to certain portions of this report as enlightening this cause.

1. Appendix. Exhibit A. Number of voters, 5,678. Number signed, 4,463. Remark: The majority of three-fourths, as required by the treaty of 1868, is obtained by receiving the votes of the squaw-men and mixed-bloods.

2. Page 74 *et sec.*, Governor Foster, speaking for the commission, says: "If you accept the bill and the Great Father finds that we have not told the truth, all that is done here goes for nothing. We understand that all white men that were incorporated in the tribe in 1868 are entitled to the benefit of this act and can vote."

Page 80: Little Wound, of the Pine Ridge Agency, speaking, says: "Here, back in 1868, those white men that married into the Indian families, were taken in the same as Indians and half-breeds. Some of them are dead and some of them are living, and we want to know if they have the same right as the Indians?"

Gen. Warner, to this inquiry, replied "Yes."

Page 82: The following sentiment, found on this page in the written communication of Charles C. Clifford, was strongly indorsed by both Governor Foster and Mr. Warner of the commission, to wit:

"But I say that it is one of the good blessings which God has stored upon the poor red race of North America, because the half-breeds and their fathers (squaw men) were the people who have made peace with the red men, and have helped them more toward civilization than any other class, and from this fact the half-breeds and their fathers should be recognized as the helpers of the Indians."

Page 84. Commissioner Warner recognizes the squaw men as of the Sioux Nation, in the following language, to wit:

"And we long for the day when your daughters shall be the school-teachers among your people; when your citizens, squaw men, as you call them, half-breeds, or Indians, shall be your mechanics, and they shall receive the money that is paid by the Great Father of the money that comes among you."

Page 94. Governor Foster, with the concurrence of his associates upon the commission, again declares the status both of the white man intermarried with an Indian woman and of his descendants:

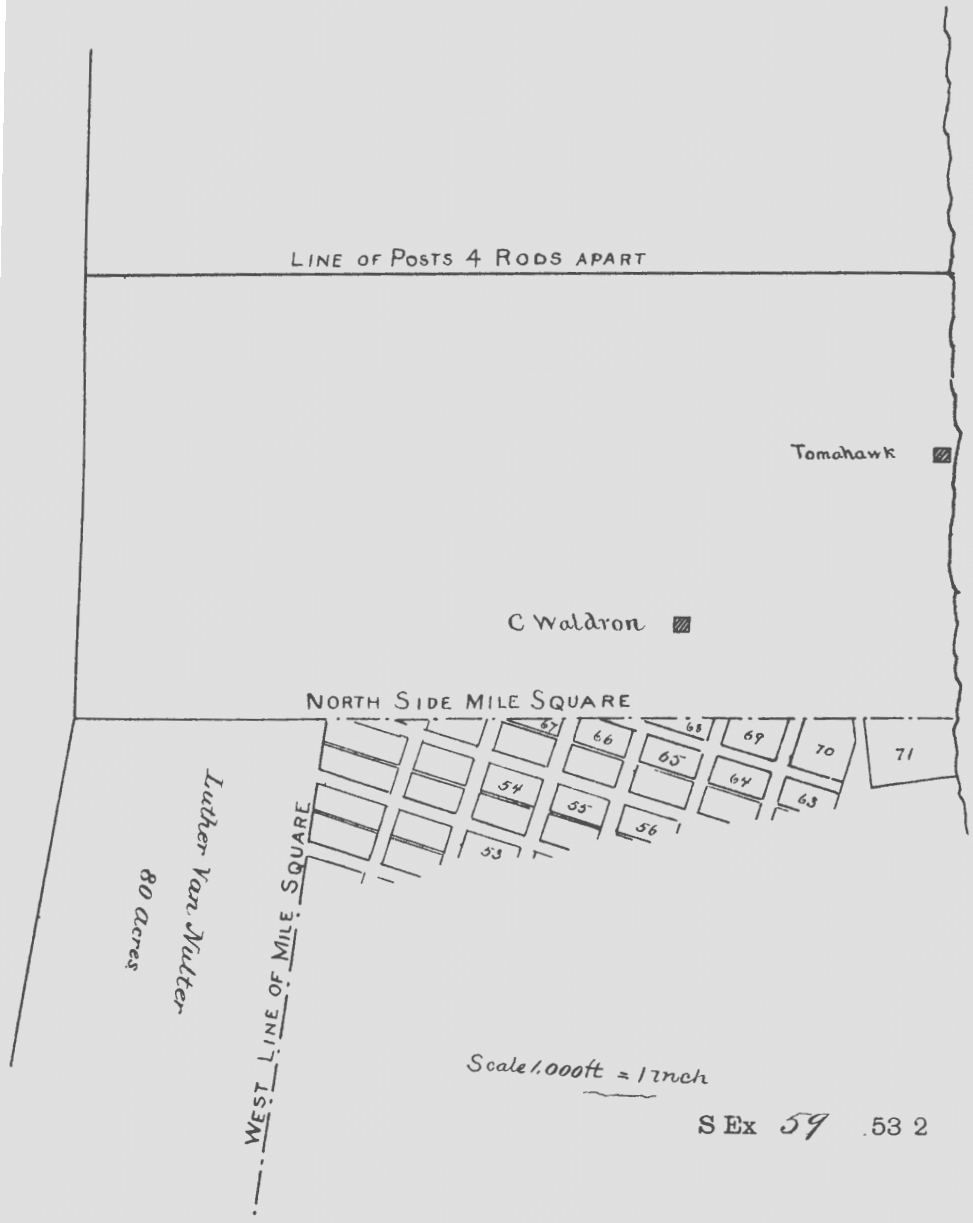
"According to the treaty of 1868, every white man then living with an Indian woman was held to be incorporated into the Indian tribe that participated in the benefits of that treaty. Every squaw man of 1868 has a right to vote here and without question. There is no question or doubt as to them." * * *

"So far as the half-breeds are concerned, that is to say, every half-breed that has an Indian mother is entitled to all the rights and privileges of an Indian. These rights descend with the mother."

Page 308. The following certification of the report of the commission was approved by the President and by implication ratified by both Houses of Congress, to wit:

"We certify that the signature or mark of each Indian to the above was, together with his seal, affixed thereto; that each and every Indian who signed the same is, to the best information attainable and to the belief of the commission, of the age set opposite to his name; that they are of a class mentioned in the act of March 2, 1889, and the treaty of April 29, 1868, as entitled to sign; and that they signed the same freely and voluntarily with fair and full understanding of its purport, operation, and effect."

Acting upon the advice of the commissioners and their construction of the law, not only the father of Mrs. Jane E. Waldron and her brothers but likewise her


LINE OF POSTS 4 RODS APART
Tomahawk
C Waldron
NORTH SIDE MILE SQUARE
67
66
68
69
70
71
65
64
63
54
55
56
53
Luther Van Nulter
80 acres
WEST LINE OF MILE SQUARE
Scale 1,000ft = 1 inch

S Ex 59 .53 2

husband, C. W. Waldron, signed and sealed the treaty or deed of cession all as Indians, eligible under the laws of the land, at the Cheyenne River Agency.

(See page 288 *et seq.* of the report.)

I therefore most earnestly request that, in view of the foregoing facts, that I should receive permission to be reheard and before the assistant attorney-general, assigned to your Department, as I thereby secure the opportunity of access to the facts indispensable to a proper disposition of the case.

It is unnecessary for me to suggest further in regard to the importance of the questions involved, because they now challenge the integrity of the treaty of cession itself.

ROBERT CHRISTY,
Attorney for Mrs. Jane E. Waldron.

The SECRETARY OF THE INTERIOR.

FORT PIERRE, *February 4, 1891.*

In the matter of the investigation of the Tomahawk and Waldron land case.

W. P. OAKS, being duly sworn, deposes and makes answer to the following questions:

Q. Did you locate a strip of this land in controversy between Tomahawk and Mrs. Waldron?—A. Yes, sir.

Q. When did you do this?—A. In February, 1889.

Q. Now, how was it done?—A. I measured it with a wagon wheel. I measured the wheel and counted the revolutions. I rode in the wagon and counted as the wheel went around. I established the corners by setting ash posts in each of the four corners and by writing Mrs. Waldron's name, and that the land was claimed by her half a mile fronting on the river and 1 mile back, and I also left lumber on the land and marked on the lumber that this land was claimed by Mrs. Waldron, and I also hauled lumber to where the house is now built and where Mrs. Waldron now resides in June, 1889, and think the house was furnished on 4th day of July, 1889. After that I hauled her furniture up there, and while alone my little girl stayed with her the most that summer. I had charge of her place when she was absent from there. And last January, or January, 1890, while she was in Washington, a white man came up and unloaded lumber on the land claimed by Mrs. Waldron. I asked him what authority he had for leaving that lumber there; he answered me that Mr. Dewey told him to leave it there.

Q. Now, is this the lumber that Tomahawk's house is built of?—A. Yes, sir.

W. P. OAKS.

Subscribed and sworn to before me this 4th day of February, 1891.

JAMES H. CISNEY,
U. S. Indian Inspector.

FORT PIERRE, S. DAK., *February 3, 1891.*

In the matter of the investigation of the rights of Black Tomahawk *v.* Mrs. Jane Waldron to land near Fort Pierre.

BLACK TOMAHAWK, being duly sworn, deposes and makes anwers to the following questions:

Q. Tomahawk, are you a full-blooded Sioux Indian?—A. Yes.

Q. Where do you draw rations and annuity goods and what agency do you belong to?—A. I belong to the Two Kettle band on the Cheyenne River Agency, and draw my rations and annuity goods at the Cheyenne River Agency.

Q. When did you locate on this land or lay claim to the land now in controversy between you and Mrs. Jane Waldron?—A. At the time the commissioners were here I told them I wanted to occupy this land; that it was not very good land, but I wanted to occupy it; and one of them gave me a letter which I have now in my pocket. I was occupying land upon Bad River, and immediately after I got this letter I gave it to my brother and came down here. When I first came there I saw Mrs. Waldron's house where it is now, and all my corner stakes and the stones were gone.

Q. Now, Tomahawk, when did you drive the stakes and pile up these stones?—A. At the time the Sioux commission left the agency I left the agency, stopped one night on the way, and came on down next day, and drove the stakes and piled up the stones.

Q. Was Mrs. Waldron's house on this land then?—A. The house was not there then, at the time I drove the stakes and piled up the stones.

Q. Had you heard at that time of any person claiming this land?—A. No.

Q. When did you have your filing recorded at the agency by the agent?—A. I told him to write in the book a long while ago that I wanted this land.

Q. When did you build your house on the land and move into it?—A. It was in the fall, after the treaty was signed.

Q. Now, do you intend to make this place your home and take it for your allotment under the law?

(Objected to by Dewey, Tomahawk's attorney, on the following grounds: That section No. —, of the act of March 2, 1889, gives the Indians living upon the ceded lands the absolute right of one year's option in which to say whether they will take the land where they resided on the 10th of February, 1890, or whether they will not. Then it is immaterial to this inquiry what Tomahawk intends to do with relation to this land.)

(Required to answer by Cisney.)

A. I have not made up my mind whether I would live there or sell it.

Q. When you first moved there did you intend to take that land under the treaty and live there; or did you intend to just take it and sell out your right for a good lot of money to some one else?—A. My intention was to sell out if I could get a good lot of money.

Q. (By DEWEY.) Tomahawk, are you the chief of the Two Kettle band?—A. My father used to be the chief of the Two Kettle Band of Sioux Indians.

DEWEY. About how many lodges of Indians is your band of Indians composed of?

A. A little over 200 lodges.

DEWEY. Where is the home and living place of this band of Indians, and where has it been for a good many years?

A. At Old Fort Pierre and the country about there.

DEWEY. Were you present at the treaty of 1868 as the chief of your band?

A. My father was present.

DEWEY. Was your father one of the signers of the treaty of 1868?

A. Yes, sir.

DEWEY. Do you know the laws and customs of the Sioux Indians?

A. I do.

DEWEY. Now, is there any law or custom that makes the woman the head of a family?

A. No, sir; I do not know any law that makes them such.

DEWEY. Is it not the law and custom of the Sioux Indians that the man is the head of a family?

A. Yes, sir.

DEWEY. Is there any law or custom among the Sioux Indians giving a woman who may have one-fourth Indian blood, but who is married to a white man who lives separate and apart from the Indians, any share in the Indian's rations or annuities?

A. I don't know.

DEWEY. Do you know Mrs. Waldron?

A. Yes, sir; I know her.

DEWEY. Do you know anything about her ancestors?

A. I only know as to her father and her mother.

DEWEY. Has Mrs. Waldron's mother any Indian blood in her veins or not?

A. She is a half-breed.

DEWEY. Of what band is she a half-breed?

A. Santee.

DEWEY. Has Mrs. Waldron ever had any right in the rations and annuities at the Cheyenne River Agency?

A. When they first applied to the agent for a ticket he refused them. I afterwards asked the agent to give them a ticket, which he did. That is the way they got the right to draw rations.

DEWEY. They have no right, then, of their own to draw rations.

A. They have not.

Were you present at the time of the signing of the Sioux bill at Cheyenne River Agency?

A. Yes, sir.

DEWEY. Did you sign that bill?

A. Yes, sir.

DEWEY. Was there anything said at that time about the Indians having a right to sell their land on that portion of the reservation that was to be ceded to the Government?

A. Yes; there was lots said.

DEWEY. Who said anything about that?

A. Swift Bird.

DEWEY. Was Swift Bird one of the Sioux Indians?

A. Yes, sir.

DEWEY. Did the Sioux commission at the council between the Indians, held for the purpose of securing the signatures of the Indians to the Sioux bill (act of March 2, 1889) tell the Indians that if they signed the bill they would have a right to sell their lands of that portion of the reservation to be ceded to the Government and then have their allotments in that portion still held as a reservation?

A. That is what they told them.

DEWEY. Is that one of the reasons why you signed the bill?

A. Yes, sir.

DEWEY. The witness has shown a letter, marked Exhibit A, which is submitted herewith.

DEWEY. Is this a letter which you received from Governor Charles Foster, who was a member of the Sioux commission?

A. Yes, sir.

DEWEY. Do you know the month that you moved into this house?

A. I don't talk English, and I don't know the name of the month.

DEWEY. At the time you moved in, then, who was your family composed of?

A. My wife, my two children, and myself.

DEWEY. What property have you?

A. I had 3 head of cows, 5 horses, 1 wagon, 1 double harness, 1 cultivator and mowing machine, and I moved all the stuff with my family down to this land.

DEWEY. Has that been the place you have lived ever since?

A. Yes, sir.

DEWEY What buildings have you now at that place?

A. I have got a house, 2 stables, and 1 lodge.

Q (By G. C. WALDRON). Who was your father?—A. Little Skunk, a Sioux Indian.

WALDRON. Who was your mother?

A. Kills Many, a full-blooded Sioux woman.

WALDRON, Who was your grandfather on your father's side?

A. His name is Catch the Enemy, a Sioux Indian.

WALDRON. Who was your grandmother on your father's side?

A. Swimming, a Sioux Indian woman.

Q. (By CISNEY.) Has any person ever tried to buy your right to this land?—A. F. R. Pettigrew tried to buy it from me, and Charley Waldron came over to my house and tried to buy it from me. The first time he had a roll of money, but I don't know how much was in the roll.

Q. How much did Waldron say he would give you?—A. He said he would give me $600.

Q. When was it that Pettigrew tried to buy this land of you?—A. Last ration day, about two weeks ago. He did not offer me any money but wanted to buy it.

his
BLACK x TOMAHAWK.
mark.

Subscribed and sworn to before me this 4th day of February, 1891.

JAMES H. CISNEY.

I, William Larabee, do solemnly swear that I did interpret the foregoing questions and answers, and that the questions were interpreted to Black Tomahawk just as asked, and that he fully understands the same, and the answers given by Black Tomahawk were interpreted in English just as answered and given above, and that I saw him sign his name by mark as appears above.

WILLIAM LARRABEE.

Subscribed and sworn to before me this 4th day of February, 1891.

JAMES H. CISNEY,
U. S. Indian Inspector.

FORT PIERRE, S. DAK., *February 3, 1891.*

Mrs. JANE WALDRON, being duly sworn, deposes and makes answers to the following questions:

Q. Mrs. Waldron, are you an Indian? A. Yes, sir; I am a quarter-blood.

Q. What tribe of Indians do you belong to?—A. The Sioux Nation.

Q. Are you entitled to draw rations and annuities? If so, where?—A. I am. I draw them at the Cheyenne River Agency.

Q. How long have you drawn rations and annuities at the Cheyenne River Agency?—A. Ever since 1883 or 1884, or about that time. I don't remember exactly the time.

Q. Where did you draw rations and annuities before 1883?—A. I never drew rations before that time.

Q. Why did you not draw rations before that time?—A. Because my father supported us off from the reservation, and never took us onto a reservation before that time.

Q. How long have you been married?—A. Six years next June.

Q. Did you come onto this reservation or the Cheyenne River reservation alone?—A. I came with my father and his family.

Q. Now, your father never drew rations before 1883, or any of his family?—A. No, sir; unless my mother did before she was married. I say that because she lived on a reservation before she was married.

Q. On what reservation did she live?—A. I can not tell. This was all Indian country then, but it was where old Fort George Island is.

Q. Now, is it not a fact that your people all belong to the Santee Reservation?—A. I don't know. I know there is Santee blood in my veins. I have relatives on the Yankton and Cheyenne reservations and I suppose I could find them on other reservations.

Q. Now, do you go to the agency and draw rations and annuities?—A. I go sometimes, and sometimes I send my ticket, as others do, by my people. My people go the most of the time.

Q. Do you consume the rations and annuities you receive?—A. Yes, sir.

Q. Are you the head of the family?—A. Yes, sir.

Q. You have a husband living?—Yes, sir.

Q. You live together?—A. Yes, sir.

Q. And why was it that you and your people never drew rations before 1883?—A. Because my father seen fit to provide for his family off from the reservation. He also educated his family off from the reservation. Then we met reverses, and thought it would be no more than right that we should take advantage of the rights we had on the reservation. So we came to the agency and got our ticket without any trouble. All our relatives on my mother's side was on the reservation drawing rations, and always had been. Some have lived here for years, some had been born here; not this reservation, but a reservation.

Q. Now you say, not this reservation, but a reservation. Now please state if not this reservation, what reservation do you mean?—A. I have relatives on the Yankton Reservation; some of them were born there. I have relatives on this reservation; some of them were born here. I have relatives on the Standing Rock Agency; some of them were born there. I suppose I have them on the other reservations, too, but I can't swear to it.

Q. Where were you born?—A. I was born in Vermillion, in the southeastern part of Dakota, which was then a Territory.

Q. Where was your mother born?—A. At Fort George Island, 16 miles below this place.

Q. How much Indian blood did she have in her veins?—A. One-half.

Q. Where was your grandmother on your mother's side born, and how much Indian blood did she have in her veins?—A. I don't know where she was born, but she was a half-blood Indian woman. Her father was a half-blood Indian man; his name was Henry Aungie. My grandmother a half-blood Indian woman.

Q. Now, were your grandfather and grandmother Sioux Indians?—A. Yes, sir.

Q. Where did they belong?—A. They were entitled to and received all the rights and benefits of 1868.

Q. Now, who was the father of your grandmother on your mother's side?—A. Col. Dixon, a white man.

Q. Now, were not your ancestors, so far as their Indian blood, all Santee Sioux?—A. I believe they are. Both of my great-grandmothers were full-blood Indians; they probably were more Santee Sioux than anything else.

Q. Now, when did you locate the lands north of the mile square upon which Fort Pierre is located, which is now in controversy between you and Tomahawk?—A. I located it on the 9th of February, 1889, prior to the act of March 2, 1889.

Q. How did you locate this land?—A. I located it by having it marked out from the mile square on the river, half mile north, and one mile west from the river; and also by putting some building lumber on the spot where my house now stands. I claimed it by my Indian rights according to the treaty of 1868.

Q. Now, in what way was that marking done?—A. By stepping half mile north from the mile square, one mile west, and then half a mile south to the mile square.

Q. When did you record your selection or have it recorded at the agency?—A. Early in September, 1890; if I am not mistaken, it was the 12th. Very soon after I located my claim I sent my husband to Dr. McChesney, the then agent, to see what I should do to make my claim good, and he sent me no instructions. It was my intention to record at the agency, but there were no register books there; so I did what my conscience told me was right. In June, 1889, I took more lumber on the place, and had

a house built, and soon after the 4th of July I established my residence in that house on the land, and that has been my home ever since.

Q. What is the fact about your having a ranch up Bad River with a herd of cattle on it and have had for sometime?—A. It is a fact we have a ranch up Bad River about 60 miles, where we keep our cattle and horses and where I lived until about two months before I located this claim. This place where the ranch is I claimed for my little boy, and I put in a notice of application to file for him at the same time I did mine.

Q. (By Mr. DEWEY, for Tomahawk). Now, Mrs. Waldron, you say you are entitled to draw rations. How are you entitled to draw rations?—A. By the rights of an Indian.

Q. (By DEWEY). How do you know that you have the right to draw of an Indian?—A. Because I have been taught ever since I was born that I was an Indian, and that all my relatives on my mother's side are entitled to, and are receiving, the benefits of Indians; and I would further add that I have equal rights with Mr. Garvie.

Q. (By DEWEY). That is, all that you know about it is that you are an Indian?—A. I answered that I know I am an Indian, and all my Indian ancestors have been wards of the Government, and have made treaties with the Government, for which they were entitled to the compensation for the land sold by the Sioux at different times.

Q. (By DEWEY). All you know of your own knowledge that you have a right to draw rations is that you have a ticket?—A. No.

Q. (By DEWEY). What else do you know about it?—A. If I were anything but a Sioux Indian I would not be entitled to draw rations.

By DEWEY. Why are the Sioux entitled to draw rations?

Answer. Because they have treated with the Government, sold lands to the Government, for which the Government promised to pay them in rations, etc., and my relatives all took part in these treaties and in the last treaty all that are living now took part.

DEWEY. Mrs. Waldron, is that the reason that you say that you are entitled to draw rations?

Answer. Yes, sir.

DEWEY. Mrs. Waldron, when were your father and mother married?

Answer. They were married thirty-two years ago last November.

Q. (By DEWEY.) What is your father's name?

Answer. Arthur C. Van Meter.

Q. (DEWEY.) He is a full-blooded white American citizen, is he not?

Answer. Yes, sir.

Question. What is the name of your husband?

Answer. Charles Westbrook Waldron.

DEWEY. He is a full-blood white American citizen, I believe?

Answer. I believe he is.

DEWEY. You may state again how long you have been married.

Answer. If I live to the 30th of next June, I will have been married six years.

DEWEY. Since that time you have lived together and he has supported you?

Answer. We have lived together and our interests have been common. We have been partners in all we have.

DEWEY. During that time have not you and your husband lived separate and apart from any Indian tribe or band of Indians?

Answer. We have never lived in an Indian camp.

DEWEY. Is it not a fact that you never in your life lived with any band or tribe of Indians as a member thereof?

Answer. I never have lived in an Indian camp but at Vermillion, when a child. We always had Indians with us, and, for a whole, years before I was married, I lived with the Dupree family on the Cheyenne River, where I taught school, part of that family being relatives of mine.

DEWEY. Mrs. Waldron, did your father ever live with the Indians, or was he ever incorporated into any Indian tribe?

A. I don't know, but I think he was, in the treaty of 1868, as he was permitted mitted to sign the treaty by Gen. Crook.

DEWEY. Was your husband ever incorporated into any band of Sioux Indians?

A. I refuse to answer.

DEWEY. Mrs. Waldron, I would like to have you explain why you are the head of family?

A. I claim to be the head of a family as much as my husband. I am as much the head as he, as we manage our business together. We are equal partners in all things. He is one man that does not put women down lower than him, even if she be but an Indian.

DEWEY. Then, you do not mean to say that you are the head of family in law?

A. My answer is I have not studied the law.

DEWEY. Then, you do not know who the head of the family is in law?

A. I did not know that I came here to answer questions of law. I thought I came here to answer facts and speak truthfully.

(Tomahawk objects to the answer, through Dewey, his attorney, as evasive, non-responsive, and disingenuous.)

DEWEY. Now, Mrs. Waldron, you say you located this land in February, 1889. What was your first act of location?

A. I had the line run out half a mile north and 1 mile west and then half mile south and put lumber where my house now stands the same day.

DEWEY. Mrs. Waldron, how was this line run?

A. It was run by my brother-in-law stepping it off.

DEWEY. When did you get this lumber?

A. I told my brother-in-law to get the lumber and I would pay him for it.

DEWEY. In June, 1889, you say you took more lumber; where did you get that lumber?

A. Yes; I took more lumber in June, 1889. My husband bought it. I don't know where he bought it, but I think he bought it of Albright & West, in Pierre.

DEWEY. If he bought it of Albright & West, and you say it was bought in the month of June?

A. I can't swear positively when the lumber was bought, but I can swear the men worked all day the 4th of July, 1889, and they had been working several days, and, remembering that, the lumber must have been bought in June.

DEWEY. When did you take up your residence in that house?

A. I took up my residence soon after the house was finished. I think about the 15th of July, 1889.

DEWEY. Where had you been living immediately preceding that time?

A. With my sister in Fort Pierre—Mrs. Oakes.

DEWEY. You had previously lived at your ranch up Red River?

A. Yes, sir.

DEWEY. You have a dwelling house there at your ranch?

A. Yes, sir; we have a log cabin.

DEWEY. How long has that been your home?

A. Over two years.

DEWEY. When you took up your residence on this land did you move your furniture from your ranch to this home?

A. The fact is I did not have much furniture, but before I built the house I made a trip to the ranch and brought down a load and left what was necessary to run the ranch.

DEWEY. Is that furniture that you left at the ranch still there?

A. Not all of it. At different times I brought away what I needed; the stove bedstead, and table are there yet.

DEWEY. But there is enough left at the ranch to run it?

A. I answered I left enough there to run it, everybody does that. I am not the only person that does that.

DEWEY. Then the ranch never has been abandoned by you and your husband during the time you claim to have resided on this land now in controversy between you and Tomahawk?

A. My answer is, I abandoned the ranch as a home. I did not claim it as a home. I never claimed it as an allotment for myself, and my husband did not abandon it, but used it as a ranch, and our intention was to abandon it entirely if there had been a ruling against the allotment in severalty to minor children, but the ruling was in favor of allotments to minor children, so we filed for our little boy. My little boy is 2 years old this day.

DEWEY. You stated awhile ago that you and your husband were partners; did this partnership authorize him to transact business in relation to this land?

A. It would if we had any business I should think.

DEWEY. Has he then been authorized by you since your residence on this land to make bargains concerning it?

A. We can't have any business with that land until we get a title. When we get a title I would trust it in his hands.

DEWEY. Has your husband authority to act for you in all matters pertaining to any business connected with this land?

A. Yes, sir.

By CISNEY. If this question is determined in your favor, do you intend to take this land as your allotment, or will your husband take it up for speculation?

A. I intend to locate it as my twenty-five-year allotment, according to the Sioux bill.

Q. Now, Mrs. Waldron, did you, when you first moved onto this land, intend to take it under the treaty and live there, or did you intend to just take it and sell out

your right for a good lot of money to someone else?—A. I had it in my mind, if I could get a good round sum of money, I would sell it, but after I had resided there awhile I concluded I had better not sell it at all.

DEWEY. Mrs. Waldron, was you residing on this land on the 10th day of February, 1890?

Answer. I was residing on this claim in controversy between Tomahawk and myself on the 10th day of February, 1890.

STATE OF SOUTH DAKOTA, *County of Stanley, ss:*

FEBRUARY 5, 1891.

I, W. P. Oakes, of Fort Pierre in said county, being duly sworn, do on oath depose and say that I am sheriff of said Stanley County; that I was present in Fort Pierre when Indian Inspector Cisney was taking testimony in the matter of the contest between Mrs. Jane E. Waldron and Black Tomahawk. It was evident to me from the conduct of Inspector Cisney that he was taking testimony in the interest of H. E. Dewey, who claimed to represent Black Tomahawk. In fact he appeared to be prosecuting the case as attorney against Mrs. Waldron; and that the conduct and deportment of Indian Inspector Cisney toward Mrs. Waldron and her husband was grossly disrespectful, ungentlemanly, and abusive, and in my opinion the conduct of this inspector toward this lady and her husband during the investigation deserves the severest censure from his superior officer which he has already received from nearly every person in this vicinity.

W. P. OAKES.

Subscribed and sworn to before me this 5th day of February, 1891.

[SEAL.] D. C. BRACKNEY,
Notary Public.

FORT PIERRE, STANLEY COUNTY, S. DAK.,
February 5, 1891.

I, H. S. Arnold, being duly sworn, do on oath depose and say that I have resided in Fort Pierre since the 27th of November, 1889; that I am a carpenter by trade; that I know the land in controversy between Mrs. J. E. Waldron and Black Tomahawk; that in January, 1890, I was employed to build the house and stable upon this land, since occupied by Black Tomahawk, by one H. E. Dewey, of Pierre, in the county of Hughes, S. Dak., and was paid by said Dewey for the same.

Attest:

H. S. ARNOLD.

Subscribed and sworn to before me this 5th day of February, 1891.

[SEAL.] D. C. BRACKNEY,
Notary Public.

STATE OF SOUTH DAKOTA, *County of Stanley, ss:*

I, Joseph Wandel, of Fort Pierre, being duly sworn, do on oath depose and say that I am 54 years of age; that I was present where Inspector Cessney was taking evidence in the matter of contest between Mrs. J. E. Waldron and Black Tomahawk, and that it was very apparant to me, and must have been to everyone present, that it was a one-sided affair, that he did not intend to try it fairly. The inspector was evidently in the interest of Dewey, the man who claimed to represent Black Tomahawk.

JOE WANDEL.

Subscribed and sworn to before me the 5th day of February, 1891.

[SEAL.] D. C. BRACKNEY,
Notary Public.

STATE OF SOUTH DAKOTA, *County of Stanley, ss:*

John T. Van Metre, being duly sworn according to law, upon oath deposeth and saith: I am a practicing attorney of the State of South Dakota, and was present in Fort Pierre when Inspector Cisney proceeded to conduct the investigation of the matter pertaining to the right to a certain piece of land between Jane E. Waldron and Black Tomahawk, and I believe from what I heard and saw that said Inspector

Cisney was prejudiced against said Jane E. Waldron, from the fact that he cast very disrespectful reflections upon her integrity. And when the counsel for said Jane E. Waldron asked said Inspector Cisney what his instructions were in regard to this matter he retorted, "It is none of your business," while upon the other hand he showed no such uncivility towards H. E. Dewey, council for Black Tomahawk. Said inspector afterwards told me personally that he had no direct instructions to investigate these matters.

It was apparent from beginning to end that he did not intend to conduct the trial fairly and impartially. In consequence of his ungentlemanly and offensive treatment of both Jane E. Waldron and her husband, they left the room, saying that they would not submit to any further insults from him.

JOHN T. VAN METRE.

Subscribed and sworn to before me this 6th day of February, A. D. 1891.
[SEAL.] D. C. BRACKNEY,
Notary Public.

Indian Agency Inspector Cessnor was in the city on business connected with this office last week. Among other business the land case of Tomahawk *v.* Waldron was up for hearing. The rights of the Santees under the Sioux bill seem to be the principal point of issue, and during the discussion of which, the defendants left the case claiming that on account of bias, justice could not be had. It is reported that the inspector afterwards concluded that the law was in favor of the position taken by the defense and that he had been duped by the plaintiff's attorney brilliant (?) attorney.

In the District Court in and for Canadian County, Oklahoma Territory.

Jesse Morrison, administrator of the estate of Nellie Morrison, deceased, *v.* Emera E. Wilson. Action to recover possession of real estate.

It appears from the complaint in this cause that the decedent, Nellie Morrison, was the daughter of James Morrison, a white man, and an Arapaho Indian woman, and that she was a member of the Arapaho tribe of Indians in Oklahoma; that pursuant to the provisions of the treaty with the Cheyenne and Arapaho Indians approved by act of Congress March 3, 1891 (26 Stat. L., p. 1024), she selected the lands in question as her allotment, and the same was duly allotted to her by M. D. Tackett, special allotting agent, and said allotment was thereafter duly approved by the honorable Secretary of the Interior, and she went into possession of same, and continued to occupy said lands until her death on the 1st day of February, 1893; that she died without issue and unmarried; that Jesse Morrison, her father, was duly appointed by the proper probate court of said county administrator of her estate, and duly qualified as such and entered upon the discharge of his duties; that immediately after her death the defendant, Wilson, entered upon and took forcible possession of said lands, and is still occupying same, collecting the rents and profits ensuing therefrom and appropriating the same to his own use, and unlawfully detains same from plaintiff.

And plaintiff prays judgment for possession of said lands and $100 damages. The defendant demurs to the complaint, and for cause thereof says the complaint does not state facts sufficient to entitle the plaintiff to the relief prayed for.

The first question to be determined is whether or not under the laws of Oklahoma the administrator is entitled to the possession of real estate.

Generally the heirs are entitled to the custody of the real estate of the decedent, and the administrator looks only after the personal estate; but the statute of this Territory is an innovation on this rule. Section 1, Article VIII, p. 335, Oklahoma Statute, provides:

"That the executor or administrator must take into his possession all the estate of the decedent, real and personal, except the homestead and personal property, not assets."

And the statute further provides that he may maintain actions for trespass, rents, possession, etc.

It is further claimed that as it appears that the decedent was a half-breed, the offspring of a white man and an Indian woman, that the allotment was illegally allowed and is void, and that as she was not entitled to the same her administrator is not entitled to the possession as against one in adverse possession.

It is sufficient to say that the legality of said allotment will not be permitted to be questioned in this manner. If she was a recognized member of the Arapaho tribe of Indians, and claimed her allotment as such, and the same was allowed by the allotting agent and afterwards approved by the Secretary of the Interior, it is the duty of the courts to protect the allottee and those entitled to possession through

her in the right of possession until such time as the Interior Department shall have canceled and set aside said allotment. The courts will not interfere to inquire into the question as to whether or not the Department has properly allowed an allotment to an Indian claimant. At least, not until the adverse claimant has gone into that Department and prosecuted their proper proceedings to secure the cancellation of the allotment.

Article 6 of the Cheyenne and Arapaho treaty, approved by act of Congress of March 3, 1891 (26 Stat. L., p. 1024), provides:

"When said allotments of land shall have been selected and taken as aforesaid and approved by the Secretary of the Interior, the titles thereto shall be held in trust for the allottees respectively for the period of twenty-five years in the manner and to the extent provided for in the act of Congress entitled 'An act to provide for the allotment of land in severalty to Indians of the various reservations, and to extend the protection of the laws of the United States in the Territories over the Indians and for other purposes,' approved February 18, 1887, and at the expiration of the said period of twenty-five years the title thereto shall be conveyed in fee simple to the allottees or their heirs free from all incumbrance."

This treaty adopts and makes applicable to the allotments taken thereunder the provisions of the act approved February 18, 1887 (24 Stat. L., p. 388). Section 5 of said act provides:

"That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patent shall be of legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or in case of his decease, of his heirs, according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs as aforesaid in fee, discharged of said trust and free of all charge or incumbrance whatsoever."

This provision has application to the laws of descent prior to the issue of patent, and is applicable to the case at bar.

The law of descent of the Territory of Oklahoma must govern in this cause without reference to the fact as to whether the decedent was an Indian or a white person. This is evident from the fact that the same section contains the further provision that the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patent to the land referred to shall have been issued and delivered.

Here is a clear and express declaration that the laws of the Territory shall govern in case of the death of the allottee after the approval of the allotment and prior to the issuance of the patent as well as after the issuing of the patent. We must then look to the laws of descent of Oklahoma to determine who has the right to the land in controversy. The laws of the Territory make no distinction as to race or color. An Indian of full blood or half blood stands on equality with the white man before the laws of descent and inheritance. The offspring of a white father and an Indian mother may be a citizen of the United States for all purposes of citizenship, and at the same time be a member of an Indian tribe for the purpose of taking an allotment and sharing in the tribal rights. They may derive their tribal rights from the Indian mother and their rights of citizenship through the father. A full-blood white may be a citizen of the United States by birth, inheritance, or adoption, and at the same time be entitled to take and hold property by inheritance from an alien relative.

A person may sustain one relation by blood or inheritance and another by law or adoption, and as the laws of Oklahoma provide that where an unmarried person dies without issue the real estate shall go to the parents or survivor of them, the white father is, in this case, entitled to the possession of the land allotted to his half-blood daughter, and at the expiration of the period prescribed by law will be, if living, entitled to a patent for the land so allotted to her.

It follows that the plaintiff is entitled to the possession of the land and to the writ of ejectment prayed for.

To which ruling the defendant excepts, and asks leave to file his answer.

Which is granted, and he is given until February 7 to further plead.

JNO. H. BURFORD,
Judge.

PIERRE, S. DAK., *February 7, 1891.*

SIR: I have the honor to report that I have made as thorough examination of the case of Black Tomahawk *v.* Jane Waldron as it was possible to do under all the circumstances.

When I arrived at Pierre from the Cheyenne River Agency I found Black Tomahawk at the Locke Hotel. I told him, through the interpreter I had brought from

the agency to interpret for me in the case, that I was going to investigate his land case. He said he had an attorney, one Mr. Dewey, who would look after his case. I then said to him I wanted them to meet me at the Locke Hotel in Pierre on Monday morning, February 2, at 9 o'clock, to make arrangements, fix a place, etc., for the investigation, and I sent word to Mr. and Mrs. Waldron to meet me at the same time and place. They sent me word if I wanted to talk with them I would have to come across the river.

I then notified Black Tomahawk and Mrs. Waldron the investigation would commence at Fort Pierre on Tuesday morning, February 3, at 10 o'clock, and for each of them to have all their evidence there at that time. They did meet me at that time. Mrs. Waldron, with her husband, brother, and several others, came. Black Tomahawk, with his attorney, Mr. Dewey, appeared, and Mrs. Waldron objected to Mr. Dewey being allowed to appear for Black Tomahawk. I said to her that could not and should not hurt her case in the least. At that they got very angry and accused me of being biased in favor of Black Tomahawk. Then they asked if they could have an attorney. I said to them, "Certainly, I would rather they would have one." They then said they did not want any attorney, that they could manage their own case. I again assured them that no advantage should be taken of anyone.

So, I first started into the case by first putting Mrs. Waldron under oath, and the very first question I asked her: "Mrs. Waldron, are you an Indian?" she got very angry and said she did not come there to be insulted, and her husband, Charles Waldron, jumped to his feet and shook his fist at me, and said he would not allow his wife insulted in that way. I said to him, not to act so foolish, that there was no intention to insult his wife, but she was claiming land as an Indian, and I wanted to find out whether she was or not. She then answered the question. When the third question was asked, after a consultation between Mrs. Waldron and her husband, they refused to answer any further until they had an attorney. I said, "Very well, get your attorney." Charles Waldron, the husband, went out and brought in his father, and said he would act as their attorney, and I think he is the most impudent and insolent man I ever met, without any exception. He said to me: "Now, sir, I am going to appear as attorney for this woman, and I want to know what your instructions are." I said to him, "I am here to investigate and try to find out who is entitled to this land in question, and it was none of his business what my instructions are."

I went along asking questions, and this man Waldron would object to almost every question asked, and when I allowed Dewey, for Tomahawk, to ask questions, Charles Waldron, the husband, jumped to his feet, spit on his hands, cracked fists, and said he would not allow any man like Dewey to ask his wife questions. I had an Indian policeman present and he had to interfere to preserve order. The examination went along with a continual interruption by some one of the Waldrons until we got to the twelfth page of Black Tomahawk's evidence, when Waldron asked Tomahawk: "Who was your grandmother on your father's side?" Tomahawk answered: "Swimming, a Sioux Indian woman."

I said to Mr. Waldron: "What are you trying to show?" He says: "I am going to show that this man was not a Sioux Indian at all." I said: "What kind of an Indian are you going to show that he is? It has not been disputed in this case anywhere that he is not a Sioux Indian."

At that Charles Waldron and his wife, Jane Waldron, jumped up and said I was running the investigation all in favor of Tomahawk and trying to rob them, and left the room with his father, and would not have anything more to do with the case, and I could not do anything more with them. I gave them two hours to reconsider their action and come back and produce any other evidence they might have, and at the end of the time G. P. Waldron came back and said they could prove I had said Black Tomahawk should have the land, and they would not have anything more to do with me, and preferred to report themselves, etc. I never did see as much contrariness and meanness displayed in so short a time as was displayed by these Waldrons at this time.

I submit herewith the evidence of Mrs. Jane Waldron numbered Exhibit B. She was sworn to true answers made to all questions propounded to her in the investigation of the contested land case between Black Tomahawk and herself, but when they left she refused to sign it and swear to it again.

It will be seen that Jane Waldron swears that she is a quarter-blood Indian, that she belongs to the Sioux Nation, that she is entitled to draw rations and annuities at the Cheyenne River Agency, that she has drawn them there ever since 1883 or 1884. On p. 2 she says she never drew rations before that time for the reason her father supported her off the reservation, and that her father nor any of his family never drew rations, unless her mother did before she was married, before 1883. She says on p. 3 that she don't know whether her people belong to the Santee Reservation; that she does know that there is Santee blood in her veins. She says the reason why they came onto the reservation is because they met with reverses and thought it no

more than right they should take advantage of the rights they had on the reservation, and applied for a ticket and got it without any trouble; and Black Tomahawk swears on p. 7 of Exhibit C, submitted herewith, that the agent first refused them tickets, and that he asked the agent to give them a ticket, and that is the way they got their ticket. She says she has relatives in the Yankton, Standing Rock, and Cheyenne River reservations, and supposes she has them on other reservations. She says on p. 5 she was born on Vermillion in the southeastern part of Dakota. She says on p. 7 that she believes her ancestors, so far as their Indian blood, were Santee Sioux; that both of her great grandmothers were full-blood Indians, and they were probably more Santee Sioux than anything else.

Mrs. Waldron says on pp. 7 and 8 that she located this land in controversy between her and Black Tomahawk in the month of February, 1889, by having it marked from the mile square one-half mile north and 1 mile west, and putting building lumber on the spot where her house now stands, and that she claimed it by her Indian rights according to the treaty of 1868. She says the measuring was done by stepping half mile north from the mile square, 1 mile west, and then half mile south to the mile square. Her brother-in-law says the measuring was done with a wheel. See his evidence, marked Exhibit D, submitted herewith. She says she recorded her filing at the agency, she thinks, about September 12, 1890, and I find by the books it was September 10, 1890. She swears that her residence has been on this land ever since July, 1889, and it is not disputed. I can't see how the head of a family question can enter into this case. Of course, a white man can not acquire any benefits of an Indian in any way from the Government on his own account, and I can't see how or why an Indian woman, because she is married to a white man, can be deprived of any benefits she may be entitled to as an Indian. She certainly must be considered the head of a family so far as her Indian rights are concerned.

There is no question as to Black Tomahawk having all the rights of a Sioux Indian under the act of March 2, 1889, and has the right to make selections of ceded lands. He swears, on page 2 of Exhibit C, that he told the Sioux commission that he wanted to occupy the land now in controversy, and he says that he left the agency at the time the Sioux commission did, and he stopped one night on the way and came on down next day, and drove some stakes and piled up some stones on the land; that Mrs. Waldron's house was not there then, and that he had not heard of any one claiming this land. This, of course, must have been some time in the latter part of July, 1889. He swears that he told the agent to write in the book a long while ago that he wanted this land. He swears that he built his house and moved into it some time in the fall after the treaty was signed. He swears, on page 9 of Exhibit C, that the Sioux commission told them that they would have a right to sell their lands selected in the ceded portion of the reservation and have their allotments in the portion still held as a reserve. He also submits a letter from Hon. Charles Foster, dated February 24, 1890, in answer to some kind of a letter written by Black Tomahawk to him, dated February 8, 1890, and asks that same be answered by you. Said letter advises him to hold to the land and not allow anyone to bulldoze him out of it. Said letter is submitted herewith, numbered Exhibit A. Tomahawk swears that Charley Waldron and F. W. Pettigrew tried to buy his land from him. (*See* p. 12, Exhibit C.) I know that F. W. Pettigrew came to the Cheyenne River Agency to see Tomahawk while I was there.

FINDINGS.

I find by her own evidence that Mrs. Jane Waldron is a one-quarter-blood Santee Sioux Indian; that she was born off of any reservation, and never did draw rations or annuities before the year 1883, and that she has been drawing rations and annuities at the Cheyenne River Agency since 1883.

That she did make the selection of the land in controversy some time in the month of February, 1889; that she had her selection of said land recorded at the agency September 10, 1890, and that she had her house completed on said land some time in the fore part of July, 1889, moved into it at once, and has resided there ever since.

I find that Black Tomahawk is a full-blood Sioux Indian, and has all the rights of the Sioux Indian under the act of March 2, 1889, to make selection on the ceded Sioux lands.

That he made the selection of the land in controversy some time between the 20th and 30th days of July, 1889.

That he had his selection of said land recorded October 4, 1890; it so appears on the books of the agency.

That he did build his house sometime in January, 1890, and moved into it at once with his family, and has occupied it ever since as his home. And I also find by the evidence of Mrs. Jane Waldron, on pages 21 and 22 of Exhibit B, and that of Black Tomahawk, on page 4 of Exhibit C, that they both took this land in controversy with speculative intentions, not for the purpose of making it their per-

manent homes. Mrs. Waldron was an unwilling witness all the way through, and when asked the question if she intended to make this her home or sell it I had quite a time getting her to answer. Tomahawk answered very promptly all questions except the question as to whether he intended to sell; that he did not want to answer, but finally did. It does not matter, in my opinion, which way this cause goes; the land will be in the hands of speculators in any event.

FINDINGS AS RIVER SELECTIONS.

I find Jane Waldron selected this land before Black Tomahawk made his selection. That she had her selection recorded before Black Tomahawk had his selection recorded, and that Mrs. Jane Waldron had her house completed and was living in the same before Black Tomahawk commenced to build his, and I also find that the land claimed by Mrs. Jane Waldron and Black Tomahawk is the same identical land, although the description in the agent's records are not just the same.

Now, in my opinion, all the question there is in this case is whether or not a Santee Sioux Indian has a right to take land in the ceded portion of the Great Sioux Reservation under the act of March 2, 1889. If they have, Mrs. Jane Waldron would be entitled to the land in controversy in this case between her and Black Tomahawk, for there is no question as to her priority in all other requirements, and there is no question but that she is a one-quarter blood Santee Sioux.

And the question of her having the right to land on the ceded portion of the Great Sioux Reservation on account of her being a Santee Sioux being the only question left in the case, in my opinion, and that being clearly a law question, I will not undertake to pass upon it.

If it should be determined that a Santee Sioux can not take lands on the ceded portion of this reserve under the act of March 2, 1891, then there could be no question as to Tomahawk's right to the land in controversy.

I return herewith the papers referred to me in this case.

Respectfully submitted.

JAMES H. CISNEY,
U. S. Indian Inspector.

The SECRETARY OF THE INTERIOR,
Washington, D. C.

STATE OF SOUTH DAKOTA, *County of Stanley, ss:*

I, C. W. Waldron, of Fort Pierre, in said county, being duly sworn do on oath depose and say that on last Sabbath evening I was told by a half-breed that a man on the east side of the river wanted my wife, Mrs. J. E. Waldron, to be there the next morning at 9 o'clock. We had no written notice; did not even know the name of the man who sent him; he guessed she would find him at the Locke Hotel. It was impossible, even if she had received proper notice, as she had a very young babe and had no one with whom she could leave it, and it was too cold to take the babe with her. The next morning she sent her brother with a note addressed to this unknown man stating these facts and telling him if he would set a time she would send a conveyance and bring him to her house. We proposed to meet her the next day at 10 o'clock a. m., and when she arrived at the place designated for the hearing she found one Cessney, who claimed to be an Indian inspector, and that he had some authority to take testimony in the matter of contest between herself and Black Tomahawk. During the hearing I asked Mr. Cessney a few questions for information in regard to the case, but in no instance did I receive a civil answer from him. As long as I remained in the room he applied to me opprobrious epithets, using the language common among street gamins.

C. W. WALDRON.

Subscribed and sworn to before me this 7th day of February, 1891.

[SEAL.] D. C. BRACKNEY,
Notary Public.

STATE OF SOUTH DAKOTA, *county of Stanley, ss:*

I, Robert H. Thielmann, being duly sworn according to law, depose and say that I am a citizen of the United States; that I am by occupation a civil engineer and surveyor; that in January, 1890, one H. E. Dewey, of Pierre, S. Dak., an attorney, came to myself and partner, Mr. Samuel Logan, and desired us to survey and locate a tract of land lying north of the city of Fort Pierre, S. Dak.

We agreed to do the work for him and made arrangements to run a line from the east side of the Missouri River to the tract of land and agreed to meet Mr. Dewey at his office in Pierre in the afternoon of the same day. During the forenoon I overheard a conversation in W. S. Knappen's store, in which it was stated that Mr. Dewey was making an attempt to get possession of the land already claimed by Mrs. J. E. Waldron during her absence on a visit to the city of Washington, and not being desirous to be instrumental in assisting anyone in doing an unlawful act by which another party would be injured, I made inquiry regarding the matter and found that there was no land joining the mile square on the north side except what was claimed by Mrs. J. E. Waldron.

We therefore informed Mr. Dewey that we declined to do the work spoken of in the forenoon, as the land was claimed by Mrs. Waldron.

R. H. THIELMANN.

Subscribed and sworn to before me this 7th day of February, 1891.
[SEAL.]
D. C. BRACKNEY,
Notary Public.

STATE OF SOUTH DAKOTA, *county of Stanley, ss:*

I, George P. Waldron, do on oath depose and say that I have been a practicing attorney for more than forty years; that I have practiced in all grades of the courts of several States from a justice of the peace to the supreme courts; that when Mrs. Jane E. Waldron was told that a man was about to take testimony in the matter of contest between herself and Black Tomahawk she supposed that no attorneys would be allowed in the case, and appeared there by herself and husband.

Soon after she had gone to the room where Cessney was she sent word to me that the inspector was so evidently interested against her and was so abusive and insulting and that he allowed H. E. Dewey, the man who induced Black Towahawk to try to get her land, to appear as attorney for Tomahawk; that she did not like to go on with the hearing without some one there to protect her in her rights, and I went then to the place where Cessney was taking the testimony. Cessney was then informed that I would act as attorney for Mrs. Waldron.

In order to know how far Mr. Cessney's authority went, and what was expected of Mrs. Waldron in the matter, I asked him what his instructions were in the case, to which he replied, "It is none of your business." Subsequently he said that his instructions were private and that he had no right to make them known to anyone. Still later in the hearing he said he had a "pile of trash there"—referring to the testimony taken by Col. Lounsberry, as I suppose—which the "Department could not make head or tail to," and that he was sent here to "straighten it out." Still later he said he was instructed by the Secretary of the Interior to take the testimony in the case and report it to the Department. And I further depose and say that in all of my experience in places where testimony was taken I never witnessed a case where the party taking the testimony or holding the court was so offensively unjust toward the one party and manifestly favorable to the other, and whose conduct as a presiding officer was so insulting, vulgar, and abusive as this Indian inspector's was toward Mrs. Waldron and her husband.

I have been in courts where the presiding officer was under the influence of liquor, and even then he was more gentlemanly and civil in his deportment and more just in his rulings than this Indian inspector. Mrs. Waldron and her husband bore this kind of treatment through the whole of one day and a part of the next, when Mr. Waldron said to Cessney that he would not remain there and allow him to abuse and insult his wife and himself any longer, and they then left the room. After they had gone and while I was yet in the room he, Cessney (I do not know his full name), expressed a strong desire that they return and finish the case, making some promises that they would be treated fairly if they would return and that he would wait until 1 o'clock. I told them what he said and they replied they had been credibly informed that he (Cessney) said while at the agency and before he came here to take this testimony that Black Tomahawk was the only person who had any right whatever to this land, and that they would not have anything further to do with a man who had already expressed himself against their case before he had heard any testimony, and who had been so ungentlemanly and abusive to them both as he had, and I, as their counsel, could not advise them to do so; and I further depose that whenever I interposed an objection to any question which seemed to me to be wrong he failed to put upon the minutes my objections and my reasons therefor.

But whenever Mr. Dewey raised an objection he gave him all the chance that he could ask, and spent much time in correcting and spreading upon the record every objection made by him, and his reasons therefor. He allowed Dewey in a lengthy speech to berate the Government, charging it with robbing the Indians and in no

instance acting in good faith toward them, and that they were now trying to rob them of their rights in not allowing Tomahawk to take this land and sell it without filing upon it.

GEO. P. WALDRON.

Subscribed and sworn to before me this 7th day of February, 1891.
[SEAL.] D. C. BRACKNEY,
Notary Public.

FORT PIERRE, STANLEY COUNTY, S. DAK., *February 9, 1891.*

SIR: I herewith transmit a number of affidavits in relation to the taking of testimony by the Indian inspector, Cessney, in the contest between Black Tomahawk and myself. I would respectfully inform the honorable Secretary that I regret as much as anyone can that I was not treated fairly by Inspector Cessney, and that I could not perfect the taking of testimony in the case.

In order that the Secretary may know as fully as possible how this inspector conducted this hearing, I have caused the affidavits of every white person who was present during the hearing to be taken except Dewey and the farmer, who was present only a short time the second day.

I will, if permitted, show that no one ever claimed this land except myself up to January, 1890, while I was in Washington, and I will further show that a scheme was gotten up during that month of January in H. E. Dewey's office, in Pierre, S. Dak., between himself and several other men to induce the Indian Black Tomahawk to jump my claim, and that Tomahawk, for a consideration was to leave the land without filing upon it, and allow Dewey and his associates to enter it as a town site; and I will further show that Dewey said in the presence of several parties that he induced Tomahawk to go on the land for what money there was in it; that he did not consider that I had any right to it, as I was only a part blood, and what Indian blood I had was Santee.

I respectfully ask that some gentleman who is unprejudiced in the matter be designated to take the testimony in this case, or that it be tried in the local land office as cases of contest are usually tried.

Very respectfully,

JANE E. WALDRON.

HON. JNO. W. NOBLE,
Secretary of the Interior.

STATE OF SOUTH DAKOTA, *County of Stanley, ss:*

I, Jane E. Waldron, of Fort Pierre, in said county, do on oath depose and say, that I appeared before Col. Cessney, Indian inspector, for the purpose of proving my right to the land selected by me in February, 1889, and now claimed by me as my allotment as a Sioux Indian. That immediately upon the inspector's commencing to take my statement it was apparent that he was in collusion with one H. E. Dewey, who appeared on the part of Black Tomahawk, the Indian whom this Dewey induced to jump my land while I was in Washington in January, 1890. And he commenced then and there with a series of insults, abuse, and ungentlemanly deportment towards myself and husband, calling my husband a "monkey" and a "pup," and other opprobrious epithets. We submitted to that abuse all one day and returned the second day, hoping he might have exhausted his store of abuse, and that we would be treated with common civility; but upon our return he kept up the same course of treatment, telling my husband and myself that we lied, when we were only telling the truth. My husband told him that he would not stay there and allow him to insult and abuse his wife any longer, and we left the room.

Subsequently Mr. Waldron, my attorney, told us the inspector desired us to go back and finish up the hearing and that we would be treated fairly. After we left the room we were informed by a gentleman that Cessney said while at the agency that Black Tomahawk was the only person who had any right to the land, and we decided that we would not go again before the man who had denied us every right and heaped upon us both all the billingsgate at his command, and that we would not allow him to report the case to Washington, when he had formed and expressed a decided opinion against my right to the land without having heard a word of testimony in my behalf, and we instructed Mr. Waldron, our attorney, to so state to him. This inspector allowed this man Dewey to denounce the Government in the most emphatic terms because it did not provide a law or rule whereby Tomahawk could sell a piece of land without filing upon it.

The inspector has what purports to be a statement of the case. I have never read it nor have I signed it or sworn to it, but if he has taken it down as I gave it and

made no changes in it since it is correct. Upon this I give no opinion. That is only a small part of the testimony which I expect to furnish whenever I can be allowed to go before gentlemen and put in all my case.

I further depose and say that in September, 1890, I filed with Maj. Palmer, agent at Cheyenne River Agency, a notice of application to file on this land, with a letter stating that it joins the town of Fort Pierre on the north and contains 320 acres. Since the survey has been completed I forwarded to him the numbers of the land, according to instructions of the register of the land office at Pierre. They are as follows: SW. ¼ Sec. 28; NW. ¼ SE. ¼ 28 Frac.; NE. ¼ SE. ¼ 28 Frac.; SW. ¼ NE. ¼ 28 Frac.; S. ½ NW. ¼ 28; NE. ¼ SE. ¼ 29; SE. ¼ NE. ¼ 29.

JANE E. WALDRON.

Subscribed and sworn to before me this 9th day of February, 1891.
[SEAL.] D. C. BRACKNEY,
Notary Public.

STATE OF SOUTH DAKOTA, *Stanley County, ss:*

I, W. E. Leeper, of Hughes County, S. Dak., being duly sworn, do on oath depose and say that I know Mrs. Jane E. Waldron and the Indian, Black Tomahawk. That in January, 1890, and while Mrs. Waldron and her husband were at Washington, and just before the cabin or shack where Black Tomahawk now lives was built, H. E. Dewey, an attorney of Pierre, came to me and wanted I should assist him in forming a company and get the Indian, Black Tomahawk, to jump Mrs. Waldron's land. I told him the parties I spoke to about it did not want to go into it. A few days after I saw the house being built, and I asked Mr. Dewey if he had made the arrangement that he spoke to me about, and he said he had.

W. J. LEEPER.

Subscribed and sworn to before me this 24th day of February, 1891.
[SEAL.] N. E. WESTOVER,
Notary Public.

STATE OF SOUTH DAKOTA, *County of Stanley, ss:*

J. C. Russell, being duly sworn according to law, deposeth as follows, to wit: That I am a resident of Nowlin County, said State, and that my post-office address is Midland, said Nowlin County and State of South Dakota.

During the winter of 1889 and 1890 I was a resident of Pierre, S. Dak., and while there I was approached by H. E. Dewey, about the latter part of February or the fore part of March of 1890, who wanted to know if I wished to go into a town-site scheme, and, upon inquiry, he stated as follows: That they were forming a company to plat a town-site upon a certain tract of land situated near Fort Pierre, in the county of Stanley, State of South Dakota, the title to said tract being at that time in dispute between a certain Indian called "Tomahawk" and a Mrs. Charles Waldron, and that he (Mr. Dewey) had received information that assured him that the contest now pending about the title to said tract would be decided in favor of said Tomahawk, and that the said Tomahawk had agreed to move off of said land and relinquish all right and title to the same as soon as the contest was decided in his favor.

I do not remember if the said Mr. Dewey stated the amount to be paid the said Tomahawk. He also wished me to try and interest some of my friends of wealth and influence in the aforesaid town-site scheme. I told him that I would speak to them about it, but as for myself I did not wish to enter into any town site platted upon lands that had been held by Indians until after the time for the Indian to file his right had expired, and there was too much uncertainty about the title to said tract for me to think of putting any money into it. Upon my declining to be one of the company we talked no further upon the subject. And I further swear that this affidavit is made of my own free will and accord, and that I have no personal motives in so doing.

J. C. RUSSELL.

Subscribed and sworn to before me this 19th day of March, 1891.
[SEAL.] D. C. BRACKNEY,
Notary Public.

PIERRE, S. DAK., *April 9, 1891.*

DEAR SIR: I am Black Tomahawk and I am a Sioux Indian of the full blood. My father was Catch the Enemy; his father was Rattling Rib. He was chief of the Two Kettle Band of Sioux Indians, of 700 lodges. My father was chief, and now that he is dead I am chief. Our home has been for a great many years on the Bad River, where our tribe still lives. The Bad River falls into the Missouri opposite the city of Pierre. Gen. Crook, Gov. Foster, and Maj. Warner were here, and wanted us to sign the bill to give up our land on both sides of the Bad River. I was opposed to it, and refused to sign the bill, and told my people not to sign it, but they told me many things and I believed them, and then I signed the bill and told my people to sign, or none would have signed it. One of the things they told me was that I might keep any land on the Bad River where I should be living when the President should issue his proclamation that the law should go into effect.

I was living on land just above the mouth of Bad River, where I had built a house some weeks before, and by what the commissioners said I have a right to this land. But a white man built a house on this same land. He did not live in it. He lived in another place, many miles away, and only built this house to keep me or anyone from having this land. He has a wife; her father is a white man; her mother is a half-breed Indian, but she is a Santee, and Santees have no right to lands on Bad River. They must go to Nebraska, where they belong. Besides that, a woman is not the head of a family; a woman is never head of the family by Indian custom. This white man wants to take this land from me, and it was in the paper here that the commissioner had decided that this white man should have my land. I am very much dissatisfied if this is true. I want to know about it. I and my people have always lived on the Bad River, and I want to know if the land I am living on is to be taken away from me for this white man. This is my land, and I have always lived on the Bad River, and want the Government to keep its promises and not give this land to Waldron nor to his wife, who is a white woman with a little Indian blood, and a Santee at that. Will you please to write to Washington and see if I can have this land.

Respectfully,

his
BLACK x TOMAHAWK,
mark
H. E. DEWEY,
Attorney.

Witness:
W. A. MOORE.
W. L. SHUNK.

GEO. W. MCKEAN, Esq.,
Special Agent, Pierre.

PIERRE, *April 9, 1891.*

DEAR SIR: The morning paper here reports that in the contest for land adjoining the mile square opposite this city between Black Tomahawk and Charles Waldron, a white man, that the Commissioner of Indian Affairs has decided against Black Tomahawk. I understand that this statement is made on the authority of a letter from R. F. Pettigrew, Senator from this State. If true, it is simply infamous; and I want to say to you that it is not at all improbable that if the Government takes this land away from Tomahawk that blood will follow. He is the hereditary chief of the Two Kettle band of Indians, which originally numbered 700 lodges, but which is some smaller now, and is connected by blood with several chiefs of other tribes who have become famous for skill and wisdom both in peace and war.

These lands have been the ancestral home of Tomahawk's tribe for hundreds of years. Under the late law he has taken one small tract out of the whole domain that belonged to him and his people before the white man set foot on the American Continent, and the proposition of the Government now is to take this last tract from him and give it to a white man because that white man's wife has a strain of Indian blood of another tribe that never possessed a rood of land on this reservation. If this newspaper report is true, it is a blunder, and just such a blunder as makes Indian wars. This same Black Tomahawk has been, I think, the subject of correspondence between yourself and Hon. Chas. Foster; at all events, I have before me your letter of May 28, 1890, to Mr. Foster, in relation to the right of Indians to sell improvements, sent by him to Black Tomahawk, and by him given to me.

Yours, truly,

H. E. DEWEY,
Attorney for Black Tomahawk.

Hon. JNO. W. NOBLE,
Secretary of the Interior, Washington.

UNITED STATES INDIAN SERVICE,
CHEYENNE RIVER AGENCY,
Pierre, S. Dak., April 10, 1891.

SIR: I have the honor to inclose herewith, for your consideration, a letter received by me from Black Tomahawk, a Sioux chief of the Two Kettle band, which he wishes me to lay before you. I am informed there is a contest between Black Tomahawk and a Mrs. Waldron for the tract of land upon which Tomahawk lives, and that an investigation of the matter has been made by the Indian office, the result of which is the cause of Tomahawk's present anxiety, it being reported here that a decision has been reached favorably to Mrs. Waldron. I was called upon yesterday afternoon by Black Tomahawk and his attorney, also Crow Eagle, and they told me that they wanted to talk with me about this matter. I told them I knew nothing whatever about the trouble between Tomahawk and Waldron, but I could assure them of the friendship and good intentions of the Secretary and Commissioner, and that I know they both desired and intended to do right by the Indians, and see justice done them, and that the Secretary and Commissioner would give them all they were entitled te under the law, and defend their rights.

Tomahawk then said he had heard the Indian Commissioner had decided to give his land to Waldron, and he wanted to know if that was so. I told him I did not know; that I knew nothing about it and had received no instructions on the subject; that when I did I would inform him. I further told him that I was here to make the allotments of land to the Indians; that I would deal justly with them and act fair to them in all my doings, and that I would make the allotments as soon and as rapidly as I could. He then said that certain parties were trying to force him off his land, and I told him that I supposed he had a right to remain and live on it until he was notified to get off by the proper officers. Tomahawk said he wanted me to write to the Secretary, so I told him that whatever he wanted to say, or have me say to the Secretary for him, he must put in writing, and the letter herewith inclosed is what he has to say:

As to the merits of the claims of the two parties, or what the testimony showed, I, of course, know nothing. I presume, however, I will in due time be instructed as to what action I shall take as between the two, both parties having filed their intention to take the allotment of the land in question. I will add that Tomahawk and also Crow Eagle went away in good humor, and seemed well pleased with their interview. I am, however, told that the brother of Black Tomahawk has been talking in a threatening manner about this land question, and he may try to make some trouble, though Tomahawk himself has shown no such disposition. I will watch matters closely and keep you fully advised.

Very respectfully,

GEO. W. MCKEAN,
Special Agent.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
Washington, December 14, 1891.

SIR: I acknowledge the receipt of your communication of March 14 last and its inclosures relative to the case of Black Tomahawk *v.* Jane E. Waldron, requesting decision on the following questions:

"First. Whether, under the laws cited and the evidence furnished, Jane E. Waldron, a Santee Sioux Indian, was, at the time the act of March 2, 1889, took effect, entitled to receive rations and annuities at the Cheyenne River Agency, S. Dak., where she appears to have received rations and annuities for the greater part of the time since the year 1883.

"Second. If it is decided that she was so entitled to receive rations and annuities, whether, under the laws cited and the evidence presented, she is entitled to the allotment of lands on the ceded portion of the Great Sioux Reservation for which she is contending against Black Tomahawk."

In response I transmit herewith copy of an opinion of the honorable assistant attorney-general for this Department, in which I concur, wherein it is held that Mrs. Waldron is not an Indian, and was not, at the date of the act of March 2, 1889, entitled to receive rations and annuities at the Cheyenne River Agency.

The papers relating to this case are herewith returned.

Very respectfully,

JOHN W. NOBLE,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

Indian lands—children of Indian woman—act of March 2, 1889.

Black Tomahawk *v.* Waldron.

The common law rule that the offspring of free persons follows the condition of the father prevails in determining the status of children born of a white man, a citizen of the United States, and an Indian woman his wife. Children of such parents are, therefore, by birth not Indians, but citizens of the United States, and consequently not entitled to allotments under the act of March 2, 1889.

Secretary Noble to the Commissioner of Indian Affairs, December 14, 1891.

I acknowledge the receipt of your communication of March 14th last and its enclosures relative to the case of Black Tomahawk *v.* Jane E. Waldron, requesting decision on the following questions:

"First: Whether under the laws cited and the evidence furnished Jane E. Waldron, a Santee Sioux Indian, was, at the time the act of March 2, 1889, took effect, entitled to receive rations and annuities at the Cheyenne River agency, South Dakota, where she appears to have received rations and annuities for the greater part of the time since the year 1883.

"Second: If it is decided that she was so entitled to receive rations and annuities, whether, under the laws cited and the evidence presented, she is entitled to the allotment of lands on the ceded portion of the Great Sioux reservation for which she is contending against Black Tomahawk."

In response, I transmit herewith copy of an opinion of the Hon. Assistant Attorney General for this Department, in which I concur, wherein it is held that Mrs. Waldron is not an Indian and was not at the date of the act of March 2, 1889, entitled to receive rations and annuities at the Cheyenne River Agency.

OPINION.

Assistant Attorney-General Shields to the Secretary of the Interior, November 27, 1891.

I have the honor to acknowledge the receipt, by reference, of the letter of the Commissioner of Indian Affairs, dated March 14, 1891, submitting the report of Indian Inspector Cisney, relative to the case of Black Tomahawk *v.* Jane E. Waldron, involving the rights of the respective parties to a tract of land within what was the Great Sioux Indian reservation, with a request for an opinion upon the questions presented.

The questions, as formulated by the Commissioner, are as follows:

"First: Whether under the laws cited and the evidence furnished James E. Waldron, a Santee Sioux Indian, was, at the time the act of March 2, 1889, took effect, *entitled* to receive rations and annuities at the Cheyenne River agency, South Dakota, where she appears to have received rations and annuities for the greater part of the time since the year 1883.

"Second: If it is decided that she was so entitled to receive rations and annuities, whether, under the laws cited and the evidence presented, she is entitled to the allotment of lands on the ceded portion of the Great Sioux reservation for which she is contending against Black Tomahawk."

The "evidence" from which an opinion is to be formed consists of a large number of *ex parte* affidavits made by and in behalf of the respective parties, which are contradictory in the extreme and as to many points wholly irreconcilable. The matter is also further complicated by antagonistic reports of agents of the General Land Office and of the Office of Indian Affairs, and charges and counter-charges of fraud and corruption on the part of the claimants, their attorneys and friends, and the agents of the government.

It is insisted, however, that Mrs. Waldron is not an Indian, and therefore is not entitled to an allotment within said reservation. It seems but proper that this question as to the status of one of these claimants under said law should be first disposed of. The Commissioner of Indian Affairs seems to have taken it for granted that Mrs. Waldron is an Indian within the meaning of the law in question.

The facts affecting Mrs. Waldron's status as to nationality are not so fully and clearly set forth as they might and ought to be with the numerous investigations and reports that have been made. It is clearly shown, however, that Mrs. Waldron's father, Arthur C. Van Meter, is a white man and a citizen of the United States. Her mother is a half blood Indian, being born of half blood parents, each of whom was the offspring of a union between a white man and an Indian woman. Where these parents of Mrs. Van Meter lived, whether with the Indians as members of some tribe or among the whites as citizens of the United States, is not shown.

It is admitted by all that Mrs. Waldron's name has, since 1883 or 1884, been borne upon the rolls at the Cheyenne River Agency, and that she has since then been receiving rations at that agency. Prior to that time her name had not been upon the roll of any agency as entitled to receive rations, nor had she received any

rations. In fact, neither her mother nor any member of her father's family had prior to that time been drawing rations at any agency. The father has never become a member of any tribe of Indians, but the family seems to have lived among the whites.

The relations existing between the various tribes and nations of Indians within our boundaries and the government of the United States are peculiar and have furnished the material for much discussion in the courts. It is unnecessary to cite the long line of cases, beginning with The Cherokee Nation *v.* The State of Georgia (5 Peters, 1), and running down to the present time, wherein the status of these tribes and the members thereof has been considered. Two propositions may be stated as well settled by these decisions: (1) The members of the various nations and tribes of Indians, although living within the geographical limits of the United States, are not by birth citizens thereof; and (2) These people constitute separate and distinct though dependent nations, and their individual members are freemen.

The status of the parents of Mrs. Waldron's mother is not sufficiently shown to justify a positive conclusion thereon, but for the purposes of this opinion she may be considered an Indian. We have then to determine, whether the child of a white man, a citizen of the United States, and an Indian woman his wife is an Indian within the purview of the act of March 2, 1889 (25 Stat., 888).

In the case of *Ex parte* Reynolds (5 Dill., 394), the question, Who is an Indian was presented and quite fully discussed. It was concluded that, the Indians being free persons, the common law rule, that the offspring of free persons follows the condition of the father, prevails in determining the status of the offspring of a white man, a citizen of the United States, and an Indian woman.

This ruling was cited and followed in the case of the United States *v.* Ward (42 Fed. Rep., 320).

These cases arose under laws defining the jurisdiction of the courts of the United States, but the rule laid down is general. It was there sought to determine what persons were included in the general term "Indians," and the same term is under consideration here. It is a question not depending for its solution upon the proportion of Indian blood flowing in the veins of the person whose status is in question.

Under the rule laid down in the decisions cited, which rule is in my opinion a sound one and applicable to the case under consideration, Mrs. Waldron was born a citizen of the United States. Her claim, that she is an Indian by virtue of being born of an Indian mother can not be allowed. There is no allegation that she has taken steps to renounce her allegiance to the United States or to assume the rights and duties of a citizen of any ather nation, tribe, or people. The mere fact that her name was placed upon the roll of the Cheyenne River Agency and that she has for several years received rations as an Indian is not sufficient to sustain a claim of membership in that tribe. The authorities cited in the brief filed in behalf of Mrs. Waldron hold simply that one born a member of an Indian tribe is not a citizen of the United States. That proposition will not be disputed, but, as shown herein, it does not control in this case.

The conclusion that Mrs. Waldron is not an Indian carries with it the answer to both questions propounded by the Commissioner of Indian Affairs. In reply to the first question, I would say Mrs. Waldron was not, at the date of the act of March 2, 1889, entitled to receive rations and annuities at the Cheyenne River Agency. This also disposes of the second question, which is hypothetical, dependent upon the first question being answered favorably to Mrs. Waldron's claim.

DEPARTMENT OF THE INTERIOR,
Washington, December 24, 1891.

SIR: You will please suspend action on my letter of December 14, 1891, approving decision in the matter of the case of Black Tomahawk *v.* Jane E. Waldron as to effect of white percentage upon status of children of Indians, as I propose to ask the honorable Attorney-General to pass upon the question.

Very respectfully,

JOHN W. NOBLE,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

[Vol. XVII. Decisions relating to the public lands.]

Sioux Indian lands—Allotment.

Black Tomahawk *v.* Waldron.

The right to receive an allotment of Sioux Indian land as provided by the act of March 2, 1889, does not extend to the half breeds, or descendants of the mixed

bloods, whose claims were recognized in the treaty of 1830, and for whom special provision was made in accordance with said treaty by the act of July 17, 1854.

The last proviso to section 8, act of March 2, 1889, does not confer the general right to receive allotments upon half breeds, or mixed bloods, but makes a special provision to cover cases where such mixed bloods may surrender their locations on the islands donated to the adjacent cities.

Assistant Attorney-General Hall to the Secretary of the Interior, August 18, 1893.

On November 27, 1891, my predecessor submitted an opinion as to the right of Mrs. Jane E. Waldron to an allotment within the ceded portion of the Great Sioux reservation in Dakota, her right to the same being contested by Black Tomahawk, a full blooded Sioux Indian (13 L. D., 683).

Two questions were formulated by the Commissioner of Indian Affairs, which were referred to this office, by the Secretary of the Interior, for answer.

The first question was, in substance, whether Mrs. Waldron, "a Santee Sioux Indian," receiving annuities and rations at the Cheyenne River agency, in said reservation, was, at the time the act of March 2, 1889 (25 Stat., 888, 889), took effect, and on the evidence furnished, "entitled" to receive such annuities and rations. And, if there was an affirmative finding on this first question, the second question was whether under the law and the evidence she was entitled to the allotment of land claimed by her.

The first question, it will be observed, assumed that Mrs. Waldron *is* "a Santee Sioux Indian." If this assumption were accepted, it would be immaterial whether she received or is entitled to receive rations at the Cheyenne River agency; and the sole inquiry would be whether "a Santee Sioux Indian" is entitled to an allotment in the ceded portion of the Great Sioux reservation.

If this were the only question in the case, it would be briefly answered by a reference to the second sentence in section seven of the act of 1889, *supra*.

But an examination of the papers then referred showed that the Commissioner had made an unwarranted assumption and thereby unduly restricted the inquiry within very narrow bounds. For the ground on which Black Tomahawk contested the right of Mrs. Waldron to an allotment, was that she was not an Indian, and, as a corollary, not entitled to receive rations and annuities at the agency, nor take an allotment under the law. To the correctness of this contention were addressed all the evidence and arguments in the case.

Therefore, in submitting said opinion, the assumption of the Commissioner was ignored by my predecessor, the real point in the case was discussed, and the contention of Black Tommahawk sustained.

The conclusions reached in that opinion were accepted by Secretary Noble, and the Commissioner of Indian Affairs so informed.

Subsequently the counsel for Mrs. Waldron asked for a rehearing of the matter, that the case might be more fully presented and attention called to the other facts alleged to be pertinent, material and indispensable to a proper disposition of the controversy. In pursuance of this request, the papers in the case were returned to this office, and time and opportunity afforded both parties to submit any evidence or arguments they might deem material to the issues involved. Upon taking charge of this office, finding the matter undisposed of I considered the same, and after a most patient and exhaustive examination of all the questions involved, I have the honor to submit to you my views thereon.

By treaty of April 29, 1868 (15 Stat., 635), what is called the "Great Sioux reservation" located on the upper Missouri, was set apart for the use and occupation of all the Sioux Indians, not otherwise specially provided for, which exceptions do not enter into the consideration of this case.

It is in regard to rights claimed under the treaty of 1868, *supra*, in connection with the act of Congress approved March 2, 1889 (25 Stat., 888, 889) that the questions arise.

It should be observed that prior to the last date agencies had been established at six different points in the Great Sioux reservation, whereat the United States officers gave to Indians, whom they deemed to be entitled to receive, and had registered, the rations, and paid annuities, provided for by law.

The act of 1889, *supra*, carves out of the Great Sioux reservation six smaller reservations, so that one of said agencies is within each of the latter, setting each one apart for a permanent reservation "for the Indians receiving rations and annuities at the" agency therein, and restores the surplus of the Great Sioux reservation to the public domain.

Section 8 of the act requires the President, when in his opinion it would be for the best interests of the Indians receiving rations on either of said reservations, to cause the same to be subdivided and allotted in severalty to the Indians located thereon, giving to each head of a family three hundred and twenty acres, etc.

Section 13 provides:

"That any Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing

upon any portion of said Great reservation not included in either of the separate reservations herein established, may, at his option, within one year from the time when this act shall take effect, and within one year after he has been notified of his said right of option in such manner as the Secretary of the Interior shall direct by recording his election with the proper agent at the agency to which he belongs, have the allotment to which he would be otherwise entitled on one of said separate reservations upon the land where such Indians may then reside, such allotment in all respects to conform to the allotments hereinbefore provided."

Section 19 declares:

"That all the provisions of the said treaty with the different bands of the Sioux Nation of Indians concluded April twenty-ninth, eighteen hundred and sixty-eight, and the agreement with the same approved February twenty-eighth, eighteen hundred and seventy-seven, not in conflict with the provisions and requirements of this act, are hereby continued in force according to their tenor and limitation, anything in this act to the contrary notwithstanding."

And section 28 provides:

"That this act shall take effect only upon the acceptance thereof and consent thereto by the different bands of the Sioux Nation of Indians, in manner and form prescribed by the twelfth article of the treaty between the United States and said Sioux Indians concluded April twenty-ninth, eighteen hundred and sixty-eight, which said acceptance and consent shall be made known by proclamation by the President of the United States upon satisfactory proof presented to him that the same has been obtained in the manner and form required by said twelfth article of said treaty, which proof shall be presented to him within one year from the passage of this act; and upon the failure of such proof and proclamation this act becomes of no effect and null and void."

Article 12 of the treaty of 1868 is as follows:

"No treaty for the cession of any portion or part of the reservation herein 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; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him, as provided in Article VI. of this treaty."

Upon examination, the President was satisfied that the consent of the Indians, in the manner and form prescribed, was obtained, and duly issued his proclamation to that effect, so that the law is now operative.

The tract of land in controversy, though within the Great reservation, is not within any of the separate reservations, and therefore its disposition is to be controlled more directly by the provisions of section 13 of the act.

It appears that Mrs. Waldron first settled upon the land in question and duly notified the United States agent of her claim thereto, and therefore it must be conceded that as between her and the contestant, Black Tomahawk, she has the better claim, if she is otherwise entitled to an allotment.

It is shown that Mrs. Waldron's great-grandmother was a full-blooded Sioux Indian, who married Col. Dixon, a white man. Mrs. Waldron's grandmother was therefore a half-breed, and married also a half-breed, named Henry Angie; consequently Mrs. Waldron's mother was also a half-breed; and she married Arthur Van Meter, a white man; so that Mrs. Waldron, who likewise married a white man, has but one-fourth Indian blood in her veins. It is not shown that Dixon and his wife lived with the tribe as Indians, or claimed, or were recognized as having Indian rights.

The same may be said of Angie and his wife, except that Angie and wife, for themselves and children, including Mrs. Waldron, then unmarried, claimed and received Sioux half-breed scrip. And Mrs. Waldron, in her testimony, states that her father supported his family and educated his children off the reservation; that meeting with reverses in 1883 or 1884, they came to the agency and were placed on the roll as entitled to rations, etc., which they have since received.

These are substantially the facts upon which the former opinion was predicated; and they are not materially changed by anything since submitted.

As new and important matter, attention is called, in behalf of Mrs. Waldron, to the report and proceedings of the Sioux commission, which was appointed to visit the Indians and obtain their consent to said act of Congress, as required by section 28 thereof.

In the proceedings of the commission is found a stenographic report of the conferences held by the commissioners with the Indians at the different agencies which were visited. Excerpts from the speeches of the commissioners and some of the Indians are given, as being authoritative utterances, which it is gravely urged, ought to control the construction of this act of Congress, previously passed and adopted, but which was not to go into operation unless its provisions were accepted by three-fourths

of the adult male Indians. The correctness of this contention cannot be admitted, for the rule is too well settled to the contrary, by a long line of decisions, to permit of any discussion. Such utterances may have some weight as the opinion of those expressing them, but nothing more.

As to the claim that, because the maternal great grand mother was an Indian, Mrs. Waldron is also an Indian, it is to be observed that under common law rule children follow the condition of the father and not of the mother. Under this rule, without going further back, Mrs. Waldron's father being a full-blooded white man, she would be regarded as a white woman. But it is said that the civil law rule relating to slaves prevails among the Indians, and the children follow the condition of the mother. If this be true, for reasons hereafter stated, it is yet very doubtful if Mrs. Waldron's case is made out.

Under the last rule, if it exists, Mrs. Waldron, though of only one-fourth Indian, would follow the condition of the mother and also be an Indian like the grand mother and great grand mother, whilst Mrs. Waldron's children, with but one-eighth of Indian blood, would in turn follow the condition of their mother, and likewise be Indians, and so on *ad infinitum* to the remotest generations. The proposition seems to carry its own refutation with it.

But in my researches I have not found that such a rule exists to the extent claimed. The counsel for Mrs. Waldron, in seeking to show the existence of the rule, refers to the desire shown on the part of the Indians to care for the half-breeds, mixed bloods, and white men who have married Indian women, and cites quite a number of instances in different treaties with Indian tribes wherein special provision was made for the benefit of the classes spoken of; and to the list given by counsel might be added many more similar instances. From these facts he seems to argue that the rule was general that all such were regarded as entitled to share equally, with the Indians negotiating the treaties, in the benefit thereof.

It seems to me that the facts and citations made by counsel irresistibly lead to the contrary conclusions, and show it was not thought by either party to the treaties that the general provisions thereof, in favor of the Indians of the respective tribes were applicable to the half-breeds, mixed bloods, or squaw men, as the whites who marry Indian women are called, but that special provisions were necessary to include them.

However this may be among other tribes, there seems to be no reasonable doubt that among the Sioux Indians the half-breeds, mixed bloods, and squaw men are not regarded as Indians and entitled to the benefits of their treaties or allowed a voice in the control or disposition of the tribal property.

By the treaty of July 15, 1830, (7 Stat., 328) with the Sioux, Sac and Fox, and other tribes of Indians, certain land was ceded to the United States for money and other recited considerations. In article 9 it is stated that the Sioux bands in council assembled, having solicited permission to bestow on the half-breeds of their nation a described tract of land as a reservation, the United States agreed to the same, the half-breeds to hold by the same title as other Indians. See also article 10.

Now if the half-breeds were regarded as members of the tribe, Indians in the full meaning of the term as used in the treaty, and comprehended by its provisions, why this solemn action on the part of the other Indians? Why necessary to "solicit" from the United States the permission "to bestow" upon the half-breeds a portion of the land to which as members of the tribe they had an equal right with others? Undoubtedly it seems clear that the half-breeds were not comprehended by the provisions of the treaty, and had to be specially provided for on a special reservation. Or, if this be not true, then it must be held that having been theretofore members of the tribe they were thereafter, with the consent of the United States, to be divorced from their membership, and all rights in common with the other Sioux Indians, to become a special organization and placed on a separate reservation. Either alternative, it seems to me, is fatal to the claim and pretensions of Mrs. Waldron, for, if such be the condition of the half-breeds, *a fortiori* is it the condition of the quarter bloods, who, like Mrs. Waldron, are descended from the half-breeds, whose status and condition were thus established.

That this was the rule which prevailed among the Sioux may be further verified by reference to the stenographic reports of the Sioux Commission heretofore referred to, pp. 93-4. There it will be seen that American Horse, one of the leading Indians, speaking for himself and others, utterly denied the right of the half-breeds, mixed bloods, and squaw men to be recognized and counted as helping to constitute three-fourths of the adult male Indians. In reply, Governor Foster, one of the Commissioners, said:

"According to the treaty of 1868, every white man then living with an Indian woman was held to be incorporated into the Indian tribe that participated in the benefits of that treaty. Every squaw man of 1868 has a right to vote here, and without question. There is no question or doubt as to them."

The correctness of this assertion being questioned by American Horse, Governor Foster continued as follows:

"You have squaw-men who have come into relation with you by marrying an Indian woman since 1868. They have never been recognized by the agent, I believe, as entitled to the provisions of the treaty of 1868, as squaw-men were before that time. Now, the language of the treaty may possibly, if when construed by our court, include them,—we don't know. Now, we let them sign but we don't count them, so that if the court in the future should hold that they are entitled to vote here that they can then be counted, and for that reason we take their vote. So far as the half-breeds are concerned, that is to say, every half-breed that has an Indian mother is entitled to all the rights and privileges of an Indian. These rights descend with the mother."

See also to the same effect pp. 173, and 188.

In other places Governor Foster repeated the assertion that the half-breeds, mixed bloods, and squaw-men were included in the treaty of 1868, and those were entitled to a voice in the acceptance of the act of 1869.

On what grounds these assertions are based is not stated by him further than to say that such is his understanding of that treaty. But I have searched its provisions in vain for an expression or implication to justify the assertion. On the contrary, the language used in the treaty negatives any such idea. It is declared that it is made with the chiefs of the different tribes of Sioux Indians; that the reservation is set apart for the absolute and undisturbed occupation "of the Indians herein named," and for such "other friendly tribes or individual Indians" as the Sioux, with consent of the United States, may be willing to admit. And the United States solemnly agrees that no persons except those "designated," and its own officers and employees, shall be permitted to settle or reside on the reservation, &c. See article 2. Article 6 provides that any individual "belonging to said tribes of Indians or legally incorporated with them," may have a tract set apart for farming, etc. This plainly means any individual Indian belonging to the Sioux tribes, with which the treaty is made, or "other friendly tribes, or individual Indians" admitted to the reservation in accordauce with the provisions of article 2.

And thus, throughout the whole of the treaty, its provisions are made specifically applicable to Indians, and Indians only, not the slightest reference being made, directly or indirectly, by expression, suggestion, inuendo, or implication to half-breeds, mixed bloods, squaw-men, or any others than Indians.

Finding in the treaty no basis for this assertion, nor elsewhere any facts to sustain it, I am forced to the conclusion that it was made under a misapprehension, and therefore is not entitled to the weight it would otherwise have because of its distinguished author.

As a sequel to what has been shown in relation to the establishing of a special reservation for the half breeds of the Sioux Indians by the treaty of July 15, 1830, Congress, by act approved July 17, 1854 (10 Stat., 304) authorized the purchase of that reservation from the half breeds and mixed bloods, and the issue to them in payment thereof of what is well known in this Department as "Sioux half-breed scrip." In accordance with said act the purchase was made and the scrip issued as directed.

Now, it is to be remembered in this connection that Mrs. Waldron claims an equal right with other Indians to an allotment in the Great Sioux reservation through her half-breed mother, Mrs. Van Meter, who was Mary Angie before her marriage. Counsel calls the claim "the mother right," and says it is well recognized among Indian tribes.

That Mrs. Waldron's mother and grandmother did not claim to be, and were not regarded as, Sioux Indians, entitled to participate in the tribal rights and share in its property, is abundantly shown by the fact that as half-breeds they claimed the benefit of article 9 of the treaty of July 15, 1830, *infra*, setting apart the separate reservation for the half breeds, and under the act of July 17, 1854, received Sioux half-breed scrip in payment for their interest in said reservation, an interest separate and apart from any possessed by the Sioux Indians proper, who were not recognized as having any right or interest in that reservation, and received no part of the scrip authorized to be issued in payment therefor. The records of the Indian Office show that Mrs. Waldron's mother and grandmother received each scrip for four hundred and eighty acres, their allotted proportion of the land within said reservation, the scrip issued to the Angie family aggregating 3,840 acres.

It seems to me that Mrs. Waldron's claim to an allotment in the Great Sioux reservation might here be dismissed without further discussion, for, after these half-breeds thus had a large and valuable portion of the tribal property bestowed upon them, which, when divided, gave to each half-breed and each descendant of the mixed blood four hundred and eighty acres of land to sell, and which they did sell, it is hard to believe that it is the intention of the government to force the Sioux Indians to again divide their inheritance with them or that it is the wish of the Indians to share equally with these remote descendants of ancestors, who themselves were not permitted to share equally with the tribe, because not of the full blood.

This reservation given to the half-breeds of the Sioux tribe may be likened to an advancement as known to our law. And certainly Mrs. Waldron, claiming through her "mother right," as her counsel calls it, should be compelled to place in hotchpotch what that mother right received by way of advancement before claiming further interest in the tribal property.

In behalf of Mrs. Waldron's claim attention is called to the following certification by the Sioux Commissioners found on p. 308 of their report:

"We certify that the signature or mark of each Indian to the above was, together with his seal, affixed thereto; that each and every Indian who signed the same is, to the best information obtainable, and to the belief of the Commission, of the age set opposite to his name; that they are of a class mentioned in the act of March 2, 1889, and the treaty of April 29, 1868, as entitled to sign; and that they signed the same freely and voluntarily with fair and full understanding of its purport, operation, and effect."

Also to the following sentence in the message of the President transmitting said report to Congress:

"It appears from the report of the Commission that the consent of more than three-fourths of the adult Indians to the terms of the act last named was secured, as required by section 12 of the treaty of 1868, and upon a careful examination of the papers submitted I find such to be the fact, and that such consent is properly evidenced by the signatures of more than three-fourths of such Indians."

And in connection therewith reference is made to exhibit "A" p. 35 of the report, which states that the total number of adult males at the different agencies entitled to vote on the acceptance of the act of 1889 is 5,678; and the number of those who signed an acceptance of the act of Congress is 4,463, or 206 more than the three-fourths required by the act of Congress. It is said, however, that of those who signed four hundred and nineteen were mixed bloods and white men, and among the latter were C. W. Waldron, the husband of the claimant here, also her father and brothers.

In view of these matters it is urged that under a proper construction of the law the parties signing the agreement must either be held to be Indians, or the integrity of the agreement itself must be challenged.

I am not much impressed by the force of this argument, for if it be considered that Waldron signed the agreement and is an Indian, then it would be Waldron, the Indian, who, as the head of the family, would be entitled to an allotment of three hundred and twenty acres, and not his wife, who, under the act of Congress, would not be entitled to any allotment whatever.

I have not gone over the signatures to the agreement to verify the foregoing statement as to the number of full bloods, mixed bloods, and whites who signed the same. The President was made, by the act of Congress, a special tribunal to ascertain and proclaim whether assent was given to the act by "at least three-fourths of the adult male Indians" occupying and interested in the Great Reservation; and he states that upon a careful examination he finds "such to be the fact," and he has accordingly so proclaimed it. His action in the premises is conclusive on this Department, and the integrity of the agreement cannot be challenged here in this respect.

An examination, however, of the list of those who signed at the Cheyenne River Agency discloses the names of three Van Metres, p. 288–9, possibly brothers of Mrs. Waldron, and the name of C. W. Waldron, her husband, p. 291, but the name of her father, Arthur Van Metre, is not found. None of said parties are put down Indians with Indian names; two of the Van Metres are put down as belonging to the Two Kettle Band; the other Van Metre and Waldron being described as white men.

When we recall what Governor Foster said, in reply to the objection of American Horse, "we let them sign, but we don't count them," we see how utterly unimportant is the fact that these whites and mixed bloods were allowed to sign the agreement.

It is further urged in behalf of Mrs. Waldron that the fact of "receiving" rations and annuities of the Cheyenne River agency at the time that the act of 1889 became effective conclusively establishes her right to an allotment thereunder, and section 4 of said act is quoted as authority for the position.

That section merely defines the boundaries of the reservation set apart "for the Indians receiving rations" at the Cheyenne River agency, and does not speak of the allotments. But section 8 does, and uses substantially the same language. It authorizes the President, whenever, in his opinion, "the Indians receiving rations" on any of said reservations are sufficiently advanced in civilization, etc., to cause allotments in severalty to be made "to the Indians located" on the particular reservation. But as Mrs. Waldron is not "located" upon the Cheyenne River Reservation, nor seeking an allotment of any lands within the limits thereof, section 8 is not more applicable in her case than section 4.

As said before, her application comes directly under the provisions of section 13 of the act herein quoted. She does not seek an allotment inside of the diminished

reservation, but claims land outside thereof, within the Great Reservation, and on which she appears to have been residing February 10, 1890, when the President's proclamation was issued, and the act of Congress became effective (26 Stat., 1554).

Whilst only the words "receiving rations" etc., are used in section 8, when we come to section 13, it provides that allotments are to be made to those "receiving and entitled to rations," etc. It is contended that the language of the last section is meant to apply to two classes: those who are actually "receiving" rations, etc., and those who, though not receiving, are "entitled to" rations; and that Mrs. Waldron being of the first class, it is not intended that an inquiry shall be made as to whether she is "entitled" to rations or not.

I cannot bring myself to take this view of the law. To adopt it would be to ignore the great purpose of the act, which is to promote the civilization of the Indians, who held the possessory title to the original reservation, by dividing the same among them in severalty to the extent authorized. This end could not be promoted by giving allotments to parties, interlopers, or intruders, who may have succeeded in imposing upon the United States agent so as to be placed upon the rolls and actually "receiving" rations, though not "entitled" to them. And I may add that I do not think the word "entitled" adds any strength to or injects any new or different condition in this section from that found in section 4 and 8. I cannot bring myself to believe that it was the intention of Congress that rations should be given to parties not entitled; or that if such parties were illegally "receiving" rations, that fact should cut off all inquiry, and the beneficiary of this one wrong should be further rewarded by allotting to him land to which he is otherwise not entitled, either in law or good conscience. I think when Congress spoke of parties receiving rations it meant those who were rightfully receiving them, not those who were obtaining them wrongfully. Therefore, I say that the meaning of the statute would be as clear without the word "entitled" as with it, and that it gives to it no force or meaning which it does not have without it.

This view makes all the provisions of the statute, in relation to the rations, annuities and allotments thereunder read harmoniously together; whilst the other would establish incongruities and work an injustice which it is not for a moment to be believed that Congress contemplated.

It is further urged that the eighth or last proviso of section 8 of the act of 1889 expressly recognizes the right of mixed blood Indians to have an allotment as here claimed by Mrs. Waldron.

The portion of that section referred to first donates by name certain islands in the Missouri and Niobrara Rivers, and part of the Sioux Reservations, to the adjacent cities, and then provides—"That if any full or mixed blood Indian of the Sioux Nation" shall have located upon either of the islands prior to the passage of the act, his improvements shall be appraised, and upon payment therefor the Indian shall remove from the island, "and shall be entitled to select instead of such location his allotment according to the provisions of this act" upon any unoccupied lands which were within the original reservation.

I do not understand the language of this proviso as having the effect claimed for it. As I read it, Congress, for satisfactory reasons, desired to give the mixed bloods, if any, who lived upon and had improved these islands, the privilege of taking allotments elsewhere in lieu of the lands occupied by them. I do not perceive that there is anything in this special legislation inconsistent with the views heretofore expressed by me. On the contrary, if any deduction is to be made therefrom, it would seem proper thus to hold that, Congress cognizant of the fact that mixed bloods were not entitled to allotments under the general provisions of the act, when it was intended that those living on the island should exercise such a right, was very careful to accord it to them expressly and in terms not to be mistaken. Its action in this instance clearly recognizes the distinction between the two classes, and in unmistakable terms includes both. The reference to this proviso seems to make plainer the conclusion that mixed bloods are not accorded the right of allotment under the other provisions of the law.

After a careful consideration of all matters presented, old and new, and a patient study of the whole case, I find additional reasons for the correctness of the views heretofore submitted in the case. I therefore advise you that in my opinion Mrs. Waldron is not entitled to the allotment claimed by her.

Approved,

HOKE SMITH,
Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, December 20, 1893.

SIR: By letter of December 14, 1891 (13 L. D., 683), my predecessor, Secretary Noble, transmitted to your office an opinion of the assistant attorney-general for this Department in the case of Black Tomahawk *v.* Jane E. Waldron, at the same time expressing his concurrence in the views therein set forth.

Afterwards, upon the filing by the counsel for Mrs. Waldron, the papers were returned to this Department and the matter was again referred to the assistant attorney-general for further consideration. After full opportunity being given the parties to submit further evidence and argument the matter was considered and an opinion rendered therein which received my approval.

Afterwards counsel for Mrs. Waldron asked that the matter be referred to the Attorney-General of the United States for his opinion upon the questions involved, which request has been denied, and the counsel for Mrs. Waldron notified of such action.

I transmit herewith the opinion of the assistant attorney-general, with my approval indorsed thereon, and the other papers in the case.

Very respectfully,

HOKE SMITH,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

DEPARTMENT OF THE INTERIOR,
Washington, December 29, 1893.

SIR: Referring to Department letter of 20th instant, transmitting to your office the opinion approved by the Department of the honorable assistant attorney-general for this Department in the case of Black Tomahawk *v.* Jane E. Waldron, I have to direct that all action thereunder be suspended for a period of thirty days.

Very respectfully,

HOKE SMITH,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

DEPARTMENT OF THE INTERIOR,
Washington, January 4, 1894.

The Attorney-General:

SIR: I transmit herewith for your consideration the opinion of my predecessor, Secretary Noble, and also an opinion of the assistant attorney-general for the Interior Department which has received my approval, upon the question as to the right of the half-breeds or the descendants of the mixed bloods to receive allotments of Sioux Indian lands under the act of March 2, 1889.

The controlling legal principle involved in the question submitted is, whether the common-law rule that the offspring of free persons follow the condition of the father prevails in determining the status of children born of a white man, a citizen of the United States, and an Indian woman, his wife.

In the opinion submitted it was held that the common-law rule, as above stated, does prevail, and that children born of such parents are therefore not Indians but citizens of the United States, and consequently are not entitled to receive allotments under the act of March 2, 1889.

This was the ruling of Secretary Noble, in his decision of December 14, 1891, in the case of Black Tomahawk *v.* Waldron, which was based upon the opinion of the Assistant Attorney-General, to whom the following questions had been submitted: First, as to whether Mrs. Waldron, a Santee Sioux Indian, receiving annuities and rations at the Cheyenne River Agency, was at the time the act of March 2, 1889, took effect and on the evidence furnished entitled to receive such annuities and rations; and, second, under the law and evidence she was entitled to the allotment of land claimed by her if the first question should be answered in the affirmative.

A motion for review was filed by Mrs. Waldron, asking for reconsideration of the question that the case might be more fully presented, and the papers were resubmitted to the Assistant Attorney-General of this Department for further examination of the question involved therein.

On August 18, 1893, Assistant Attorney-General Hall submitted his opinion, concurring in the views of his predecessor as to the status of children born of a white man, a citizen of the United States, and an Indian woman, his wife, and for this

reason, as well as for other reasons embodied in his said opinion, herewith transmitted, he advised that Mrs Waldron was not entitled to the allotments claimed by her, which opinion received my approval, and I still adhere to it; but in view of the important legal questions involved in this case, and of the interests that may be affected thereby, I have deemed it advisable to submit the same for your consideration and to request your opinion upon all of the questions considered in the opinion of the Assistant Attorney-General for the Department of August 18, 1893.

Very respectfully,

HOKE SMITH,
Secretary.

The ATTORNEY-GENERAL.

OPINION OF THE ATTORNEY-GENERAL IN REGARD TO CITIZENSHIP OF JANE E. WALDRON, A HALF-BREED SIOUX INDIAN. (BLACK TOMAHAWK.)

DEPARTMENT OF JUSTICE,
Washington, D. C., February 9, 1894.

SIR: Your letter of January 4, asking my opinion with relation to the citizenship of Jane E. Waldron, and the opinions of Assistant Attorneys-General Shields and Hall therewith transmitted have received my careful attention.

It appears that Mrs. Waldron's mother was a half-breed Sioux Indian. Her father was white and supported his family off the reservation until 1883 or 1884, after she came of age. At that time, meeting with reverses, they came to the agency and were placed on the roll as entitled to rations, etc. Mrs. Waldron's husband is also a white man.

Mrs. Waldron claims the rights of a Sioux Indian under the act of March 2, 1889, chapter 405, entitled "An act to divide a portion of the reservation of the Sioux Nation of Indians, in Dakota, into separate reservations, and to secure the relinquishment of the Indian title to the remainder, and for other purposes." This act carves out six small reservations from the Great Reservation of the Sioux Nation, and releases the balance of the land to the United States. Various provisions are made in the act for allotment of lands in severalty, and under one of these plaintiff claims as an "Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect."

Her claim to an allotment has raised a number of interesting questions in your Department, among which you submit the question, "Whether the common law rule that the offspring of free persons follow the condition of the father prevails in determining the status of children born to a white man, a citizen of the United States, and an Indian woman, his wife?"

It will be noticed that the act under consideration was dependent for its validity upon the consent of the Indians. (Sec. 28.) In other words, it was substantially a treaty with the Sioux Nation; acts in this form having taken the place of the ancient Indian treaty since the latter was prohibited by act of Congress in 1871. By the agreement confirmed in this act the Sioux Nation gave up a large amount of territory, and the rights conferred on the nation or on individuals were in consideration thereof. The persons entitled to such rights are the persons who, at the time of the agreement, constituted the Sioux Nation and were lawful members thereof. The question, therefore, whether any particular person is or is not an Indian, within the meaning of this agreement, is to be determined, in my opinion, not by the common law, but by the laws or usages of the tribe. (*See* Western Cherokee Indians *v.* United States, 27 Ct. Cl., 1, 54; United States *v.* Old Settlers, 148 U. S., 427, 479.) As to these laws or usages I am not informed and am not qualified to advise. I do not think that they can be regarded as matters of which judicial notice can be taken. They present rather questions of fact like other local usages. Presumptively a person apparently of mixed blood residing upon a reservation and claiming to be an Indian is, in fact, an Indian. (Famous Smith *v.* United States, 151 U. S. ——, decided January 3, 1894.)

Other interesting questions are discussed in the opinion, but they are not presented in such a way that I can answer them. No definite statement of facts is submitted, nor are the questions to which an answer is desired separately formulated. "Where an official opinion from the head of this Department is desired, on questions of law arising on any case, the request should be accompanied by a statement of the material facts of the case, and also the precise questions on which advice is wanted." (14 Op., 367, 368; 16 Op., 487, 488; 19 Op., 465, 466, 696.)

You submit all the evidence for my consideration, requesting my opinion "upon all of the questions considered in the opinion of the assistant attorney-general for

the Department of August 18, 1893." This substantially asks me to exercise appellate jurisdiction over a decision upon mixed questions of fact and law. This I am not empowered to do.

Very respectfully,

RICHARD OLNEY,
Attorney-General.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, January 12, 1894.

SIR: I have the honor to request that the papers in the case of Black Tomahawk *v.* Jane E. Waldron, transmitted with letter of the 10th instant, be returned to this Department temporarily that copies of certain papers may be made for transmittal to the Senate, in response to Senate resolution of the 4th instant.

I have the honor to be, very respectfully,

WM. H. SIMS,
Acting Secretary.

The ATTORNEY-GENERAL.

DEPARTMENT OF THE INTERIOR,
Washington, January 31, 1894.

SIR: I have the honor to return herewith the papers in the case of Black Tomahawk *v.* Jane E. Waldron, submitted to you with Department letter of 10th instant, and recalled for purpose of making copies for the Senate by Department letter of 12th instant.

I have the honor to be, very respectfully,

WM. H. SIMS,
Acting Secretary.

The ATTORNEY-GENERAL.

DEPARTMENT OF THE INTERIOR,
Washington, February 21, 1894.

SIR: Under date of January 4, 1894, was transmitted for your consideration an opinion of the assistant attorney-general of this Department, approved by me, in relation to the claim of Mrs. Jane E. Waldron, of mixed blood, to receive an allotment of Sioux Indian lands, under the provisions of the act of March 2, 1889, (25 Stats., 888–889).

In the letter of transmittal it was stated that the controlling legal principle involved was, "whether the common law rule that the offspring of free persons follow the condition of the father, prevails in determining the status of children born of a white man, a citizen of the United States, and an Indian woman, his wife."

In reply, under date of February 9, 1894, you state in substance that the agreement confirmed by said act of Congress only conferred rights upon persons who at the time of the agreement constituted the Sioux Nation and were lawful members thereof; that the question whether any particular person is or is not an Indian within the meaning of this agreement is to be determined, "not by the common law, but by the laws or usages of the tribe;" that as to those laws and usages you are not informed or qualified to advise, and regard them as local usages to be proven rather than matters of which judicial notice is to be taken.

In conclusion, you state that the questions discussed in the opinion of the Assistant Attorney-General, whilst interesting, are not presented in such a way that you can answer them; that no definite statement of facts is presented nor are the questions to which an answer is desired separately formulated.

I think the statement in my former letter as to the controlling legal principle involved was too narrow, and I agree with you that the question is not restricted to the application of the common-law rule that children of free persons follow the condition of the father, but the inquiry is whether the claimant, Mrs. Waldron, is a Sioux Indian, entitled to an allotment within the ceded reservation, and the answer depends upon the peculiar facts of the case. This was the view presented and discussed in the opinion of Assistant Attorney-General Hall, and I will now endeavor to rehearse the matters stated in that opinion as briefly as may be conducive to clearness, so as to comply with the stated requirements of your Department, in respect to which, as pointed out by you, my former communication seems to be defective. I therefore present to you the following facts:

It is shown that Mrs. Waldron's great-grandmother was a full-blooded Sioux Indian, who married Col. Dixon, a white man. Mrs. Waldron's grandmother was, therefore, a half-breed, and married, also, a half-breed, named Henry Angie; consequently, Mrs. Waldron's mother was also a half-breed, and she married Arthur Van Meter, a white man; so that Mrs. Waldron, who also married a white man, has but one-fourth Indian blood in her veins. It is not shown that Dixon and his wife lived with the tribe as Indians, or claimed or were recognized as having Indian rights. The same may be said of Angie and his wife, except that Angie and his wife, for themselves and children, including Mrs. Van Meter, then unmarried, claimed and received Sioux half-breed scrip. And Mrs. Waldron, in her testimony, states that her father supported his family and educated his children off the reservation; that meeting with reverses in 1883 or 1884 they came to the agency and were placed on the roll as entitled to rations, etc., which they have since received.

This does not appear to have been done by authority of the tribe, but was the action of the U. S. agent; nor does it appear that Van Meter's family were ever adopted by or otherwise incorporated into said tribe or nation. It is true that Mrs. Waldron's husband appears to have signed the agreement confirmed by the act of March 2, 1889, *supra*. He did not, however, sign as an Indian, but his name is put down as that of a white man, as will be seen by reference to p. 291, Senate Ex. Doc. No. 51, first session Fifty-first Congress. But by reference to p. 93 of the same document, being official report of the Sioux commission appointed to negotiate said agreement, the Indians, through American Horse, one of their chiefs, objected most vigorously to the half-breeds and white men (squaw men) signing the agreement, to which objection Governor Foster, chairman of the commission, replied, "We let them sign, but we don't count them."

Your attention is also invited to the fact that, by article 9 of the treaty of July 15, 1830 (7 Stats., 328), between the United States and the Sioux and other Indians, the tribal authorities of the Sioux Indians solicited permission to bestow upon the half-breeds of their nation a described tract of land as a reservation, and, the United States acceding to the request, such reservation was set apart. Subsequently, under the provisions of the act of July 17, 1854 (10 Stats., 304), the United States purchased the reservation thus specially set aside from the half-breeds and mixed bloods and paid therefor, as provided in that act, with what is known as "Sioux half-breed scrip;" and the records of the Indian office show that Mrs. Waldron's mother and grandmother received such scrip for 480 acres, their allotted proportion of the land within the special reservation, the scrip issued to the Angie family aggregating 3,840 acres.

On this statement of facts I ask your opinion whether Mrs. Waldron is entitled to an allotment of land on the ceded Sioux Reservation, under the provisions of the act of March 2, 1889 (25 Stats., 888)?

Very respectfully,

HOKE SMITH,
Secretary.

The ATTORNEY-GENERAL.

DEPARTMENT OF THE INTERIOR,
Washington, August 30, 1890.

DEAR SIR: Your several letters, of April 8 and 14, and July 23, 1890, have received due consideration, both at the hands of the Commissioner of the General Land Office and the Assistant Attorney-General, and I herewith transmit you the opinion of the Assistant Attorney-General, which I approve, and which you will adopt for your guidance in regard to what constitutes grazing lands, or lands mainly valuable for grazing purposes, under the provisions of section 13 of the act of March 2, 1889 (25 Stats., 888).

Yours, truly,

JOHN W. NOBLE,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., August 27, 1890.

SIR: In accordance with your request for an opinion as to the correctness of the views expressed by the Commissioner of Indian Affairs in his letter of April 8, 1890, upon certain questions propounded by Indian Inspector Armstrong in his letter of

March 25, 1890, as to the rights of Indians on the ceded Sioux lands under the act of March 2, 1889 (25 Stats., 888), I would respectfully submit the following:

Inspector Armstrong submitted three questions, as follows:

"Can he (a Sioux Indian living on ceded lands) take for his children, minors, as he would on the reservation for each and every member of his family?

"Can he take grazing land outside the same as if he were within the diminished reservation for each member, etc.?

"Who is to decide as to what is grazing and what is agricultural land?"

The Commissioner of Indian Affairs holds the opinion that an Indian living on these ceded lands is entitled to make the same selections as to character and quantity of land as if he were within one of the reservations. Upon this point the Commissioner of the General Land Office, to whom the matter was referred for an opinion, concurs.

Section 13 of said act provides—

"That any Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing upon any portion of said Great Reservation not included in either of the separate reservations herein established, may, at his option, within one year of the time this act shall take effect, and within one year after he has been notified of his said right of option, in such manner as the Secretary of the Interior shall direct, by recording his election with the proper agent at the agency to which he belongs, to have the allotment to which he would be otherwise entitled on one of said separate reservations upon the land where such Indian may then reside, such allotment in all other respects to conform to the allotments hereinbefore provided."

This language is clear and unambiguous, and in my opinion there can be no doubt as to the correctness of the views of the Commissioner of Indian Affairs as to the effect thereof. Virtually, the same views were announced in the circular of March 25, 1890 (10 L. D., 562).

In answer to the question as to who shall decide whether the lands to be allotted are agricultural or grazing lands, the Commissioner of Indian Affairs suggests that where such lands have been surveyed "the surveyor's description of the same might be taken as the guide, and all lands noted on the plats of survey as first and second class might be held to be agricultural land, and those noted as third and fourth class as being mainly valuable for grazing purposes;" and where the land has not been surveyed that the question be "left to the determination of the special agent of this Bureau, who will be on the ground to assist the beneficiaries in making their selections and declaring their elections." The Commissioner of the General Land Office upon this point says:

"To the third question he [the Commissioner of Indian Affairs] gives the opinion that the special agent of the Indian Bureau should decide as to what is agricultural and what grazing lands, in executing the statute, and in this opinion I also concur."

While the act itself does not in terms direct by whom or in what manner the character of these lands is to be determined, yet it does provide in section 10 that the allotments provided for shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made. It seems to me that the question as to the character of the land, and therefore as to the quantity to be allotted, might be safely left to the determination of these parties. In case the land is not within either of the reservations provided for, then the Indian Agent to act would be the one in charge of the reservation where the Indian claimant for such land receives his rations and annuities. With these parties it might be advisable for the General Land Office to be represented by a special agent, thus constituting a commission of three persons to which the determination of the character of the land could be submitted.

The papers and letters submitted to me are herewith returned.

Very respectfully,

GEO. H. SHIELDS,
Assistant Attorney-General.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., August 29, 1890.

SIR: In accordance with your request for an opinion as to the correctness of the views expressed by the Commissioner of Indian Affairs in his letter of April 14, 1890, relative to the provisions of section 13 of the Sioux act of March 2, 1889 (25 Stat., 888), and of the views of the Commissioner of the General Land Office, as expressed in his letter of July 8, 1890, as to "what constitutes grazing lands or

lands mainly valuable for grazing purposes," under said act, I would respectfully submit the following:

As to the propositions numbered 1, 2, and 3 in the letter of the Commissioner of Indian Affairs, the facts and the position taken by him, together with the arguments in support thereof, are fully and clearly presented in his said letter. It does not seem necessary to further elaborate these propositions. The views advanced by the Commissioner on these questions are in my opinion correct and should be adopted.

Upon the fourth proposition presenting the question as to what constitutes grazing lands within the meaning of said act, the Commissioner of Indian Affairs suggested that the opinion of the Commissioner of the General Land Office would be valuable. This suggestion it seems was followed and the matter was accordingly referred. The Commissioner of the General Land Office submitted his views in his letter of July 8, 1890. After a discussion of the question it is concluded that if land would produce a greater profit if used for grazing purposes than if used in any other way, then it should be classed as grazing lands or land mainly valuable for grazing purposes. I concur in this opinion and agree with the Commissioner that no more definite general rule for determining this question can be laid down.

The papers and letters submitted to me are herewith returned.

Very respectfully,

GEO. H. SHIELDS,
Assistant Attorney-General.

THE SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 8, 1890.

SIR: I have the honor to be in receipt, by Department reference March 31, 1890, o a letter from Inspector Armstrong, dated March 25, 1890, asking:

(1). Whether Indians who are entitled to allotments within the recently ceded Sioux lands under the first paragraph of section 13, of the act of March 2, 1889 (25 Stats., 888), can take allotments for their minor children on the ceded lands the same as if they were to take their allotments within one of the separate reservations, and

(2). Who is to decide as to what is grazing land and what agricultural land?

In reply to the first inquiry, I have to state that it is clearly the intention of the act (section 13) that the nonreservation Indians—that is, those who were residing upon the ceded lands when the act took effect (February 10, 1890,—shall fare precisely the same in all respects as do the Indians residing upon the separate reservations. They are given one year in which to decide whether they will take their allotments within the ceded lands, and if they so elect to do, then they are to have the allotments to which they would otherwise be entitled on the separate reservations, upon the ceded land where they resided when the act took effect.

The allotment to which they would be entitled upon the separate reservations embraces allotments to minor children, to be selected by the head of the family, and therefore there can be no doubt that the Indians who elect to take allotments upon the ceded land are entitled to select for their minor children also. Every provision of the act having any bearing upon the question points to that conclusion.

In regard to the second question presented, I have to say that under appropriations made during the past two years for the survey of the public lands the law has provided that the surveys shall be confined "to lands adapted to agriculture," and the General Land Office, I understand, has held that lands adapted to grazing may be surveyed as agricultural lands; in other words, that lands suitable for any branch of agriculture, of which grazing is one, may properly be regarded as agricultural lands in the meaning of the law.

In the Sioux act, however, a clear distinction seems to be intended between agricultural lands and grazing lands or lands mainly valuable for grazing purposes, and the character of the land determines the size of the allotment, to this extent, at least, "that where the lands on any reservation are mainly valuable for grazing purposes" (and the same would apply to the ceded lands) double the quantity is to be allotted. Hence the necessity for establishing some standard by which the Indian allottees and the allotting agents may be governed.

Where the lands have been surveyed the surveyor's description of the same might be taken as the guide, and all lands noted on the plats of survey as first and second class might be held to be agricultural land, and those noted as third and fourth class lands as being mainly valuable for grazing purposes. To be sure, this would be leaving the determination of the matter entirely to the judgment of the surveyor who makes the survey, but the surveyors are sworn officers, under bond, and I do not see why their judgment may not be relied upon without imperiling the rights or interests of the Indians.

The question will arise, however, where Indians electing to take allotments on the ceded lands desire to declare their election and stake off their claims before the sur-

veys are extended over the lands claimed by them. In such cases the question whether the lands are mainly valuable for grazing purposes could be left to the determination of the special agent of this Bureau, who will be on the ground to assist the beneficiaries in making their selections and declaring their elections.

The plan I have presented is the best that suggests itself to me. It is not altogether satisfactory, however, for several reasons, one of which is that the surveyor and the special agent may differ in opinion as to what shall be regarded as agricultural land and what grazing land, and the question being left to their individual judgment, one working in one part of the field and the other in another, and perhaps having no communication with each other, the special agent would declare certain lands to be mainly valuable for grazing purposes and allow the Indian claimant to select perhaps a mile square for himself and another mile square for his children; then in a short time along comes the surveyor and classes the land as agricultural. The whites would then very likely insist on a reduction of the Indian allotments, the Indian would feel aggrieved and try to resist, and interminable trouble would follow all along the line.

The Department has expressed the desire "to have the allotments of lands to Indians selected and the Indians compelled to prosecute their claims without waiting for the year to expire," and a special agent, George P. Litchfield, has been sent out by this office, accompanied by Rev. T. L. Riggs, of the Dakota Mission, to assist the Indians in so doing.

The special agent was instructed to have the Indians stake off their respective claims, limiting themselves to the quantity of land to which they are entitled under the act. This will be done at once and before it will be possible to extend the surveys over the ground, hence the question submitted by Inspector Armstrong, "Who is to decide as to what is grazing and what is agricultural land?"

I would respectfully suggest that the opinion of the General Land Office would be valuable in the premises, as similar questions are constantly arising in connection with the disposition of the public lands.

Inspector Armstrong's letter is herewith returned.

Very respectfully, your obedient servant,

R. V. BELT,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 14, 1890.

SIR: Under date of March 15, 1890, the Commissioner of the General Land Office transmitted to this office certain communications (herewith inclosed) from C. A. Lounsberry, esq., special agent of that office, relating to land matters within the late Sioux cession, act of March 2, 1889 (25 Stats., 888).

The questions presented are:

(1) As to the status of white men married to Indian women of the Sioux Nation; what their rights are in respect of allotments of land under said act.

(2) Where two Indians claim the same ground, one of them holding in good faith, the other for speculative purposes. They can not agree. The agent runs a provisional line dividing the lands between them (see section 9 of the act). The Indian holding for speculation sells out and goes away. Can the Indian who claims the tract in good faith be thus deprived of his right to that portion of the tract claimed and sold by the speculating Indian?

The special agent reports that there are instances where the original (Indian) occupant has been in unmolested possession for years, and designing white men have put other Indians on the land to contest in order to force the running of a divisional line so that a part of the land, at least, may become available for speculative purposes.

(3) The special agent states that three-fourths of the Cheyenne River Agency Indians are located upon the ceded land—on the very best portion of it—and if allowed to take allotments for themselves and for their children as well within the ceded territory, they will be sure to do so, the result of which will be that the reservation set apart for the Cheyenne River Indians will remain in its present wild, unsettled condition.

The special agent thinks these Indians should be required to select lands for the allotment to their children *within the reservation*, which, he observes, "will be no disadvantage to them because they can select right across the river (Cheyenne), and will result in giving the whites some show."

(4) Great difference of opinion exists as to what lands are to be regarded as "mainly valuable for grazing purposes" in the meaning of the proviso to section 3 of the act aforesaid.

The special agent states, by way of illustration, that land in Custer County, Nebr., which a few years ago was entirely given up to grazing, is now very generally occupied under the homestead and preemption acts, corn being raised on the highest hills, on the hill sides, and down in the ravines. He further observed that all agree in the opinion that while the "bad lands" are fit only for grazing, the table and valley lands should not be so classed, unless badly crowded by sand hills or cut up by deep ravines.

In reply to the first question raised, I have to state that it has ever been held by this office that a white man acquires no rights whatsoever upon an Indian reservation by virtue of his marriage to an Indian woman, and in carrying out the provisions of the general allotment act that rule has been invariably followed.

In all instructions from this office to allotting agents (and they are always submitted to the Department for approval) the direction has been that "Indian women married to white men should be regarded as heads of families. The white husbands can not take allotments."

The special agent, Mr. Lounsberry, refers to the Sioux treaty of 1868, and submits an opinion by Gen. John B. Sanborn, who was one of the commissioners who negotiated said treaty, in support of his proposition "to recognize the rights of those (white men) who have intermarried with the Sioux as being equal in all respects to the Sioux."

It is true the recent Sioux act (sec. 19) continues in force all the provisions of the treaty of 1868 (15 Stats., 635) and the agreement of 1877 (19 Stats., 254) not in conflict with the provisions and requirements of said act.

The special agent of the General Land Office points to the sixth article of the treaty of 1863, which reads as follows:

"If any individual belonging to said tribes of Indians, or legally incorporated with them, being the head of a family, shall desire to commence farming, he shall have the privilege to select * * * a tract of land in said reservation, not exceeding 320 acres in extent," etc., and asks whether part blood Indian women, married to white men, are to be regarded as the heads of families, or whether their white husbands are to be regarded as "legally incorporated" with the tribes and entitled to be classed as Indians having all the rights of Indians.

Evidently the question is asked in order to determine the rights of Indian women who are married to white men, and of their white husbands, in respect of allotments upon the ceded lands under section 13 of the Sioux act.

I have been unable to find any decision whatever as to who were to be regarded as "legally incorporated" with the Sioux tribes at the date of the treaty of 1868, but even admitting Gen. Sanborn's construction of the language of the treaty to be correct, I do not think that any white man married to an Indian woman has a right to an allotment upon the ceded lands under the thirteenth section aforesaid, unless he was residing within the ceded territory at the time said act took effect and *upon a tract of land previously selected, certified, and recorded in the "land book"* under and in accordance with Article VI of the treaty of 1868.

It can not be successfully contended that under section 19 of the Sioux act, which continues the provisions of the treaty of 1868, either the Indians themselves or individuals "legally incorporated" with them would have the right *now* to make selections, etc., upon the ceded territory under Article VI of the treaty aforesaid.

The right to take allotments under said section 19 is limited by the terms of the section itself to *Indians* who were residing upon the ceded lands when the act took effect, and it would be "in conflict with the provisions and requirements of this (the said) act" to allow any Indian or "legally incorporated" individual to make a selection within the ceded lands under article 6 of the treaty of 1868 aforesaid, irrespective of the limitation of the late act.

It follows, then, that the only rights white men could possibly have to an allotment upon the ceded lands would be by virtue of his legal incorporation with the tribe at the date of the Sioux treaty of 1868, and the further fact of his having selected and had certified and recorded in the "land book" kept at the agency, the tract of land he now claims.

It will be observed that the benefits of the 13th section of the Sioux act, in respect of allotments upon the ceded lands, are conferred upon *Indians* only. There is no provision for "incorporated individuals." Whatever rights they may have proceed from the treaty of 1868, and unless they availed themselves of the privilege therein conferred and complied with the terms of the treaty, there are no rights or privileges to be "continued in force," so far as they are concerned, with reference to the ceded lands.

In carrying out the provisions of the general allotment act, Indian women married to white men, or to other persons not entitled to the benefits of the act, are regarded as heads of families and entitled to allotments as such. The same rule should govern in allotting lands under the Sioux act.

In reply to the second question presented, I would say that where two Indians claim the same ground, "one holding in good faith and the other for speculation,"

the entire tract should be secured to the Indian who has made bona fide settlement thereon with a view to obtaining title thereto and making it his home.

The law says (section 9) that "where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act."

The inquiry, coming as it does from the special agent of the General Land Office, relates of course to the ceded lands. It can readily be seen how an Indian might claim a tract of valuable land, upon which he had been residing, without desiring or intending to make it his home, but simply in the hope of selling it within the year in which he is allowed to declare his election to take an allotment, and cases of that kind have already been reported.

It stands to reason that such procedure would be a violation of the spirit and clear intent of the law. The lands were ceded to the United States for certain valuable considerations, to be disposed of to actual settlers, to furnish homes for our constantly increasing population and as a means for the proper development of the country. But in order that every Indian should be properly provided for and the lands upon which he had settled and to which he had perhaps become strongly attached should be secured to him for a homestead, it was provided that he might, if he should so elect, have the land upon which he resided at the time the act went into effect allotted and patented to him instead of being required to remove to one of the separate reservations. It was not for a moment intended to permit him to hold his land for a time, under pretense of wanting it for the allotment, and then sell out and go upon the reservation or elsewhere. He must either take his tract in good faith and declare his election to have it allotted to him or let it go to the white settler as contemplated by the act.

I would suggest that, in order to prevent any such fraudulent or unauthorized sales by Indians, the General Land Office be instructed to direct the local land officers to peremptorily refuse all entries attempted to be made by white settlers within the time which the Indians may exercise their right of option under the law, viz, until February 28, 1891, upon any lands occupied and claimed by Indians. The Department has already instructed that office that in its opinion no one purchasing Indian claims should be allowed to enter them within a year. Perhaps that is sufficient. If the direction be faithfully carried out, the Indian could not sell at all, for if he should declare his election to take an allotment it must, under the clear intent and purpose of the law, be with the understanding that the land claimed by him is reserved only for allotment to him, and that the land when allotted is to be held in trust by the United States and not subject to alienation for a period of twenty-five years. If he should not declare his election, the white settler not being allowed to enter, there would be no incentive for him to hold the land for speculation, and the bona fide Indian claimant could take the whole tract (to the extent of the quantity of land he is entitled to) regardless of any divisional line that may have been drawn between him and the would-be Indian speculator.

Furthermore, no divisional line should run for the benefit of any Indian claimant when it is clearly evident that he intends to hold the land not for allotment, but simply for speculation; and his refusal to promptly declare his election to take an allotment when the opportunity is afforded him to do so should be sufficient proof of fraudulent intention on his part.

The third question relates to the large number of Cheyenne River Indians residing upon the ceded lands.

This is a matter that can not be remedied. We must be governed by the law as we find it. Under the thirteenth section of the act certain Indians are allowed to take allotments on the ceded lands; they have a right to select lands for allotment to their minor children also on the ceded lands, and we can not compel them to take their allotments, either for themselves or their children, on the reservation, as suggested by the special agent.

The fourth question, as to what constitutes grazing lands or lands "mainly valuable for grazing purposes," was discussed in office letter to the Department of the 8th instant, in which it was suggested that the opinion of the General Land Office would be valuable in the premises, as similar questions are constantly arising in connection with the disposal of the public lands.

I should like to have the opinion of that office if further discussion or opinion by this office is desired.

I transmit herewith the letter of the Commissioner of the General Land Office and accompanying copies of papers submitted by Special Agent Lounsberry, with request for their return to this office.

A copy of this report is inclosed.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 8, 1890.

SIR: I have had the honor to receive the inclosed communication addressed to the Hon. Secretary of the Interior by the honorable Commissioner of Indian Affairs under date of the 14th April, 1890, by reference indorsed thereon under date of the 21st ultimo, by the Hon. George Chandler, First Assistant Secretary, for an expression of my opinion upon the fourth question referred to therein, viz, "What constitutes grazing lands or lands mainly valuable for grazing purposes?"

In reply, I have to state that there are various classes of lands known to this office as embraced in the public domain, among which may be mentioned agricultural lands, mineral lands, desert lands, timber and stone lands, grazing lands, and saline lands. I know of no general rule or formula that may be set forth as a means of determining to which class any particular lands belong without examination of the lands in question, in comparison with other lands, as to their value for particular purposes. When practical questions have arisen as to the character of lands in the administration of the land laws, they have been determined by investigation of the facts and judging as to the value of the lands for particular purposes as compared with other lands. That is, if the lands could be profitably employed for agricultural purposes, rather than for any other use of which they were susceptible, the lands were classed as agricultural; if they could be more profitably employed for mining than agriculture, they have been regarded and treated as mineral, and so on, with regard to the other classes.

In some instances lands have been entered as homesteads or preemptions for agricultural purposes, and on final proof being offered it has been shown that the lands could not be profitably used for anything but grazing. In such cases they have been classed as grazing lands, and the laws have been considered as satisfied if the settlers have resided upon them for the proper period and used them for stock-raising, even if without cultivation as agricultural lands. In regard to desert lands, it has been laid down as a rule that lands that, one year with another, for a series of years will not, without irrigation, make a fair return to the ordinarily skillful and industrious husbandman, for the seed and toil expended in endeavoring to secure a crop, are desert lands within the law. This requires a knowledge of the capabilities of the particular tract in question and the exercise of judgment as to the result of an attempt to make a profit by using it as ordinary agricultural land, under ordinary conditions, or by using it for mining, grazing, or other purposes.

If it would produce a greater profit if used for agriculture than if used in any other way it would be classed as mainly valuable for agriculture; if it would produce a greater profit, if used for grazing, then it would be considered as grazing land or land mainly valuable for grazing. It may be difficult to do this in a satisfactory manner, in allotting lands to Indians, as agricultural or grazing lands, or lands mainly valuable for grazing purposes under the agreement with the Sioux, but I know of no other way. And I can think of no other way than this of giving an opinion on the question presented, viz:

"What constitutes grazing lands or lands mainly valuable for grazing?"

Very respectfully,

LEWIS A. GROFF,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, November 7, 1890.

SIR: This office is in receipt by reference from the Commissioner of the General Land Office, September 13, 1890, of a letter from W. J. Norville, a special agent of that office, in which, after referring to a council held by him with some of the Sioux Indians residing upon the ceded lands of the late great Sioux reservation (act March 2, 1889, 25 Stats., 888), he asks:

(1) Whether the *minor children* of Indians who are entitled to allotments within the ceded lands can have allotments within the ceded territory; if so, *where* upon the ceded lands are they permitted to take their allotments.

(2) Whether the children of mixed bloods are entitled to allotments upon the ceded lands.

In reply, I have to state that the first part of the first question, "whether the minor children of Indians who are entitled to allotments within the ceded lands can have allotments within the ceded territory," was submitted to the Department with certain other questions in office letter of April 8, 1890, with an expression of my views thereon, as follows:

"It is clearly the intention of the act (sec. 13) that nonreservation Indians, that is, those who were residing upon the ceded lands when the act took effect (February 10, 1890) shall fare precisely the same in all respects as do the Indians residing upon the separate reservations. They are given one year in which to decide whether they will take their allotments within the ceded lands, and if they so elect to do, then they are to have the allotments to which they would otherwise be entitled on the separate reservations, upon the ceded lands where they resided when the act took effect.

"The allotment to which they would be entitled upon the separate reservations embraces allotments to minor children, to be selected by the head of the family, and therefore there can be no doubt that the Indians who elect to take allotments upon the ceded lands are entitled to select for their minor children also. Every provision of the act having any bearing upon the question points to that conclusion."

The Department having requested the opinion of the Assistant Attorney-General for the Department upon these views as above set forth, that officer, in an opinion rendered August 27, 1890, fully concurred therein, and his opinion was transmitted to this office with Department letter of August 30, 1890.

The second part of the first question presented, as to where "upon the ceded lands are they (the minor children) permitted to take their allotments," suggests itself from the fact that the act (sec. 13) provides that the allotments to nonreservation Indians, that is, those living outside of the separate reservations, are to be taken "upon the land where such Indians may then reside;" and as in all probability but few, if any, minor children were residing separate and apart from their parents, the question arises, Where, then, are they to take their allotments?

I think the rule laid down by the Department in the case of minor children under the fourth section of the General Allotment act furnishes a guide in this case.

The Assistant Attorney-General (Hon. George H. Shields), in an opinion in the case of minor children under said act, said:

"On September 17, 1887, this Department issued a circular containing rules and regulations in relation to the allotments of lands under the fourth section of said act. * * *

"The circular requires that an Indian applying for an allotment under said section shall make oath that, among other things, he has made actual bona fide settlement upon the lands he desires to have allotted to him. And if the applicant, being the head of a family, is seeking allotments for his minor children, he is required to swear to their ages and 'that they are living under his care and protection.' This last requirement would seem to negative any idea that an affidavit of residence by the children upon the respective tracts applied for is required by the Land Office, and, I think, answers the inquiry on this point. Besides, the act nowhere expressly demands such an affidavit; and in the absence of such express demand it is not to be inferred that Congress intended in this instance to upset well-settled law and require that a minor child should have a residence separate and apart from that of his parents. I therefore concur in the conclusions arrived at by the Commissioner of Indian Affairs, that no actual settlement should be required in the case of allotment to minor children under the fourth section. * * * Whilst allotments within reservations may be made, as stated, without regard to contiguity, and whilst in my opinion it is not required that allotments to minor children under the fourth section shall be contiguous to that made to the head of the family, it is required that each allotment made to an individual, whether the head of a family, a single adult, or a minor child, where such allotment embraces more than one legal subdivision, must be composed of contiguous tracts, as in the ordinary disposition of the public domain under the settlement law."

This opinion was referred to me by the Secretary of the Interior, June 22, 1889, for my information and direction. (See Annual Report Indian Office, 1889, pp. 482–483.)

In the case under present consideration (minor children under the Sioux act) the same principle might well apply. Heads of families who are entitled to allotments within the ceded territory are entitled to select lands for allotment to their minor children; and as presumably in most cases, if not in all, the minor children were living under the care and protection of their parents, and had no residence separate and apart from them, the law would be inoperative in such cases if actual residence upon a particular tract of land were required in the case of minor children. I conclude, therefore, that heads of families who are entitled to allotments within the ceded lands under the thirteenth section of the Sioux act aforesaid have the right to select lands for allotment to their minor children upon any portion of the late Great Sioux Reservation not included in either of the separate reservations established under the provisions of said act.

In answer to the second question, as to whether the children of mixed bloods are

entitled to allotments within the ceded lands, I have to say that the rights of such children depend upon the rights of the parents. If the parents, or either of them, are entitled to the benefits of the thirteenth section of the act, the children would stand upon the same footing as the children of full bloods, and the question as to the rights of the parents can, as a general rule, be very readily determined.

The thirteenth section provides:

"That any Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing upon any portion of said Great Reservation not included in either of the separate reservations herein established, may," etc.

It makes no distinction between Indians of full blood and those of mixed blood, and the agency rolls will show who were "receiving" rations and annuities at the time when the act took effect, and the fact that a person's name was borne on the rolls would be prima facie evidence that he or she was "entitled" to receive the same. Still there may be exceptional cases. Possibly some who were on the rolls were not entitled to be there, and where reasonable doubt exists in any case it should be investigated and decided upon its individual merits.

I would respectfully request that if you concur in my views as above set forth you will so indicate to me in order that I may furnish the Commissioner of the General Land Office with a copy thereof for his information.

Very respectfully, your obedient servant,

R. V. BELT,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, November 12, 1890.

SIR: I acknowledge the receipt of your communication of 7th instant, giving your views on the following questions presented by the Commissioner of the General Land Office, in regard to the Sioux Indians residing upon the ceded portions of the Great Sioux Reservation (act of March 2, 1889, 25 Stats., 888):

"(1) Whether the minor children of Indians who are entitled to allotments within the ceded lands can have allotments within the ceded territory; if so, where, upon the ceded lands, are they permitted to take their allotments?

"(2) Whether the children of mixed bloods are entitled to allotments upon the ceded lands."

You state that the first part of the first question, "Whether the minor children of Indians who are entitled to allotments within the ceded lands can have allotments within the ceded territory," has been answered in the affirmative by Department letter of August 30 last; and you express the opinion that the rule laid down by the Department in the case of minor children under the fourth section of the general allotment act applies to the second part of the first question, "where, upon the ceded lands, are they (the minor children) permitted to take their allotments," and and you therefore conclude "that heads of families who are entitled to allotments within the ceded lands under the thirteenth section of the Sioux act aforesaid have the right to select lands for allotment to their minor children upon any portion of the late Great Sioux Reservation not included in either of the separate reservations established under the provisions of said act.

In answer to the second question you say, "if the parents, or either of them, are entitled to the benefits of the thirteenth section of the act, the children will stand upon the same footing as the children of full bloods, and the question as to the rights of the parents can, as a general rule, be very readily determined."

Your conclusions are concurred in, and the parents or guardians of minor children will be allowed to select for such minor children lands in the ceded tract that may be subject to such selection, and to which there is no valid adverse claim.

The letter from the Commissioner of the General Land Office is herewith returned.

Very respectfully,

GEO. CHANDLER,
Acting Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

P. S.—Copy of above decision sent by Indian Office to each of the Sioux Indian agents by indorsement on back of same, and copy also sent to the General Land Office with letter to that office, dated November 18, 1890.

DEPARTMENT OF THE INTERIOR,
Washington, January 24, 1891.

SIR: For the information of W. N. Norville, special agent of your office, who addressed a letter to you, dated December 16, 1890, concerning the rights of certain Sioux Indians in the ceded lands of the Great Sioux Reservation, you are instructed as follows:

Referring to the first question of Agent Norville, "Can Indians and their families, who resided on their separate reservations on the 10th day of February, 1890, now remove to the ceded lands and take the benefit of the thirteenth section of the act," it is provided in the thirteenth section of the Act of March 2, 1889 (25 Stats., 888)—

"That any Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing upon any portion of said Great Reservation not included in either of the separate reservations herein established, may, at his option, within one year from the time when this act shall take effect, and within one year after he has been notified of his said right of option in such manner as the Secretary of the Interior shall direct, by recording his election with the proper agent at the agency to which he belongs, have the allotment to which he would be otherwise entitled on one of said separate reservations upon the land where such Indian may then reside, such allotment in all other respects to conform to the allotments hereinbefore provided."

The proclamation issued in pursuance of the act is dated February 10, 1890.

If these Indians had been residing upon the lands upon the ceded tract at the date of the President's proclamation, February 10, 1890, they would be entitled to take their allotments upon the said tract any time prior to February 10, 1891. But because of the fact that they did not reside upon the ceded tract at the time of the President's proclamation, they can not now, under section 13 of said act, take allotments on the ceded tract.

Referring to the second question asked by Agent Norville, "If not, what privileges are they now entitled to on the ceded portion of the Great Sioux Reservation?" the only other provision of law by which Indians may take allotments of land off a reservation is found in section 4 of the act of February 4, 1887 (24 Stats., 388), which provides:

"That where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patent shall be issued to them for such lands in the manner and with the restrictions as herein provided. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior."

But this provision is not applicable to these Indians, as the tribe to which they belong have a reservation provided both by treaty and by said act of March 2, 1889—the Rosebud—and are absent therefrom without the consent of the agent.

Section 6 of the act of March 2, 1889, provides as follows:

"And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States, without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property."

If these Indians sever their tribal relations and reside separate and apart from their tribe and adopt the habits of civilized life, they will become citizens of the United States and be entitled to all the rights, privileges, and immunities of such citizens, and being such can avail themselves of the preemption and homestead laws thereof and acquire lands upon the ceded tract, as provided in said act.

A copy of Agent Norville's letter is herewith transmitted to you.

Very respectfully,

JOHN W. NOBLE,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 30, 1891.

SIR: The President having appointed you a special agent to make allotments of lands in severalty to the Sioux nation of Indians under the provisions of the act of Congress approved March 2, 1889 (25 Stats., 888), the following instructions are issued for your guidance in the work entrusted to you:

Your duties at present will be confined to the allotment of lands in severalty to the Sioux under the thirteenth section of said act, and you will give your attention first to the Indians of the Cheyenne River Agency.

Said thirteenth section provides as follows:

"That any Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing upon any portion of said great reservation not included in either of the separate reservations herein established, may, at his option, within one year from the time when this act shall take effect, and within one year after he has been notified of his said right of option in such manner as the Secretary of the Interior shall direct, by recording his election with the proper agent at the agency to which he belongs, have the allotment to which he would be otherwise entitled on one of said separate reservations upon the land where such Indian may then reside, such allotment in all other respects to conform to the allotments hereinbefore provided."

The eighth section of the act governs as to the quantity of land each Indian is entitled to receive, which is as follows:

"To each head of a family three hundred and twenty acres; to each single person over eighteen years of age, one-fourth of a section; to each orphan child under eighteen years of age, one-fourth of a section; and to each other person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-eighth of a section. In case there is not sufficient land in either of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provision of this act: *Provided*, That where the lands on any reservation are mainly valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual; or in case any two or more Indians who may be entitled to allotments shall so agree, the President may assign the grazing lands to which they may be entitled to them in one tract, and to be held and used in common."

A copy of the act is herewith inclosed (Public—No. 148); also copy of the President's proclamation of February 10, 1890, declaring said act to be in full force and effect.

You will observe that the Indians were given one year from the time the act took effect, or one year after being notified of their right of option in the premises within which to record their elections with the proper agent at the agency to which they respectively belonged.

The Secretary of the Interior gave notice to the Indians, February 15, 1890, that the act took effect February 10, 1890, and that the time in which they might exercise their right of option under said thirteenth section would expire on the 28th day of February, 1891. (See copy of printed notice herewith, 1,000 copies of which were sent to the Cheyenne River Agency February 20, 1890, for distribution among the Indians.)

Soon after the act took effect a special agent of this Bureau, George P. Litchfield, was sent to the Cheyenne River Agency to assist the Indians of that agency who were entitled and desired to do so in declaring their elections to take allotments within the ceded territory, and to help them stake off their claims as far as practicable.

Rev. T. L. Riggs, of the Dakota Mission, was employed for a period of two months to accompany and assist the special agent.

Under date of November 20, 1890, Agent Palmer, of the Cheyenne River Agency, reported that up to that time 63 Indians had declared their elections to take allotments within the ceded territory, and that as they were for the greater part progressive Indians, they would nearly all remain and take allotments there. He thought that many more would have elected to take allotments outside of the reservation had it not been for the "Ghost Dance" troubles. No recent report has been received from Agent Palmer touching this particular subject, but the register of the land office at Pierre, in a recent letter to the General Land Office, reported that it was thought that there would be 300 applicants for allotments under the thirteenth section within the Pierre land district.

On December 15, 1890, this office directed all the Sioux agents to transmit without delay to the register and receiver of the proper local land offices, a complete list of the Indians, who had up to that time declared their elections to take allotments

within the ceded territory, giving a description of the lands selected by them, if surveyed, by legal subdivisions, and if not surveyed, by metes and bounds, beginning with some natural object which may be readily identified when the lands are surveyed, and also thereafter to send a monthly statement to the register and receiver, of the selections made during the month.

A form of application prepared by this office for use of the Indians has been approved by the Secretary of the Interior, and 350 copies thereof have been sent to you in care of the agent at the Cheyenne River Agency.

It will be your duty to see that the blanks are carefully filled and the applications and certificates properly signed.

Only those Indians who, within the prescribed time (on or before February 28, 1891), recorded their elections with the agent at the agency to which they respectively belong, are entitled to allotments within the ceded lands under the 13th section of the act.

I inclose herewith, for your information and guidance, the following papers, opinions, and decisions, touching allotments under the Sioux act.

(1) Copy of a letter from this office to the agent at the Cheyenne River Agency, dated March 31, 1890, approved by the Secretary of the Interior April 7, 1890 (I. O. file mark 13330—1890), with instructions upon the following points.

(*a*) Whether allottees will have to pay taxes on their land.

(*b*) Whether they will have to pay taxes on their personal property.

(*c*) Whether they will have to pay taxes on horses, stock, agricultural implements, furniture, etc., issued to them by the United States.

(*d*) Whether they will have to pay poll or road taxes.

(*e*) Whether, where the head of a family selects land for his minor children, he will be required to put up houses on the land so selected for his minor children.

NOTE.—These questions are frequently asked by the Indians, and it will afford you satisfaction to be able to answer them.

(2) Copy of letter dated August 30, 1890, from the Secretary of the Interior (I. O. file mark 27236—1890) transmitting, for guidance of this office, opinions of Assistant Attorney-General of August 27 and 29, 1890, upon the following questions:

(*a*) Whether an Indian allottee on the ceded lands can take land for his minor children the same as he could if he were residing on one of the separate reservations.

(*b*) Can he take grazing land within the ceded territory?

(*c*) Who is to decide as to what is grazing and what agricultural land?

(*d*) As to status of white men married to Indian women of the Sioux Nation, what their rights are in respect of allotments of land under the act aforesaid.

(*e*) As to two Indians claiming the same ground, one holding in good faith, the other for speculative purposes.

(*f*) As to what constitutes grazing lands or lands "mainly valuable for grazing purposes" in the meaning of the proviso to section 8 of the act.

(3) Copy of the decision of the Acting Secretary of the Interior, dated November 6, 1890 (I. O. file mark 34387, 1890), to the effect that an Indian allottee may take land on school section if his residence was there.

(4) Decision of the Acting Secretary of the Interior, dated November 12, 1890 (I. O. file mark 34989. 1890), to the effect that heads of families entitled to allotments within the ceded lands have the right to select lands for allotment to their minor children upon any portion of the ceded lands, and that children of mixed bloods, the parents themselves being entitled, stand upon the same footing as children of full bloods.

(5) Decision of the Secretary of the Interior, dated January 24, 1891 (I. O. file mark 3333, 1891), to the effect that Indians who were not residing upon the ceded territory when the Sioux act took effect (February 10, 1890) are not entitled to allotments under the thirteenth section of said act.

The Sioux Indians are not entitled to the benefits of the fourth section of the general allotment act, its provisions not being applicable to them for the reason that they have had reservations provided for them.

They may become citizens of the United States, however, and as such be entitled to all the rights, privileges, and immunities of such citizens and being such can have the benefits of the homestead laws and acquire lands upon the ceded tract, as provided in the Sioux Act of March 2, 1889, aforesaid.

I have mailed to your address, care Agent P. P. Palmer. Cheyenne River Agency, seventy-five blank allotment sheets for your use in allotting lands to Indians belonging to that Agency under these instructions.

The schedule of allotments should be made and submitted in duplicate, and should be certified by both yourself and the agent in charge of the Cheyenne River Agency.

Each family should be grouped by itself and the relationship of each member to the head of the family shown in the column of remarks.

For the purpose of identification the sex and age of each allottee (on February 10, 1890, the date when the Sioux act took effect) should be given.

The name of the wife (legal) should be entered in the schedule immediately following that of her husband, but she should not be counted or numbered on the schedule as an allottee.

Where persons have both English and Indian names both should be given.

Great care should be taken to have the names properly spelled, and where they are borne on the regular agency census rolls, your spelling of the names should conform thereto, or if not, the spelling borne on the agency rolls should be given in the column of remarks upon your schedule, so that the allottee may be readily identified in the future.

To avoid mistakes which otherwise are so likely to occur, Indian names should always be carefully and distinctly written.

I am informally advised by the General Land Office that contracts have been made for the survey of nearly all of the ceded lands lying between the Big Cheyenne and White rivers, and that a great deal of the fieldwork has been completed and in some cases I understand the plats have been filed in the local land offices at Pierre and Chamberlain.

Before entering the field to make allotments it will be well for you to visit the land office at Pierre, and perhaps the surveyor-general at Huron, which is not far distant, and fully inform yourself as to how far the surveys have been extended and over what particular townships and sections, and for that purpose you are hereby authorized to visit these points.

It would, of course, simplify matters very much and save a great deal of extra work and trouble in the future, if allotments were made only upon lands over which the public surveys have been extended, and you may find that there are enough allotments to be made upon surveyed lands to keep you busy until the surveys now in progress, or to be resumed as soon as the weather will permit, shall have been extended over all the lands desired by Indians for allotment. If that should not be the case, however, you will have to proceed with the allotments and describe the tracts by metes and bounds as best you can. Such description should in every case begin with some natural object that may be readily identified, or a permanent artificial monument or mound set for the purpose, or if not in that way the allotment should be described in such other manner as to admit of its being readily identified when the official survey comes to be extended. (See note at bottom of application blanks.)

You are authorized to employ a surveyor and the necessary assistants in case you find it necessary in ascertaining location and describing tracts to be allotted, the assistants to be Indians if practicable. For such persons you will furnish the proper vouchers and report them upon a list of regular employés. This expense is payable out of the appropriation of $10,000 for surveying and allotting Indian reservations and of lands to be allotted to Indians, 1891. Your expenses for all employés for the remainder of the present fiscal year is limited to $1,000.

It will be your duty to assist the Indians in the preparation of their applications and the required proof.

When an application for allotment of land has been properly made and noted or recorded by the local land officer of the district in which the land is located, you will then allot the lands described in the application to the applicant, and at once certify the allotment to the Commissioner of Indian Affairs, in duplicate, on the blanks furnished you (form 5–150).

I can not well give you specific directions as to how many allotments you shall make and certify at one time. This will depend upon the conditions and circumstances as you find them.

You can either remain in the field until all the Indians have made their applications and then repair to the local land office with the applications, or you can make a certain number at a time, go to the land office with them, and then return to the field; or you can send the applications, if you have safe means of transmittal, to the local land office, and have the register place his certificate thereon (see certificate of register's signature on first page of the printed application), and hold them until you reach his office. You should have a distinct understanding with the register that he is not to transmit the application to the Commissioner of the General Land Office until you have made the allotments and entered them on your schedule, for you will need to have them before you when you come to make the allotments and certify them to this office.

In all cases where allotments are made upon unsurveyed lands it should be explained to the thorough understanding of the allottees that when the public surveys are extended over the lands, their allotments will be adjusted so as to conform to the legal subdivisions, and consequently their lines as staked off and described in the application may be considerably changed by such adjustment.

With the act itself before you I think these instructions will be sufficient for your thorough understanding of the duties required of you.

Should any questions arise requiring further instructions you will promptly present them to this office, fully and clearly stated.

You will make a weekly report to this office of the progress of your work.

Very respectfully,

R. V. BELT,
Acting Commissioner.

GEO. W. MCKEAN,
U. S. Special Agent, etc.,
Cheyenne River Agency, S. Dak.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, October 13, 1893.

SIR: Under date of June 22, 1893, the President granted authority for making allotments to the Indians of the Rosebud Agency, in South Dakota, under the provisions of the act of March 2, 1889, and the Secretary has designated you as a special agent to make such allotments. You will therefore proceed to the Rosebud Agency and reservation, in South Dakota, for the purpose of making said allotments.

(1) The eighth section of the act of March 2, 1889, provides for allotments in quantities as follows:

To each head of a family, three hundred and twenty acres; to each single person over eighteen years of age, one-fourth of a section; to each orphan child under eighteen years of age, one-fourth of a section, and to each other person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-eighth of a section. In case there is not sufficient land in either of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *Provided*, That where the lands on any reservation are mainly valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual, or in case any two or more Indians who may be entitled to allotments shall so agree the President may assign the grazing lands to which they may be entitled to them in one tract, and to be held and used in common.

The ages of allottees on June 22, 1893, the date of the President's order, determine the class to which they belong, and their ages should be given as of that date.

(2) One hundred allotments have been made on the Rosebud Reservation under the sixth article of the treaty of April 29, 1868, which provided for the allotment of 320 acres to the head of a family, and 80 acres to any person over 18 years of age not being the head of a family. These allotments are confirmed by the act of March 2, 1889, but such allottee is entitled to select enough additional land to bring the total quantity allotted him up to the amount allowed by the eighth section of the said act of 1889. These allotments were all made on unsurveyed lands and are described by metes and bounds. Where an allotment is made covering the old allotment the tract should be adjusted to the public surveys. Where an allottee under the treaty of 1868 desires to take other land than that covered by his certificate he may be permitted to relinquish his certificate by indorsement thereon and take other land in lieu thereof.

(3) Where an allottee selects a tract or tracts of 40 acres each, containing no agricultural lands, he will be allowed to select an additional tract of 40 acres containing no agricultural lands for each 40-acre tract.

(4) You will allow the Indians to select their lands, heads of families selecting for themselves and their minor children.

(5) Selections for orphans will be made by yourself and the agent.

(6) Allotments should be made with reference to the best interests of the Indians, the choice portions of the reservation being given them and care taken to see that they have every possible advantage which the reservation affords.

(7) Every allotment should be distinctly marked with permanent monuments, and each allottee of sufficient age should be personally shown the boundaries of the allotment selected by him so that he will understand exactly where the land selected by him lies, and every possible means should be taken to familiarize him with the boundary lines.

(8) The tracts given to each allottee should ordinarily be contiguous, but he may be allowed to select detached tracts, if necessary, in order to give him a proper proportion of woodland or water privileges.

(9) Each Indian should be allowed to select his land so as to retain improvements already made. Where the improvements of two or more Indians have been made on

the same legal subdivision, a provisional line should be run dividing the land between them as provided in section 9 of the act, unless an arrangement can be made between them by which the tract can be given to one of them. Such arrangements, however, must be satisfactory to all parties.

(10) Indian women married to white men should be regarded as heads of families, unless the white husband has been legally incorporated with the tribe. White husbands unless so incorporated can not take allotments.

It may be difficult to determine what constitutes legal incorporation. If a white man has been legally married to an Indian woman, has resided with her for some years upon the reservation, and has drawn annuities with the Indians and been recognized by them and the agent as entitled to rights on the reservation, he may be regarded as legally incorporated with the tribe. You will consult with the agent in all such cases. Where the evidence leaves the rights of claimants in doubt, you will submit the cases to this office for determination.

In all cases where Indian women have been married to Indian husbands and have children born of such marriage, who have been divorced from such husbands after the Indian custom, the mother should receive an allotment as the head of a family and be allowed to select land for her children not under the charge of the father at the date of these instructions, if competent to do so.

When a man and woman are living together without the form of marriage they should be treated as single persons, and each be given allotments as such.

(11) When an Indian has a plurality of wives the first should be regarded as the legal one, and the others allowed to take allotments as single persons. The status of such persons at the date of these instructions should be held as determining their rights.

(12) Orphans are children who have lost both parents or who have no Indian parent living.

(13) A person who has children or other persons legally or morally dependent upon him or her for care and support, being in the same household, should be regarded as the head of a family.

You will prepare a schedule of the allotments made, each family being grouped by itself and the relationship of each member to its head shown in the column of remarks. The name of the wife (legal) should be entered in the schedule immediately following that of the husband, for the purpose of identification, but she should not be numbered as an allottee, as married women are not entitled to allotments.

Where persons have both English and Indian names each should be given, and care taken to have the names properly spelled and plainly written.

Where Indians are known by more than one name, it would be well to give all the names by which such Indian is known.

The schedule should be made in duplicate and be certified to by both yourself and the agent in charge of the Rosebud Agency.

Your attention is called to the provisions of the eighteenth section of the act with reference to religious societies or organizations. A supplemental schedule will be prepared and submitted by you for the action of the Secretary of the Interior, under the provisions of said section, showing the lands not exceeding 160 acres in any one tract occupied upon the reservation at the date of the passage of the act of March 2, 1889, by any religious society or organization for religious or educational work among the Indians. You will also note upon this schedule, which should also be in duplicate, all tracts occupied for agency, school, or other Government purposes.

You will do such retracing of lines and reestablish such monuments as may be found requisite, employing a surveyor or surveyors and the necessary assistants, all of whom should be Indians in all cases where practicable.

Particular pains should be taken to secure a thoroughly competent and intelligent surveyor. For such persons you will submit proper vouchers and report employés upon a list of irregular employés. This expense is payable out of the appropriation of $25,000 for surveying and allotting Indian reservations, 1894. This appropriation being limited in amount it will be necessary for you to exercise the utmost economy in the employment of surveyors and assistants. As a considerable portion of the surveys have been very recently executed, it is not thought you will have much difficulty in finding the lines and corners. During a greater part of the time, therefore, it may not be necessary for you to employ any assistants other than a surveyor. As soon as practicable after entering upon duty you will report the amount needed to defray the expenses of resurveying; that is, the employment of a surveyor and necessary assistants for the quarter ending December 31, 1893.

You are also authorized to employ an interpreter when absolutely necessary, and you will report him upon your list of irregular employés. As you are understood to be familiar with the Sioux language, you will exercise economy in this respect.

It is expected that you will exercise great care in the work and prosecute it with diligence and vigor and as rapidly as a due regard to thoroughness and accuracy will permit.

Weekly report of the progress of the work should be made upon the accompanying blanks. I mail to you at the agency, for your use, 50 blank township plats and 100 blank allotment sheets. I also mail you blue-print copies of the plats of such townships as have been surveyed. The field notes of these surveys will also be transmitted for your use.

A copy of these instructions will be furnished to the agent in charge of the Rosebud Agency, with directions to furnish you all the assistance in his power.

Very respectfully,

D. M. BROWNING,
Commissioner.

Approved October 13, 1893.

WM. H. SIMS,
Acting Secretary.

GEORGE C. CREAGER, Esq.,
U. S. Special Agent, Washington, D.

P. S.—Similar instructions were issued to the allotting agents of the Crow Creek and Lower Brule reservations, S. Dak., dated respectively March 16, 1891, and February 18, 1892, which were also approved by the Department.

[Copy.]

INDIAN ALLOTMENT APPLICATION FOR LANDS WITHIN THE GREAT SIOUX RESERVATION, IN NORTH DAKOTA AND SOUTH DAKOTA, CEDED TO THE UNITED STATES BY THE ACT OF MARCH 2, 1889 (25 STATS., 888).

[Register's No. 6.]

UNITED STATES LAND OFFICE,
Pierre, S. Dak., April 23d, 1891.

Application No. 10.

I, Barney Travirsiee (Traversee), being an Indian of the Sioux Nation, and having recorded my election with the U. S. Indian agent at the Cheyenne River Agency, to take an allotment within the ceded territory, do hereby apply to have allotted[1] to me as the head of a family, under the provisions of the thirteenth section of the act of Congress, approved March 2, 1889 (25 Stats., 888), the[2] southeast quarter of the northwest quarter and the southwest quarter of the northeast quarter, and the southeast quarter of section three (3) and the north half of the northeast quarter of section ten (10) in township four (4) north and range thirty-one (31) east, containing three hundred and twenty (320) acres.

his
BARNEY X TRAVIRSIEE.
mark

Witnesses:
F. C. FLICKINGER,
WALTER SWIFT BIRD.

UNITED STATES LAND OFFICE,
Pierre, S. Dak., June 20, 1891.

I, L. H. Bailey, register of the land office, do hereby certify that there is no prior valid adverse right to the lands applied for, and described above.

L. H. BAILEY,
Register.

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[1] Insert "to me, as the head of a family," or "to me, as a single person over eighteen years of age," or "to my minor child" (giving the name of the child), as the case may be.

The same blank may be used in making application in the case of an orphan child, the agent's or special agent's name being inserted in place of the parent's, and the phraseology changed to suit the case.

[2] Insert description of the land, if surveyed, by legal subdivisions; if unsurveyed, by metes and bounds, beginning with some object that may be readily identified, or a permanent artificial monument or mound set for the purpose, or in such other manner as to admit of its being readily identified when the official survey comes to be extended.

If the application is for grazing land, it should be stated in the application that the lands are "mainly valuable for grazing purposes."

INDIAN ALLOTMENT AFFIDAVIT.[1]

I, Barney Traviršiee (Traversee), having filed my application, No. 10, for an allotment of land,[2] to me as the head of a family, under the provisions of section 13 of the act of March 2, 1889 (25 Stats., 888), do solemnly swear that I am an Indian of the Sioux Nation; that I am[3] the head of a family; that I was receiving and entitled to rations and annuities at the Cheyenne River Agency, on the tenth day of February, eighteen hundred and ninety, the date when said act took effect by proclamation of the President, but was residing upon a portion of the Great Sioux Reservation not included in either of the separate reservations established by said act; and that[4] I have not heretofore had the benefit of said section 13. (See note at bottom.)

his
BARNEY x TRAVIRSIEE.
mark

F. C. FLICKINGER.
WALTER SWIFT BIRD.

Sworn to and subscribed before me this 23d day of April, 1891.

GEO. W. MCKEAN,
Special Agent.

AGENT'S CERTIFICATE.

CHEYENNE RIVER AGENCY, *May 4, 1891.*

I, Perain P. Palmer, United States Indian agent, do hereby certify that the applicant, Barney Traversee, is an Indian of the Sioux Nation; that[5] he was receiving and entitled to rations and annuities at the Cheyenne River Agency, on the 10th day of February, 1890, but was residing on a portion of the Great Sioux Reservation not included in either of the separate reservations established by the act of March 2, 1889 (25 Stats., 888), and that[5] he recorded[6] his election to take an allotment within the ceded territory, at this agency on the 14 day of February, 1891.

PERAIN P. PALMER,
U. S. Indian Agent.

ALLOTMENT AGENT'S AND RESIDENT INDIAN AGENT'S JOINT CERTIFICATE.

CHEYENNE RIVER AGENCY, *April 23, 1891.*

We, George W. McKean, U. S. special agent, and Perain P. Palmer, U. S. Indian agent, do hereby certify that the land applied for by Barney Traversee, and described in the foregoing application, is agricultural land.

GEO. W. MCKEAN,
Special Agent to make allotments to the Sioux Nation of Indians.
PERAIN P. PALMER,
U. S. Indian Agent.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 24, 1891.

SIR: I have received your letter, dated December 21, 1891, inclosing a newspaper article (telegram) upon the opinion of the Assistant Attorney-General for this Department in the case of Black Tomahawk *vs.* Jane E. Waldron, in which it is stated that the opinion referred to has created great consternation among the squaw men and half-breeds, and that the land office at Pierre was crowded all day with parties offering contests upon choice pieces of land, etc.

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[1] The "Indian allotment affidavit" may be made before either the register or receiver of the land district in which the land is situated, or before any agent, special agent, or inspector of the Indian Department, or any officer authorized to administer oaths, and having a seal, in the land district where the land is situated.

[2] Insert "myself, as the head of a family," or "myself, as a single person over eighteen years of age," or "my minor child" (giving the name of the child), as the case may be. The same blank may be used in the case of an orphan child, the agent making the affidavit for such child, and changing the phraseology to suit the case.

[3] Insert "the head of a family," or "a single person over eighteen years of age," as the case may be.

[4] Insert "I," or "he," or "she," as the case requires.

[5] Insert "he" or "she" as the case may be.

[6] Insert "his" or "her" as the case may be.

NOTE.—If the application is in the name of a minor child, add: "and that the applicant is my child, that (he or she) is of the age of — years, and is now living under my care and protection." If the application is for lands claimed to be mainly valuable for grazing purposes, add: "and that the lands described in said application are mainly valuable for grazing purposes."

In connection therewith you are hereby directed to continue your work under existing instructions, and to pay no attention to the newspaper publication of the opinion referred to, or to other statements regarding the same, until you shall have received official notice thereof from this Department and instructions concerning the same.

By letter of this date to the Secretary of the Interior, I have recommended that the Commissioner of the General Land Office be instructed to notify the local land officers in that section of the country to the same effect.

Very respectfully,

R. V. BELT,
Acting Commissioner.

GEORGE W. MCKEAN, Esq.,
U. S. Special Allotting Agent, Chamberlain, S. Dak.

[Owen A. Rowe, attorney at law and investment broker.]

PIERRE, S. DAK., *January 16, 1893.*

DEAR SIR: I have asked my lawyer, Mr. Rowe, to write this letter to you because I think you will be willing to help me in the matter of getting my allotment application canceled. I made application about a year ago to relinquish, but the Secretary of the Interior denied my right to relinquish. He seems to think that I am an ignorant Indian who is not able to take care of himself. The facts are that I am not an Indian at all. I was born among and brought up with white people. My parents tell me that my mother had some Santee Indian blood in her veins, but my father is a white man. I have voted at all elections for about twenty-one years and my right to do so has never been questioned except at the last election, when I was denied the right to vote because my name was on the roll at the agency. When the allotting agent allotted me land I did not understand how it was or I would not have signed the papers. I do not want any land, rations, or annuities as an Indian. I want to take 160 acres—the land where I have lived for over nine years—as my homestead, as other people do.

I have made out a new affidavit and my attorney has put it into the Land Office. I will take it as a great favor if you will tell the people who will have to pass on my rights that I make this affidavit to relinquish in good faith. I do not think that it is right for them to insist on my being an Indian when I am not one, and do not want to be. I think that if you will explain to them that I am a white man and want to continue to be such that they will reconsider my case and let me take a homestead like my other neighbors and friends. The trouble in this matter is that a Mr. Stearns paid me some money so that he could live on part of the land which was covered by my allotment application. The Secretary decided that an Indian can not relinquish for money, but I do not claim to be an Indian. I would rather have 160 acres of land in my own name than many times that amount held in trust for me twenty five years, as I understand the law to be. I want to live like other white people and I do not want to be under the control of the Indian agent. My wife has a little Indian blood and she and the children have all the land they will ever need. I am better fixed in life than many other white people about me. I send my children to the public schools and do everything else that white people do. If you will tell them just how it is I will be very grateful to you.

Very truly, yours,

BARNEY TRAVERSEE.

(Dictated.)

By OWEN A. ROWE,
His Attorney.

Maj. JOHN A. PICKLER,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 28, 1893.

SIR: I transmit herewith, for your consideration, a letter, dated 13th instant, from the register of the U. S. land office at Pierre, S. Dak., inclosing a motion for review and accompanying affidavits in the matter of the attempted relinquishment by one Barney Traversie of lands allotted to him on the Great Sioux Reservation, S. Dak.

On December 12, 1892, the Commissioner of Indian Affairs furnished this office with a copy of your letter of December 5, 1892 (7494 Ind. Div., 92), wherein you concurred in the view of the Commissioner of Indian Affairs of October 1, 1892, relative to the

relinquishment of said Barney Travirsie. Copies of these letters were sent December 16, 189 , to the register and receiver at Pierre, S. Dak.

I am, sir, very respectfully, your obedient servant,

W. M. STONE,
Commissioner.

The SECRETARY OF THE INTERIOR.

UNITED STATES LAND OFFICE,
Pierre, S. Dak., January 13, 1893.

SIR: Referring to your letter D of initial I. R. C., of the 16th ultimo, I have the honor to report that I duly notified Barney Traversee of the action taken concerning his efforts to relinquish allotment application No. 6, Pierre series.

On the 12th day of January, 1893, Mr. Traversee, appeared in this office and executed what appears to be a motion for a review of his case.

I inclose herewith the papers filed by him and his attorney.

Very respectfully,

L. H. BAILEY,
Register.

The COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

HOUSE OF REPRESENTATIVES, UNITED STATES,
Washington, D. C., February 16, 1893.

DEAR SIR: I desire to call attention of the importance and desirability of an early adjustment of the contest or controversy between R. B. Stearns and one Barney Traversee, who it has been heretofore claimed was an Indian.

I understand the question has arisen that possibly Mr. Stearns used some unfair means to procure Traversee's relinquishment of the tract in question.

From my acquaintance with Mr. Stearns, and from his standing in the community, I can not think there can be any truth in such report.

It does not seem to me that while Traversee himself declares he is not an Indian, and that he therefore has no right to the land, that Mr. Stearns paid anything to Traversee for any right that Traversee might have to the land, but rather to keep peace with Traversee, who, as is well known, is regarded as a dangerous man, and one with whom Mr. Stearns or any prudent man would desire to keep the peace.

I submit that this case should be disposed of at once, and I ask action in accordance with the facts set forth in the papers.

Yours truly,

J. A. PICKLER.

The SECRETARY OF THE INTERIOR.

LAND OFFICE,
Pierre, S. Dak., February 29, 1892.

BARNEY TRAVISSEE, being duly sworn, says he is the same Barney Travissee in whose name Indian Allotment No. 6 of the said land office appears recorded. That he hereby relinquishes all claim to so much of the land mentioned in said record of said allotment as is hereinafter described and hereby withdraws all claim to said hereinafter described land, in any manner or form, and relinquishes the same to the United States.

He further says that he is the son of a white man duly married to and living with his mother, and that he is informed and believes that he is not entitled to an allotment of said hereinafter described land as an Indian. That neither himself nor his said father have ever been incorporated into any band or tribe of Indians, and that he is and claims to be a citizen of the United States. That the said land hereby relinquished is known and described on the public plats as the SE. ¼, sec. No. 3, T. No. 4, R. No. 31, E. B. H. M., also the N. ½, NE. ¼, sec. 10, and SE. ¼, NE. ¼, and SE. ¼, NW. ¼, of sec. 3, said town and range. That part of said land he desires to enter as a homestead under the homestead laws of the United States.

his
BARNEY x TRAVISSEE.
mark

Subscribed and sworn to before me this 29th day of February, 1892.

L. H. BAILEY,
Register.

SUPPLEMENTARY AFFIDAVIT.

U. S. LAND OFFICE,
Pierre, S. Dak., March 12, 1892.

BARNEY TRAVISSEE, being first duly sworn according to law deposes and says that he is the identical person who made affidavit to which this affidavit is attached upon the 29th day of February, 1892.

That in said affidavit a clerical error was made in the description of the tract of land claimed by him under allotment No. 6, Pierre series, as follows, to wit:

In line 19 the description purporting to describe his said allotment reads as follows: "The N. ¼ NE. ¼ Sec. 10 and SE. ¼ NE. ¼ NW. ¼ of Sec. 3, said town and range."

That the tract claimed by him under said allotment is as follows:

SE. ¼ of the NW. ¼ and the SW. ¼ of the NE. ¼ and the SE. ¼ of Sec. 3, and the N. ½ of the NE. ¼ of Sec. 10, all in Township 4, N. Range 31, E. B. H. M.

That affiant still adheres to his desire to relinquish and does relinquish to the United States all rights, title, or interest in the said described land as an Indian allotment, as set forth in the affidavit of which this is supplementary.

his
BARNEY x TRAVISSEE.
mark

Witnesses to signature:
TESSA EVANS,
GEO. L. STEVENS.

Subscribed and sworn to before me this 12th day of March, 1892.

L. H. BAILEY,
Register.

U. S. LAND OFFICE,
Pierre, S. Dak., February 29, 1892.

BARNEY TRAVISSEE being first duly sworn according to law testified as follows:

Question by the Register:

Is it your desire to relinquish to the Government of the United States your rights to an allotment as an Indian?

Ans. Yes.

2. Q. Did you ever vote at any election held in conformity with the laws of the State of South Dakota or the United States?

Ans. Yes; I voted down in Iowa, and I also voted in South Dakota at Fort Pierre.

Q. How long have you lived upon the land which you formerly claimed as an allotment?—A. I have lived there for eight years, but I first put improvements on them in '81 or '82.

Q. Where did you live before you moved upon the Sioux Reservation?—A. I lived in Union County, S. Dak., near the Sioux River.

Q. Where did you live before you lived in Union County, Dak.?—A. I lived in Woodbury County, Iowa, near Sioux City.

Q. When did you first claim any rights as an Indian?—A. In the year '80.

Q. What is your age?—A. About 38 years.

Q. Was your father an Indian?—A. No, sir.

Q. Was your mother an Indian?—A. About a half breed.

Q. When did you first receive rations and annuities of the Government as an Indian?—A. In about the year 1879.

Q. Do you make this relinquishment of your own free will?—A. Yes, sir.

his
BARNEY x TRAVISSEE.
mark.

Witnesses to signature,
H. E. DEWEY.
L. H. BAILEY.

Subscribed and sworn to before me this 29th day of February, 1892.

L. H. BAILEY,
Register.

UNITED STATES LAND OFFICE,
Pierre, S. Dak., March 14, 1892.

SIR: Referring to your letter D of March 7, 1892, I have the honor to transmit herewith relinquishment of Barney Travisse, (corrected) of SE. ¼ SE. ¼ of NW. ¼ and SW. ¼, NE. ¼, sec. 3, and N. ½ NE. ¼, sec. 10, T. 4, R. 31, E. B. M., also Hd. application

of Barney Travisee for SE. ¼, NW ¼, SW. ¼, NE. ¼, and W. ½, SE. ¼, sec. 3, T. 4, R. 31. Also Hd. application of Royal B. Stearns for NE. ¼, SE. ¼, and SE. ¼, SE. ¼, sec. 3, T. 4, R. 31.

Very respectfully,

L. C. BAILEY,
Register.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

UNITED STATES INDIAN SERVICE,
LOWER BRULE AGENCY, S. DAK.,
Chamberlain, March 23, 1892.

SIR: I have the honor to report that, in a conversation to-day with the register of the Pierre land office, I was informed by him that Barney Travirsie, allottee, in allotment No. —— had filed a relinquishment of his allotment in his office, which had been forwarded to the General Land Office; that Travirsie under oath had declared that he was not an Indian, but was a white citizen and a qualified voter, and had voted for a number of years.

This man Travirsie has always been considered, and he claimed to be, a half-breed Sioux, and he is carried on the "issue roll" at the Cheyenne River Agency. When I made the allotment to him he swore he was a Sioux Indian and was entitled to rations. If his statements before the register are true, then his affidavit before me that he was an Indian was false and he was not entitled to an allotment and is not entitled to rations. I have not seen his request to relinquish his allotment, and do not know what reasons, if any, he assigned for wishing to relinquish, and the register did not inform me. I have reasons to believe, however, that it was for a money consideration. This matter is referred for your action.

Very respectfully,

GEO. W. MCKEAN,
Special Allotting Agent.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 16, 1892.

SIR: Referring to the letter of Mr. R. B. Stearns, of Pierre, S. Dak., relative to the relinquishment by Barney Traversee of a certain Indian allotment, I have to state that the relinquishment was received here with letter of 29th ultimo from the register and receiver at Pierre, S. Dak., and was returned the 7th ultimo to said officers for correction.

Upon the receipt of the corrected paper it will be submitted to the Commissioner of Indian Affairs for his consideration.

The Department has decided that an Indian can not relinquish an allotment without its approval (12 L. D., 162).

Before any action looking to the cancellation of said allotment can be taken by this office the matter will have to be referred to the Department.

You will be promptly advised when the papers are submitted to the Commissioner of Indian Affairs. Mr. Stearns's letter is herewith returned.

Very respectfully,

THOS. H. CARTER,
Commissioner.

Hon. J. A. PICKLER,
House of Representatives.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 8, 1892.

SIR: I inclose herewith for your consideration a letter dated 14th ultimo, from the register of the U. S. land office at Pierre, S. Dak., and the relinquishment of Barney Travissee of his allotment under act of March 2, 1889 (25 Stats., 888), also the allotment application of said Travissee, Pierre No. 6.

Very respectfully,

THOS. H. CARTER,
Commissioner.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 14, 1892.

SIR: In your letter, dated March 23, 1892, you state that in a conversation on that day with the register of the Pierre land office you were informed that Barney Travissie, an allottee, had filed a relinquishment of his allotment, in said local land office, and that the same had been forwarded to the General Land Office; that Travissie had declared under oath that he was not an Indian; that he was a white citizen and a qualified voter; and that he had voted for a number of years.

You further state that the said party has always been considered to be a Sioux half-breed, and that he has claimed to be such; that he is carried on the "issue roll" at the Cheyenne River Agency; that when you made the allotment to him on the ceded portion of the Great Sioux Reservation he swore that he was a Sioux Indian and that he was entitled to rations.

You state that if the statements made in his affidavit before the said register are true, then his affidavit made before you, to the effect that he was an Indian, is false; that he is not entitled to an allotment, nor to rations as indicated; that you have not seen his request to relinquish his allotment, and do not know what reason, if any, he has assigned for wishing to do so; that the register did not inform you of such fact, but that you have reason to believe that it was for a money consideration.

You submit the matter referred to for the action of this office.

In reply I have to direct that you make a full investigation of all the facts in this case, obtaining a certified copy of the affidavit made before the local land officer, and transmit the same to this office, together with the affidavit, or a copy thereof, made before yourself, in order that the matter may be laid before the Secretary of the Interior, with a recommendation, if the facts in the case warrant such course, that the said allottee be allowed to relinquish his allotment, and for such further action as may be deemed proper to take in the premises.

Very respectfully,

T. J. MORGAN,
Commissioner.

GEORGE W. MCKEAN, Esq.,
Special Allotting Agent, Crow Creek, S. Dak.

FORT PIERRE, S. DAK., *July 2, 1892.*

DEAR SIR: On December 17, last year, I filed at the U. S. land office in Pierre, S. Dak., a notice of contest against Barney Travisee, a quarter-blood Indian, on allotment No. 6, alleging that he was not an Indian and entitled to take and hold land under a decision of the Department made about that time. His allotment covered 320 acres, which he has since relinquished to the Government. I have purchased his improvements on 160 acres and have paid him $400 for the same. I have built me a small house on the land and have over 40 acres under cultivation. I have been in possession since my notice was filed last December.

I would like to put up some more buildings and break some more of the land, and further improve it, that is if you think I have a show to get a title. Would you kindly look into this matter and help me to get it into shape so that I will know what I can depend upon. The number of my papers in the office at Washington is 29334.

Will you kindly write me about this as soon as possible. I wish I could know how this matter will be fixed by you soon, as I would like to put up some sheds and other shelter before winter comes on. Hoping to hear from you soon, I am

Respectfully, yours,

ROYAL B. STEARNS,
Fort Pierre, S. Dak.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

UNITED STATES INDIAN SERVICE,
Chamberlain, S. Dak., July 18, 1893.

SIR: Referring to your communication of May 20, 1893 (14374-1893), relating to the relinquishment of Indian rights, by Barney Travirsie, of the Forest City Agency, I have the honor to inclose herewith the said relinquishment which I obtained during my late trip to Pierre. Before Mr. Travirsie signed the document I explained to him carefully the extent and effect of said relinquishment, whereupon he said it was

just what he desired, and expressed a hope that the matter would receive prompt attention and be finally settled at an early day. Travirsie was at Forest City Agency, and I had to go there to see him.

Very respectfully,

GEO. W. MCKEAN,
Special Allotting Agent.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
Washington, August 2, 1893.

SIR: Under date of October 1, 1892, your office submitted a full report, upon the request of Barney Travirsie, to be allowed to release his allotment on the Sioux ceded lands, recommending that said request be denied. The request was denied by letter of December 5, 1892. The matter was again called up and referred to your office for report. This report was made under date of January 28, 1893, and recited the action theretofore taken in the matter. The papers were, on April 21, 1893, again sent to your office with the request "that the matter receive your further consideration, and with the suggestion whether, in view of the facts in the case, it would not be proper to allow Travirsie to relinquish all of his allotment of 320 acres, when he shall have relinquished all his right and interest as a Sioux Indian."

You instructed Special Agent McKean to advise Travirsie that when he should relinquish all his rights and interests as a Sioux Indian you would recommend the Department that he be permitted to relinquish his allotment. By letter of July 28, 1893, you submit an instrument executed by Travirsie before the special agent whereby he relinquishes and surrenders all his rights as an Indian to rations, annuities, funds, moneys, or other benefits of any kind, and severs his tribal relations with the Sioux Indians, and recommended that this instrument be approved, and that Travirsie be allowed to relinquish his allotment application.

While the circumstances indicate that the relinquishment was sought to be made in the first instance for a money consideration, and in the interest of a party seeking to obtain the land as a homestead, yet in view of all the facts I have concluded to authorize the relinquishment in this instance in accordance with your recommendation and permission therefor is hereby granted.

I have also approved the relinquishment by Travirsie of his rights as a Sioux Indian.

The papers in the case are returned for such further action as may be necessary.

Very respectfully,

WM. H. SIMS,
Acting Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

HEADQUARTERS REPUBLICAN STATE LEAGUE,
STATE OF SOUTH DAKOTA,
Pierre, S. Dak., August 3, 1892.

MY DEAR MAJOR: I have heard nothing from Washington in regard to my claim. There have been two decisions rendered by the Department there of identically the same question, viz, the relinquishment of an Indian allotment. I inclose newspaper clippings containing information about the same. I also send you a letter which you sent me last spring. I am very anxious to have them take up this matter at once. Would it not be possible, major, for you to get the Department to act upon this particular case before you leave Washington? It would really be a great accommodation to me, as I want this matter disposed of and off from my mind.

If you can possibly arrange to press these fellows for a decision before you leave Washington I shall be exceedingly grateful to you for your kindness. As soon as there is any action taken in the matter please let me know by telegraph at once.

Yours, very truly,

R. B. STEARNS.

AUGUST 5, 1892.

DEAR SIR: We hereby enter our appearance for Royal B. Stearns, who has on file in the General Land Office an application to make homestead entry for the SE. ¼, sec. 3, T. 4 N., R. 31 E., Pierre, S. Dak. district, now covered by Indian allotment No. 6,

made to Barney Travisee. The records of the General Land Office show that Travisee's application to be allowed to relinquish this allotment was transmitted to your office on April 8, 1892. We desire to be advised of any and all action taken on said relinquishment.

Yours, very truly,

COPP & LUCKETT.

Hon. THOMAS J. MORGAN,
Commissioner of Indian Affairs.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, August 10, 1892.

SIR: Referring to a letter, received by your reference, dated the 3d instant, from R. B. Stearns, Pierre, S. Dak., pertaining to the desire of an Indian named Barney Travirsie (Traversee) to relinquish his allotment of certain lands on the Sioux ceded tract, South Dakota, I have to advise you that Special Allotting Agent McKean was instructed, on April 14 last, to make full investigation of this case and furnish certain evidence to this office, to the end that the matter might be laid before the Secretary of the Interior with recommendation, if the facts in the case should warrant such course, that the said allottee be allowed to relinquish his allotment.

It appears that Agent McKean has not as yet submitted the report called for. His attention will be called to the matter at an early day, and upon receipt of his report thereon the facts in the case will be presented to the Department, with such recommendation as is deemed proper in the premises.

You will be advised of the final decision in the case.

Very respectfully,

T. J. MORGAN,
Commissioner.

Hon. J. A. PICKLER,
House of Representatives.

EXHIBIT A.

STATE OF DAKOTA, *County of Hughes, ss:*

ROYAL B. STEARNS, after being duly sworn, doth depose and say as follows:

Q. State your full name and age, occupation, and residence.—A. My name is Royal B. Stearns; my residence is Stanley County, S. Dak.; my occupation at present is farming, though I am a lawyer by profession; my age is 34 years.

Q. Please whether you are personally acquainted with Barney Travirsie, a half-breed Sioux Indian.—A. I am.

Q. Do you know where his land is located which he holds as an allotment under the act of March 2, 1889, and are you personally acquainted with it?—A. I do, and I am.

Q. State whether, to your knowledge, Barney Travirsie has relinquished or attempted to relinquish his land and allotment thereof.—A. I know that on or about February 26, 1892, he filed a paper in the land office at Pierre, S. Dak., which I understood to be a relinquishment of his land, and I know he offered the paper or filed it in the land office for the purpose of relinquishing his land, and he expressed a desire to me to do so. The paper was written and prepared by H. E. Dewey, an attorney in Pierre. I went to Dewey with Travirsie to have him make out the paper and I also went with him to the land office when he went to file the paper.

Q. State whether the paper offered by Travirsie as a relinquishment was accepted for filing and record by the local land officers, and what, if anything, was said or done by them in your presence regarding the paper and attempted relinquishment by Barney Travirsie.—A. When Travirsie and I went to see Mr. Dewey he went with us to the land office and we all three went into the back part of the office. Mr. Dewey went in the front part of the office, or called on the register, Mr. Bailey, for a copy of the proceedings of the council with the Sioux tribe under the treaty of 1868. Mr. Bailey procured the pamphlet and gave it to Mr. Dewey. He (Dewey then read the proceedings relating to relinquishments and then wrote out the paper that Barney filed as a relinquishment. At the same time Mr. Dewey prepared a paper for Travirsie, declaring that he desired to become a citizen of the United States, and also an application as a homesteader. At the same time Mr. Dewey prepared for me an application as a homesteader, which application covered one-half, or 160 acres, of Travirsie's land, and his homestead application covered the other 160 acres. These papers were then offered for filing to the register, Mr. Bailey, prior to this, however,

and after the papers had been prepared, Mr. Bailey, the register, read them over to Travirsie and explained them to him.

When the papers were offered for filing the register, Mr. Bailey, rejected the homestead applications of Travirsie and myself and returned the fees. He and the receiver, Mr. Eakin, both made some notes upon the application and filed them away. The register, Mr. Bailey, swore Mr. Travirsie and myself to the applications, as well as the relinquishment of Travirsie. As to what Mr. Bailey done with the relinquishment paper of Mr. Travirsie, I can not say. I don't remember that he rejected it, but as well as I remember he said his office had nothing to do with it, but he did not return the paper nor did he suggest to or inform Travirsie whose business it was to attend to the request to relinquish. After the papers had all been filed and we were about to leave, Mr. Bailey called Travirsie and said to him that he would like to ask him a few questions under oath. Mr. Eakin, the receiver, was present alongside of Mr. Bailey at this time, on the inside of the rail, and we were all on the outside. Mr. Bailey then swore Mr. Travirsie and asked him quite a number of questions as well as I remember as these. His name, age, and residence. Whether he was the same Barney Travirsie who made and signed Indian allotment application No. 6, on April 23, 1891, why he wished to relinquish the land. How long he had been known as an Indian. How long he had been under the charge of an Indian agent. How long he had been receiving rations. How long he had lived on the land where he resided. Whether he had ever voted or exercised the right of suffrage.

Traversie said he was the same person who signed the allotment application referred to; that he wished to relinquish the allotment because he desired to become a citizen. That he had lived on the land some eight to eleven years, and had drawn rations since that time, but had never been under the charge of an agent or recognized as an Indian, before coming to Fort Pierre, eight or eleven years ago. That he had been a voter for fourteen years, that he had voted in Iowa, Yankton County, and Stanley County, S. Dak. He also said in response to a question by Mr. Bailey that his father was a white man, a Frenchman, that his mother was a mixed blood Sioux, but whether he said a half or quarter blood I am not now certain. After Mr. Bailey got through his questions and writing them down, he had Travirsie sign the document, and then said: "That will do." Before leaving I remarked to Mr. Traversie that the statements he had just made might possibly conflict with something he may have stated or signed in the shape of an affidavit when he made the allotment application. He said he signed papers, but could not say then what kind of statements he had made; but when he made the allotment application he did so, believing he had some Indian blood in him, and he was therefore entitled to land. I have now stated as near as I remember all that was said and done in the land office at that time. I do not know what Mr. Bailey did with the relinquishment paper or the sworn statement of Travirsie except that he pinned them all together.

Q. Now state, Mr. Stearns, what interest you have or have had in the relinquishment of Barney Travirsie, and what consideration you paid or agreed to pay him to relinquish 160 acres of his land in your favor, as appears he did, from your statements herein? Please state your full connection in the transaction as regards his relinquishment.—A. On December 17, 1891, upon receipt in Pierre of the decision in the Waldron-Tomahawk case, I filed a contest on the allotment to Travirsie at about 11 o'clock in the forenoon. At that time Travirsie was in jail in Pierre serving out a sentence for giving whisky to an Indian, and I had no personal acquaintance with him. In the afternoon of that day I went to the jail and saw Mr. Travirsie, when I told him of the Waldron decision and of my filing a contest on his land. I told him I believed under the decision I could hold the land, but I did not want it for nothing; that I was willing to pay him what was right and fair. He then said if he could not hold the land he would as leave I should have it as anyone; that the banks of Fort Pierre held mortgages on his cattle and he had been told by his wife that they were about to foreclose on him, and he was afraid he would lose his cattle; that if I would give him $400 he would be satisfied and call it square. I agreed to do so, and I gave him then, in jail, $5, and that same evening I went over to Fort Pierre and took up and paid the mortgages. I paid to the Stock Growers Bank $108.20 and to the First National Bank $323, making $431.20. Since then I have let Mr. Travirsie and his wife have money from time to time to live on, making in all something over $500 that I have paid them for his good will and relinquishment of the 160 acres to me. After Travirsie got out of jail, and since then, he and I have farmed together and have in a good crop. After Mr. Travirsie and I agreed about the land, with his knowledge and consent, I built a house and occupied the land in December last, and I have resided on it since then and have the land in cultivation. I have acted in good faith in all my transactions with Travirsie and in regard to his relinquishment, and I done nothing but what I supposed and thought to be proper and right. After Mr. Travirsie got out of jail and came home he and I talked over the matters relating to the best way to fix up our deal about his land.

I did not know whether it would be best to await the outcome of my contest or not, and I so said to Travirsie. I also told him of Black Tomahawk having filed an application to become a citizen and an application to enter a homestead.

After thinking the matter over for a few days, he said he thought that would also be the best for him, and then we came over to Pierre to consult Mr. Dewey and had him fix up the papers, as I have before stated. I knew but little or nothing about these Indian land matters, and supposed the local land officers were the proper officers with whom to file the relinquishment, and the register told me nothing to the contrary. I have paid the amount of money stated in cash to Mr. Travirsie in consideration of his vacating and relinquishing to me the 160 acres, upon which I have made my improvements and upon which I have resided since last December, and having done this in good faith I have nothing to conceal, and only ask that my rights, whatever I may have, may be protected.

Q. Is there any further statement in connection with the relinquishment of Barney Travirsie that you desire to make or is there any point overlooked?—A. No, I think not.

ROYAL B. STEARNS.

Sworn and subscribed to before me this 1st day of September, 1892.

GEO. W. MCKEAN,
Special Allotting Agent.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

BARNEY TRAVIRSIE, upon being duly sworn, doth depose and say, that he is 34 years of age; that he resides in Stanley County, S. Dak., and is a farmer.

Q. Are you the same Barney Travirsie, who, in the month of April, 1891, made and signed an Indian allotment application for land in severalty under the act of March 2, 1889, before Special Allotting Agent George W. McKean as a Sioux Indian?—A. Yes, sir.

Q. State what proportion of Indian blood is in you.—A. You can judge, my father was a white man, and my mother was a half-breed Sioux.

Q. At what agency do you draw rations or were drawing rations in April. 1891?—A. I was then and am still drawing rations at the Cheyenne River Agency, S. Dak.

Q. How long have you been on the issue rolls at Cheyenne River Agency and been drawing rations there?—A. Since 1878 or 1879.

Q. Where did you draw rations prior to 1878 or 1879?—A. At Yankton Agency, but prior to 1878 I had no ticket of my own.

Q. How long have you resided on the land that was allotted to you in 1891 and where you now reside?—A. About ten years.

Q. Have you since 1878 been recognized as a Sioux Indian and have you yourself always claimed to be an Indian?—A. Yes, sir.

Q. Have you at any time or before any official ever stated or swore that you were not an Indian, but a citizen?—A. Not that I know of or that I so understood. I never was a citizen and I have never given up my tribal relations. I have voted and have said so, but not that I was a citizen.

Q. When and where did you vote?—A. I voted in Yankton County, S. Dak., before I came here in 1878; I voted there two or three times. I voted just because they gave me a ticket and told me to go and put it in the box, and did; but I did not know what I was voting for. About three years ago in Fort Pierre, when they were voting for the county seat, some of them gave me some tickets and I put one in. I have never voted any other times but these, and I never claimed to be a citizen; I voted just because they wanted me to.

Q. Have you at any time since April, 1891, made or filed a request to relinquish the land allotted to you at that time under the act of March 2, 1889?—A. I have. I filed a relinquishment of my land about February, 1892, in the land office at Pierre. Mr. H. E. Dewey wrote out the paper for me, and I filed it in the land office because I thought that was the place to file it. Mr. Bailey, the register, swore me to the paper. I also at the same time filed a homestead application with an application to become a citizen, and I paid the register $14, but he gave me the money back, but I did not know and don't understand why he returned it. Mr. Bailey asked me a good many questions under oath about my parents, and whether I had ever voted, and I told him just as I told you.

Q. Did you tell Bailey, or mean to tell him, that before coming to Fort Pierre you had never been recognized as an Indian, and had been a voter for 14 years?—A. I told him that at Yankton when I was among the white people they did not recognize me as an Indian, but I did not mean that I did not claim to be an Indian. I told him I had voted two or three times down there and once at Fort Pierre.

Q. Did you file the application to relinquish your allotment, of your own free will and did you in fact desire to relinquish it?—A. Yes, sir.

Q. Is it still your wish and desire to relinquish your allotment?—A. Yes, sir.

Q. Upon what grounds do you wish to relinquish your allotment and land?—A. Because I wish to become a citizen and take a homestead. I have no other reasons.

Q. Do you understand that in doing this, you give up 320 acres and can take but 160, as a homestead?—A. Yes.

Q. Do you understand that in becoming a citizen you sever your tribal relations and all rights as an Indian, or not?—A. Yes, I understand that I will not be an Indian, but can still draw my rations, and that the allotment to my children and their Indian rights will not be affected by my becoming a citizen.

Q. Have you not sold your right to 160 acres of your allotment or have you not agreed to relinquish for a monied consideration and is not that the real and true reason for your desire to relinquish your allotment?—A. Yes, sir; that is true. That was this way: I was in a tight place for money. My horses and cattle were mortgaged and I had been arrested for giving liquor to an Indian. While I was in jail my wife and also the sheriff came and told me they were after my cattle and foreclosed the mortgage, but I had no money and could do nothing. Then R. B. Stearns came to the jail to see me, and he told me of the Waldron-Tomahawk decision, and that he had filed on my land. I told him if I could not hold it I would just as leave he would get it as any one, and I told him if he would take up those mortgages and save my cattle I would relinquish the land to him. I told him I wanted $400 and he agreed to do it, and he did pay off the mortgages and altogether has given me about $500.

After I got out of jail I had the papers made out by Mr. Dewey and filed them, as I said. I wanted to be a citizen, and thought I would file all the papers at the same time. I wanted to be a citizen because I did not want to be any longer under an agent and a boss farmer that didn't know as much about farming as I do. I have acted in good faith in this matter and Mr. Stearns has acted in good faith by me, and I want to relinquish the land so he can get his 160 acres, and I hope the Secretary will allow it.

his
BARNEY x TRAVIRSIE.
mark.

Witnesses:
WILSON L. SHUNK.
ROYAL B. STEARNS.

Subscribed and sworn to before me this 3d day of September, 1892.

GEO. W. MCKEAN,
Special Alloting Agent.

EXHIBIT C.

RELINQUISHMENT.

I, Barney Travirsie, do hereby relinquish to the Government of the United States all my right, title, and interest in and to my allotment in severalty under act of March 2, 1889, and the land described therein, viz: SE. ¼ of NW. ¼ and SW. ¼ of NE. ¼ and SE. ¼ of section 3, and N. ½ of NE. ¼, section 10, township 4, range 31.

his
BARNEY x TRAVIRSIE.
mark.

Witnesses:
WILSON L. SHUNK.
ROYAL B. STEARNS.

STATE OF SOUTH DAKOTA, *County of Hughes:*

Personally appeared before me, a notary public within and for said county, Barney Travirsie, to me well known to be the same person who executed the foregoing instrument, and acknowledged the same to be his voluntary act and deed.

In testimony whereof I have hereunto set my hand and seal, this 3d day of September, 1892.

[SEAL.]

JOHN F. HUGHES,
Notary Public.

EXHIBIT D.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

L. H. BAILEY, being duly sworn, doth depose and say that he is 32 years of age; that he is a resident of Pierre, Hughes County, S. Dak., and that he is register of the United States land office at Pierre.

Q. Are you personally acquainted with Barney Travirsie, a Sioux Indian belonging to the Cheyenne River Agency?—A. I will state that I have seen a person claiming to be Barney Travirsie.

Q. State from the records of your office whether Barney Travirsie has ever been allotted land in severalty under the act of March 2, 1889.—A. It appears from the records of this office that in my register of indian allotment applications that one Barney Travirsie, or Traversee, made allotment No. 6, register's number, on the 23d day of April, 1891, and that the same was filed and recorded in this office on June 20, 1891, for 320 acres, described as follows: The SE. ¼ of the NW. ¼ and the SW. ¼ of the NE. ¼ and SE. ¼ of section 3, and the N. ½ of the NE. ¼ of section 10, all in Township 4, R. 31, E. B. H. M.

Q. State whether Barney Travirsie has at any time since June 20, 1891, filed or offered to file with you a relinquishment of his said allotment of land as described by you—A. He has.

Q. When did he do so?—A. Sometime in the spring of 1892. I find upon page 474 of my press-copy book, in which we take the copy of the letters from the register of this office to the Commissioner of the General Land Office, a copy of letter to said Commissioner in which I find written in substance "that I inclose the relinquishment of Barney Traversee to Indian allotment No. 6, Pierre series." This letter is dated February 29, 1892.

Q. State, if you know, by whom this alleged relinquishment of Barney Travirsie was written and prepared, and whether in printed or written form.—A. I do not at this time remember whether the relinquishment proper was in written form at the time it was offered in this office or not. My impression is that it was written and in the handwriting of H. E. Dewey.

Q. Was the relinquishment when offered in your office accompanied by any affidavit?—A. I do not remember.

Q. State by whom the relinquishment was presented or offered to you for filing, and who was present.—A. I don't remember who handed me the relinquishment, but I remember that H. E. Dewey, Royal B. Stearns, Barney Travirsie, and a number of others, whose names I can not recall, were present.

Q. What action did you take upon the said relinquishment when it was offered you?—A. The records in the case, which are on file with the Commissioner of the General Land Office, will show. I will not undertake to state, at this time, without access to the record, just what was done. I remember that I had the affidavit read to Mr. Travirsie in my presence, before he was sworn by me. I remember also that the affidavit alleged that said Travirsie was not an Indian, and that I propounded to him certain questions as to whether he understood the affidavit which he was making, and as to whether he was making it of his own free will. I think I asked him under oath some questions as to what grounds he had for claiming that he was or wanted to become a citizen of the United States. I think a homestead application was attached to the relinquishment offered by Travirsie, covering a portion of the land described in his allotment. The papers were all transmitted to the Commissioner of General Land Office on February 29, 1892, with the recommendation of the register that Indian allotment No. 6 be canceled.

Q. In answer to a former question you said you could not remember whether the relinquishment was accompanied by an affidavit; then to what affidavit do you refer in your last answer to my last question?—A. The relinquishment itself, which, as I remember, was in the form of an affidavit.

Q. Did you or did you not put the questions you propounded to Mr. Travirsie, with his answer thereto, in the form of a deposition or affidavit and have him sign it?—A. I think I did. The record will show as to that.

Q. I am dir ected by the honorable Commissioner of Indian Affairs to procure a certified copy of the affidavit or affidavits made by Travirsie before you for the use of his office in making an examination into this matter; can you furnish me with such copies?—A. They were all transmitted, as I have stated before, to the Commissioner of the General Land Office. I would be pleased to give you access to the records of this office for the purpose of making copies of any of the records herein. I can not furnish you with the copies of the papers in the case because they are not in this office, nor have we any copies of them.

Q. State, if you can, in substance what Travirsie swore to before you as to his rights as an Indian.—A. I would not now undertake to say what he swore to any further than I have.

Q. Do you know whether Travirsie relinquished or agreed to relinquish his allotment in favor of any one for a consideration of money or any other thing?—A. I do not.

Q. Do you know what, if any, interest one Royal B. Stearns has in the relinquishment of Barney Travirsie?—A. I do not.

Q. Did Travirsie give any reason for wishing to relinquish his allotment?—A. None outside of his affidavit or relinquishment and other papers filed in the papers. I don't remember what reason he gave.

Q. Has there been any homestead filings made upon the land of Barney Travirsie?—A. No, sir.

L. H. BAILEY.

Subscribed and sworn to before me this 2d day of September, 1892.

GEO. W. MCKEAN,
Special Allotting Agent.

L. H. BAILEY, register, U. S. land office, recalled and asked:

Q. Mr. Bailey, in your former deposition in this case, you stated that there had been no homestead filings made upon the land of Barney Travirsie. Mr. Travirsie has testified that at the time of offering to you his request to relinquish his allotment he also filed an affidavit to become a citizen and an application for a homestead entry upon 160 acres of his allotment. Royal B. Stearns has testified that he also offered a homestead entry on 160 acres of the allotment to Travirsie, which he says you rejected, but Travirsie says he does not know what you done with his homestead entry. Will you state what action you did take upon his application to become a citizen and his homestead application?—A. I believe that Stearns and Travirsie each offered homestead filings at the time the relinquishment was offered. If they were offered they were both rejected.

L. H. BAILEY.

Subscribed and sworn to before me this 6th day of September, 1892.

GEO. W MCKEAN,
Special Allotting Agent.

EXHIBIT E.

INDIAN ALLOTMENT AFFIDAVIT.

I, ——— ———, having filed my application, No. ——, for an allotment of land for ——— ———, under the provisions of section 13 of the act of March 2, 1889 (25 Stats., 888), do solemnly swear that I am an Indian of the Sioux Nation; that I am ——— ———; that I was receiving and entitled to rations and annuities at the ——— Agency on the tenth day of February, eighteen hundred and ninety, the date when said act took effect by proclamation of the President, but was residing upon a portion of the Great Sioux Reservation not included in either of the separate reservations established by said act; and that —— ha—— not heretofore had the benefit of said section 13.

UNITED STATES INDIAN SERVICE,
Lower Brule Agency, S. Dak., September 12, 1892.

SIR: Referring to your letter of instructions of April 14, 1892, I have the honor to submit the result of my investigation of the alleged relinquishment by Barney Travirsie of his allotment of land under Section 13, act of March 2, 1892, and to transmit herewith the deposition taken by me relative thereto.

It appears from the testimony of Travirsie, Exhibit B, and of Royal B. Stearns, Exhibit A, that at about the time of the publication of the decision of the Assistant Attorney-General in the Waldron-Tomahawk case Travirsie was in jail at Pierre, serving out a sentence for giving whisky to an Indian; that upon the day that said decision was made public in Pierre, Royal B. Stearns filed in the local land office at Pierre a contest on the land or against the allotment to Travirsie; that after filing the contest and on the same day Stearns visited Travirsie in jail and informed him of the said decision and also of his action in filing the contest; that thereupon Travirsie said to Stearns that if he could not hold the land he would as leave he (Stearns) would get it as any one, and if he (Stearns) would give him $400 to pay off a mortgage on his cattle, so he (Travirsie) could save them, he would relinquish the land to him (Stearns). This Stearns agreed to do.

It appears further, from the testimony of Travirsie and Stearns, that Stearns kept his promise and paid off the mortgage or mortgages on the cattle of Travirsie, and also let him have from time to time money which has aggregated to about $500. That after Travirsie got out of jail, to wit, on or about the 26th day of February, 1892, he went with Stearns to an attorney in Pierre, one H. E. Dewey, who, at the request of Travirsie, wrote and prepared a paper, which purported to be an application or request to relinquish his allotment, that Dewey also wrote and prepared for him (Travirsie) an application to become a citizen and also a homestead application to enter 160 acres of his allotment. That these papers were offered for filing in the local land office at Pierre to the register (Mr. Bailey) in person, at the same time as it appears Royal B. Stearns offered to file a homestead entry on 160 acres of

Travirsie's allotment. Mr. Stearns testifies that the register rejected the homestead filings of both him and Travirsie, but accepted the relinquishment and application to become a citizen of Travirsie, but Travirsie testified that he did not know or understand what the register did with his papers.

Travirsie testifies (Exhibit B) that he filed his application for relinquishment of his own free will, and because he wished to become a citizen and take a homestead; that in so doing he understands that he does not thereby lose his right to rations and annuities, nor do his children lose any of their Indian rights. He testifies further that he never swore or stated to any one that he was not an Indian, but a citizen, and that he has always claimed to be an Indian, that his father was a white man, and his mother a half-breed Sioux. That he voted two or three times at Yankton prior to 1878, and once at Fort Pierre about three years ago; that he voted just because the ticket was given to him to vote, but he never claimed to be a citizen. That when he filed the papers with the register, Mr. Bailey (the register), asked him a great many questions under oath about his parents, and whether he had ever voted. That it is his desire to relinquish his allotment, become a citizen, and take a homestead, and that he does not wish to be longer under an agent and boss farmer. That he has acted in good faith, that Mr. Stearns has acted in good faith toward him, and he hopes the honorable Secretary will approve his relinquishment.

Royal B. Stearns testifies (Exhibit A), among other things, that "As to what Mr. Bailey done with the relinquishment paper of Mr. Travirsie I can not say; I don't remember that he rejected it, but, as well as I remember, he said his office had nothing to do with it, but he did not return the paper, nor did he suggest to or inform Travirsie, whose business it was to attend to the request to relinquish. After the papers had all been filed and we were about to leave, Mr. Bailey called Travirsie and said to him that he would like to ask him a few questions under oath. Mr. Bailey swore Mr. Travirsie, and asked him quite a number of questions, as well as I remember, as to his name, age, and residence, whether he was the same Barney Travirsie who made and signed Indian allotment application No. 6, on April 23, 1891, why he wished to relinquish, how long he had been known as an Indian, how long he has been under the charge of an Indian agent, how long he had been receiving rations, how long he had lived on the land where he resided, whether he had ever voted or exercised the right of suffrage. After Mr. Bailey got through his questions and writing them down, he had Travirsie sign the document, and then said that will do."

L. H. Bailey, register U. S. land office at Pierre, testifies in substance (Exhibit D) that the application of Barney Travirsie to relinquish his allotment was filed or offered for filing in his office some time in the spring of 1892. He says:

"I find upon page 474 of my press copy-book, in which are taken the copy of the letters from the register of this office to the Commissioner of the General Land Office, a copy of letter to said Commissioner, in which I find written, in substance, that I inclose the relinquishment of Barney Travirsie to Indian allotment No. 6, Pierre series. This letter is dated February 29, 1892."

When asked as to what action he took upon the relinquishment when it was offered to him, the register said: "The records in the case, which are on file with the Commissioner of the General Land Office, will show. I will not undertake to state at this time, without access to the record, just what was done. The papers were all transmitted to the Commissioner of the General Land Office on February 29, 1892, with the recommendation of the register that Indian allotment No. 6 be canceled."

When asked if any homestead filings had been made upon the land of Barney Travirsie, the register said, "No, sir." But upon being recalled and questioned on this point, he said, "I believe that Stearns and Travirsie each offered homestead filings at the time the relinquishment was offered. If they were offered they were both rejected." The testimony of the register, for some reason best known to himself, was evasive and noncommittal all through, and, to say the least, his conduct in this case has been very strange. It is shown by the testimony of Mr. Stearns that when Travirsie offered the relinquishment in the local land office the register stated that his office had nothing to do with it, but made no suggestion to Travirsie as to where or to whom his application should be filed, nor did he return the paper, thus leaving the Indian in ignorance as to what he should do or what was done with the paper. The register, however, it appears, while acknowledging that his office had nothing to do with an Indian request to relinquish, puts the Indian under oath, and asks him a number of questions touching his rights as an Indian, and by his own admission recommends to the General Land Office that the Indian allotment be canceled, while he has rejected the Indian's homestead filing.

This section is calculated to do the Indian great injustice and to jeopardize his rights to land, with a chance to lose his entire allotment. His homestead application having been rejected and his allotment canceled, his land would be open to entry and some white settler would in all probability file on it without delay. This would not probably cause him to lose his land, but it would make a contest in the local land office and cause the Indian much trouble. The register, Mr. Bailey, when approached

by me to testify in this case as to what he knew about it, showed an evident disinclination to do so, and rather questioned my right to interrogate him, and he wanted to know if I had been instructed to take his deposition. His testimony will show that he was not disposed to give me any more information than he could avoid. If he had nothing to conceal I can not understand his reluctance in this case. It looks, however, as though an officer of the land office was anxious to manage the business of the Indian Office as well as his own. I could not procure a copy of the affidavit of Travirsie made before the register, as that officer stated it had been filed with the Commissioner of the General Land Office with the papers in the case.

I file, however, herewith (Exhibit E) a copy of the form of affidavit made before me by Travirsie when he made his application for allotment. I also file herewith the formal relinquishment of Travirsie (Exhibit C). This case presents quite a different feature from any request to relinquish that I have ever before had to inquire into, but from all the facts and information that I was able to procure I am of the opinion that the Indian Travirsie honestly desires to relinquish his allotment and become a citizen and to take a homestead of a portion of his allotment. I am also of the opinion that it will be to the interest of the Indian to allow him to relinquish, and I so recommend, with the proviso, if it can be, that his right to reenter such quarter section of his allotment as he may select shall not be interfered with by any other settler.

Very respectfully,

GEO. W. MCKEAN,
Special Allotting Agent.

THE COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, September 16, 1892.

GEORGE W. MCKEAN, Esq.,
Special Allotting Agent, Chamberlain, S. Dak.:

SIR: On April 8, 1892, the Commissioner of the General Land Office addressed a letter to this office inclosing therewith the following papers and documents, which I inclose herewith for your consideration: Indian allotment application No. 6, Pierre land district, South Dakota, made by Barney Travissee for certain lands upon the ceded portion of the Great Sioux Reservation; also letter dated March 14, 1892, from the register of said local land office pertaining to the offer of said Indian to relinquish his application for the lands applied for; and two affidavits made by said Indian on February 29, 1892, and supplemental affidavit made by him March 12, 1892, pertaining to the proposed relinquishment.

On July 2 last R. B. Stearns, Pierre, S. Dak., addressed a letter to this office stating, among other things, that he has purchased the improvements located on 160 acres of the land applied for by the said Travissee and allotted to him by you, for which he paid the said Indian $400; that he has built for himself a small house on the said 160 acres, and has under cultivation more than 40 acres of the same and that he has been in possession thereof since December last.

Mr. Stearns urges that action be taken upon this case in order that he may proceed to make further improvements, if favorable consideration is given the same. I inclose Mr. Stearns's letter.

On August 10 last, I received, by reference from Hon. J. A. Pickler, another letter from Stearns dated August 3, 1892, inclosing therewith one of date March 16, 1892, from the General Land Office, each of which pertains to the proposed relinquishment by the said Indian of his allotment on the Sioux ceded lands, which I also inclose herewith.

You will consider the inclosed letters and documents in connection with office letter dated April 14, 1892, wherein you were directed to make a full investigation of all the facts in this case, in order that the matter might be laid before the Secretary of the Interior with the recommendation, if the facts in the case should warrant such course, that the said allottee be allowed to relinquish his allotment, and for such further action as might be deemed proper to take in the premises.

You will observe from the inclosed papers that the said Indian now disclaims his right to an allotment upon the ceded portion of the Sioux Reservation under the act of March 2, 1889; and it seems that he has relinquished, or offers to relinquish, the same for a monetary consideration.

You will make thorough investigation of this case and submit an early report thereon, with your recommendation as to whether, under all the facts and circumstances as ascertained, the said allottee should be permitted to relinquish his allotment, returning therewith all of the inclosed papers.

Very respectfully,

R. V. BELT,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 12, 1892.

SIR: Referring to previous correspondence relative to the offer of Barney Travirsie, a Sioux Indian allottee, to relinquish his allotment on the Sioux ceded lands, I have to say that all the facts in the case were laid before the Department on October 1, 1892, together with all the papers in relation thereto, with the recommendation that the request or offer of said Barney Travirsie to relinquish his said allotment on the Sioux ceded lands be denied.

I am now in receipt of a communication dated the 5th instant from the honorable Secretary of the Interior, stating that he concurs in the views of this office that to allow Indians to take allotments and then relinquish the same for the purpose of speculation would defeat the object of the allotment law intended to secure a permanent home for them and their families; that while in this case the Department might have the power to grant to this Indian the right to relinquish his allotment, the fact that he has disposed of a portion of said allotment for a money consideration is sufficient reason for denying the offer to relinquish; and that, therefore, the offer of Barney Travirsie to relinquish his said allotment, application No. 10, register's No. 6, Pierre local land office, South Dakota, is denied.

You will notify the said Indian of the action taken by this office in the matter and the decision of the Department thereon.

You will also notify the proper local land officers that the honorable Secretary of the Interior has denied the request or offer of the Indian named to relinquish his said allotment on the Sioux ceded lands.

I think it would be well also for you to notify Mr. R. B. Stearns, Pierre, S. Dak., of the decision of the Department in this case, inasmuch as he has already made settlement upon a portion of the said Indian's allotted lands and is now residing upon and cultivating the same, and request him to peaceably remove therefrom within a reasonable time, and in the event of his failure to do so proper steps will be taken through the Department of Justice to cause an action of ejectment to be instituted against him in the proper United States court, as the facts in the case warrant intervention by the United States. You will make report of your action in this matter for the further information of this office.

Very respectfully,

T. J. MORGAN,
Commissioner.

GEORGE W. MCKEAN, Esq.,
Special Allotting Agent, Chamberlain, S. Dak.

UNITED STATES INDIAN SERVICE,
Chamberlain, S. Dak., September 20, 1892.

SIR: I have the honor to return herewith papers received this day, by your reference of the 16th instant, relating to the relinquishment of Barney Travirsie, an Indian belonging to the Cheyenne River Agency. This case was investigated by me about three weeks since, during my visit to Pierre, on the Trumbo matter, and I submitted my report with the testimony taken by me on the 12th instant, to which I invite your attention in connection with the papers herewith returned.

Very respectfully,

GEO. W. MCKEAN,
Special Allotting Agent.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, October 1, 1892.

SIR: In a letter dated March 23, 1892, George W. McKean, special allotting agent, stated that in a conversation on that day with the register of the local land office, Pierre, S. Dak., he was informed that Barney Travirsie, an Indian allottee, had filed a relinquishment of his allotment on the Sioux ceded lands in said local land office, and that the same had been forwarded to the General Land Office; that Travirsie had declared under oath that he was not an Indian, that he was a white citizen and a qualified voter, and that he had voted for a number of years.

Agent McKean reported that the said Indian party had always been considered a Sioux half-breed and that he had claimed to be such; that he was carried on the

"issue roll" at the Cheyenne River Agency; that when he made the allotment to him on the ceded portion of the Great Sioux Reservation, he, the Indian, swore that he was a Sioux Indian and entitled to rations; that if the statements made in the Indian's affidavit before the said register were true, then the affidavit made before him (the agent) to the effect that he was an Indian, is false; that he was not entitled to an allotment nor to rations as indicated, if his statements were such as alleged to be by the said register; that he had not seen his request to relinquish his allotment and did not know what reason, if any, the Indian assigned for wishing to do so; that the register did not inform him of such fact; that he (the agent) had reason to believe that it was for a financial consideration.

Agent McKean submitted the matter referred to for the action of this office.

On April 14, 1892, this office directed the agent to make a full investigation of all the facts in the case, obtaining, if possible, a certified copy of the affidavit made before the local land officer, and submit the same to this office together with the affidavit, or a copy thereof, made before himself, as agent, in order that the matter might be laid before the Department with recommendation, if the facts in the case should warrant such course, that the said allottee be allowed to relinquish his allotment, and for such further action as might be deemed proper to take in the premises.

On July 2 last, R. B. Stearns, Pierre, S. Dak., addressed a letter to this office stating, among other things, that he had purchased the improvements located upon 160 acres of land applied for by the said Travirsie and allotted to him by Agent McKean, for which he paid the said Indian $400; that he had built for himself a small house on the 160 acres, and had under cultivation more than 40 acres of the same, and that he had been in possession thereof since December last. Mr. Stearns urged that action be taken upon this case in order that he might proceed to make further improvements, if favorable consideration should be given same by the Department.

On August 10 last this office received, by reference from Hon. J. A. Pickler, another letter from Mr. Stearns, dated August 3, 1892, inclosing therewith one of date March 16, 1892, from the General Land Office, each of which related to the proposed relinquishment by the said Indian of his allotment on the Sioux ceded lands.

By office letter dated September 16, 1892, the following papers and documents, inclosed with the letter from the General Land Office addressed to this office April 8, 1892, were transmitted to Agent McKean, viz: Indian allotment application No. 6, Pierre land district, South Dakota, made by Barney Travirsie for the SE. ¼ of the NW. ¼ and SW. ¼ of the NE. ¼ and the SE. ¼ of sec. 3, and the N. ½ of the NE. ¼ of sec. 10, T. 4 N., R. 31 E., containing 320 acres, located upon the Sioux ceded lands; also letter dated March 14, 1892, from the register of said local land office, pertaining to the offer of said Indian to relinquish his application for the lands applied for; and two affidavits made by said Indian on February 29, 1892, and supplemental affidavit made by him March 12, 1892, pertaining to the proposed relinquishment.

Agent McKean was instructed to consider the letters and documents referred to in connection with those instructions of April 14, 1892, wherein he was directed to make full investigation of all the facts in this case and submit an early report thereon with his recommendation in the premises.

On September 16, 1892, this office received Agent McKean's report, dated September 12, 1892, submitting the results of his investigation of the alleged relinquishment of land under section 13 of the act approved March 2, 1889 (25 Stats., 888), and transmitting therewith the depositions taken by him pertaining thereto.

It appears from the testimony of Travirsie that he has never denied under oath his Indian nativity or character; that he has been carried upon proper "issue rolls" for many years, and that he has voted two or three times at certain elections because he was furnished a ballot and requested to do so, and not because he claimed such rights on account of citizenship.

The testimony of Travirsie, the Indian, and Royal B. Stearns, submitted by Agent McKean, shows that on the day on which the decision of the Department in relation to the Waldron-Tomahawk case was published in Pierre, S. Dak., said Stearns initiated contest against the Indian for 160 acres of the lands allotted to him on the Sioux ceded tract; that in the afternoon of that day Stearns visited the jail at Pierre, where Travirsie was serving out a sentence for *giving* whiskey to another Indian, and informed him of said decision, and also of the fact that he had initiated contest against him—the Indian—and represented to him that he could not hold the land allotted; that the Indian at that time said that if he could not hold his allotment, he was as willing that Stearns—then a stranger to the Indian—should have the same as any one else; that Stearns referred to the fact in that conversation, that certain banks in Pierre were about to foreclose certain mortgages to the amount of $400, held on the horses and cattle of the Indian; that the Indian feared he would lose his stock; that Stearns agreed, while conferring with the Indian then in jail to give him $400 for his interest in a 160-acre tract of his allotment, and then and there paid the Indian $5; that he afterward satisfied the mortgages referred to, aggregating as indicated, about $400, and furnished the Indian and his wife, from time

to time thereafter, some money, amounting in all to $500; that when the Indian had served out his said sentence he accompanied Stearns to the local land office at Pierre, where they met Stearns' attorney, one H. E. Dewey, of that town; that they repaired to the back room in the local land office, and called upon Mr. Bailey, the register, for a copy of the proceedings of the council with the Sioux tribe under treaty of 1868, which Mr. Bailey furnished; that Dewey, the attorney, then read the proceedings relating to relinquishments, and thereupon prepared a written relinquishment for Travirsie of his entire allotment on the Sioux ceded lands, which the said Indian was induced to sign and hand to said register, Mr. Bailey.

It also appears from the testimony that the said attorney prepared separate applications for the said Indian and said Stearns to enter, as homesteads, each 160 acres of the lands alloted to the Indian; that the reason assigned by the Indian for his action in the matter is that he desires to become a citizen of the United States and take a homestead of 160 acres of land; and that he hopes the Department will grant his request.

Agent McKean states in his report that this case presents quite different features from any request to relinquish, which he has been instructed to investigate, and recommends that the Indian be permitted to relinquish his allotment as requested.

I am constrained to the opinion, from all the facts in the case, that fraud and deception have been practiced upon the Indian in this matter, and in support of this conclusion I would respectfully invite your attention to the fact that Mr. Stearns initiated a contest for a portion of the allotment in question at the hour of eleven o'clock on the day on which the said decision was first published in Pierre, and immediately thereafter visited the Indian while in distress and confined in jail, and then and there led him to believe that he would lose his lands, paying him $5 to close a bargain for them. The Indian was ignorant of the decision referred to, distressed by his imprisonment and the probable foreclosure of the mortgages on his stock, and without counsel or advice in the matter.

Further, upon his release from jail he was carried before a lawyer, the counsellor of Mr. Stearns, who cited the proceedings of the Sioux council of 1868 as authorizing the relinquishment of allotments of land made under section 13 of the act of March 2, 1889 (25 Stats., 888), and represented citizenship as a necessary qualification for an Indian to take a homestead, although allotments to Indians can be relinquished only by consent of the Department; and section 11 of said Sioux act, together with section 6 of the general-allotment act, approved February 8, 1887 (24 Stats., 388), confers citizenship upon each and every allottee on the ceded lands.

Again, by the provisions of the Indian appropriation act of July 4, 1884 (23 Stats., 86), any Indians who were then located on public lands, or should thereafter so locate, may avail themselves of the privileges of the homestead laws as fully and to the same extent as citizens of the United States, and without the payment of fees or commissions on account of such entries or proofs. The Indian was clearly misled as to citizenship by Mr. Stearns and his attorney.

Again, Mr. Stearns moved upon the land which he seeks to have relinquished by the Indian last December, long before the date on which the Indian offers to relinquish, namely, February 29, 1892, and has resided upon and cultivated the same since that time, December last.

He seeks to possess himself of the land before the Department takes action on the case, and his correspondence in relation to the same shows great haste in his efforts to have the matter passed upon.

Indians should not be allowed to take allotments for the purpose of speculation. If so, the object of the Indian allotment laws, intended to secure permanent homes for Indians and their families, will be defeated. If the Indian was ignorant of his rights and was misled in relation to his allotment, as appears to be the case, he should be protected, and no doubt that Mr. Stearns will be able to secure himself otherwise in the payment of the amount advanced to the Indian.

In view of all the facts and circumstances in the case I have the honor to recommend that the request or offer of Barney Travirse to relinquish his said allotment on the Sioux ceded lands be denied.

I would respectfully request to be advised of your decision in this case, in order that the General Land Office and the parties interested may be notified thereof.

All the papers in the case are herewith inclosed, with request that they be returned to the files of this office.

Very respectfully, your obedient servant,

R. V. BELT,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 26, 1892.

SIR: I am in receipt by your reference, for report of a letter dated 1st ultimo, from the Acting Commissioner of Indian Affairs in the matter of the relinquishment of Barney Travirsie an Indian of the Great Sioux Nation.

In reply I have the honor to state that the records and files of this office show that Barney Travirsiee, an Indian of the Sioux Nation, filed his application for an allotment under the act of March 2, 1889 (25 Stat., 888), for the SE. ¼ of NW. ¼, SW. ¼ of NE. ¼, and SE. ¼ of sec. 3, and N. ½ of NE. ¼ of sec. 10, T. 4 N., R. 31 E., B. H. M., South Dakota.

That on December 17, 1891, one Royal B. Stearns filed with the register and receiver at Pierre, S. Dak, an affidavit to contest said Indian allotment upon the grounds that "Barney Travirsee is not now and never was an Indian receiving and entitled to receive rations and annuities at any Indian agency. That said Travisiee is a white man and is not entitled any allotment of land as an Indian. That his said allotment is void and illegal because he is not an Indian but a white man and a citizen of the United States."

On December 18, 1891, Benaiah Titcomb filed an affidavit of contest; reasons assigned same as those given by Royal B. Stearns.

On February 29, 1892, Royal B. Stearns applied to enter under the homestead laws the NE. ¼ of SE. ¼ and SE. ¼ of SE. ¼ of sec. 3 and N. ½ of NE. ¼ sec. 10, Tp. 4 N., R. 31 E. B. H. M. "$14 fees offered and refused. E. W. Eakin, receiver."

On February 29, 1892, Barney Travisiee, "a native-born citizen of the United States above the age of 21 years," applies to enter under the homestead law the SE. ¼ of NW. ¼, SW. ¼ of NE. ¼ and W. ½ of SE. ¼, sec. 3, Tp. 4 N., R. 31 E. B. H. M., "$14 fees and commission offered and refused. E. W. Eakin, receiver."

This is all the information disclosed by the records and files of this office.

The papers received with said letter are herewith returned.

I am, sir, very respectfully, your obedient servant,

W. M. STONE,
Acting Commissioner.

THE SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, December 5, 1892.

SIR: I have considered your report of October 1 last, and accompanying papers relative to the offer of Barney Travirsie, a Sioux Indian, allotted to relinquish his allotment in the Sioux ceded lands.

I concur in your views that to allow Indian to take allotment and then relinquish the same for the purpose of speculation would defeat the object of the allotment law intended to secure a permanent home for them and their families, and while in this case the Department might have the power to grant to this Indian the right to relinquish his allotment, the fact that he has disposed of a portion of said allotment for a money consideration, is sufficient reason for denying the offer to relinquish.

The offer to relinquish is therefore denied and you will notify the Commissioner of the General Land Office and Barney Travirsie of this action.

The papers in the case are herewith returned.

Very respectfully,

JOHN W. NOBLE,
Secretary.

COMMISSIONER OF INDIAN AFFAIRS.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 12, 1892.

GENTLEMEN: By your letter dated August 5, 1892, you enter your appearance for Royal B. Stearns, who you state has on file in the General Land Office an application to make homestead entry for the SE. ¼ of sec. 3, T. 4 N., R. 31 E., Pierre, S. Dak., district, now covered by Indian allotment, application No. 10 (Register's No. 6), made to Barney Travirsie.

You state that the records of the General Land Office show that Travirsie's appli-

cation to be allowed to relinquish his allotment was transmitted to this office on September 8, 1892, and request to be advised of any action taken on said relinquishment.

In reply I have to state that all the facts and correspondence in relation to this case were laid before the Department on October 1, 1892, with the recommendation that the request or offer of Barney Travirsie to relinquish his said allotment to the Sioux ceded lands be denied, his allotment covering the SE. ¼ of the NW. ¼ and SW. ¼ of the NE. ¼, and the SE. ¼ of sec. 3, and the N. ½ of the NE. ¼ of sec. 10, T. 4 N., R. 31 E., containing 320 acres.

I am now in receipt of a communication from the honorable Secretary of the Interior, dated the 5th instant, stating that the offer of the said Indian to relinquish his allotment of the lands described is denied.

The Indian entry, therefore, of the lands mentioned remains intact.

For your further information I inclose herewith copy of Department decision referred to.

Very respectfully,

T. J. MORGAN,
Commissioner.

Messrs. COPP & LUCKETT,
Attorneys at Law, 706 Eighth street NW., City.

DEPARTMENT OF THE INTERIOR,
OFEICE OF INDIAN AFFAIRS,
Washington, December 12, 1892.

SIR: Referring to office letter dated August 10, 1892, pertaining to the desire of an Indian, Barney Travirsie, to relinquish his allotment of certain lands on the Sioux ceded tract, South Dakota, I have to state that all the facts and correspondence in the case were laid before the Department on October 1, 1892, with the recommendation that the request or offer of Barney Travirsie to relinquish his allotment, Application No. 10, Register's No. 6, Pierre local land office, South Dakota, be denied.

I am now in receipt of a communication from the honorable Secretary of the Interior, dated the 5th instant, stating that the offer of the said Indian to relinquish his allotment is denied.

For your further information I inclose herewith copy of the Department decision referred to.

Very respectfully,

T. J. MORGAN,
Commissioner.

Hon. J. A. PICKLER,
House of Representatives.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 12, 1892.

Sir: Referring to previous correspondence relative to the offer of Barney Travirsie, a Sioux Indian allottee, to relinquish his allotment on the Sioux ceded lands, embracing the SE. ¼ of the NW. ¼ and SW. ¼ of the NE. ¼, and the SE. ¼ of section 3, and the N. ½ of the NE. ¼, section 10, township 4 N., range 31 E., containing 320 acres, Pierre local land office, South Dakota, I have to say that all the facts and correspondence in the case were laid before the Department October 1, 1892, with the recommendation that the request or offer of Barney Travirsie to relinquish his said allotment on the Sioux ceded land be denied.

I am now in receipt of a communication, dated the 5th instant, from the honorable Secretary of the Interior, stating that the offer of the said Indian, Barney Travirsie, to relinquish his allotment on the Sioux ceded lands, as above described, is denied, and directing me to so notify you.

For your further information, I inclose herewith copy of said Department decision.

Very respectfully,

T. J. MORGAN,
Commissioner.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

In the U. S. Land Office at Pierre, S. Dak.

Royal B. Stearns, contestant, v. Barney Traversee, Indian allottee.

The SECRETARY OF THE INTERIOR,
Washington, D. C.

ROYAL B. STEARNS, being first duly sworn, according to law, deposes and says, to wit:

First. That he is a native born citizen of the United States, 32 years of age, and fully qualified to enter land under the homestead laws.

Second. That he is now and has at all times hereinafter mentioned been in the actual peaceable and quiet possession and occupation of the lands, to wit: The north half (N. ½) of the northeast quarter (NE. ¼), section No. ten (10) and south half (S. ½) of southeast quarter (SE. ¼) section No. three (3) township No. 4 N. range (31), E. B. H. M.

Third. That he has now and had at all times hereinafter mentioned valuable improvements on said land to the amount of one thousand dollars.

Fourth. That after having so settled upon and improved said land and immediately after the same came into market he applied at the local land office at Pierre, S. Dak., to enter the same as his homestead under the United States Statute in such case made and provided; that his entry thereof was rejected by the register and receiver of said office, for the reason that the same was included in the Indian allotment No. 6 of one Barney Traversee, made on the 23d day of April, 1891.

Fifth. Affiant said further that at said time and at all time hereinafter he was residing upon and in the peaceable possession of said land.

Sixth. Affiant says further that the said allotment to said Barney Traversee and the attempted appropriation of his land thereunder are null and void and were so from their inception on the following grounds, to wit:

1. That the said allotment to Barney Traversee is in violation of the act of Congress and of the treaties of the Sioux Indians under which it is pretended to have been made, for the reason that the said Barney Traversee is not now and never was a Sioux Indian, nor entitled to receive rations and annuities at any Indian agency. That the said Barney Traversee is now and was long prior to the said allotment a white man and a citizen of the United States, and had no claim, right or title to have any land allotted to him under the said law or under any other law, and that the said allotment or attempted allotment, No. 6, made by Special Allotting Agent McKean to Barney Traversee, was erroneously made, and is illegal, erroneous, and void, and that it is also an injury and a fraud upon the prior legal adverse rights of this affiant as aforesaid.

2. That the said Barney Traversee does not now nor never did claim to be an Indian, and is not such in fact, and now claims that the said allotment was not made by any procurement of his, but was done by mistake.

3. That even if the said Barney Traversee was an Indian and entitled to said allotment, the above described land in controversy never was in his possession or under his control, or in any manner claimed by him, but the same is now and always has been, at all the times that the matters herein stated, in the bona fide, legal, and rightful control and possession of this affiant.

4. That this affiant was the first legal, bona fide, and rightful settler upon and claimant of said lands from the Government of the United States, when the same was a part of the public domain.

5. That this allotment to the said Barney Traversee is now of record in the Land Office, and so appears upon the local plats of the land office at Pierre, S. Dak., and thereby prevents this affiant from entering at said office as he is entitled to do, the said land under the homestead laws.

Wherefore your affiant prays that a patent to said Barney Traversee in pursuance to said allotment do not issue; that the said allotment, in so far as it segregates from the public domain the said land in controversy, be annulled, and that the honorable Commissioner of the General Land Office be instructed to order the honorable register and receiver of the land office at Pierre, S. Dak., to cancel from their records and plats the said allotment in so far as it affects the aforesaid land in controversy, and to allow the entry of this affiant to go to record if it be found in all other respects valid.

Or, if by you deemed necessary, that the said officers be ordered to order a hearing wherein all the matters in issue herein put may be determined by competent evidence.

ROYAL B. STEARNS.

Subscribed and sworn to before me, a notary public within and for the county of Hughes, State of South Dakota, and within the boundaries of the Pierre land district, on this 7th day of January, A. D. 1893.

JOHN F. HUGHES,
Notary Public.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

George W. Harris and Owen A. Rowe, each being first duly sworn, say that they have read the foregoing affidavit of Royal B. Stearns, are fully acquainted with the contents thereof; that they are personally acquainted with the said Barney Traversee and all the matters and things in said affidavit alleged, and from their personal knowledge they know, and hereby say, that the said affidavit is true; that they are not in any manner, directly or indirectly, interested in the land in controversy, or in any manner related to the said affiant.

GEORGE W. HARRIS.
OWEN A. ROWE.

Subscribed and sworn to before me this 7th day of January, 1893.

JOHN F. HUGHES,
Notary Public.

In the U. S. land office in Pierre, S. Dak.

Royal B. Stearns, contestant, *v.* Barney Traversee, Indian allottee.

Comes now the undersigned, John F. Hughes, an attorney, admitted to practice before the Interior Department, and moves the honorable Secretary, on the affidavits hereunto annexed, that the prayer of the affiant in said affidavits be granted; that the said allotment of said Barney Traversee be canceled, in so far as it affects the land in controversy herein; that the honorable Commissioner of the General Land Office be instructed to order the register and receiver of the land office at Pierre, S. Dak., to cancel the same from their records and plats, and to allow the homestead entry of the said affiant, if it be found in all other respects valid.

Or, if it be deemed by the honorable Secretary necessary that a hearing herein be immediately ordered to determine the priority of right of the parties hereto, that justice may in all things be done.

Respectfully submitted.

JOHN H. HUGHES,
Attorney and Counsel of Affiant, Pierre, S. Dak.

The SECRETARY OF THE INTERIOR,
Washington, D. C.

Before the honorable Commissioner of Indian Affairs, Washington, D. C.

In the matter of Barney Traversee to relinquish his Indian allotment and to enter a portion of the land thereunder as a homestead, involving Indian allotment No. 10, Register's 6, for the SE. ¼ of NW. ¼, SW. ¼ of NE. ¼, and the SE. ¼ Sec. 3, and N. ½ of NE. ¼ Sec. 10, Tp. 4 N. of R. 31 E., B. H. M.

Motion for review.

Comes now Barney Traversee, the above-named allottee, and by his attorney, Owen A. Rowe, moves that the action taken by the honorable Commissioner of the Indian Office, the same being approved by the honorable Secretary of the Interior on December 12, 1892, in denying the aforesaid application of said Barney Traversee to relinquish his said allotment, be reviewed by the honorable Commissioner and Secretary, and the grounds for said motion are as follows:

First. That he believes the facts in regard to said relinquishment have not been fully set forth, and the honorable Commissioner and honorable Secretary have thereby been led into a misapprehension of the real status of the case.

Second. That he believes that an examination of the accompanying affidavit and a fuller investigation of the real facts in this application will fully convince the said officers that his application is made in good faith for beneficial purposes for himself and not for mere speculation.

Third, that the grounds set forth in this motion for review are: First, that he does not desire to relinquish said allotment for the purposes of speculation, but that because he believes it to be his best interests and rights to do so. Second, that he is a citizen of the United States, a white man, was born such, and always has been such, and that he is entitled to all the privileges, rights, and annuities of any other citizen. Third, that he is not an Indian and as such is not entitled to any Indian allotment. Fourth, that said allotment was given to and received by him under a misapprehension as to his rights, powers, and relations thereto, and under a misappre-

hension of the law governing the same. Fifth, that he did not know in taking said allotment of the conditions attached to the same, and he now therefore desires to relinquish the same and to enter a portion of said land, which is now and has been his home, under the homestead law, as he believes he is entitled to do. He wishes to continue the education of his children in the public schools as a citizen and taxpayer, and he wishes to exercise all the other rights and prerogatives of a citizen, and at the same time bear his just proportion of the burdens and duties thereof.

Wherefore he most respectfully prays a careful examination and consideration by you may be given to his and the other accompanying affidavits hereto attached and made a part of this motion, and that you may order that he be allowed to relinquish the tract of land above described as an allotment and be permitted to enter a portion thereof as his homestead if he be in other respects qualified, and for such other and further relief and adjudication of this matter as your honorable selves may deem necessary in the premises.

OWEN A. ROWE,
Attorney for Applicant, Pierre, S. Dak.

I, Barney Traversee, the above-named allottee, hereby constitute and appoint Owen A. Rowe, of Pierre, S. Dak., as my attorney, to present and prosecute this application, hereby revoking any or all other appointments of attorneys, if any such there be, in this matter.

Dated at Pierre, S. Dak., this 12th day of January, 1893.

OWEN A. ROWE,
Attorney for Barney Traversee.
his
BARNEY x TRAVERSEE.
mark.

U. S. LAND OFFICE, *Pierre, South Dak.*

Filed this 13th day of January, 1893.

L. H. BAILEY, *Register.*

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

BARNEY TRAVERSEE, of Stanley County, S. Dak., being first duly sworn, deposes and says, that he is the identical person to whom Indian allotment No. 10 (register's No. 6) was made for the SE. ¼ of NW. ¼ and SW. ¼ of NE. ¼ and SE. ¼ of section 3, and N. ½ of NE. ¼ of section 10, all in township No. 4 N. of range 31 E., B. H. M; that said allotment was made to him by Special Allotting Agent George W. McKean, on the 23d day of April, 1891; that at the time he signed the said allotment application he did not know or understand the provisions of the act under which said allotment was taken, in that he was not aware of the fact that in making said allotment he still retained his alleged connection with the Sioux Nation or band of Indians, and that the land that was being allotted to him would under the law be held in trust for him for the period of twenty-five years instead of being his in fact to use, dispose of, or retain as he might at any time elect; that he was not at that time, is not now, never has been, and has never desired to be, a Sioux Indian; that on the contrary he was at the time he signed said Indian allotment application under the circumstances above stated a white man, a citizen of the United States, and had been since his birth; that he has always been and is now a citizen of the United States; that he is 42 years old; that he was born on a farm in Woodbury County, Iowa, about 8 miles from Sioux City, in the year 1850;

That at the time he was born his father and mother were living upon a farm; that farming was their business; that they lived among white people and not among Indians; that his father, Joseph Traversee, was a white man, without a drop of Indian blood in his veins; that his mother is a quarter-blood Santee Indian; that she is not a Sioux Indian—that she is in fact a white woman, and dresses and acts like other white people; that her habits are those of other white people; that her father was a full white man and her mother only a half blood; that affiant lived with his parents at the place he was born, near Sioux City, Iowa, until he was 25 years old; that during all that time he associated with and lived among white people only; that during the time he lived in Woodbury County, Iowa, as aforesaid, he exercised the right of an American citizen, by voting at the elections held in his county; that he has for twenty-one years enjoyed the right to vote, and has voted at the elections for county, State, and national officers; that in the year 1875 he, with his father and mother, moved from their home in Iowa and took up their residence in Yankton County, Dakota Territory (now State of South Dakota), and there engaged in farming for a number of years, living and associating with white people only; that during his residence in the place last named he continued to vote at all elections and his right to do so was never questioned.

That in the year 1881 he took up his residence at Fort Pierre on the Sioux Reservation, with many other white people, and was engaged in freighting between Fort Pierre and Deadwood, Dakota Territory; that shortly after moving to Fort Pierre he married a white woman, who had been educated in the public schools; that it is claimed that affiant's wife is of Sioux Indian descent and that affiant verily believes such to be a fact, but that she is not to exceed a quarter blood Indian; that she, like affiant, has always lived among white people and has never adopted the habits or customs of the Indians; that affiant's children have been and are being educated in the State public schools at Fort Pierre, S. Dak., that during the year 1881 when affiant moved to Fort Pierre, his father and mother came with him and took up their residence in said city of Fort Pierre and lived in said town or city, which was then a trading post, for a number of years; that prior to this time affiant's parents had never, in any manner, as affiant verily believes, had any connection with the Sioux Nation of Indians; that affiant's father was engaged in business in Fort Pierre until about the month of August, 1890, after which time he and affiant's mother moved upon the present Sioux Reservation in the vicinity of the Forest City Agency; that about ten years ago affiant's name was put upon the roll of the Cheyenne Indian Agency by his mother; that his mother has now, and always has had, possession of his ration ticket, but that she sent him some rations from time to time, which affiant supposed she drew from said agency.

That affiant accepted these rations because no one objected, and he understood that he had a right to them by virtue of his wife being of Sioux Indian descent; that he never claimed or intended to be classed as a Sioux Indian; that he has never claimed, or does not now claim, any rations or annuities by virtue of any Indian blood in himself, but that if his wife and family are entitled to any such because they are of Sioux Indian descent, he desires that they be allowed to continue the same. That affiant has not intended to defraud the Government by drawing rations and annuities when he may not have been entitled to the same, but that the rations and annuities which he did get came to him without any effort on his part; that affiant, if he had known the provisions of the act under which his application was made, would not have made the same; that it was not then, and is not now, his intention or desire to have allotted to him any land whatever as an Indian; that affiant hereby renounces forever any claim for any land whatever under the provisions of the act of March 2, 1889, and all acts concerning the disposition of lands belonging hereto or hereafter to the Sioux Nation of Indians, except such rights as he may have under the homestead laws as a citizen of the United States; that on or about the 12th day of March, 1892, affiant, with his attorney, H. E. Dewey, appeared at the U. S. land office, at Pierre, S. Dak., and offered his relinquishment for the land covered by his allotment application.

That the register of the land office advised affiant of the full import of the relinquishment which he was about to sign, and advised him, the affiant, not to sign the same unless he desired to do so; that affiant then signed or caused his name to be signed to said instrument with full knowledge of its contents; that his intention was then and is now, and has been since the fall of 1891, when he learned for the first time the provision of the act under which his allotment has been or was being made, to withdraw said allotment application and take 160 acres of land under the homestead laws; that upon the 20th day of December, 1892, he was notified that the honorable Secretary of the Interior had denied his right to relinquish said allotment application for the reason that "an Indian should not be allowed to relinquish his land for a money consideration;" that affiant believes that there must be some misunderstanding or mistake in regard to his intentions and purposes for the reason that he, the affiant, was not induced to offer said relinquishment for a money consideration; that he intended to offer said relinquishment before any money was paid to him, or for him, by Royal B. Stearns, or anybody else; that the payment of said money did not influence him in his actions, except possibly as to informing said Stearns as to the time when said relinquishment was to be offered; that he would have so offered to relinquish said allotment had no money been paid him.

That he understood that the money which was paid him by said party was paid affiant not for the purpose of causing him, affiant, or persuading him, to relinquish any right which he has as an Indian, for affiant well knew then that he had no such rights to relinquish; that the said Royal B. Stearns knew that he had no standing as an Indian, and on that account the said Stearns did, on December 17, 1891, initiate a contest on said allotment, which contest was pending at the time affiant offered his relinquishment and he is informed is now pending before the honorable Commissioner of the General Land Office; that affiant did not offer his relinquishment on account of said pending contest, but because he had concluded that he had no standing as an Indian, did not want to be an Indian, and did not want to represent himself as a Sioux Indian when he was not in fact one; that it is and was at that time well and commonly known that affiant did not claim any rights as a Sioux Indian; that while affiant did accept money from said Royal B. Stearns, as stated

to George W. McKean, special allotting agent, it was a personal matter between himself and said Stearns, and the only advantage, the affiant believes, which said Stearns had over other applicants for homestead entry on the land was in knowing the exact time when affiant was to offer said relinquishment, and that he, Stearns, might be the first to offer his homestead application, which said Stearns did at the time said relinquishment was offered; that said Stearns is a bona fide resident on a portion of the land I desire to relinquish, claiming priority of right, as against said allotment, to enter the same as a homestead.

That affiant did not offer said relinquishment contingent upon his rights to take up land elsewhere as an Indian that the only right to enter land or to take land on the public domain which affiant now claims or did claim at the time he executed his relinquishment papers is a right which is accorded to every other citizen of the United States, and no more, that of homesteading 160 acres of land; that at the time affiant moved upon the Sioux Reservation he became a resident of Fort Pierre; that it was unlawful, as affiant was informed, for white people to live or reside upon said Sioux Reservation; that after affiant married he considered that he had a right to live upon said reservation by virtue of his wife being of Sioux Indian descent; that his object in living in Fort Pierre was to procure work of the freighting companies which were transporting freight by wagons from Fort Pierre to the Black Hills, S. Dak.; that he was further induced to take up his residence upon the Sioux Reservation for the advantages which the lands on the reservation afforded for the raising of all kinds of stock; that as soon as he was able to establish his residence where he now lives he engaged in farming and stock-raising, which business he has pursued up to the present time, and is now pursuing; that affiant's house is made of logs, and is 18 by 30 feet with an addition of 14 by 14 feet.

That he has a frame milk house 18 by 24 feet, with shingle roof, good barn, hog house, and other buildings, and has over 45 head of cattle and horses, and 45 acres of the land which he desires to enter as a homestead is fenced with good posts and three strands of barbed wire; that affiant has a wife and four children; all speak the English language and use the English in all their conversation; that affiant's children can not talk the Sioux language or dialect; that affiant desires that his children shall continue to attend the public schools and continue to be educated therein; that affiant desires to make a homestead entry and pay his full share of the taxes necessary to operate and maintain said schools and pay the other expenses of maintenance for township, county, and state government; that affiant denies the right of the Government to insist on him being and remaining its ward when he has been, and is now, one of its citizens, and by his votes has helped to make laws and elect the officers who execute and interpret its laws; that affiant did not execute or offer his relinquishment and does not make this affidavit under duress, but of his own free will and inclination; that he makes this affidavit for the purpose of having the action taken upon his application to relinquish reconsidered by the honorable Secretary of the Interior; that he still desires that he may so relinquish; that he prays that all the facts and circumstances connected with his case may be reviewed by the proper officers to the end that his affiant's name may be stricken from the allotment record; that he may then be a free man, to do and act as other citizens of the United States; that to be a ward of the Government and to be under the directions of the agents and officers is repugnant to him; that he makes each and every allegation in this affidavit in good faith; that he does not insist on the exercise of his right for the purpose of carrying out any promise or for any pecuniary consideration, but that he makes it for the purpose herein stated and for no other reason whatever.

his
BARNEY x TRAVERSEE.
mark.

Personally appeared before me, the receiver of the United States land office, this 12th day of January, 1893, Barney Traversee, personally known to me to be the same party he represents himself to be, and executed the foregoing affidavit by signing his name thereto and swearing that the allegations therein are true.

E. W. EAKIN,
Receiver.

UNITED STATES LAND OFFICE, *Pierre, S. Dak., ss:*

THOMAS E. PHILIPS, jr., being duly sworn according to law, deposes and says that he is personally acquainted with Barney Traversee, who executed the foregoing affidavit, and the tract of land referred to therein; that he has been well and personally acquainted with said Traversee for ten years last past; that he knows him to be in all appearances, actions, and habits a white man; that the affiant has read the foregoing affidavit of said Traversee and knows the facts set forth therein to be true so far as they refer to said Traversee since affiant has been acquainted with him,

as the affiant verily believes; that he, the said Traversee, made his application to relinquish his Indian allotment in good faith, and not for the purpose of speculation; that affiant lives on his farm within three-fourths of a mile of the home of said Traversee.

THOS. E. PHILIPS, JR.

Subscribed and sworn to before me this 12th day of January, 1893.

L. H. BAILEY,
Register.

U. S. LAND OFFICE, *Pierre, S. Dak., ss:*

JAMES DOUD, being duly sworn, according to law, deposes and says: That he is personally acquainted with Barney Traversee, who executed the foregoing affidavit, and the tract of land referred to therein; that he has been well and personally acquainted with him for eleven years last past; that he knows him to be in all appearances, actions, and habits a white man; that the affiant has read the foregoing affidavit of said Traversee and knows the facts set forth therein to be true so far as they refer to said Traversee since affiant has been acquainted with him, as the affiant verily believes; that he believes said Traversee made his application to relinquish his Indian allotment in good faith and not for the purposes of speculation; that affiant lives on his homestead within one-half mile of the home of said Traversee.

JAMES DOUD.

Subscribed and sworn to before me this 12th day of January, 1893.

L. H. BAILEY, *Register.*

In the matter of the application of Barney Traversee to relinquish Indian allotment 10, register's No. 6.

Argument of counsel for applicant.

To the honorable Secretary of the Interior and the honorable Commissioner of Indian Affairs, Washington, D. C.:

GENTLEMEN: If the opinion rendered by Assistant Attorney-General Shields to the Secretary of the Interior, November 27, 1891, and approved by the honorable Secretary December 14, 1891, in the case of Tomahawk *v.* Waldron (13 L. D., 683) is to govern in cases of the kind referred to in this decision, then Barney Traversee has no standing whatever as an Indian, and his application for an allotment was invalid and illegal upon its face, and upon the showing that his father was a white man would necessarily have to be canceled whether Traversee desired it or not. But in writing this argument I take it for granted that, though this opinion and decision is printed in the Land Decisions, and is generally admitted to be correct, is not in fact being applied in the determination of questions coming within its purview. We, therefore, argue this case the same as we would had no such opinion been handed down.

In the first place, this applicant is not, in fact, an Indian. He has never been claimed as a member of the Sioux nation of Indians. The allotment which he now seeks to relinquish would not probably have been made had all the facts concerning his life been known at the time the alloting agent wrote up his application.

The affidavit of this applicant, filed herewith, is certainly conclusive upon the question as to whether Mr. Traversee has any standing as a Sioux Indian. We do not believe that there can be a reasonable doubt that this name was placed upon the rolls of the Cheyenne River Agency by mistake. It should never have been placed there. The facts seem to be that Traversee moved to Fort Pierre in the year 1883. Before that time he had lived in Iowa and Yankton County, Dakota Territory, as a white man, and enjoyed all the rights of citizenship. From 1850, when he was born, up to 1883, thirty-three years, he had no thought of claiming any rights upon the Sioux Reservation on account of the little Santee Indian blood said to be in his veins. But in later years, having located at Fort Pierre for the purpose of getting employment of the transportation companies referred to in his affidavit, he for the first time did an act which might indicate that he was an Indian. He here at this time married a quarter-blood Sioux Indian, a woman who had been educated in the public schools, who speaks the English language, and who is now and always has been recognized as a white woman.

At the time Mr. Traversee moved with his parents to Fort Pierre the lands east of the Missouri River in the vicinity of Pierre were being rapidly taken by the white settlers. The great Sioux Reservation, lying just west of the Missouri, was a sore

temptation to the white settlers, who desired to go upon the Sioux lands, but who were prevented by the stringent provisions of the Sioux treaty of 1868. The only way to get a foothold on these lands was to either marry an Indian woman or else trace in their ancestry some evidence of Indian blood. This condition of affairs caused many persons who had heretofore been ranked as white people to suddenly assume that they were Indians.

They represented their claims in an ex parte way to the Indian agent, and he, in the absence of any objections, probably placed such names upon the agency roll. Who could object to these newly-created Indians? Not the white settlers east of the Missouri, for they had no interest in the matter. Not the real Indians west of the river, for they were only comparatively few, scattered over a vast expanse of territory. So by default of objection many of these persons of doubtful Indian blood were allowed to live on the Sioux lands, draw rations and annuities from the Government, and enjoy all the rights which the real Indians possess. It is only natural that these persons should have taken advantage of circumstances thus favorable to their pecuniary welfare.

How many names were thus placed upon the agency rolls will never be known until the white settlers going upon the ceded lands and whose interests may conflict with lands claimed by these self-created Indians have brought the attention of the Department and the courts to the facts in each case. This is not an easy matter to accomplish for the department, and especially the department of Indian affairs, will be very slow to admit that any such condition of affairs exists, for to admit that persons were receiving rations and annuities and being allotted lands who were not entitled to such, might be construed as a reflection upon the management of such department, and justice in the courts while sure, is long in obtaining and involves much expense of time and money, more than many applicants would be able to bear and more than the value of the land would warrant. Therefore when a white settler undertakes to challenge the right to an allotment of any person who may have been living upon the Sioux Reservation at the time the same was opened to white settlement, he is met by the Indian Department by the statement that the name of the person whose right is being attacked was upon the rolls of the agency and he is therefore an Indian and the white settler is in effect denied the right to show that said name was placed upon said roll without authority of law or equity.

We submit that any citizen of the United States has a right to question the legality of any name, and its right to be upon the agency roll. More than this, it is his duty as a citizen to do so. Hence when a citizen offers to show the illegality he should not have to contend with arbitrary rules, but should rather be encouraged to offer such legitimate proofs as he may have. We contend that where a man's name has been placed upon the agency rolls by ex parte statements of the applicant, at a time when no person could properly object, that at the first opportunity that an adverse right or interest can assert itself, that it should do so, and every encouragement should be given to parties seeking to show such facts. The department, it seems to me, should be, and no doubt is, especially interested in allowing only such persons as are entitled to do so, draw rations and annuities and hold allotted lands. To hold that the mere fact that a name which is upon the agency rolls is conclusive evidence that such party is an Indian would be most damaging to the public weal. It would offer a reward for fraud.

In no department of justice where the rights of citizens are determined does such an arrogant, unequitable, and unreasonable rule obtain. Certainly the wards of the Government can not have more protection in their sacred rights than the citizens of the Government. We therefore argue that when a settler comes forward and offers to show that a person claiming to be an Indian is not in fact an Indian, he should be given every opportunity to submit his proof. The real Indian is just as much, yes more, interested in having such investigation as the white settler. Every name stricken from the agency roll adds to the latter's inheritance. By what authority was the name of Barney Traversee ever placed upon the rolls of the Cheyenne River Agency? In the light of the circumstances of his life can it be held that he gained any rights by virtue of section 2 of the treaty of 1868? Traversee went upon the Sioux lands not as a member of any "friendly" tribe, but as a white man—a full fledged citizen of the United States. Never has he claimed any rights in consequence of the slightest tinge of Santee Indian blood in his veins, nor does he claim any such rights now. Of course he may have had a right to live upon the Sioux lands after he had married a lady of slight Sioux Indian blood, but he certainly then only occupied such land as any other white man who married an Indian woman. He was and is what is termed a "squaw man," and nothing more in the Indian line.

Even after he married, in 1884, he continued to be a citizen, voted at the elections, and sent his children to the public schools. These children cannot even talk any Indian language. In what way, then, did Traversee cast off his citizenship when he moved onto the Sioux Reservation? If he is an Indian and was an Indian at the time that he signed the Indian allotment application, by what means did he become such?

In rejecting his application to relinquish his allotment it seems to have been taken for granted that he was an Indian, though I understand that there was evidence in the case to at least cast a doubt upon such proposition. Was it considered that the applicant was a white man, that he has always been and is now a citizen of the United States, that he is an intelligent business man, amply able to cope with his fellows in business matters, and in fact, all matters wherein his interests are involved? Was it decided that one Royal B. Stearns, a white settler, who paid my client Traversee several hundred dollars for a portion of the land covered by the allotment, imposed upon or misled the Indian? If it was, I have to suggest that Traversee showed much greater business capacity in the transaction than did the settler.

When Stearns paid this money he must have known that he could have obtained title to the land by process of law if it were a fact that Traversee was not entitled to an allotment. He undoubtedly knew all about Traversee and paid the money to him that he might get peaceable possession of the land ahead of any other settler. He must have known that the Department would not allow an Indian to relinquish an allotment for a money consideration. I agree with the recommendation of the honorable Commissioner of Indian Affairs and the affirming of such decision by the honorable Secretary of the Interior, "that an Indian should not be allowed to relinquish his allotment for a money consideration," nor do we ask for an abrogation of such decision and recommendation. If Traversee were in fact an Indian, with the ability of the average citizen, it might be a question as to whether or not it would not even then be better for him and his family if he relinquished his allotment to take a homestead, as in this case. Even if Traversee were a full-blood Indian, and at the same time an intelligent business man, fully armed with education, experience, inclination, and ambition to sever all relations with his tribe, would it not be in accordance with the long-established policy of this Government for him to be allowed to do so? Of course his good faith would have to be established. In this case we submit that the only possible evidence against Mr. Traversee's good faith is the money transaction between himself and Mr. Stearns. Whether such transaction was in fact legal does not enter into the question.

The only questions, as I take it, are, First: Did this money consideration influence Traversee to offer to relinquish any rights which he had as an Indian at the time such offer was made? Second: Did he have any rights to relinquish?

We maintain that he was not influenced to do so by any money consideration. Mr. Traversee is a sharp, shrewd, business gentleman. He must have known that the amount paid by Stearns was not adequate consideration for the 160 acres of land to be relinquished. If he had desired to relinquish for a mere money consideration he could have demanded, and no doubt received, more money for so doing. In this conclusion we are taking it for granted that he was an Indian and had something to relinquish, when just the contrary is undoubtedly the fact.

Any doubt as to Mr. Traversee's desire or intentions in the matter it seems to me is cleared away by his last affidavit filed herewith. By your denial of his application he was given the best opportunity to go back on any agreement which he had made with Stearns, but instead of doing so he now comes forward and after understanding fully every right which the Department claims for him still insists upon a relinquishment. He has been fully advised that he can hold this 320 acres of land if he desires to. The fact is, he does not want an allotment. He desires to stand upon an equal footing with his white neighbors and friends. Should he not be allowed to do so? Is it not his undisputed right to do so? If he is, as the corroborated testimony shows, an intelligent and capable citizen, should the Government insist on keeping him in the attitude of a ward?

All legislation by Congress for the Indians has been with the view of aiding them in abandoning their tribal relations and learning the arts of peace and industry and elevating them from the condition of savagery in which they were found when civilization first touched the shores of America and began its magic transformation of their continent. In our opinion there is no law or rule or regulation which means to insist on an Indian remaining a member of any Indian tribe or nation of Indians when he desires to sever his tribal relations. Especially is this true when such person has shown himself qualified to pass from out the guardianship which he has been kept under by reason of his incapacity to act for himself. The Government holds the Indian to be a ward only so long as such guardianship is necessary and no longer. The position or condition of a ward may not suggest to the savage or semi-civilized mind any repugnance, for when in that condition he does not feel or understand that his position is an inferior one, but to the person who may have in his veins some tinge of Indian blood, but to all intents and purposes is a free white man, the word "ward" has an entirely different meaning. Such a man naturally enough feels that to be kept in such a condition is to infringe upon his rights.

It would not be strange that Barney Traversee, who, having all his life enjoyed the sacred boon of citizenship and liberty, should now refuse to assume the attitude of an Indian. He stands before you in the dignity of a citizen of the United States

and asks to be relieved of all supposition that he is a ward. He does this in good faith, for what he believes to be his best interests and happiness, and for the good and welfare of his wife and children. His actions are not governed by any vulgar desire for present pecuniary relief, as might be presumed in consequence of the money transaction between himself and Mr. Stearns, which, unfortunately for him, has been made to enter into the consideration of this case.

We submit that if Mr. Traversee made an illegal or improper sale of part of the tract covered by his allotment that he is amenable to the law the same as other citizens, and such transaction can be no bar to his subsequent actions if he is in fact competent to continue to exercise the functions of a citizen. If Traversee were intellectually deficient then it might be presumed that he had been deluded into a transaction against his best interests, but such is not the case, as is abundantly manifest.

Respectfully submitted.

OWEN A. ROWE,
Attorney for Applicant, Pierre, S. Dak.

PIERRE, S. DAK., *January 17, 1893.*

SIR: I herewith inclose you petition of Royal B. Stearns in relation to a certain Indian allotment in this land district.

In cases where parties have received allotments who are not entitled to them, and in violation of the rights of settlers, there seems to be no mode of procedure laid down by the Department. I have therefore in this case filed in the local land office for the consideration of the honorable Commissioner an affidavit of contest against the portion of this allotment that my client claims. I have also considered it possible that, as these allotments must be approved by you, on a proper showing you might refuse to approve them and order them to be canceled. I hope that you will take early action in regard to this class of cases by designating the mode of procedure to be pursued by honest claimants whose rights are usurped by allotments that have been made in violation of law or made in violation of the proper legal adverse rights of claimants.

I beg to remain, respectfully, yours,

JOHN F. HUGHES,
Attorney for Royal B. Stearns.

The SECRETARY OF THE INTERIOR,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 28, 1893.

SIR: I am in receipt, by Department reference for report, of a communication dated January 17, 1893, from John F. Hughes, Pierre, S. Dak., in relation to an allotment of land to an Indian named Barney Travirsie on the Sioux ceded tract, embracing the southeast quarter of the northwest quarter and the southwest quarter of the northeast quarter and the southeast quarter of section 3, and the north half of the northeast quarter, section 10, township 4 north, range 31 east, containing 320 acres, Pierre local land office, South Dakota.

Mr. Hughes incloses with his said letter a petition from Royal B. Stearns, subscribed and sworn to January 7, 1893, setting forth in substance that he is a native born citizen of the United States, 32 years of age, and fully qualified to enter land under the homestead laws; that he is now and has been at all times in said petition mentioned in actual peaceable and quiet possession and occupation of the following described lands, viz: the north half of the northeast quarter of section 10, and the south half of the southeast quarter of section 3, township 4 north, range 31 east, the same being a portion of the lands described above; that he is now and has at all times mentioned in his said petition had valuable improvements on the lands last described worth $1,000; that after having settled upon and improved the last-named tract, and immediately after the same came into market he applied at the proper local land office to enter the same as his homestead under the public land laws of the United States; that his entry thereof was rejected by the register and receiver of the local land office for the reason that the same was included in the Indian allotment application No. 6, made by Barney Traversee on the 23d of April, 1891; that the allotment of the lands described to the Indian named and the attempted appropriation of the same are null and void and were so from their inception on the following grounds, viz:

"1. That the said allotment to Barney Traversee is in violation of the act of Congress and of the treaties of the Sioux Indians under which it is pretended to have been made for the reason that the said Barney Traversee is not now and never was a Sioux Indian nor entitled to receive rations and annuities at any Indian agency; that the said Barney Traversee is now and was long prior to the said allotment a white man and a citizen of the United States and had no claim, right or title to have any land allotted to him under the said law or under any other law, and that said allotment or attempted allotment No. 6, made by Special Allotting Agent McKean to Barney Traversee was erroneously made and is illegal, erroneous, and void, and that it is also an injury and a fraud upon the prior legal adverse rights of this affiant as aforesaid.

"2. That the said Barney Traversee does not now nor never did claim to be an Indian, and is not such in fact, and now claims that the said allotment was not made by any procurement of his, but was done by mistake.

"3. That even (if) the said Barney Traversee was an Indian and entitled to said allotment the above described land in controversy never was in his possession or under his control or in any manner claimed by him, but the same is now and always has been, and at all the times that the matters herein stated in the bona fide legal and rightful control and possession of this affiant.

"4. That this affiant was the first legal bona fide and rightful settler upon and claimant of said lands from the Government of the United States when the same was a part of the public domain.

"5. That this allotment to the said Barney Traversee is now of record in the land office, and so appears upon the local plats of the land office at Pierre, S. Dak., and thereby prevents this affiant from entering at said office, as he is entitled to do, the said land under the homestead laws."

Mr. Stearns prays in his said petition that a patent to the Indian named for the lands allotted be not issued; that the said allotment, in so far as it segregates from the public domain the said land in controversy, be annulled, and that the General Land Office be instructed to order the register and receiver of said local land office to cancel the said allotment in so far as it is in conflict with the lands desired to be entered by himself, to the end that his application to enter the lands desired may be recorded.

Mr. Hughes, the attorney for Mr. Stearns, filed a motion, which is transmitted with the papers in the case, asking that the prayer of Mr. Stearns set forth in his said petition be granted, and states in his said letter that in cases where parties have received allotments who are not entitled to them, and in violation of the rights of settlers, there seems to be no mode of procedure laid down by the Department; that for this reason he has filed in the local land office an affidavit of contest against that portion of the said allotment which his client claims; that he considers it also possible, as the allotments on the Sioux ceded tract must be approved by the Department, that on a proper showing it might refuse to approve them and order them to be canceled, and that he hopes that early action will be taken in regard to this class of cases by designating the mode of procedure to be pursued by honest claimants whose rights are usurped by allotments, which have been made in violation of law, or in violation of the prior legal adverse rights of claimants.

Upon this subject I have the honor to invite your attention to office report, dated October 1, 1892, wherein a full and complete history of this whole matter was submitted to the Department, upon request of the Indian named to relinquish his said allotment and to make entry of 160 acres of the land covered thereby under the homestead laws of the United States.

It was recommended for certain reasons therein set forth that the request or offer of Barney Travirsie to relinquish his said allotment on the Sioux ceded lands be denied.

On December 5, 1892, you addressed a communication to this office, stating that the offer of the said Indian—Barney Travirsie—to relinquish his allotment on the Sioux ceded lands was denied, and directing me to so notify the Commissioner of the General Land Office, which was done December 12, 1892.

Special Allotting Agent McKean and Messrs. Copp and Luckett, attorneys for Mr. Stearns, were also so advised on that date.

The allotment to the Indian named will be transmitted to the Department together with other allotments upon the Sioux ceded lands at as early a day as practicable for your consideration and approval.

The papers in the case are herewith returned and a copy of this report submitted.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 20, 1893.

SIR: Referring to previous correspondence in the matter of the request of Barney Travirsie to relinquish his allotment upon the Sioux ceded lands, I have to state that this office submitted to the Department two reports thereon, dated, respectively, October 1, 1892, and January 28, 1893, with recommendation that the request of the allottee to relinquish his said allotment on the Sioux ceded lands be denied.

A full and complete history of the whole matter was contained in said office reports, and all the papers pertaining thereto were submitted for the consideration of the Department.

I am now in receipt of a communication, dated April 21, 1893, from the Department returning the said office reports and all the papers in the case, with the request that the matter receive further consideration by this office, and with the suggestion whether, in view of all the facts in the case, it would not be proper to allow the said Travirsie to relinquish his entire allotment of 320 acres when he shall have relinquished all his rights and interests as a Sioux Indian.

I have therefore to direct, in accordance with the suggestion from the Department, that you advise the said Barney Travirsie that when he shall have relinquished all his rights and interests as a Sioux Indian, this office will recommend to the Department that he be permitted to relinquish his application for allotment of lands upon the Sioux ceded tract.

If he concludes to relinquish his rights and interests as a Sioux Indian, you will have him execute such relinquishment in proper form and manner, and acknowledge the same before you under oath, upon receipt of which this office will submit the recommendation to the Department as above indicated.

You will be careful to explain to him that such relinquishment of his rights and interests will bar him from participating in any manner in the benefits derived under the Sioux act of March 2, 1889, and previous treaties and agreements made with the Sioux Nation of Indians, and that he will not be entitled to receive rations, annuities, funds, moneys, or benefit of any kind whatever thereunder.

You will report your action in this matter.

Very respectfully,

FRANK C. ARMSTRONG,
Acting Commissioner.

GEORGE W. MCKEAN, Esq.,
Special Allotting Agent, Chamberlain, S. Dak.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, June 2, 1893.

SIR: I have received your letter of the 24th ultimo, referring to office letter of May 20 last, relating to the proposed relinquishment by Barney Travirsie of his allotment upon the Sioux ceded lands under section 13 of the act of March 2, 1889 (25 Stats., 888), and the suggestion that he would be permitted to do so by this Department if he would relinquish all his rights and interests as a Sioux Indian under said act and former treaties made with the Great Sioux Nation of Indians.

You request to be advised whether the relinquishment by Barney Travirsie of all his Indian rights and interests as indicated would affect the rights of his wife and children to allotments of land, rations, annuities, etc., his wife being an Indian woman.

In reply I have to state that should Barney Travirsie conclude to relinquish his rights and interests as suggested in said office letter, the instrument of relinquishment should set forth that he relinquishes *his* rights and interests only, and not those of his wife and children. Should the relinquishment be made in the manner indicated, I am of the opinion that it would not affect the rights of his wife and children, especially those of his wife.

Very respectfully,

FRANK C. ARMSTRONG,
Acting Commissioner.

GEORGE W. MCKEAN, Esq.,
Special Allotting Agent, Chamberlain, S. Dak.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, July 28, 1893.

SIR: I have the honor to acknowledge the receipt of a communication, dated April 21, 1893, from Hon. George Chandler, then Acting Secretary of the Interior, transmitting therewith the papers in the matter of the request of Barney Travirsie to relinquish his allotment upon the Sioux ceded lands, which was the subject of Indian Office reports of October 1, 1892, and January 28, 1893, together with other papers relating thereto, with request that the matter receive further consideration by this office, and with the suggestion whether, in view of the facts in the case, it would not be proper to allow said Travirsie to relinquish all of his allotment, aggregating 320 acres, when he shall have relinquished all his rights and interests as a Sioux Indian.

In reply I have the honor to state that on May 20 last the whole matter was laid before Special Allotting Agent George W. McKean with directions, in accordance with the suggestion from the Department, that he advise the said Barney Travirsie that when he shall have relinquished all his rights and interests as a Sioux Indian this office would recommend to the Department that he be permitted to relinquish his application for allotment of land upon the Sioux ceded tract.

Special Agent McKean was also instructed, if the Indian named concluded to relinquish his rights and interests as a Sioux Indian, to have him execute such relinquishment in proper form and manner and acknowledge the same before him under oath, and to be careful to explain to him that such relinquishment of his rights and interests would bar him from participating in any manner in the benefits derived under the Sioux act of March 2, 1889 (25 Stats., 888), and previous treaties and agreements made with the Sioux Nation of Indians, and that he would not be entitled to receive rations, annuities, funds, moneys, or benefits of any kind whatever thereunder.

I am now in receipt of a letter, dated the 18th instant, from Special Agent McKean, inclosing therewith the relinquishment of said Travirsie, made in accordance with the instructions from this office with the statement that he (Travirsie) desired and expressed a hope that the matter would receive prompt attention and be finally settled at an early day.

It will be observed from the said relinquishment (herewith inclosed) that the same was executed by said Travirsie under oath before George W. McKean, special allotting agent, on July 8, 1893, and is witnessed by two attesting witnesses; that the said Travirsie sets forth therein, in substance, that he is the identical Barney Travirsie to whom was made allotment of land in severalty under act of March 2, 1889, as shown by Indian allotment application No. 10 (R. and R., No. 6); that he relinquishes and forever surrenders all his rights and interests as an Indian under the said act to rations, annuities, funds, moneys, or other benefits of any kind whatever thereunder; that he severs his tribal relation with the Sioux Nation of Indians; that he makes the relinquishment of his own free will and accord, without any mental reservation whatever, and with a full knowledge of the force and effect of the same; with the understanding that it shall affect his own personal rights only.

In view of all the facts in the case, I have the honor to recommend that the said Barney Travirsie be permitted to relinquish his allotment application No. 10 (R. and R. No. 6), Pierre local land office, South Dakota, covering the SE. ¼ of the NW. ¼, and the SW. ¼ of the NE. ¼, and the SE. ¼ of section 3, and the N. ½ of the NE. ¼ of section 10, T. 4 N., R. 31 E. South Dakota, containing 320 acres, without the privilege of taking another allotment in lieu thereof, either under the said Sioux act of March 2, 1889, or the general allotment act of February 8, 1887, amended by act of February 28, 1891 (26 Stats., 794); and that his relinquishment of his rights and interests as a member of the Sioux Nation of Indians be approved.

I return herewith all the papers in the case, as requested by the Department, and inclose the said letter of Special Agent McKean.

I would be pleased to be advised of your action in this matter in order that, if the permission to relinquish as recommended is granted, proper annotations be made upon the records of this office, and also that the General Land Office may be advised thereof.

When the papers in the case shall have had consideration by the Department, I would respectfully request their return to the files of this office.

Very respectfully, your obedient servant,

FRANK C. ARMSTRONG,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

STATE OF SOUTH DAKOTA, *County of Stanley, ss:*

I, Barney Travirsie, to whom was made an allotment of land in severalty under the act of March 2, 1889, as shown by Indian allotment application No. 10, before Special Allotting Agent Geo. W. McKean, on or about the 22d day of April, 1891, and who was, on the 10th day of February, 1890, receiving and entitled to receive rations and annuities at the Cheyenne River Agency as a Sioux Indian, do hereby relinquish and forever surrender all my rights and interests as an Indian under the act of March 2, 1889, known as the Sioux act, and to rations, annuities, funds, moneys, or other benefits of any kind whatever thereunder, and I hereby sever all my tribal relations with said nation of Sioux Indians. And I make this relinquishment of my own free will and accord, without any mental reservation whatsoever, and with a full knowledge of the force and effect of said relinquishment, with the understanding that this act shall, and does, affect my own personal rights only.

his
BARNEY x TRAVIRSIE.
mark.

Witnesses:
WM. D. HODGKISS
EUGENE MOTLEY.

I, Geo. W. McKean, special allotting agent, do hereby certify that the above described person, Barney Travirsie, who is personally known to me to be the same person as described in the foregoing relinquishment, did appear before me in person on this 8th day of July, 1893, and in my presence did execute the within and foregoing instrument, and did then and there acknowledge to me, under oath, that he executed the same freely and of his own accord; and I do also certify that before the said Travirsie signed said relinquishment I did read to him and fully explain the meaning, intent, and force of said document.

GEO. W. MCKEAN,
Special Allotting Agent.

Approved, August 2, 1893.

WM. H. SIMS,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, August 15, 1893.

SIR: Referring to previous correspondence in the matter of the request of Barney Travirsie to relinquish his allotment application for lands within the ceded portion of the Sioux Reservation, S. Dak., I have to state that the facts in the case were again laid before the Department on July 28, last, together with the instrument executed by said Travirsie before you as special agent, whereby he relinquishes and surrenders all his rights as an Indian to rations, annuities, funds, moneys, or other benefits of any kind, and severs his tribal relations with the Sioux Indians, with the recommendation that this instrument be approved and that Travirsie be allowed to relinquish his allotment application.

I am now in receipt of a letter, dated the 2d instant, from the Department, stating that while the circumstances indicate that the relinquishment was sought to be made in the first instance for a money consideration, and in the interest of a party seeking to obtain the land as a homestead, yet, in view of all the facts in the case, it has concluded to authorize the relinquishment in this instance, in accordance with said office recommendation, and permission, therefore, is granted for said Travirsie to relinquish his allotment application No. 10 (R. & R. No. 6, Pierre local land office, S. Dak.) covering the SE. ¼ of the NW. ¼, and the SW. ¼ of the NE. ¼, and the SE. ¼ of sec. 3, and the N. ½ of NE. ¼ of sec. 10, township 4, N., R, 31 E., said state containing 320 acres, without the privilege of taking another allotment in lieu thereof, either under the Sioux Act of March 2, 1889, or the general allotment act of February 8, 1887, amended by act of February 28, 1891 (26 Stats., 794); and the relinquishment by Travirsie of his rights as a Sioux Indian, is approved by the Department.

You will advise Barney Travirsie of the action taken by the Department in this matter, and have him execute in proper form a relinquishment before you as special allotting agent of the lands described in his said application, and forward the same to this office in order that proper annotations may be made upon the Sioux ceded tract book, and the General Land Office advised thereof.

Very respectfully,

D. M. BROWNING,
Commissioner

GEORGE W. MCKEAN, Esq.,
Chamberlain, S. Dak.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, September 11, 1893.

The COMMISSIONER OF THE GENERAL LAND OFFICE:

SIR: In the matter of the request of Barney Travirsie (Indian) to relinquish his allotment application for lands within the ceded portion of the Sioux Reservation S. Dak., No. 10 (R. & R. No. 6, Pierre local land office), covering the SE. ¼ of the NW. ¼ and the SW. ¼ of the NE. ¼ and the SE. ¼ of section 3, and the N. ½ of the NE. ¼ of sec. 10, T. 4, R. 31 E., I have to state that all the facts in the case were laid before the Department on July 28 last, together with an instrument executed by said Travirsie before Special Alloting Agent McKean, whereby he relinquished and surrendered all his rights as an Indian to rations, annuities, funds, moneys, or other benefits of any kind, and severed his tribal relations with the Sioux Indians, with the recommendation that said instrument be approved, and that Travirsie be allowed to relinquish his said allotment application.

In a communication dated the 2d of August last, the Department stated that while the circumstances indicated that the relinquishment was sought to be made in the first instance for a money consideration, and in the interest of a party seeking to obtain the land as a homestead, yet, in view of all the facts in the case, it had concluded to authorize the relinquishment in this instance in accordance with said office recommendation.

On August 15, 1893, Agent McKean was instructed to advise Barney Travirsie of the action taken by the Department in this matter and have him execute, in proper form, a relinquishment of the lands described in his said application and forward the same to this office in order that proper annotations might be made upon the Sioux ceded tract book and your office be advised thereof.

I am now in receipt of a letter, dated the 4th instant, from said Agent McKean, inclosing therewith the relinquishment by Barney Travirsie of his Indian allotment application covering the lands above described, executed before U. S. Commissioner S. M. Laird, of the State of South Dakota.

For your further information I inclose herewith copy of said authority and also copy of the relinquishment by said Travirsie of the lands described.

Very respectfully,

D. M. BROWNING,
Commissioner.