

THE CONGRESSIONAL CAREER OF SIDNEY CLARKE

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PREFACE

This study concentrates on the congressional career of Sidney Clarke, congressman at large from Kansas, 1865-1871. It also deals with national issues of the reconstruction period and conflicts over public land policies both in Kansas and on the national level.

For aid on this paper I am deeply indebted to Mr. Alton Juhlin, former Head of the Special Services Department of the University Library. I am also grateful to Dr. Sidney D. Brown and Dr. Norbert R. Mahnken for critical reading of the manuscript. Without access to the files of the Kansas State Historical Society at Topeka, Kansas, and the Oklahoma Historical Society at Oklahoma City, Oklahoma, this study would have been impossible, and I appreciate the courteous treatment I received at both places.

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CHAPTER I

EARLY LIFE AND ELECTION TO CONGRESS

In another day and another age, Sidney Clarke of Lawrence, Kansas, and Oklahoma City, Oklahoma, might have been one of the great statesmen of American history. Unfortunately, he came to Congress following the Civil War, an era notorious for decline in public morality. His career as a lawmaker was controversial from its beginning, and at the end of the six years~~he served~~ he was suspected as a corruptionist by reforming factions, caught in a general wave of reform, defeated for a fourth term, and faded into relative obscurity. Clarke searched throughout his brief congressional career for a policy that would enable settlers to buy public land cheaply, and at the same time provide capital enough for railroad building. He fought the Indian treaty system to its death and paved the way for the destruction of tribal governments and the eventual emergence of the Indian into full citizenship.

The Clarke family is old in American history and reaches far back into the colonial era. Sidney Clarke's grandfather, Jephtha Clarke, was a soldier in the Revolutionary War and was at Saratoga when the British army, under General John Burgoyne, surrendered.¹ His father, Joseph Clarke, had also been a soldier, seeing service in the War of 1812. Clarke himself was born in Southbridge, Massachusetts, on October 16, 1831. He received little formal education and was apprenticed to a

¹Portrait and Biographical Record of Oklahoma (Chicago: Chapman Publishing Co., 1901), pp. 22-23.

printer until the age of eighteen. He then began publishing a weekly paper, the Southbridge Press.² Ten years later, in 1859, he sold his newspaper interests and moved to Lawrence, Kansas, where he joined the Free State Party. Probably because of his experience as a newspaperman, he became a member of the Constitutional Convention which framed the Free State Constitution for Kansas Territory, under which statehood came on January 29, 1861.³

To understand Clark's later career, it is necessary to look at Kansas and its problems in 1861. A more poverty stricken state probably never entered the union. The majority of the people lived in log cabins or dug-outs, where pigs and chickens shared their living quarters. Most of the sparse population lived along the eastern border. The western-most settlement was Emporia, a little village where the people occasionally killed stray buffalo in the streets. The southern rim of settlement was the Cherokee Neutral Lands, corresponding to Crawford and Cherokee counties today. Although this region belonged to the Cherokees by treaty, fifteen hundred squatters now lived on it. The new state had only three hundred miles of railroads, and its people hoped to be linked soon with eastern markets.

The Indians still possessed most of Kansas. They were of two types: semi-civilized tribes such as Sac, Fox, Delaware and Pottawatomie; savage tribes like the Comanche, Cheyenne and Arapahoe.⁴ The latter group presented serious problems to the border settlers because of their frequent

²Southbridge Press, July 5, 1856, Sidney Clarke Papers, Oklahoma State University. Hereafter cited as Clarke Papers.

³Luther B. Hill, A History of the State of Oklahoma (2 vols., Chicago: The Lewis Publishing Co., 1910), Vol. I, p. 170.

⁴Albert Castel, A Frontier State at War: Kansas, 1861-65 (Ithaca: Cornell University Press, 1958), Ch. 1.

raids.

Kansas, like most frontier states, was the scene of wild speculation. "Never in all history, so it would appear," wrote Annie H. Abel, "has the insatiable land hunger of the white man been better illustrated than in the beginning of Kansas."⁵ Land warrants were used instead of currency. Speculation had become so intense that people facetiously proposed an act of Congress to reserve some Kansas land for farming purposes. The first object of its early settlers had been to secure land claims which might be sold profitably to someone else. An eye-witness described claim-making this way: "They do not squat for the purpose of making a home, but for selling claims . . . they calculate to sell without pre-empting, because they rarely have money. The revolver and bowie knife are certificates of title . . . it is the unwritten doctrine that when a man discovers a tract of land no other man has appropriated, he acquires a certain right to claim it. . . ."⁶

A significant blunder in government policy had been made in 1854 when the territory was opened to settlement. Not an acre of land at that time was available for sale, either because it was all restricted and reserved for Indians or no provisions had been made for surveying it.⁷ In July, 1854, the government had extended the right of pre-emption to Kansas settlers occupying unsurveyed public land to which Indian titles had been extinguished. However, more than fifteen million acres were still closed

⁵Annie H. Abel, The American Indian Under Reconstruction (Cleveland: The Arthur H. Clark Co., 1925), p. 24.

⁶Quoted in Ibid., p. 53.

⁷Paul Wallace Gates, Fifty Million Acres: Conflicts Over Kansas Land Policy, 1854-1890 (Ithaca: Cornell University Press, 1954), p. 20.

to settlement. Much of this land joined Missouri and was rich and fertile, having both water and timber. As was the usual case, the settlers paid scant attention to Indian titles.⁸

Kansas, at statehood, found itself confronted with multiple problems. The settlers were demanding the complete removal of the Indians. New political alignments had to be made within the state itself. One had been worked out when the Wyandotte Convention had apportioned the state so that the Democratic party found it practically impossible to elect candidates to Congress.⁹

Two factions within the Republican party, finding it no longer necessary to unite against slaveholders, vied with each other for control of the state. One faction, headed by Charles Robinson, elected him governor in 1861. The other, headed by James H. Lane, went after federal patronage and concentrated on electing him to the United States Senate. Lane was one of the most colorful figures in Kansas history. He was born in Indiana in 1814. A colonel in the Mexican War, he served with distinction in several battles. Using his military record as a stepping stone, he was elected to the House of Representatives from Indiana. He migrated to Kansas in 1855 because his vote in favor of the Kansas-Nebraska bill had wrecked his political career in his home state. His participation in the Kansas troubles of 1856-1857 led many to believe that "he rescued the state from the border renegades and bushwhackers."¹⁰ He was a master politician, and from the start he and Robinson were at odds.

⁸William Frank Zornow, Kansas: A History of the Jayhawk State (Norman: University of Oklahoma Press, 1954), p. 93.

⁹Castel, A Frontier State at War, p. 18.

¹⁰John Speer, Life of General James H. Lane (Garden City: John Speer, Printer, 1897), Ch. XVI.

Clarke, upon arriving in Lawrence, Kansas, was strongly attracted to the colorful Kansas "savior," and asked permission to read law under his tutelage while serving as a clerk in his office.¹¹ There is no way to determine how much law Clarke actually learned, but he absorbed Lane's devious political procedure, as his congressional record demonstrated.

Lane and Robinson, though central figures on the Kansas stage at this time, were by no means the only important ones. Another well-known Republican was S. C. Pomeroy of Atchison. He was short in stature, and affected such a sanctimonious attitude that many people called him "Pom the Pious." He was popular with the abolitionists, and, with the backing of railroad interests, had political ambitions. He and Lane were elected to the United States Senate by the Kansas legislature.¹²

Lane appointed Clarke his private secretary, and the two new senators, along with scores of Kansas office seekers, left for Washington on April 8, 1861, to attend to the pleasant task of federal patronage for the new state. When the newcomers arrived, they found the city practically defenseless and its citizens frightened. Old soldier Lane organized his group of Kansas job hunters into a company of sixty men under Clarke as captain and offered their services as a personal bodyguard for the new president, Abraham Lincoln. His "Frontier Guard" bivouacked in the White House for two weeks until the militia arrived. They were then mustered out of service with the personal thanks of President Lincoln.¹³

The "general" and the "captain" of the "Frontier Guard" became great

¹¹Castel, A Frontier State at War, p. 24.

¹²Ibid., p. 34.

¹³Eugene F. Ware, "The Frontier Guard at the White House," Kansas Historical Collection, Vol. X (1907-1908), p. 419.

favorites of the President, and because of this Lane was able to gain control of a lion's share of federal patronage.¹⁴ Pomeroy, not so fortunate, obtained only a few crumbs and became chagrined when the choice political jobs were filled with Lane supporters. The "general" himself became a general in fact when he was appointed a major general of volunteers by the President, while Clarke was elected to the second Kansas legislature in 1862 by the obedient Lane machine.

The new general determined to destroy the opposing faction, and had his supporters bring impeachment charges against Governor Robinson. The Kansas government had recently sold one hundred and fifty thousand dollars worth of bonds to the Department of Interior at eighty-five cents on the dollar of value. Only sixty cents on the dollar found its way into the state's treasury and twenty-five cents on the dollar commission was allegedly paid to the governor and other state officials for arranging the sale. A special committee of the Kansas House of Representatives reported a resolution to impeach Robinson and his cohorts on charges of embezzlement. Clarke, who was a member of the committee, helped prepare lengthy charges against Robinson, who was tried before the Kansas Senate and was acquitted on all counts, but emerged from the scandal politically ruined.¹⁵

At this point, Clarke's career began to separate from that of General Lane. Early in 1863, Clarke was commissioned by President Lincoln Assistant Adjutant General of Volunteers for the state of Kansas, with the rank of captain, and a few days later was appointed Assistant Provost

¹⁴Raymond Gaeddert, The Birth of Kansas (Lawrence: University of Kansas, 1940), Ch. VIII.

¹⁵Ibid.

Marshal for Kansas, Nebraska, Colorado and Dakota.¹⁶

The high point of the Kansas war effort occurred in the defeat of the Sterling Price raid on September 9, 1864. General Price of the Confederacy moved out of Arkansas at the head of twelve thousand cavalry, determined to make a final effort to win Kansas. He was joined in this endeavor by the guerrillas of Missouri, who had long harassed the Kansas border. Lane prevailed upon the governor of Kansas to call out the whole state militia. The Kansas forces under General J. G. Blunt drove Price and his men back into Arkansas, winning the battle of Big Blue. Lane thus became the man of the hour in Kansas.¹⁷

On the national scene, the election of 1864 presented a cloudy picture. A combination of war and peace Democrats nominated General George B. McClellan to oppose Lincoln, who himself felt that he might lose the election. The Lincoln administration bent every effort to carry enough states to put its candidates back in office for another term. Senator Pomeroy bolted the party to stump the state for Salmon P. Chase. Waging a mighty battle with Lane over federal patronage, Pomeroy felt he would be the junior senator as long as Lincoln was President.

Lane used all his political knowledge in the effort to carry Kansas for Lincoln. Soldiers received extended furloughs. Provost Marshal Clarke appointed deputies in every county to work for Lincoln's re-election. Taylor Hawkins, who came to Kansas as federal mail agent and toured the state in Lincoln's behalf, stated that he found "half of Kansas' men in the army and the other half in some federal service at home."¹⁸

¹⁶Arthur Goodspeed Weston, The Province and the States (7 vols., Madison: The Western Historical Association, 1904), Vol. IV, p. 287.

¹⁷Castel, A Frontier State at War, p. 184.

¹⁸Ibid., p. 169.

In addition to the national elections of 1864, the Kansas state legislature had still another important duty to perform. General Lane, whose popularity had soared to new heights with the defeat of Price's raiders at the battle of Big Blue, was elected for a new term to the United States Senate, beginning March 4, 1865. Clarke, who had been eyeing the post of Congressman at Large from Kansas, held by A. C. Wilder, asked for and received appointment as chairman of the Republican State Central Committee. Lane, with Clarke appointed to this key post, was absent when the state convention met. Before leaving, the new chairman was carefully briefed on how to dispense Lane's federal patronage, and above all, was told to secure the renomination of Wilder to Congress. The Leavenworth Conservative, commenting on the forthcoming Republican state convention, remarked that it was "heartily in favor of A. C. Wilder" to fill the other important national position. The Conservative further stated that it had heard of no opposition, and believed no one in the state could fill the post better: "Wilder has been seasoned by one term of apprenticeship and should be most valuable."¹⁹ The same paper some days later sounded a note of alarm, saying that Topeka was excited: "Neither Lane nor Wilder are in Kansas, and Captain Sidney Clarke is openly working for the nomination for Congress at the convention which assembled there on September 8."²⁰ The Leavenworth Times, critical of the entire convention and its domination by General Lane, noted that "Sidney Clarke is openly electioneering for himself while Uncle Sam foots the bills," and denounced the entire group as "General Lane's fraudites."²¹

¹⁹Leavenworth Conservative, September 6, 1864.

²⁰Ibid., September 9, 1864.

²¹Leavenworth Times, September 9, 1864.

Clarke, working quietly at the convention, asked for the admission of a limited number of army delegates. When this permission was reluctantly granted, a group of army officers appeared at the convention almost at once and was seated. In the ensuing quick vote, Clarke wrested the nomination from Wilder by a count of 46 to 35. The Leavenworth Conservative announced the results on September 10, charging that the convention was irregular and the ticket poor. This newspaper also promised its complete opposition.²² The Times of Leavenworth, a vigorous supporter of Wilder, was more bitter in its denunciation, stating that the Clarke nomination was due to a conspiracy among federal officials. It pointed out that as provost marshal Clarke had a sub-provost marshal in each county and that these officials secured his nomination. It further charged "that Clarke was Lane's man and that Abraham Lincoln was the shield that covered both of them."²³ The same paper, a week later, called for the removal of Clarke as nominee because "he has control of all provost marshals, and recruiting officers in the state and used them to secure his election."²⁴ The Times editor then outdid himself, thundering that "the Clarke public career is a record of infamy and were all the terms which indicate knavery and corruption lost from the vernacular the name of Sidney Clarke would be a synonym for them all."²⁵ He predicted that the ticket would not carry a county in the state because of alleged scandals in Clarke's career, currently being exposed, and his fraudulent nomination.²⁶

²²Leavenworth Conservative, September 10, 1864.

²³Leavenworth Times, September 13, 1864.

²⁴Ibid.

²⁵Ibid.

²⁶Ibid.

Lane, upon returning to the state, denounced Clarke for his defection. He announced angrily that Clarke, with involvement in the irregular claims scandal of 1862, would beat the whole ticket. At that point Lane volunteered, if necessary, to "walk barefoot across the state to beat him."²⁷

In the bitter campaign of November, 1864, Clarke's alleged irregularities in the Provost Marshal's department were thoroughly aired.²⁸ Political enemies labeled him "Carpetbag Clarke." In 1862 Congress had appropriated \$100,000 to pay claims against the government for expenses of Kansas irregular forces, mostly General Lane's group. General Blunt was appointed commissioner to audit the claims, and Clarke had been clerk of the commission. Upon receiving the claims, Clarke had gone to Washington to get the money for their liquidation. He reported that the bag containing the vouchers was lost in Baltimore. He then returned to Leavenworth and started the whole process of collecting and auditing claims over again. His political enemies charged that he and his agents toured the state buying up claims at enormous discounts, knowing all the time that each claim would be redeemed in full.²⁹ The Leavenworth Times reported an alleged conversation between Lane and Clarke in Washington: "You are going home with \$100,000 to pay to citizens of Kansas. Find \$100,000 worth of debts, but don't find a d----d debt due to anyone but

²⁷ Emporia Weekly Globe, January 20, 1887.

²⁸ D. W. Wilder, Annals of Kansas (Topeka: Kansas Publishing House, 1886), pp. 207-208.

²⁹ Political Affairs in Kansas; a Review of the Official Acts of Our Delegation in Congress; Shall Inefficiency and Corruption Be Sustained? A New Deal and Less Steal, (no place, no publisher, no date [1870 or 1871?]), pp. 19-21. Cited hereafter as Political Affairs in Kansas.

Jim Lane's friends."³⁰

Clarke, hard pressed by criticism of his war record, published a denial in the same paper, defying anyone to prove he had wronged any of the people of Kansas in the claims incident. The Times, on the same page, published a statement that he had forged the name of a deceased soldier to a claim for sixty dollars and fifteen cents and collected it, stating further that "this can be proven."³¹ Clarke, well aware of the power of the press, then teamed with C. W. Anthony and bought a rival newspaper, the Leavenworth Evening Bulletin, to counteract the anti-Clarke sentiment being aroused by opposition newspapers. From that time his campaign prospects became more favorable, and he was elected by a close margin of 1120 votes over Albert Lee to the Thirty-Ninth Congress on November 8, 1864.³²

³⁰Leavenworth Times, September 27, 1864.

³¹Ibid., November 6, 1864.

³²Castel, A Frontier State at War, p. 172.

CHAPTER II

OPENING ISSUES OF RECONSTRUCTION

Clarke, at 33 years of age, was the youngest member of the newly elected Congress. He resigned his commission from the Union Army in Washington on February 20, 1865, and then lingered in the city to observe Lincoln's second inaugural ceremonies. When Lincoln was assassinated friends remembered that Clarke had been a favorite of the late President and asked him to serve as a member of a select congressional committee to accompany the body back home to Springfield, Illinois.¹

With the war behind, Kansas faced again the problems of railroad financing and Indian reserves. After the burial of Lincoln, Clarke made his way back home, and in a speech at Paoli, Kansas, September 8, 1865, he outlined a railroad policy for that state. According to Clarke, the value of railroads was not to develop towns, but to promote the growth of the whole country. He pointed out that a law of 1863 provided liberal grants to some railroads and that the Homestead Act had been amended to permit veterans to deduct time spent in military service from the five years total pre-emption time. This, he thought, should bring large numbers of settlers to Kansas. Clarke pointed out that the railroads must have land subsidies, and accurately indicated that the supply of public

¹National Cyclopedia of American Biography (New York: James L. White Co., 1904), Vol. XII, p. 393.

land available was almost exhausted.² He recalled that no action had been taken on a congressional resolution of 1862, to move the Indians out of Kansas. It was his feeling that all Indian titles should be extinguished and the tribes should be moved south to the Indian Territory.³

In his Paoli speech, Clarke further indicated that he believed that Kansas products should be transported south, along with those of neighboring states and territories. This plan would make it imperative that treaties which closed the door to the occupancy of Indian lands be abrogated. He realized that the battle to break down the treaty system would be lengthy, but he was confident that the great southwestern region would eventually form a bloc of new states and would not continue to be a hunting preserve for Indians.

Clarke was cognizant that the treaties in effect with the Five Civilized Tribes formed the most formidable barrier to a rail outlet south.⁴ These contained the most solemn guarantees that the Indians' titles to their lands, which comprised a huge area in Kansas and Oklahoma, would be perpetual. The leaders of the tribes were distressingly literate and quoted their treaties with such fluency that Congress hesitated to break them.⁵ Clarke felt that the whole elaborate treaty system was impractical and absurd. He could see no reason to maintain the fiction of independent Indian nations, believing it would be better for the Indians to

²Copy of a speech delivered at Paoli, Kansas, September 8, 1865, Clarke Papers.

³Ibid.

⁴Hill, A History of Oklahoma, Vol. I, p. 171.

⁵Angie Debo, And Still the Waters Run (Princeton: Princeton University Press, 1940), Ch. I.

make an allotment of land to each member of a tribe and open the rest to settlement. He had no objection to the land being given to railroads to help finance construction of internal improvements. As he saw it, the great interior must have railroads to develop. However, he did not favor selling lands to settlers at prices higher than public land had always been sold.

Clarke was not original in these ideas. Senator Lane had introduced a bill in January, 1863, abolishing Indian titles to land in Kansas and providing for their removal from the state. Lane felt that the 78,000 square miles in the Indian Territory was enough on which to concentrate all the Indians east of the Rocky Mountains. He believed also that the Indians were occupying some of the richest land of Kansas. The bill passed, authorizing the President to negotiate removal treaties with the Kansas Indians.⁶ Lane, with characteristic exaggeration, painted a picture not completely true. The Indian lands were substantial, comprising one-fifth of all Kansas territory, but there were whispers that the Leavenworth-Pawnee and Western Railroad had bribed Lane and Pomeroy to introduce the measure and secure its passage. It was charged that this railroad had gained possession of part of the Pottawatomie reserve by secret treaty with the Indians, and, in order to get their treaty ratified by the Senate, the railroad "bloc" had to make provision for Lane and Pomeroy.⁷

Suggestions similar to Clarke's thinking on the Indian problem had also come from other sections of the country. A bill had been introduced in the Thirty-Eighth Congress by Senator James Harlan of Iowa,

⁶ Congressional Globe, 37 Congress, 3 Session, p. 305.

⁷ Castel, A Frontier State at War, p. 221.

providing for consolidation of all the Indians into the territory south of Kansas, under a government administered by the United States. In debate on the bill, Lane had suggested that the territory might also be used as a home for freedmen. The measure was not considered practical and failed, although it did show a trend of thought.⁸

Soon after the end of the war in 1865, and before the Thirty-Ninth Congress convened, it became necessary to negotiate peace treaties with the Five Civilized Tribes, many of whom were secessionist in sentiment and had aided the Confederate cause. A Cherokee, Stand Watie, had even held the rank of brigadier general in the Confederate army. The tribes had already appointed commissioners to visit Washington for a conference on their affairs. The United States Commissioner of Indian Affairs, D. N. Cooley, decided to hold an Indian council in the West, to make it possible for all the plains tribes to be represented along with the Five Civilized Tribes. Fort Smith, Arkansas, was selected as the site of the meeting.⁹ When the council assembled on September 8, 1865, Cooley explained to the Indians that when portions of their tribes joined the Confederacy, their actions abrogated all existing treaties with the United States. It would be necessary for the tribes to negotiate new treaties.¹⁰ Cooley described the terms under which the United States would treat with the Indians. The stipulation of importance to Kansas was that "a portion of the lands hitherto owned and occupied by the Indians of the territory to the south must be set apart for friendly tribes now in Kansas."¹¹

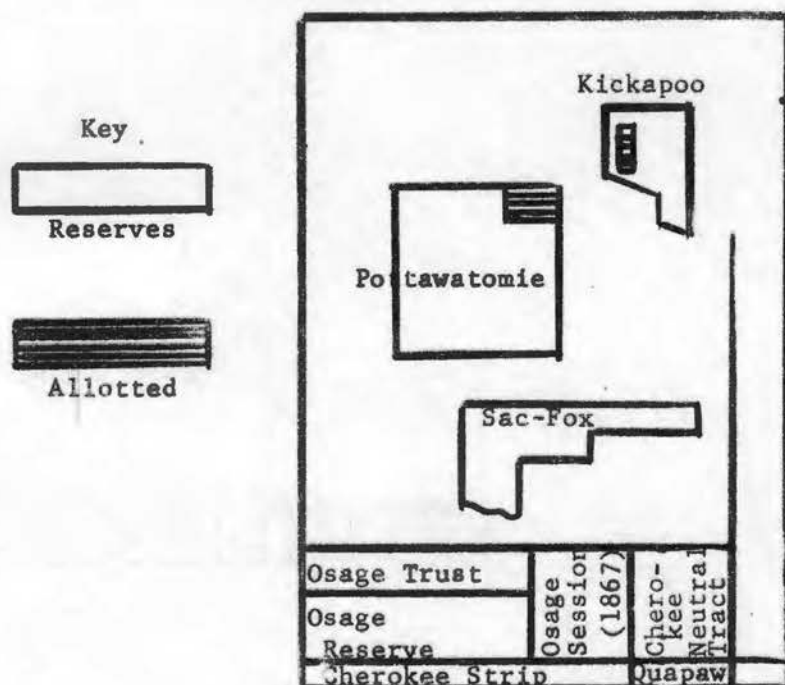
⁸Congressional Globe, 38 Congress, 3 Session, pp. 1305-1306.

⁹Annual Report of the Commissioner of Indian Affairs, 1865, p. 296.

¹⁰House Executive Documents, 39 Congress, 1 Session, Vol. II, Doc. 105½, p. 481.

¹¹Annual Report of the Commissioner of Indian Affairs, 1865, p. 98.

There was some vigorous reaction in Kansas to this great council. Clarke received a letter from William Weir of Wyandotte, Kansas, illustrating the feeling prevalent in the state: "I suppose you are aware that the southern Indians are to have a grand gathering about the first of September in the Choctaw country at which it is expected commissioners from Washington will be present . . . treaties will be made, railroad grants fixed up, and things done generally. Will a delegation go from Lawrence? If so, I would like to join The paper states fifty thousand Indians are looked for. At all events the meeting is important to our railroad interests and we should have a hand in it."¹² Weir at this time was engaged in land speculation and was attempting to affiliate with some railroad company.



The Indian Reserves of Eastern Kansas¹³

¹² Abel, The American Indian Under Reconstruction, p. 167.

¹³ Gates, Fifty Million Acres, p. 119.

With many problems concerning the welfare of Kansas on his mind, Clarke entered Congress on December 4, 1865. This was a Congress which had been elected in 1864 while the war was reaching its climax, and when the Lincoln administration had feared loss of control in Congress and defeat of the President. Lincoln, by political skill, had carried the election, and a legislative body had been elected to support the administration in the final destruction of the Confederacy. His assassination had shocked the nation and sent to Washington a group of vengeance-minded lawmakers. A win-the-war Congress found itself with a prostrate South at its feet and the not unpleasant task of devising suitable punishments.

The temper of this body was not improved by the presence of a number of congressmen from southern states who had been serving in the Confederate army when the present members were elected and who were now asking to be seated. Schuyler Colfax of Indiana was elected Speaker of the House of Representatives. Thaddeus Stevens, recognized as majority leader of this body, offered a resolution for the appointment of a joint committee of fifteen members, nine from the House and six from the Senate, "to inquire into the conditions of the states which formed the so-called Confederate States of America, and report whether any of them are entitled to be represented in either house of congress." The resolution further directed that "all papers relating to the representation of the said states shall be referred to this committee without debate."¹⁴ A motion to seat the southern delegation pending the outcome of the investigation was completely ignored, and the House declined even to vote on it.

The House was so irked by the presence of the southern groups that committees were not appointed until it had been in session a week. On

¹⁴ Congressional Globe, 39 Congress, 1 Session, p. 6.

December 11, posts were finally assigned. Congressman Clarke became a member of the Pacific Railroad Committee and the Committee on Indian Affairs.¹⁵ Several days later he sponsored a measure to equalize bounties for former Union soldiers, and this was referred to the House Military Affairs Committee, where it caused a great deal of frantic debate.¹⁶ With an eye on the fact that his home state paid no bounties, Clarke saw a chance for every veteran to benefit. The proposition was to pay bounties at the rate of one hundred dollars a year or to consider a soldier who received four hundred dollars to have been paid his full amount.

The House Military Affairs Committee referred the popular bill to Edwin M. Stanton, Secretary of War, with a request for all necessary information. In correspondence with Robert C. Schenck, chairman of the House committee, Stanton included letters from the United States Paymaster General and the Provost Marshal. The Provost Marshal reported that as nearly as could be ascertained, 1,722,700 enlisted men received bounties of from one hundred dollars to four hundred dollars each. There were 738,372 men who received no bounties at all. It was determined that six hundred and eighty-four million dollars would be required to pay each in proportion to his time in the service at the rate of four hundred dollars bounty, and this would only equalize federal bounties. It would require additional millions to equalize state bounties. The two officials feared the sum was so enormous it would bring the United States to financial ruin. Provost Marshal James B. Fry pointed out that every soldier received his promised bounty when he enlisted and that veterans were paid three hundred dollars to re-enlist. He felt that it would be poor justice to bring

¹⁵Ibid., p. 21.

¹⁶Ibid., p. 60.

every soldier up to the veterans' level. The Paymaster General recommended that Congress consider land bounties rather than money bounties.¹⁷

The measure to equalize bounties was undesirable during this period of strained government credit, but it became popular immediately. Clarke received a number of letters from constituents in Kansas congratulating him on his boldness in looking after their interests. A letter from a resident of Troy assured Clarke that he was fully satisfied with his course in Congress.¹⁸ Another, from Lawrence, wrote a cheering note: "Congratulations on the bold course you are taking in congress on great questions. Let the voice of the people be heard."¹⁹ Also writing from Lawrence, a friend complimented Congressman Clarke on his zeal in looking after the welfare of Kansas. He asked that all federal officials serving in Kansas who had opposed the administration in the last campaign, be removed from office. The letter pointed out that it was common knowledge that the Sac and Fox Indian agent was a Democrat, yet he had been ordered to Washington for treaty making purposes. Could Representative Clarke please give some of his time to this problem?²⁰

The movement to equalize bounties gathered momentum. Resolutions from the Pennsylvania legislature arrived, requesting that state's delegation in Congress to support it.²¹ A memorial was received from the

¹⁷House Miscellaneous Documents, 39 Congress, 1 Session, Vol. II, Doc. 22, p. 4.

¹⁸Leland to Clarke, March 16, 1866, Clarke Papers.

¹⁹Thacher to Clarke, January, 1866, Ibid.

²⁰Brooks to Clarke, January 24, 1866, Ibid.

²¹House Miscellaneous Documents, 39 Congress, 1 Session, Vol. III, Doc. 89, pp. 1-2.

legislature of Wisconsin urging the passage of the law equalizing bounties.²² Shortly afterward the Pennsylvania legislature sent a second memorial pushing passage of the bill.²³ The House of Representatives yielded to the wishes of the people, and the measure was finally passed by a vote of ninety-two to sixty-nine.²⁴ The Senate received the measure, and, proving that some statesmen still sat with that body, let it die in committee.

On December 14, Clarke presented the first of several railroad bills to the House. The Leavenworth, Lawrence, and Galveston Railroad had been authorized by Congress in 1863. This line was to run south through Kansas and Indian Territory in the direction of Galveston and was to receive a subsidy of five sections of land on each side of the track for each mile completed.²⁵ A bill granting lands to Kansas to aid the Kansas and Neosho Valley Railroad construction was finally passed July 27, 1866, providing for a line through eastern Kansas to the Red River. The bill stipulated that any rail line might join the Kansas and Neosho, and that the first line to reach the southern Kansas border was authorized to build on through the Indian Territory, toward Galveston and Preston, Texas. The Kansas and Neosho was to receive the enormous subsidy of ten sections of land on each side of the track for each mile completed. If the land adjacent to the track had been sold, the United States was to grant to Kansas the nearest available land within twenty miles.²⁶ This measure became law

²²Ibid., Doc. 95, no page number.

²³Ibid., Doc. 107, pp. 1-2.

²⁴Congressional Globe, 39 Congress, 2 Session, p. 1272.

²⁵Ibid., 37 Congress, 2 Session, Appendix, p. 383.

²⁶Ibid., 39 Congress, 1 Session, p. 387.

July 27, 1866.²⁷

Another Clarke railroad bill granted the same subsidy for aid in constructing a line from Fort Riley to Fort Smith.²⁸ It became a law on July 23, 1866, with the provision that the land within ten miles of the track was not to be sold for more than double the minimum price of \$1.25 per acre.²⁹ Clarke introduced still another bill authorizing the construction of a line from Elwood, Kansas, through the northern counties, with the usual subsidies, which became law July 24, 1866.³⁰ A later measure, which was also passed July 23, 1866, authorized a line from Atchison toward Topeka and to Santa Fe.³¹

Realizing the potential dangers of creating a land monopoly by means of so much railroad subsidy, Clarke presented a bill to the House on March 27, 1866, to prevent Indians from selling or leasing their lands unless by treaty or agreement with the United States. It proposed that Indian lands in Kansas be placed under Kansas laws. Speaking for the bill, Clarke stated that the object was to bring about uniformity in jurisdiction: "this bill simply states that crimes committed on the Indian lands can be punished."³² A suspicious House moved to table the bill, and let crimes go unpunished.

Clarke, although occupied with the many problems of his own state, found himself drawn into the controversial battle with President Andrew

²⁷House Journal, 39 Congress, 1 Session, p. 1152.

²⁸Ibid., p. 4061.

²⁹Ibid.

³⁰Ibid., p. 1101.

³¹Ibid., p. 1187.

³²Ibid., p. 1703.

Johnson on reconstruction policies. Early in 1866, acting on reports that Negroes were being denied the vote in Washington, D. C., because of color, and irked at the special black codes being passed by some of the southern states, the House of Representatives began debate on a proposal to extend suffrage to colored persons in the District of Columbia. Before the discussion finally ended by the passage of the measure over Johnson's veto, Congress had evolved a civil rights bill for the whole nation and ultimately the 14th Amendment to the United States Constitution took shape.

The House Judiciary Committee, in a report on the measure, December 19, 1865, had recommended that it not be passed: "there is no more reason for Negro suffrage now than before the war."³³ The report recommended the submission of the bill to District of Columbia voters.³⁴

Clarke, who seldom spoke in the House of Representatives, made a long address in favor of the bill. Describing himself as being from a state with a history of continual protest against political injustice, Clarke stated that he was "proud enough of my race not to fear the swarthy scions of another one."³⁵ Making a long summary of the evils of slavery, Clarke declared that he would not acknowledge "a man to be a slave unless a bill of sale from God could be shown for him."³⁶

He concluded with a promise that the establishment of universal suffrage in the District of Columbia would be hailed everywhere as a return

³³House Committee Reports, 39 Congress, 1 Session, Vol. I, Report 2, p. 1.

³⁴Ibid., p. 2.

³⁵Congressional Globe, 39 Congress, 1 Session, p. 303.

³⁶Ibid.

to a policy of national justice. The House, perhaps as a result of Clarke's eloquent address, passed the suffrage bill with a vote of 116 to 54. The bill made its way on to the Senate, which passed it by a substantial majority, and sent it to President Johnson. The President promptly vetoed the measure on the grounds that Congress was disregarding the will of the people in Washington. Congress passed the bill over the veto, and it finally became law on January 8, 1867.³⁷

Congress, fearing that civil liberties were being withheld from the southern Negroes by their former masters, began searching for a law which would solve these problems. Proposals were made that all persons born or naturalized in the United States should be citizens. Another section of the civil rights bill set up a \$1,000 fine for violation. In vetoing this bill, President Johnson explained that Congress was interfering with states' rights. The veto caused a great deal of fiery oratory in the House, during which Clarke expressed his personal views on reconstruction: "beaten on the battlefield, the pestilent southern politicians are continuing the war at rigged elections by defrauding Negroes of civil rights" He "would never vote to seat a man in congress who participated in the rebellion against the United States. Former rebels are insulting the American people by claiming to be members of congress." He concluded his long address: "It is time the American people should be taught to understand that treason is a crime, and should be punished as such."³⁸

This speech stamped Clarke as one of the most uncompromising members of Congress. Fearful lest the civil rights bill be declared unconstitutional,

³⁷Ibid., 39 Congress, 2 Session, p. 344.

³⁸Ibid., p. 1840.

Congress, by joint resolution, formulated the 14th Amendment. This provided that (1) all persons born or naturalized in the United States were citizens with full civil rights; (2) southern states must grant Negroes the vote, or suffer loss of a portion of their representation; (3) former Confederates could not hold office until pardoned by Congress; (4) the Confederate war debt must be forever repudiated; and (5) the measure must be enforced by Congress rather than the President or the courts.³⁹ In a series of noisy sessions the proposal was passed by the two-thirds majority necessary to refer it to the states. Clarke, by now a popular party man, gave it his unqualified support.

By this stage in his career, Clarke was drawn more and more into political alignment with Senator Pomeroy. Lane, moreover, had never become reconciled with him after his disputed nomination for Congress. Also, Lane was fast losing popularity in Kansas. Rumor had it that he had been supporting the unpopular Johnson reconstruction measures in return for more federal patronage. In addition, he had killed a settler, Gaius Jenkins, in a disputed land transaction. The general, home from Washington attempting to mend his political fences, was given a chilly greeting in Kansas and in a fit of despondency, possibly caused by his declining political fortunes, killed himself.⁴⁰ Clarke, speaking to the House on July 18, 1866, offered a stirring tribute by "resolving that the House mourn the death of Senator Lane, and adjourn until the next day as a mark of respect to his memory."⁴¹

Shortly afterward, news burst in Kansas that the Cherokee Neutral

³⁹Ibid., p. 344.

⁴⁰Gates, Fifty Million Acres, p. 279.

⁴¹Congressional Globe, 39 Congress, 2 Session, p. 1133.

Lands had been sold. Lying between the Osage and the Cherokee reservations, they had been ceded to the United States early in 1866 to be held in trust, and the treaty stipulated that the Secretary of the Interior could sell all of the land for \$800,000 cash, to be held for the Cherokee Indians by the United States.⁴² The lands were sold by Secretary of the Interior James Harlan to the American Emigrant Company for twenty-five thousand dollars down and the rest on long-term notes.

This sale was described by Eugene F. Ware, early Kansas editor, in very strong language: "It was a dishonest and corrupt action....There were some who stated Harlan did it at the instigation of Mr. Pomeroy... such a charge was probably true....Both of them were charged with bribe giving and bribe taking. . . ."⁴³ Indignant Kansans accused Pomeroy of being bribed, and in October, 1866, United States Attorney General Henry Standbery declared the sale void, because the land was not sold for cash. Demands were made by families squatting on the land that Clarke and Pomeroy not permit another such sale.⁴⁴ Clarke, in an effort to safeguard these families, presented a memorial to the House from the Kansas legislature, asking that settlers on the lands be able to buy their farms at the pre-emption price as established by law.⁴⁵ He also memorialized Congress, on behalf of his state, asking that it grant to Kansas school lands equivalent to the sixteenth and thirty-sixth sections of Indian reservations already disposed of, and that in all future treaties with Kansas tribes the same

⁴²United States Statutes at Large, Vol. XIV, pp. 115-120.

⁴³Eugene F. Ware, "The Cherokee Neutral Lands," Kansas Historical Collections, Vol. VI (1897-1900), p. 155.

⁴⁴Ibid., pp. 154-155.

⁴⁵Congressional Globe, 39 Congress, 2 Session, p. 1133.

amount be set aside for public schools.⁴⁶

Finding Senator Pomeroy fighting for his political life, Clarke hurried home to aid his campaign, bearing a letter signed by senators Charles Sumner, B. F. Wade, Zachariah Chandler, and other influential members of Congress. Addressed to the Kansas legislature, the letter said that "it would be a grave mistake not to re-elect Senator Pomeroy."⁴⁷ The state legislature obliged by sending Pomeroy back to the United States Senate for another term. Clarke, who had signified his willingness to be a member of the upper house, was shunted aside in favor of E. G. Ross, who replaced Lane. The Atchison Champion commented editorially: "the presence in Topeka of Congressman Sidney Clarke . . . lends character to the campaign."⁴⁸

In a speech to the state legislature, Clarke promised to support a reconstruction bill that would put only loyal people in power in the South. He stated bluntly that he expected Congress to remove the President if he continued his defiant attitude.⁴⁹ With his political fortune improved, and on a rising tide of personal popularity, Clarke made his way back to Washington for the Second Session of the Thirty-Ninth Congress.

Early in the session, the storm broke. Representative Gilford Ashley of Ohio offered a resolution to the House that President Johnson be impeached. The motion, supported by Clarke, was passed by a vote of 107 to 39.⁵⁰ The Judiciary Committee was ordered to examine the evidence, taking

⁴⁶ Ibid., p. 1535.

⁴⁷ Atchison Champion, January 22, 1867, clipping, Clarke Papers.

⁴⁸ Ibid.

⁴⁹ The Leavenworth Bulletin, clipping, no date, Clarke Papers.

⁵⁰ Congressional Globe, 39 Congress, 2 Session, p. 321.

cognizance of reports that "certain members of this House are ready to make a corrupt bargain with the President providing that he will do certain things for them that he has been hostile to before" The House also instructed the Judiciary Committee to investigate the corrupt bargains.⁵¹

Clarke, by this time popular in Kansas due to vigorous denunciations of the beaten Confederates and his railroad bills, was easily renominated for his second term in Congress. The Olathe Mirror noted great interest in the forthcoming elections, "because loyal people are meeting the challenge of Andrew Johnson."⁵² In his speech accepting the nomination for a second term, Clarke stated: "Treason has been met and defeated. Johnson has restored everything to the traitors and now clasps their hands in criminal fraternity." He also warned that if southern delegations were seated in the Fortieth Congress it would add eighteen more rebel congressmen. He himself felt that Johnson should be removed.⁵³

⁵¹Ibid., p. 1281.

⁵²Olathe Mirror, September 6, 1866.

⁵³Ibid., September 13, 1866.

CHAPTER III

THE CHEROKEE NEUTRAL LAND CONTROVERSY

With the impeachment motion against President Johnson referred to the Judiciary Committee for study, Clarke turned his attention once again to the problems which had been created by the attempted sale of the Cherokee Neutral Land. This shady transaction between Secretary of the Interior James Harlan and the American Emigrant Company without any regard for the welfare of several thousand squatters on the land had aroused a storm of criticism. The Fort Scott Monitor charged that there was "no end to Harlan's public stealings," and further emphasized that "Kansas was cursed with pickpockets for senators."¹ President Johnson, distressed at condemnations of the sale, had asked Attorney General Henry Standbery for an opinion, and with relief heard the good news that he considered the sale invalid.

Four other railroad groups immediately began trying to acquire the lands. The Taos and Neosho Railroad offered a down payment of \$45,000, a like amount in one year, and the balance at one dollar and twelve cents an acre in nine annual installments. This was refused by O. H. Browning, the new Secretary of the Interior, because it was not cash. Another offer came from the Union Pacific Railroad to exchange stock for the land.² In still another bid the Atlantic and Pacific Railroad offered one million

¹Fort Scott Monitor, January 12, 1872.

²Gates, Fifty Million Acres, p. 159.

dollars, with one hundred and fifty thousand at once and the balance in five annual installments. This offer was viewed with approval despite the early treaty provision that the land must be sold for cash. A treaty was drawn up, approved by Browning and the President, and sent to the Senate for ratification. While this was under consideration, a fourth offer was made by James F. Joy for the Missouri, Fort Scott, and Gulf Railroad.³ When rumors of secret dickering over the Cherokee tract reached Kansas, a flood of indignation was aroused. Petitions and letters from Kansas demanding that the land be sold only to settlers descended on Congress, the Interior Department, and the President.

As was usual in most western Indian reserves, the land in question had been taken up by numerous squatters for many years. With the typical frontier disregard for Indian titles, the squatters considered the public domain theirs to hold and defend with knife and gun, if necessary. The fact that the Cherokees had never established themselves on the land made its occupation much easier than some of the other reserves. By terms of the attempted transaction between Harlan and the American Emigrant Company, the settlers were to be privileged to buy their claims at the pre-emption price of one dollar and twenty-five cents an acre, provided they had improvements to the value of fifty dollars at the time of the treaty and were on the land before June 10, 1868. The settlers felt uncertain of their status, for fear that a new treaty would be drawn up in secret. The Kansas legislature rushed a petition to Clarke, which he presented to the House, asking that the Cherokee lands be kept out of the hands of speculators and that settlers have full pre-emption rights.⁴ On March 11, 1867,

³Ibid., p. 160.

⁴Congressional Globe, 40 Congress, 2 Session, p. 1116.

Clarke offered a bill to the House with the same provisions.⁵

Before the Joy group could purchase the land in question, it had first to defeat the treaty which had been secretly drawn up for the sale to the Atlantic and Pacific Railroad. It was able to block ratification in the Senate by arguing that the treaty was illegal because it was not signed by the real Cherokee chiefs, and that it was against public policy to permit speculators to purchase large amounts of Indian lands.⁶ After this, several months of extremely delicate negotiations occurred. Secretary of the Interior Browning, fearing public indignation and a possible congressional investigation, moved with great caution. It was embarrassing that the Atlantic and Pacific had offered one million dollars for the eight hundred thousand acre tract, while the Joy group was only offering eight hundred thousand dollars. Finally, on October 9, 1867, the sale was made to Joy, providing that all lands not occupied by settlers were to be purchased for one dollar an acre in cash. Trouble was encountered from the American Emigrant Company, which had never conceded the right of Stanbery to nullify the original sale. It now threatened suit to uphold its right to the land. Accordingly, an agreement was reached whereby the American Emigrant Company conveyed to Joy its right to purchase the land for twenty-five thousand dollars. Thus all the lands which were not occupied and improved by settlers by June 8, 1866, were purchased for one dollar an acre. With this agreement, the Joy group acquired the lands on credit, with seven years to pay.⁷

When news of this sale became public, Clarke explained that it took

⁵Ibid., 40 Congress, 1 Session, p. 58.

⁶Gates, Fifty Million Acres, p. 163.

⁷House Reports, 41 Congress, 2 Session, Vol. II, Report 53, p. 2.

place without his knowledge, and launched an immediate campaign against it.⁸ On July 6, 1868, he presented a petition to the House from settlers on the Cherokee lands asking that they be extended the right to acquire their farms under the public land laws of the United States.⁹ In a long address to the House, Clarke charged that the sale would enrich the Joy group, because all of the land was worth at least \$5 an acre and much of it from \$15 to \$20. He also reminded his listeners that the land was sold without the approval of Congress and against his protest. The first treaty had been declared void because it was not a cash transaction. Now, however, Joy would pay only twenty-five thousand dollars cash, and get the same terms the Emigrant Company had. It was his feeling that the government should sell the lands to actual settlers for \$1.25 an acre or less.

Other congressmen joined Clarke in his assault on the Cherokee Neutral land transaction. Charles Clever, New Mexico delegate, offered a resolution to protect settlers on the land, stating that since the original treaty had been declared void, to June 1868, 2700 more families had settled there, with no objections from anyone, believing Congress would safeguard their interests.¹⁰ As the sale had no provision for these people, Clever asked the House to pass a resolution permitting them to buy their land for \$1.25 an acre.¹¹ It was his belief that the treaty unlawfully disposed of public land. Congressman William Lawrence of Ohio questioned the Indian right to sell land. "If the Indian can sell land," he asked,

⁸Ware, loc. cit.

⁹Congressional Globe, 40 Congress, 2 Session, p. 3767.

¹⁰Ibid., p. 4000.

¹¹Ibid.

"what is to prevent a foreign country from buying public land from them?"¹²
Clever and Lawrence were joined in their position by George W. Julian and William Holman of Indiana, and Benjamin F. Butler of Massachusetts. The Clever resolution passed.¹³

The House Indian Affairs Committee in a lengthy report stated that by 1867, 3500 families on the neutral land were entitled to pre-emption rights. The committee felt that the Cherokees had forfeited what slight title they might have to the land because they had never lived on it. These lands had been sought by settlers for years and should have been sold to them under sealed bids at \$1.25 an acre. The Joy sale was no more a legal transaction than the original sale. The committee felt that the practice of disposing of large tracts of public land to railroads and speculators was wrong. "The law is clearly violated when no provision is made for school lands," the group emphasized, and concluded that the sale to Joy was not valid, and that "Indian cooperation in these nefarious treaties means absolutely nothing."¹⁴

Kansas had been the scene of almost countless conflicts between squatters and land speculators since the territory was first opened, but the fight which now began between the settlers and the Joy railroad group surpassed all previous squabbles in duration and vituperation. Experience had shown settlers that if they moved on Indian reserves and fought hard enough for squatters' rights they could win them. The prospect of having to pay Joy \$10 to \$20 an acre for choice land was unbearable; accordingly,

¹²Ibid.

¹³Ibid.

¹⁴Emmett Starr Indian Documents (50 vols., Oklahoma Historical Society, Oklahoma City, Oklahoma), Vol. XXXIX, pp. 1-20. Hereafter cited as Indian Documents.

the Cherokee Neutral Land League was organized. Fifteen hundred men were recruited to resist the Joy forces. They argued that the whole disturbance was a war against land monopoly and that the entire West was in its grip.¹⁵ So much violence occurred that on June 11, 1869, Governor James Harvey of Kansas asked that federal troops be sent to the region to restore order, and the War Department sent four companies of soldiers to the area.¹⁶ The Lawrence Tribune reported that its sympathies were entirely with the settlers and that Congressman Clarke would visit the tract to try to settle the difficulties. "He thinks troops are not needed," the Tribune added.¹⁷

Clarke, with an eye for the several thousand votes on the disputed strip, made frequent visits to attend meetings of the Neutral Land League. Time after time he urged the members to fight Joy to the last ditch and resist all efforts to evict them. Additional fuel was added with a letter published by the Lawrence Tribune June 25, 1869, signed by Clarke, William Lawrence, Butler, and Julian, which stated that the Secretary of the Interior was not authorized by Congress to sell the land and that anyone who purchased land from Joy would acquire no valid title.

There is evidence that Clarke, a man of strange contrasts, was using the neutral lands uproar to further his own political career, with an eye on the Senate, and was secretly in the Joy camp. James Craig, in a letter to Joy on May 5, 1870, during the hottest period of the controversy, wrote: "I think him still favorable to us."¹⁸ The Emporia News reported that

¹⁵Political Affairs in Kansas, pp. 1-16.

¹⁶House Reports, 41 Congress, 2 Session, Vol. II, Report 53, pp. 22-23.

¹⁷Lawrence Tribune, June 11, 1869.

¹⁸Craig to Joy, May 5, 1870, quoted in Gates, Fifty Million Acres, p. 179.

Clarke was in the neutral lands stirring up strife,¹⁹ while the Fort Scott Monitor said his resolution to enable settlers to buy their land at pre-emption prices was a fraud: "It cannot pass Congress because J. F. Joy owns the land."²⁰ In a later issue, the same editor gloomily advised the settlers to take their case to the Supreme Court, because "all congressmen are in on the swindle."²¹

Clarke's continuous presence in the neutral tract and his opposition to the sale caused rumors to circulate in Kansas that he intended to lead the settlers out of the Republican party and establish a political dynasty of his own and also that he was causing the settlers to tear up track and destroy property. He heatedly denied all this, stating that he counseled the settlers to obey the laws.²² He also denied having any part in a recent meeting of the Land League when senators Pomeroy and Ross were hanged and burned in effigy.²³ "The rumors," he continued, "came from D. S. McIntosh, probate judge of Crawford County who is very unreliable."²⁴

Secretary of the Interior Browning quit his position in 1869 and was succeeded by J. D. Cox. Immediately under bombardment by members of the Land League, Cox bluntly stated: "Please inform Sid Clarke that the Interior Department recognizes no right of the settlers to buy land from the government, who settled after the treaty of 1866. In case of contested claims the land commissioners will decide."²⁵ The editor of the Lawrence

¹⁹Emporia News, August 13, 1869.

²⁰Fort Scott Monitor, March 31, 1869.

²¹Ibid., April 14, 1869.

²²Lawrence Tribune, August 14, 1869.

²³Ibid., September 1, 1869.

²⁴Ibid., October 12, 1869.

²⁵Ibid., July 15, 1869.

Tribune urged settlers not to be discouraged, pointing out that Joy would have to sue them under Kansas law, and that their rights would be supported in Congress by Clarke, "A little disturbance on the Neutral Land," the editor emphasized, "has been magnified into a riot."²⁶ The Land League determined to test the validity of Joy's title in the Supreme Court, which in 1872 upheld his position on every contested point.²⁷ Land reformers, however, perfected their tactics in the neutral tract squabble and achieved national recognition of the need for better public land and Indian policy.

Clarke himself seems to have been able to play both sides successfully in the long land controversy. He was backed for the Senate in 1871 by the Joy group to succeed Ross, whose political career in Kansas had been ruined by his failure to support the effort to remove President Johnson. In the hot campaign Clarke received enthusiastic support from the Neutral Land League also. The Kansas Pacific Railroad, however, opposed him and contributed an enormous "corruption" fund to insure his defeat. The Kansas legislature, notoriously susceptible to the bribery and blandishments of the railroads, finally selected Alexander Caldwell in a corrupt election. A special joint committee of the legislature had this to say in a report submitted to the Kansas solons on February 24, 1872:

Clarke's friends engaged eighty rooms for him at the Tefft House. He had five rooms outfitted across the street where refreshments were kept. Members of the legislature were offered appointments to office and payment of election expenses for their votes. . . . His friend D.M. Adams offered Senator Wood \$3,000 for his vote. Another friend offered Senator W. C. Webb \$2,000 also for a favorable Clarke vote. R. S. Stevens, general manager of the M. K. T. Railroad, spent money in his behalf. P. T. Abell, who was employed by J. F. Joy, spent money for Clarke. Finally

²⁶Ibid., July 23, 1869.

²⁷Gates, Fifty Million Acres, p. 185.

Alexander Caldwell paid all his election expenses to withdraw and then bribed his own way into the senatorship.²⁸

Caldwell's supporters were equally enthusiastic in his behalf. In the political practices of this era many things were condoned which would be highly questionable today. Although Clarke's vociferous and worried supporters spent a great deal in his behalf, there is no evidence that he himself was guilty of anything more than permitting them to do so and of accepting his election expenses to withdraw.

²⁸Report of the Joint Committee of Investigation, February 24, 1872, Kansas Legislative clippings, (2 vols., Kansas State Historical Society, Topeka, Kansas), hereafter cited as Legislative Clippings.

CHAPTER IV

THE OSAGE STRUGGLE

By far the greatest uprising against the practice of permitting land speculators to gain control of Indian reserves was brought on by the attempted transfer of the Osage reserve to the Leavenworth, Lawrence, and Galveston Railroad. The Osage treaty of 1868 emphasized the settlers' complaint that all Indian land was passing into the hands of greedy corporations. This fraud was so forcibly exposed by Clarke that it became the last attempt of its kind in American history and was largely responsible for the abandonment of Indian treaty-making.¹

In a nefarious treaty of 1865, ratified by the Senate in 1866, the Osages had ceded more than four million acres of their Kansas land.² The remaining Osage land comprised an enormous region of more than eight million acres in southeastern Kansas, perhaps the most fertile and best watered part of the state. A scheme was born in the busy brain of William Sturges, president of the Leavenworth, Lawrence, and Galveston Railroad, to acquire control of all the remaining Osage land. He knew that this idea, if it were to have any hopes of success, must be cloaked in secrecy. Congress, particularly the House, was in an uproar over the

¹Annie H. Abel, "Indian Reservations in Kansas, and the Extinguishment of their Titles," Kansas Historical Collection, Vols. VIII (1907-1908), pp. 107-109.

²Charles J. Kappler, Indian Affairs, Laws, and Treaties (U.S. Government Printing Office, Washington, D. C., 1904), Vol. II, p. 878.

Cherokee land transaction, then under consideration. However, it was possible that a second land grab might be pushed through the Senate while the attention of the lower House was distracted. J. F. Joy, working hard to secure ratification of his Cherokee treaty, was a natural ally, since he was also an experienced lobbyist and land speculator. Accordingly, the two groups began working together to bring about what might be one of the most profitable land grabs in history. The coalition, in addition to Sturges and Joy, included the Kansas senators Ross and Pomeroy, Harlan, the former Secretary of the Interior, who was now chairman of the Senate Committee on Indian Affairs, and Browning, Secretary of the Interior.³

This powerful group, never noted for letting principle stand in the way of profit, began secret negotiations. Because of the large number of officials involved, news of the plot leaked out, and the Sturges group received a warning from Clarke that the Osage Reserve, however acquired, would have to be opened to actual settlers at the pre-emption price of \$1.25 an acre. Clarke had no objection to railroad's buying Indian land inexpensively, but he insisted that the maximum price should always be \$1.25 an acre. He declared that he would fight any transfer of land to the death, if it were a speculative scheme to buy low and sell at high prices to settlers.⁴ Clarke, who always championed the interests of settlers in Congressional battles, was at his best in the Osage fight. He consistently favored a severe Indian policy, and worked for the complete removal of Indians from Kansas. He seems to have had objection to profitable bargains with Indians, but land speculators were

³Gates, Fifty Million Acres, p. 197.

⁴House Executive Documents, 40 Congress, 2 Session, Doc. 310, pp. 27-28.

not going to enrich themselves at the expense of the Kansas settlers. He also feared that expensive land would cause the tide of western emigration to bypass Kansas.

Early in 1868, the Sturges group secured the appointment of a commission to negotiate a treaty with the Osages. The House of Representatives first heard of the proposed sale on March 6, 1868, when Clarke forcefully demanded that thousands of squatters illegally on the Osage reserve must be protected and must get their land at pre-emption prices.⁵ Several days later, the House passed a resolution submitted by Clarke asking the Secretary of the Interior to suspend the sale of lands understood to have been ceded to the United States by the Osages.⁶ On June 11, 1868, Clarke notified the House of reports that the eight million acre Osage reservation had been transferred to a railroad corporation, that improper influences were at work, and that settlers on the land were excluded from pre-emption rights.

The irate lawmakers dispatched a resolution to President Johnson asking that any treaty be withheld from the Senate until a full investigation could be made by the House Indian Affairs Committee, and that all details, dates, and correspondence should be sent that group. It was further agreed that the House committee should have complete authority to make investigations, call for testimony of witnesses, and make its findings public. The House was determined that there should be no more secret arrangements such as the Cherokee treaty.⁷ Several days later a message from the Secretary of the Interior notified the House that the treaty had

⁵Congressional Globe, 40 Congress, 2 Session, p. 1704.

⁶Ibid., p. 2304.

⁷Ibid., p. 3063.

been submitted to the Senate before the House resolution.

On June 18, 1868, the House Indian Affairs Committee had its report ready on the Osage treaty. It was branded an outrage, and the report charged that the Senate "assumes authority repeatedly denied by this House to dispose of Indian lands other than by cession to the United States."⁸ The Senate was urged not to ratify the pretended treaty. Clarke pointed out that the treaty commission had rejected a better offer and that he personally knew the lands were worth much more than the Leavenworth, Lawrence, and Galveston offer.⁹ In his long report, Clarke stated that the treaty provided for the transfer of eight million acres to the railroad group, headed by Sturges, for the astounding price of \$.19 an acre. The road was to pay \$100,000 within three months, and the balance of \$1,600,000 was to be paid at the rate of \$100,000 annually. This huge sum was not even secured by a mortgage on the railroad, but only by bonds of a road not yet constructed.¹⁰ No provision was made for settlers on the Osage reserve. However, settlers on about three million acres of the northern part of the reservation might buy 160 acre tracts if they were living on them. The land had only been recently surveyed, and most settlers were not on exact quarter sections.¹¹ Angri-ly, Clarke reported that the Missouri, Fort Scott, and Santa Fe Railroad had offered a better price, \$2,000,000 for the reservation: \$100,000 in 90 days and the balance in annual payments of \$100,000 at five per cent.¹²

This railroad would guarantee 160 acres to each settler at \$1.25 an

⁸House Committee Reports, 40 Congress, 2 Session, Vol. II, Report 63, p. 3.

⁹Ibid., p. 2.

¹⁰Ibid., p. 1.

¹¹Ibid.

¹²Ibid.

acre and also 160 acres to every halfbreed who desired to stay. It was also willing to give every 16th section on the reservation to Kansas for public school land. His state, by act of admission to the Union, Clarke reminded the House, was entitled to each 16th and 36th section for school lands. In strong language, he charged that the Leavenworth, Lawrence, and Galveston Railroad did not intend to build a rail line on these lands. This treaty would place the farmers in the hands of a corporation which would own the best land in Kansas. His committee asked that the House refuse to appropriate money necessary to put the treaty into effect. Statements from Kansas officials--Governor S. J. Crawford, Secretary of State R. A. Baker, State Auditor J. R. Swallow, Treasurer J. M. Anderson, Attorney General George Hoyt, and Superintendent of Public Instruction Paul McVicar--protesting the treaty, were read, and by House resolution sent to the Senate.¹³

Fighting hard, Clarke continued his lengthy report. An affidavit from Z. R. Overman, who stated he represented the settlers and was at the meeting when the treaty was signed, was read. Overman said that the Indians were forced to sign the treaty on threats that the United States would withdraw protection from them; that settlers had to be on a square quarter section to get pre-emption rights; and that as they had settled before the land was surveyed, very few of them could qualify. Another affidavit from a settler, Solomon Markham, was presented. Markham said that the treaty was a fraud, and charged that the Leavenworth, Lawrence, and Galveston had no intention of building through the land, and that the transaction was simply a swindle by Sturges.

¹³Ibid.

More evidence piled up in a statement from Charles W. Blair of the Missouri, Fort Scott, and Santa Fe Railroad. Blair denounced the Indian commission and the Leavenworth, Lawrence, and Galveston. His road offered a better price, and in money, not bonds. He wondered how the Osages could buy land from the Cherokees in Oklahoma with Leavenworth, Lawrence, and Galveston bonds of a non-existent railroad. Blair said there were enough of these lands to endow three railroads, pointing out that his road had no land subsidy. He charged that the Leavenworth, Lawrence, and Galveston already had received 800,000 acres. He would guarantee to sell every acre within ten miles of the track for \$2.50 and every other acre for \$1.25. He said that the Commission told the Osages "they must sell to the Leavenworth, Lawrence, and Galveston or the Kansas governor would send the state militia against them." He had received from N. G. Taylor, Commissioner of Indian Affairs, a letter stating that, "for various reasons" not given, his high bid was not acceptable to the commission, and also that his request for a council with the Osages was refused by Taylor.¹⁴

A statement of George Hoyt, the Kansas Attorney General, charged gross deceit was practiced on the Osages. The Kansas Superintendent of Public Instruction had applied to the treaty commission for the state's school land or its equivalent and was brushed aside.¹⁵ Clarke stated that the Leavenworth, Lawrence, and Galveston had previously acquired 125,000 acres of land from Kansas plus \$900,000 in bonds from various counties. All this and the Osage land would give it more than \$14,000,000 to build 150 miles of track. It would make a profit of more than

¹⁴Ibid.

¹⁵Ibid.

\$10,000,000 and be the most richly endowed 150 miles of railroad track in history.¹⁶ He concluded by warning that similar treaties were being prepared with other Indian tribes.

At the end of Clarke's long report, Congressman Julian of Indiana took the floor and commented on the Osage affair. He remarked "that the President has informed this House that the treaty is secret and he cannot divulge its contents so we are left without any official knowledge of this monstrous project."¹⁷ Julian said succinctly that "Johnson's Indian commission has proven itself to be a thieving commission both from the government and from the Indians." He named them as N. G. Taylor, the Commissioner of Indian Affairs, Thomas Murphy, A. G. Boone, and Major James Snow, the Osage agent. It was Julian's opinion that their work surpassed anything he had ever seen in the way of public plunder. "The Jurisdiction of Congress over public land," he roared, "has been overthrown by thieves and speculators."¹⁸ The House unanimously adopted a resolution asking the Senate not to ratify the treaty, and pledged itself to refuse any appropriation in its behalf, and to refuse to recognize its validity in any form.¹⁹

Newspaper opinion in Kansas was sharp in its denunciation of the treaty. The Marysville Enterprise chuckled at the "fight being waged between Indian thieves." It could not help smiling at the "corruption being exposed by thieves who are excluded from the stealing ring. It is being demonstrated how nasty a pool of fraud and corruption an Indian

¹⁶Congressional Globe, 40 Congress, 2 Session, p. 3261.

¹⁷Ibid., p. 3264.

¹⁸Ibid.

¹⁹Ibid., p. 3265.

agent will swim through to gobble a fat thing."²⁰ The Emporia News called it another wholesale swindle, and warned Clarke that "his only chance to return to the 41st Congress was to oppose the treaty."²¹

On July 13, 1868, the House accused the Commissioner of Indian Affairs of suppressing papers on the Osage treaty relating offers from rival railroads for the land.²² This forced the Indian office to transmit it to the House before the Senate could act on it.²³ The secret documents and papers about the treaty were thoroughly aired in the House by Clarke. An interesting letter from Thomas Murphy to O. H. Browning suggested a list of \$7,500 worth of presents for the Osage chiefs. A letter of April 13, 1868, to N. G. Taylor from Clarke stated that public policy demanded the land be opened at once to actual settlers at not more than \$1.25 an acre. Profits from the sale at this price would build the Leavenworth, Lawrence, and Galveston, and full recognition of the rights of settlers on the land would be extended. These were the only conditions under which a treaty would be approved in Kansas, and this was the only kind of deal he would support.²⁴

McVicar, the Kansas Superintendent of Public Instruction, was especially effective in organizing protest movements against the treaty. On July 25, 1868, Clarke presented to the House another long protest from him, stating that Kansas had a deficit of 700,000 acres of school

²⁰Marysville Enterprise, July 4, 1868.

²¹Emporia News, August 28, 1868.

²²Congressional Globe, 40 Congress, 2 Session, p. 4001.

²³Ibid., p. 3171.

²⁴House Executive Documents, 40 Congress, 2 Session, Vol. XIX, Doc. 310, Part 3, pp. 27-28.

land and the Osage sale would take 500,000 acres more away from schools. Included was a memorial to Congress from the Kansas State Teachers Association, resolving that "education is more important than the enrichment of a corporation" and urging its congressional delegation to use every effort to defeat the treaty.²⁵ The Marysville Enterprise grumbled to its readers that Major Snow, the Osage agent, had been a poor man two years ago, but he now had accumulated a fortune of \$100,000. One of Snow's better deals was the sale of \$2.00 blankets to the tribe for \$20.00 each. "Snow," the editor rasped, "is at this very moment using \$7,000 of funds belonging to the Osages to speculate with."²⁶

With Kansas seething and the land reformers in Congress pressing their charges, Charles W. Blair, head of the rival railroad, took advantage of the occasion to issue another long statement. The treaty, he said, "was really between the Osage nation and a railroad. The Indians have no security for the money except Leavenworth, Lawrence, and Galveston Railroad bonds. They will be without means to purchase any other lands. . . . it can be stated that the tribe knew it had been offered a higher price by men they knew and had confidence in. . . . it is scarcely to be expected that the Cherokees or Creeks will sell them land and take these bonds in payment."²⁷

The next move in the bitter fight was a long open letter to Clarke, entitled "Kansas and the Osage Swindle," from George Hoyt, the state's attorney general. Hoyt called attention to a recent pamphlet, entitled

²⁵Congressional Globe, 40 Congress, 2 Session, Appendix, p. 471.

²⁶Marysville Enterprise, October 26, 1867.

²⁷Statement of Charles W. Blair, President, Missouri, Fort Scott, and Santa Fe Railroad. Clarke Papers.

"The Osage Treaty," signed by I. S. Kalloch, C. Robinson, A. N. Blackledge, and William Babcock. The careful attorney pointed out that no statement in the publication was verified by oath and that Kalloch and Robinson were directors of the Sturges company. Blackledge was secretary to the commission, and Babcock was a close friend of Sturges and his directors.

The pamphlet was an extraordinary effort to whitewash the commission and the treaty. This group stated that Clarke made a secret one-sided investigation of the treaty and failed to call the signers of the aforementioned pamphlet before the House Indian Affairs Committee. Hoyt had heard Clarke notify Kalloch in person of the committee meeting and heard him tell Kalloch to bring ANY friends of the treaty. The ardent pamphleteers were now whining because the House did not compel friends of the treaty to appear. This group charged Clarke with submitting a protest from the state officers of Kansas, based entirely on the statements of C. W. Blair of the rival railroad. Hoyt stated that he was present when the protest was framed in Topeka, and Blair made no communication at all. Only Secretary of State Burlingame failed to back up the protest, and then not until "like a certain man who went down to Jericho, he fell among friends of the treaty."²⁸

Hoyt next denounced the claims of the Sturges lobby that the Osage lands were comparatively worthless, saying everyone in Kansas knew they were the best watered and most fertile part of the state. He listed several major state objections to the treaty as being that one fifth of Kansas territory passed under control of a railroad monopoly; a better

²⁸"Kansas and the Osage Swindle," a letter to Sidney Clarke from George H. Hoyt, Attorney General of Kansas. Clarke Papers.

treaty could have been made with Blair; no school lands set aside for the state in clear violation of the act of admission; no provision made for settlers on the lands; "in fact, the whole purpose of the treaty was to accomplish a huge steal of public lands."²⁹

Clarke, in organizing his opposition, addressed a "remonstrance against the Osage treaty to the Senate of the United States," stating that the Osage land comprised an area within a fraction of the combined size of Massachusetts, Connecticut, and Delaware. It would make fifty thousand homesteads of 160 acres each. This great region would bring \$12,000,000 into the public treasury at \$1.25 an acre. Under this treaty all this would go to one man and his corporation, he pointed out, for only \$100,000 cash and \$1,500,000 in railroad bonds.

He informed the Senate that Kansas was awarded the 16th and 36th sections of each township of public lands for benefit of common schools. Since 1859, a total of 1,357,521 acres of Indian lands in Kansas had been acquired by speculators, with none having been reserved for Kansas schools. Should the Osage treaty be ratified, Kansas school children would be defrauded of land worth \$1,355,480. Clarke concluded by asking the Senate to amend the treaty to permit either Kansas or the United States to buy the lands and to open them to immediate settlement to settlers only at \$1.25 an acre, warning that if the iniquitous thing were ratified it would fill the pockets of Sturges, "not one mile of whose railroad will ever pass through the land."³⁰

When the cause appeared almost lost, unexpected help arrived. The

²⁹ Ibid.

³⁰ "A Remonstrance Against the Treaty with the Osage Indians." Clarke Papers.

Osages engaged the services of two eminent Cherokee attorneys, William P. Adair and C. N. Vann, to help defeat the treaty and try to secure a better price for their land. With the arrival of these men in Washington, things began improving, because, as Clarke remarked years later, "Adair was unusually able as well as a man of integrity."³¹ Clarke and Adair soon agreed that Clarke should go to the Osage country and assemble the Indians in a meeting to get a first-hand report of the conditions under which the treaty had been made. Accordingly, Clarke called a general meeting of the Osage tribe in the summer of 1868.³² By now the entire state was thoroughly aroused. The Lawrence Tribune reported that Clarke spoke to thirty-one chiefs, numerous counselors, and braves. They all stated that the treaty had been signed by only a few of the tribe, and these were either bribed or intimidated.³³ Clarke reported to the Commissioner of Indian Affairs that he found the tribe unanimously opposed to the treaty.³⁴

The editor of the Lawrence Republican was not so favorably impressed with the Clarke-Osage council, noting that Clarke had reported that the Indians were bribed and scared into signing the treaty: "enough dust has been raised about this treaty to scatter the minds of most people."³⁵ The editor warned Clarke to cease his opposition, because railroads were going to be built, and he pointed out that it was a better treaty than

³¹Indian Documents, Vol. L, p. 796.

³²Ibid., p. 755.

³³Lawrence Tribune, August 5, 1869.

³⁴Ibid., August 18, 1869.

³⁵Lawrence Republican, October 5, 1869.

many Clarke had supported.³⁶ Hoyt, the Kansas Attorney-General, stated in an open letter that he knew the commission had included in its list of presents to the Osages six barrels of whiskey, undoubtedly a factor in influencing the Indians.³⁷

This concerted and well organized assault on the treaty caught the lobbyists at a time when troubles over the Cherokee sale and rumors of bribery in the impeachment of President Johnson had them on the defensive. Hoping to let opposition die down, they left the treaty to slumber until after the congressional elections. The sole issue in Kansas was the treaty, and Clarke was renominated and elected on his pledge of continued opposition to it in the 41st Congress.³⁸

In 1869, efforts were made to revive the treaty. Six railroads pooled their talents, lobbyists, and money, and proposed a new treaty with partners to share as follows: The Leavenworth, Lawrence, and Galveston to receive five-sixteenths of the land; Atchison, Topeka, and Santa Fe, five-sixteenths; Missouri, Fort Scott, and Santa Fe, two-sixteenths; Lawrence and Neosho, two-sixteenths; Union Pacific, Southern Branch, one-sixteenth; Leavenworth and Topeka, one-sixteenth.³⁹

When this began brewing, Clarke and Adair decided to call for a complete investigation of the whole unsavory affair. In a long letter to Ely S. Parker, the new Commissioner of Indian Affairs, Clarke reported the outcome of his visit to the Osages the preceding year. On August 20,

³⁶Ibid.

³⁷"Kansas and the Osage Swindle," a letter to Sidney Clarke from George Hoyt, Attorney General of Kansas. Clarke Papers.

³⁸Indian Documents, Vol. L., p. 798.

³⁹Senate Executive Documents, 43 Congress, 2 Session, Doc. 29, pp. 11-17.

1869, Parker ordered Enoch Hoag, Superintendent of Indian Affairs at Lawrence, Kansas, to make an official report of the Osages' views. Hoag promptly reported he believed the tribe to be opposed to ratification of the treaty, because of the low price paid.⁴⁰ There was much objection to the new proposition of six railroads, and also because it did not increase the price and had no provision for Kansas school lands. However, the Kansas legislature which had opposed the treaty reversed itself on February 25, 1869, and sent a resolution to Clarke asking him to support it, thus opening a hot fight in the state between the representatives of the six railroads and friends of Clarke.

Clarke, Adair, Vann, and Commissioner Parker, in a series of conferences with President Ulysses S. Grant, secured his promise to withdraw the treaty if they could prove it had been obtained by fraud.⁴¹ The railroad lobby, which had been reorganized with new names and faces, was visibly shaken when Clarke exhibited the following printed certificate: "This may certify that the bearer of this, for services rendered, is entitled to _____ number of acres of land upon confirmation of the Osage treaty. William Sturges."⁴²

Kansas press reaction was vigorous, both for and against the treaty. The Emporia News reported that Thomas Ewing and former Secretary of Interior Browning were to split \$250,000. Taylor, Commissioner of Indian Affairs, had been promised 12 sections of land. According to the editor, Clarke allegedly demanded \$20,000 and 25,000 acres of land for his silence, even naming J. F. Legate as receiving a message from Clarke to that effect.

⁴⁰ Indian Documents, Vol. L., pp. 755-757.

⁴¹ Ibid., p. 759.

⁴² Ibid., p. 797.

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Ex-Governor Robinson, arguing for the treaty, sought an interview with Clarke and allegedly verified this with the added stipulation of the Congressman, that all six roads must support him for re-election. The editor contended that Kansas must quickly get rid of Ross, Pomeroy, and Clarke.⁴³

The editor of the Lawrence Tribune, writing that much has been published about Clarke's opposition to railroad interests, told how the people of Emporia had appointed Lieutenant Governor J. Eskridge to go to Washington and urge amendments to the new treaty that would permit the building of the Emporia railroad. The editor himself had accompanied him. The two of them and ex-Governor Robinson went to see Clarke and asked him to try to amend the treaty to give one-sixteenth of the land to the Emporia road. Clarke stated he would do everything in his power to aid the road, but would never consent to the monopoly principle of the treaty. If the treaty could be changed to read "lands to be sold to actual settlers at \$1.25 an acre, and schools to be provided for," he was willing for the Emporia road to have that much.⁴⁴ When Eskridge stated that the railroad would never agree, Clarke then said he would oppose the effort. The editor was puzzled, because the road could have made over a million dollars on the Clarke proposition. "The speculators," he concluded, "think they can smear and break Clarke, but they are responsible for retarding progress and not him. He should be praised for opposing land monopolies and guarding the rights of the people. He has established himself as the most able man in Congress."⁴⁵

⁴³Emporia News, June 25, 1869.

⁴⁴Lawrence Tribune, June 26, 1869.

⁴⁵Ibid., June 22, 1869.

Eventually the treaty became so involved in the contest between the two houses of Congress over the practice of land subsidy to railroads, presents to Indians, and denunciations of speculators by land reformers, that the House, led by Clarke, opposed making further Indian treaties. Late in December, 1868, the House began a movement to transfer control of Indian affairs to the War Department. Clarke, at his vitriolic best, assailed the Indian service as a system of public plunder, roaring that the commissioner of Indian affairs was attended by a "retinue of thieves." He demanded a complete report from the Secretary of the Interior, saying funds appropriated for Indians were usually stolen. He had no hope of reform, because "he had known no honest commissioners of Indian affairs."⁴⁶ Shaken by attacks of this nature, the Interior Department recommended to President Grant on February 4, 1870, that he withdraw the treaty.⁴⁷ A few days before on January 28, 1870, Clarke had prepared a bill to sell the Osage land, give the tribe \$1,000,000, and place the remainder in the United States Treasury. Vann and Adair, the two able attorneys who had aided his fight against the original treaty, now turned on this measure, and fought it to death in the House. After its defeat, Clarke adopted the views of the two versatile Cherokee attorneys in regard to the payment of full value of the lands to the Osages and the three men began working to have such a law enacted.⁴⁸

The railroads were not willing to give up the fight and began legislation to secure the land for the same price. Senator Harlan of Indiana

⁴⁶Congressional Globe, 40 Congress, 3 Session, p. 18.

⁴⁷Indian Documents, Vol. L., p. 760.

⁴⁸Ibid., p. 795.

proposed that the United States assume ownership and control of Osage lands, pay them \$1,600,000, hold this in the treasury, and give the tribe five per cent interest on it.⁴⁹ Senator Ross of Kansas proposed an amendment that would allow the same six roads to buy at the same prices, and in the same proportions as the original treaty.⁵⁰ These plans, however, found little support in Kansas or anywhere. When it became apparent that the Osage lands could not be sold to railroads, Congress began considering paying them the full value of \$1.25 an acre for their lands. A Clarke bill of January 10, 1870, providing for the removal of the Osages from Kansas and sale of their land to actual settlers, appeared quite logical to the harassed Senate.⁵¹ On July 15, 1870, under a provision of the Indian appropriation act, the Osages were paid \$1.25 an acre for their land, the 16th and 36th sections of each township were reserved for Kansas schools, and the area was opened only to actual settlers at the pre-emption price of \$1.25 an acre.⁵² Thus the bitter congressional fight ended, but many exposes, charges, and counter-charges so aroused the people of Kansas that the state's entire congressional delegation was swept out of office as rapidly as each individual could be brought before the voters.⁵³

⁴⁹Congressional Globe, 41 Congress, 2 Session, p. 3218.

⁵⁰Ibid., p. 3219.

⁵¹Ibid., 41 Congress, 2 Session, p. 338.

⁵²United States Statutes at Large, Vol. XVI, p. 362.

⁵³Political Affairs in Kansas, passim.

CHAPTER V

THE ATTACK ON THE TREATY SYSTEM

For more than a decade following the Civil War the Indian question was a baffling problem to the American people and to Congress. Conflicting forces were at work, one urging peaceful means and the other recommending force to settle it. Throughout American history, western settlers consistently followed a ruthless Indian policy. With so many Americans notorious for being Indian fighters, and also because of the atrocities of the southwestern plains Indians after the Civil War, it can be understood why Kansas and other western states demanded that they be exterminated. Most of the Five Civilized Tribes had been secessionist in sentiment, and that alone seemed sufficient ground for the destruction of their tribal governments by the western settlers. The southern plains tribes had subjected the border settlements to harrowing raids for many years. Hundreds of captives had been carried away to remote Indian villages. In many cases friends had paid liberal rewards for their return. The Comanche, Kiowa, and Apache had aroused particular hatred. The problem was finally turned over to generals William T. Sherman and Philip Sheridan, apostles of wholesale destruction in the recently concluded War Between the States.¹

All Indian policy was directed by the Department of the Interior, but old soldiers in Congress--such as Clarke--urged that the Indian

¹Carl Coke Rister, Border Captives (Norman: University of Oklahoma Press, 1940), Ch. 1.

service be transferred to control of the War Department. Clarke admitted that he found it hard to distinguish between friendly Indians and hostile ones. From the beginning to the end of the contest over Indian policy, Kansas was in the war party, and of the state's congressional delegation, Clarke was the most consistent in his opposition to Indian appropriations. Whenever an Indian money bill was before the House from 1868 to the end of his congressional career, he could be counted on to oppose it on the grounds that there must be a part of it which would be given to hostile tribes.²

The Kansas legislature, though known for squabbles with its executives, had always given them support against the Indians. The state's settlers consistently demanded that uncivilized tribes should be conquered and driven from the state and that traders among them must be supervised and controlled. All reservation Indians, they argued, should be driven to the Indian Territory and their land opened to settlement. The pens of Kansas editors dripped venom on the Indian question. The Marysville Enterprise suggested that "Congress should begin buying Indian scalps."³ The editor stated that the Enterprise was willing to buy some "hair" itself. Commenting on a recent statement by Secretary of War Stanton that "his department would handle the matter of Indian raids," he stated in disgust that "the East is so far from scalping knives and tomahawks that it does not understand the murderous barbaric redskins, and nothing short of complete extermination will solve the problem."⁴ The same writer suggested several

²Marvin H. Garfield, "The Indian Question in Congress and in Kansas," Kansas Historical Quarterly, Vol. II (February, 1933), pp. 31-32.

³Marysville Enterprise, July 13, 1867.

⁴Ibid.

weeks later that if Congress would remove all the Indian agents and contractors it would begin to get at the root of the problem. The editor, noting that a bill appropriating \$1,500,000 for Indian affairs had recently passed Congress, commented morosely that part of it was probably spent for, "sixty kegs of powder received here last week marked in care of Colonel E. W. Wynkoop, for Cheyenne and Arapaho."⁵ The editor concluded by remarking: "We do not wonder at the impudence of the red scoundrels when they are furnished arms by the government to kill us with."⁶

Files of the Lawrence Tribune carry numerous reports of Indian depredations and atrocities. The editor published an open letter from Clarke to President Johnson demanding help from the War Department and pledging the cooperation of the governor of Kansas and the state militia with the army.⁷ The Tribune warmly praised him for this and pointed out that Kansas was rapidly filling up with emigration from Scandinavia, "a class of people who cannot protect themselves from the savage Indians as well as Americans can."⁸

The Republican state convention at Topeka on September 9, 1868, adopted the following resolution: "We demand in the name of our frontier settlers that the uncivilized Indians be driven from the state and the Five Civilized Tribes be speedily removed to the Indian country."⁹ Clarke, when commenting on the proposal to transfer all Indian affairs to direct control of the War Department, said: "the entire West is unanimously in

⁵Ibid., June 20, 1868.

⁶Ibid.

⁷Lawrence Tribune, May 26, 1869.

⁸Ibid.

⁹Wilder, Annals of Kansas, p. 484.

favor of it. The Indian question is not a question of philanthropy or of laying the blame on some other race. . . . it is question of civilization. . . . the job of Congress is to aid civilization and not hinder it."¹⁰ The convention reciprocated by nominating Clarke to the Fortieth Congress.

The busy Congressman kept the Indian question constantly before the House and introduced many claims against the government for losses which had been sustained in clashes with Indians, and also voiced his own ideas toward a solution. The most pressing problem, as he saw it, after the removal of the Indians, would be ownership of their lands. Admitting that he had aided in the bestowal of public lands for railroad development, he did not feel that this was now the answer, because it actually retarded the development of the country by making it possible for land speculators and powerless chiefs to transfer land titles in questionable treaties.¹¹

Several Clarke bills, prepared with skill and presented to the House, paved the way for a mighty attack on the treaty system itself. In this maneuvering, Clarke knew he was sure to have the support of land reformers in the House, and if his own state should benefit "in the interests of civilization," a great evil would be ended. A long resume of Indian depredations was followed by a resolution that the United States government pay claims of Kansas and western citizens for losses of property sustained in hostile raids. With the implication that the Court of Claims could not be trusted to dispense justice to settlers, it provided that the court's jurisdiction in this matter would be restricted and settlers' losses

¹⁰Congressional Globe, 40 Congress, 3 Session, p. 18.

¹¹Ibid., p. 345.

established by the House Committee on Claims.¹² Although this did not pass, several days later two more Clarke proposals came before the House. A proposition for his own Indian Affairs Committee to investigate claims from Indian losses was referred back to it along with another bill providing for close regulation of the Indian trade.¹³ These failed also, but some days thereafter at Clarke's request, the House passed a resolution to extend the jurisdiction of United States courts in Kansas over the Indians' territories there.¹⁴

The House, in the midst of a national uproar brought on by the notorious Osage and Cherokee treaties and beset by land reformers on every side, was quite willing to listen to denunciations of the treaty system. When a measure was sent to it in March, 1868, asking for an appropriation of \$450,000 to make peace with certain hostile tribes, Clarke, always opposed to such negotiations, promptly introduced a measure to dissolve the peace commission authorized to do so, and found the House receptive.¹⁵ The Committee on Indian Affairs was asked to study the proposition carefully. The House, in a suspicious mood, proceeded to send a stiff resolution to the Secretary of the Interior, asking that it be furnished with copies of all treaties made with western Indians in recent years.¹⁶

Another request for funds, this time to provide payments and presents to the Sioux caused much acrid comment in the House. Clarke seized the opportunity to state that the time had come for the House to assert its

¹²Ibid., 40 Congress, 2 Session, p. 935.

¹³Ibid., p. 1083.

¹⁴Ibid., p. 1662.

¹⁵Ibid., p. 1631.

¹⁶Ibid., p. 4000.

power in regard to the Indian question. Since the abuse of the treaty-making power in the Senate was responsible for the national problem, he felt that the House should refuse to appropriate another dollar "to be stolen by the corrupt Indian service."¹⁷ The Lawrence Tribune noted approvingly that while Clarke was being denounced by "thieves and speculators in Washington and Kansas he is quietly doing his job of serving the people." It published a letter of Clarke to Ely S. Parker, the Commissioner of Indian Affairs, in which he stated that Kansans were anxious for the Indians to be moved south to the Indian Territory. He believed that no more legislation would be necessary for their removal, but if the commissioner felt other legislation was needed, would he please send someone from his office to help Clarke draw up a bill. The commissioner was asked to please show this letter to the President. The Tribune in the same issue also published Parker's reply. The commissioner fully agreed with Clarke. He had always disliked the treaty system, and did not even plan to send an agent to the Indians. He understood that many Kansas Indians had already gone south.¹⁸

Early in the Forty-First Congress, Clarke began firing heavy salvos at the annual appropriation for the Indian Department. It was obvious that if this substantial amount, more than \$2,500,000, could be blocked by the House, the department could soon be forced to come to terms. Because some of this amount represented funds that had been pledged by the Senate in treaties already ratified, that group could also be bent to the will of the lower House.

¹⁷ Ibid., 40 Congress, 3 Session, pp. 881-882.

¹⁸ Lawrence Tribune, June 23, 1869.

Clarke opened his attack by noting an item of \$22,750, a payment to hostile tribes at war with the United States. He angrily informed the attentive members that the Indian Department had appropriated money every year for tribes at war with the country. "Indian agents," he said, "are always hanging around the Interior Department trying to get money to steal."¹⁹ The bill, he implored, was a fraud manipulated and conceived by Indian agents. It was now time to stop the whole business. Other members agreed. Clarke, feeling that the time was ripe, offered an amendment providing that "from this date all Indian tribes be held incapable of making treaties with the United States, and that any sale of their land must be approved by an act of Congress."²⁰ The proposal failed, and the bitter debate continued.

Clarke, in a long speech, told the aroused House that his first impressions of Indians had been gained in his native state of Massachusetts, far from the frontier. His views had changed since he became a resident of a western state, and he believed that a policy of making no more treaties with Indians would end corruption in the Interior Department and the Indian Service. Clarke, warming to his subject, denounced the Senate and charged that group with illegal actions in transferring Indian lands to corporations. The remnants of the tribes should be dealt with as any other group of people and not given millions each year. In reality, he continued, there were only half as many Indians as had been claimed in census figures. It had never been possible to count the uncivilized tribes. "The Indian population figures," he emphasized, "have been given by corrupt

¹⁹ Congressional Globe, 41 Congress, 1 Session, p. 170.

²⁰ Ibid.

agents so there would be more appropriations to steal."²¹ He warned his attentive audience that if the treaty system continued, the same old Indian question would be back every year. Ever a master of invective, Clarke reached new heights of vituperation in further declarations that if two pending treaties with the Cherokees and Osages were ratified, vast amounts of the public domain would go to monopolies and speculators. He demanded again that the appropriations bill be amended to end the treaty system forever.²²

The disputed bill was turned over to a joint conference committee of both houses to try to reach a satisfactory solution. The committee reported two days later that the amount had been pared down to \$2,000,000 and that the Senate was "extremely desirous to carefully safeguard the money."²³ Clarke asked the committee bluntly if "it had been taken away from the filthy Indian Bureau," and if the bureau had been prevented from making more treaties. The committee chairman replied that the group felt that public sentiment had been so aroused by Clarke that the funds would be safe. Clarke then stated gloomily to the House that "this bill is no different from all others of a like nature."²⁴ Momentarily, the House took no further action.

Early in the Second Session of the Forty-First Congress, Clarke's relentless attacks on treaties and land speculators began to prevail. On December 15, 1869, he was able to secure a House resolution that whenever

²¹Ibid., p. 564.

²²Ibid., p. 648.

²³Ibid.

²⁴Ibid., p. 649.

Indian titles were extinguished, the House maintained the lands should be opened to settlement at once. It opposed the sale of such lands to corporations operating contrary to this policy.²⁵

Debate soon began again on the Indian appropriation bill which had been blocked by Clarke in the previous session. He was still demanding his amendment that these be the last treaties ever made, when the House closed debate and agreed to take up the matter in the near future. A week later, on March 2, 1870, the House under Senate pressure for money resumed debate. Clarke, changing his tactics, denounced the bill as inconsistent. "The House," he said, "has stated that the Senate has no power to negotiate treaties with and buy Indian land. If so, then it should have no power to make treaties with the Indians at all."²⁶ The whole system was unconstitutional, he emphasized, because the Indians were not independent nations.²⁷

On July 14, 1870, the long fight over the appropriations bill ended. A joint conference committee offered a compromise appropriating \$5,000,000, taking control of the funds out of the hands of the Interior Department and placing it under the personal administration of the President. Clarke, upon being informed that the bill authorized the purchase of the Osage lands and their removal from Kansas, gave it his complete support.²⁸ At last he had won his fight.

Thus the traditional process of divesting Indians of their land by

²⁵Ibid., 41 Congress, 2 Session, p. 153.

²⁶Ibid., p. 1578.

²⁷Ibid.

²⁸Ibid., p. 5607.

drawing up treaties with chiefs or representatives of tribes came to an end. The treaty method by which scant regard had been given to the rights of settlers had brought the lower House under heavy pressure from western voters. The Senate, more remote from popular compulsion, had no doubt come under the influence of powerful lobbyists working with railroad groups. The House with its refusal to appropriate money for hostile tribes exercised its traditional control of the purse strings, and emerged victorious in its contest with the Senate.

CHAPTER VI

THE PUBLIC LANDS BATTLE

Clarke had entered the Thirty-Ninth Congress a staunch believer in the practice of subsidizing western railroads with public lands. He had watched with amazement while speculators, by fraudulent treaties, gained control of large areas from Indians. As the author of many railroad bills which had provided for land grants, he had watched capitalists acquire ownership of the choice land in Kansas for only a fraction of its value, then sell it to helpless settlers on the sodhouse frontier at rates far above the government price of \$1.25 an acre. He had no objection, however, to eastern financiers buying the reservations from the Indians for a few cents an acre and retailing them to settlers for \$1.25. That amount, he contended, would provide plenty of capital to build railroads, and moreover, the settlers were entitled by law to the pre-emption price. There are innuendos, as indicated earlier, in the Clarke record that he himself was not averse to sharing in the profits, up to what he believed was the maximum price of land. His congressional service is replete with warnings to the land lobby that he would support no treaties unless the settlers were guaranteed the standard land price.

As early as the Fortieth Congress, he began considering national legislation to establish a public land policy, thus making the continual battle against speculators and land grabbers unnecessary. In January, 1869, perhaps with an eventual public land policy for the whole country in mind, Clarke stated his views on the use of public domain in the

the House. It was his profound conviction that land ownership was a great safeguard of the nation. In history, he said, "whoever owned the land of any country, many or few have controlled it. Where a few have owned the land the government has been destroyed."¹ He pointed out to the now attentive group that "the French revolution found France a nation of serfs and left it a nation of landowners. In American history the colonists were denied land at home and won a new world for their own."² He could see grave danger ahead, however, because of the fearful efforts of land monopolists. Thirty million acres of public land was now in the hands of speculators. If this had been opened under the homestead laws, it would have made 187,500 quarter sections and land owners.

Altogether, Clarke warned the House, two hundred and twenty-five million acres of public domain had either been given to railroads or were in the hands of speculators. "These figures," he sternly admonished his listeners, "show the necessity of stopping the land grant policy. Greed begets greed and the amount asked for in the future will double the figures given. The American people have a right to the public domain which has been occupied by Indians."³ Speaking in a measured tone, he asserted that Executive and Senate secrecy had been responsible for the transferral of this to speculators and railroads. "No Indian tribe," he stated, "has ever had the right to sell land or make a treaty."⁴ Striking a blow for his state, Clarke commented that already substantial areas of Kansas had been given away by treaties, and more were still pending. He

¹Congressional Globe, 40 Congress, 3 Session, p. 343.

²Ibid.

³Ibid., p. 345.

⁴Ibid.

then submitted a letter from the Interior Department showing all Kansas lands sold to individuals and corporations since 1860:

1. The Sac and Fox Reservation, as follows:
 - A. 8930 acres to H. McCulloch for \$15,246.25.
 - B. 29,677 acres to William R. McKean for \$19,180.19.
 - C. 39,058 acres to Fuller and McDonald for \$28,825.58.
 - D. 51,689 acres to R. Stevens for \$36,965.
 - E. 142,915 acres to John McManus for \$156,937.
2. Delaware lands; Union Pacific Railroad, Eastern Branch, 223,890 acres for \$296,252.
3. Kickapoo lands; 123,832 acres sold to Atchison and Pike's Peak Railroad for \$154,790.
4. Cherokee Neutral Lands; 640,199 acres sold to J. F. Joy for \$640,199.
5. Pottawatomie lands; 339,165 acres sold to Atchison, Topeka, and Santa Fe Railroad for \$339,165.
6. Osage lands; 8,003,203 acres sold to William Sturges' L. L. and G. Railroad for \$1,600,000.⁵

Clarke stated that this was only a partial list, saying that "in Kansas alone 9,774,566 acres had either been stolen or were about to be stolen from farmers."⁶ Every acre of this land, he stated intently, was choice, and settlers would have eagerly bought it for \$1.25 an acre, but speculators wanted five to twenty dollars an acre. Clarke stated that he was making these remarks, well aware that he himself had aided the bestowal of public land on railroads. "Settlers on this land," he continued, "would have created 100 million dollars in new wealth."

To illustrate the enormity of profits to be made in land speculation, Clarke distributed a brochure he had prepared on the Cherokee Neutral Lands. His figures were as follows:

1. Total area, 799,614 acres.
2. Population, 15,000.
3. Actual claimants, 3,000.
4. Claimants unprotected by treaty terms, 2,600.

⁵Ibid.

⁶Ibid.

5. Value of settlers' lands, \$720,000.
6. Appraised value of land unoccupied, \$479,422.
7. Value of coal fields, \$14,000,000.
8. Total value of land including coal, \$15,199,422.
9. Value of settlers' improvements, \$1,800,000.
10. School land Kansas should get, 44,423 acres.
11. Total paid for lands, \$640,199.69.
12. Profits made on deal by Joy, \$16,000,000.⁷

"These schemes for plunder," he shouted, "come out of secret Senate sessions!" But the Kansas Republican party had adopted this resolution: "Kansas demands protection of settlers' rights, and the school lands it is entitled to. It also demands that the Indians be removed from the state."⁸ He was hereby notifying the House that he would oppose any further land grants to railroads. He concluded his long address with a statement that he was in favor of compelling the railroads to open the land they now controlled to settlement at \$1.25 an acre.⁹

Early in the Forty-First Congress, Clarke offered another railroad bill reflecting his changed viewpoints. This called for a grant of land to aid in construction of the Junction City, Solomon Valley, and Denver City Railroad, with the stipulation that the lands could be sold only to actual settlers. Speaking cautiously, he explained to the House that the land grant would be 6400 acres for each mile of track, and the maximum price would be \$2.50 an acre, not to be sold to anyone except settlers on quarter sections. The settlers would pay within three months after completion of each ten miles of track; thus, unless settlers lived along completed track, they would never pay. This bill, Clarke stated, "appeared to be a fair safeguard for public lands."¹⁰ Although no action was taken,

⁷Ibid., p. 346.

⁸Ibid., p. 347.

⁹Ibid.

¹⁰Ibid., 41 Congress, 2 Session, p. 710.

it received a thoughtful reception by the House.

With the arrival of the Northern Pacific Railroad bill from the Senate, the tide began to turn in favor of the land reformers in the House. That body, already on record as being opposed to any further railroad grants or sale of public lands unless the land were sold to actual settlers, had now before it what appeared to be another gigantic raid on the public domain.¹¹ Clarke, leading off the opposition to the proposal, denounced it as another scheme of "robbery and public plunder."¹² Thoroughly aroused, he emphasized that this company already had a grant one hundred miles wide in alternate sections, and by this bill it would get twenty miles more. If passed, the road would have 75,000,000 acres of the best land in North America, worth \$500,000,000. Clarke warned the House that much was being said all over the nation about corruption in Congress. "The railroad grants," he stated, "now equal the combined area of Great Britain, France, Spain, and Italy."¹³ He would insist that the bill be amended to restrict sale of the Northern Pacific grant, if it gets one, to actual settlers in 160-acre tracts for a minimum of \$2.50 an acre.¹⁴

Some supporters of the bill reasoned that to set such a ceiling would make the grant of little value to the company. Congressman W. W. Wheeler of New York, speaking for the bill, charged that Clarke was opposing it because Kansas had no interest in the road. Wheeler felt sure that Congress and the railroad involved would not permit it to be a swindle.

¹¹Ibid., 40 Congress, 3 Session, p. 1222.

¹²Ibid., 41 Congress, 2 Session, Appendix, p. 412.

¹³Ibid., p. 413.

¹⁴Ibid.

This road, he declared, had never been granted a money subsidy, only land. Clarke, in replying to Wheeler, said unequivocally that he was not opposed to railroads, only to land speculation. He did not care for Indian rights and had no objection to the Northern Pacific acquiring ownership of the land.¹⁵ There must be a limit on its price, he emphasized, and it must go to actual settlers in quarter sections, or he would oppose. He felt his constitutional duty was to serve both settlers and railroads, and \$2.50 an acre would be enough to build this line.

George W. Julian of Indiana, able chairman of the House Committee on Public Lands, announced his opposition to the bill and his complete agreement with Clarke's proposed statement.¹⁶ Congressman John D. Stiles of Pennsylvania questioned the right of Congress to give away the people's land and announced that he would oppose the Northern Pacific bill in any form it was finally presented to the House. J. M. Tyner of Indiana stated in amazement that the railroad grant would be two and one-half times the size of the state of New York, and declared that it was high time the land policy of the United States was changed. Tyner announced that the Republican party's state platform in Indiana would read: "We are opposed to land and money subsidies for railroads, and favor reserving the public domain for actual settlers."¹⁷ He predicted that other states would follow. Other congressmen denounced the bill in turn, and it was brought out that total land grants of 185,890,794 acres had already been made to railroads. The Indiana delegation warned that the Southern Pacific was

¹⁵Ibid.

¹⁶Ibid., 41 Congress, 2 Session, p. 3792.

¹⁷Ibid., 41 Congress, 2 Session, Appendix, p. 403.

watching its "bastard" relative and if this steal succeeded it would then come forward to claim more of the "people's inheritance from Congress, the common father of them all."¹⁸ The opposition of John M. Crebs of Illinois, a railroad man, was interesting. It was his opinion that land monopolies had been the bane of every nation in history. He warned that if this bill should pass, the "western settlers would be at the mercy of wolves," concluding darkly that "no one here knows who the managers of this corporation are."¹⁹

Early in June, 1870, Clarke was ready to attempt national legislation on the public lands question and delivered what was probably his greatest address to the House. He gave his views on the proper use of the public domain and outlined legislation he felt the nation needed. He charged that railroad land grants originally came from the fertile brain of Stephen A. Douglas, a Democrat. The system had on the whole been beneficial to western states, and with the Republican party to establish proper safeguards, it could produce even greater results. "The feeling of the American people," he said, "is against the abuse of the public domain, and not its use." Looking far into the future and forecasting the Interstate Commerce Act and other railroad legislation, Clarke stated the opinion that the greatest railroad evil was the fact that each road had no competing lines. "The railroads," he said thoughtfully, "cannot be considered private property. They must always exist as public utilities and legislatures must have the right to establish their maximum rates."²⁰

¹⁸Ibid., p. 396.

¹⁹Ibid., pp. 401-402.

²⁰Ibid., 41 Congress, 2 Session, p. 4121.

Reiterating previous statements, he remarked again that he did not oppose railroad grants made with proper restrictions. Here, he said, were a group of principles which should govern their grants and the use of public land:

- A. Every enterprise asking a subsidy in land or money should show the connections it proposes to make and convince congress that the region it plans to construct in would be benefited by the work.
- B. The amount of the grants should be restricted rigidly to whatever is actually needed. He felt that the enormous extent of some grants, particularly that of the Northern Pacific, made them iniquitous and invited public criticism and hostility.
- C. In his opinion the most important restriction would have to be price. The granted land would have to be sold only to actual settlers in maximum amounts of 160 acres at the same rate as government land. Irritated at railroads which had held their lands off the market to evade taxation, he would demand that they be opened to settlement at once upon congressional award of the grant.
- D. Taking cognizance of the dilatory construction tactics of railroads, he felt that only when the line had constructed ten consecutive miles of road should the settlers be called on to pay for their farms and then only along the completed track. The settlers would then pay within three months to district land offices in sales conducted by the Secretary of the Interior, who would turn over the proceeds to the railroad. All land unsold or not paid for in three months would revert to the railroad, which could sell it to anyone; but the stipulation would be again that it went to actual settlers at the same price as before.
- E. If the road should not be completed, its grant would be nullified and its remaining lands opened to settlement as government land. He felt that a price of \$2.50 an acre, which amounted to \$16,000 a mile, would build a railroad. However, a road could obtain further capital by mortgages, etc., if needed.²¹

Clarke concluded his long statement by saying that he would "welcome placing this issue before the people in his forthcoming campaign for the next Congress."²² He pointed to Kansas as an excellent example of the

²¹Ibid., p. 4123.

²²Ibid., p. 4124.

advantages and evils of land subsidies, denying vehemently that he had ever opposed legitimate internal improvements. His opposition in his state had maintained that he should represent corporations and capitalists, but his conscience demanded that he represent all the people.²³

Clarke's thoughtful and farsighted program caused much favorable comment in the House. Representative John Beatty of Ohio put his state and himself on record as opposing all future land subsidies and the disposal of a single acre except for purposes of cultivation. He described statesmanship as "simply the application of common sense to national affairs."²⁴ Beatty suggested that if internal improvements needed assistance, Congress should give them money and not land. Describing the Northern Pacific bill as the culminating outrage of all, Beatty charged that it gave the "swindling scoundrels a railroad and \$350,000,000."²⁵

Opposition collapsed early in July, 1870, and victory came swiftly. The House quickly passed two far-reaching measures. One forbade the transfer of Indian reservations by treaty to any other than the United States government. Clarke secured an amendment to this, so that the Indian land transferred would be subject only to the authority of Congress and must be opened to settlement under homestead and pre-emption laws. The other bill was even more far-reaching in its implications. It prohibited further sale of public lands also, except as provided under homestead and pre-emption laws.²⁶

Several days later, on July 15, 1870, the Second Session of the

²³Ibid.

²⁴Ibid., p. 4119.

²⁵Ibid., p. 4120.

²⁶Ibid., pp. 5127-5128.

Forty-First Congress came to an end and Clarke placed his issues before the people of Kansas in a campaign for reelection.

CHAPTER VII

THE CAMPAIGN OF 1870 AND CLARKE'S DEFEAT

Railroad companies, never noted for clean tactics in any fight, now arrayed themselves solidly against Clarke in his fight for election to the Forty-Second Congress. The bitter campaign split Kansas squarely and divided it into two camps, pro-Clarke and anti-Clarke. For several months, Clarke became more denounced than any individual in the state.¹ Lavish advertising patronage dispensed to the newspapers generally assured their support to the railroads. Liberal fees and expense accounts given to Kansas legislators and politicians usually brought their support also. The railroads handed out numerous passes, another excellent weapon. A battery of lobbyists was maintained at Topeka, and so effective had been its work that the Kansas legislature, which had memorialized the Senate not to ratify the Osage treaty, reversed itself and on February 25, 1869, sent a resolution to Clarke asking him to support the treaty.

When the Sturges lobby decided to distribute the Osage plum among six railroads, political opinion in Kansas began to change almost at once. So effectively had the Neutral Tract and Osage conflicts been publicized, that the forthcoming congressional election in Kansas received wide press attention all over the nation. Such cries of land reformers as "steal" and "swindle" made another weapon easy to use against Clarke, a campaign to smear and tarnish his reputation with vague charges of bribery and

¹Senate Reports, 42 Congress, 3 Session, Vol. I, Report 451, pp. 275-287.

corruption. Carl Schurz, Senator from Missouri, speaking to his chamber about the election of Alexander Caldwell to that body in 1871 in a campaign against Clarke, stated that "he found bribery systemically organized . . . a riot of corruption . . . a spectacle of baseness and depravity"2

It was well known that Clarke had been an early associate of Jim Lane, whose political principles had been noted for elasticity. In addition, he had supported the campaign of Senator Pomeroy for reelection, and "Old Pom the Pious" was notorious for profitable and shady dealings. Whispers that Pomeroy was supporting Clarke for reelection tarnished him even further. Also, the Clarke past itself was not above question. There were numerous allegations that he had been in the pay of the Joy lobby while professing to support the settlers on the Cherokee tract.

Rumblings began to be heard from Kansas early in 1870. It was whispered that Clarke was very unpopular among his constituents and that he was guilty of fraud and corruption. He was also charged with lending aid to the railroad swindles which had secured the best land in Kansas. His opponent, D. P. Lowe, was considered sure to win the race.³ The Fort Scott Monitor called on the "tax ridden" voters of Kansas to overthrow political corruption. Its theme was to get Clarke at this time and finish the move two years later by retiring Pomeroy to private life.⁴

Former Governor S. J. Crawford stumped the state, telling voters that Clarke had participated in every land steal and Indian contract since he

²Congressional Record, 43 Congress, Special Session of the Senate, pp. 87-90.

³Paul H. Giddens, "News from Kansas in 1870," Kansas Historical Quarterly, Vol. VII (1938), pp. 173-174.

⁴Fort Scott Monitor, July 3, 1872.

had been in Congress. Crawford's other theme was that Kansas' "hypocrite Representative has been too busy denouncing monopolies to look after the interests of the state"5

The defeat of Clarke was in part brought about by a book which had wide circulation in Kansas throughout the heated campaign. Purporting to be an expose of the entire congressional delegation, much of it was devoted to enumerating the sins of Clarke and Pomeroy and denouncing J. F. Joy, supposedly Clarke's backer.

The unknown writer or writers of the book complained that Clarke was far too clever to let himself be directly involved, but always took his payoffs from the railroads through a third person in the form of land or money. Both Clarke and the railroads denied this. The Clarke opposition centered on his fight against railroads and took the position that he had hindered the development of the state. It was pointed out that he had secured no appropriations for public buildings in Kansas in his three terms; the Kansas war debt was unpaid; settlers on the Cherokee Neutral Lands had not won title to their homes. Other vague charges were made that he had failed to secure Kansas school lands and that he was in some way connected with "Indian steals" and "land gobbles."⁶

These charges, along with the expenditure of large sums of money by railroad interests, made a winning combination, and he was beaten by D. P. Lowe for the Republican nomination to the House. The same year, Clarke attempted unsuccessfully to win a Senate post held by E. G. Ross, but the same interests beat him again. He ran successfully for a post in the Kansas

⁵Crawford Scrapbooks (2 vols., Kansas State Historical Society, Topeka, Kansas), Vol. II, pages unnumbered.

⁶Political Affairs in Kansas, pp. 1-31.

legislature in 1878 and served a two-year term as speaker of the lower house. Old scandals were revived again, and Clarke retired from Kansas politics after this term. However, he still continued his fight against land monopolies and railroad corporations.⁷ In 1873, he noted that railroads were withholding land from settlement to evade state and local taxes and launched a typical campaign to compel them to bear a just share of the tax burden. He called on the people of Kansas to correct this evil, charging that the railroads were not paying taxes because of their failure to claim title to, and open, their lands.⁸ It had been railroad custom to delay requests for patents until settlers had made all their payments. By law, their land was held off the tax rolls until then. The unoccupied lands, though not taxable, could be mortgaged.⁹

Looking toward Oklahoma, to which he had relentlessly driven the Kansas Indians, Clarke determined to have it opened to settlement. Using all his restless energy to achieve this goal, he began lobbying before Congress in December, 1885, and gained prominence in Washington in his efforts to promote enabling legislation.¹⁰ Numerous appearances before the Senate Committee on Territories, and private conferences with members of the House and Senate, along with frequent statements to the Washington press, finally achieved his goal. In the last hours of the congressional session of 1889, he succeeded in drafting an amendment to the Indian

⁷ Portrait and Biographical Record of Oklahoma, p. 23.

⁸ "The Taxation of Railroads in Kansas," a speech delivered before the anti-monopoly club of Lawrence. Clarke Papers.

⁹ Gates, Fifty Million Acres, p. 267.

¹⁰ Biographical Directory of the American Congress, 1774-1949 (Washington: Government Printing Office, 1950), p. 985.

appropriation bill which provided for the opening of Oklahoma to settlement.¹¹

In April of the same year he moved to Oklahoma City, where he at once became prominent in the affairs of the new territory, being elected to its legislature from the Sixth District. He engaged in the practice of law for many years, and worked vigorously for statehood. He saw this dream come true, for he lived until June 18, 1909.¹²

Summary and Conclusions

Many chapters in history are made up of the accounts of men who reached the edge of greatness, but never quite wore the crown of success. Clarke was one of these. He was a richly talented man whose solid accomplishments outweighed his many faults, and the conclusion cannot be escaped that here is the career of one of history's "might-have-beens."

Clarke came to Kansas as a young man and was drawn into the orbit of James Lane, infamous for his devious political practices. When his ties with Lane were broken, Clarke found himself in political alignment with S. C. Pomeroy, who was possibly more unscrupulous politically than Lane. Never able to disassociate himself from the innuendos and allegations surrounding the careers of Lane and Pomeroy, Clarke was eventually tarred with the same brush, when the Kansas voters in disgust turned their entire congressional delegation out of office. Although recognized as one of the state's most able men, he could never again win political support.

The Clarke record in Congress reads well for a six year tour of duty.

¹¹Hill, A History of the State of Oklahoma, Vol. I, pp. 170-171.

¹²Ibid.

In that period he fought the Indian treaty system to its death, was instrumental in ending Indian tribal governments, and paved the way for the emergence of the Indian as a citizen. He also fought side by side with the land reformers against the practice of subsidizing western railroads with public land, and at the same time waged a battle to secure land for settlers at the pre-emption price. His efforts saved Kansas much of its public school land. Throughout the national controversy raised over these issues, charges and exposes became so numerous that his solid achievements were obscured from public view. From 1885 until the end of his life, he fought as hard for the interests of settlers in Oklahoma as he had in Kansas. The enduring political contributions of Clarke, largely unrecognized during his lifetime, should be appreciated.

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