

## PROTEST

OF

A. MILLER, DELEGATE OF THE STOCKBRIDGE  
NATION OF INDIANS,

AGAINST

*The passage of bill H. R. 2889.*

---

JULY 1, 1884.—Presented by Mr. Cameron, of Wisconsin, ordered to be printed, and referred to the Committee on Indian Affairs.

---

*To the Congress of the United States :*

The House Committee on Indian Affairs, misled by misrepresentation of facts, having reported favorably the above numbered bill, the undersigned delegate for said nation presents, to the end that there may be a correct understanding of the matters involved, the following statement of facts, and asks that the same be received as a memorial on behalf of and as a protest against said bill by said nation.

In 1821-'22 the Stockbridge-Munsee Nation of New York Indians, desiring to remove to the West, they and others, Oneidas and Brothertons, purchased of the Menomonees the right to occupy in common with them their country, situate in what is now the State of Wisconsin.

Subsequently dissensions arose between the Stockbridges and Menomonees. The United States intervened, and in order to effect a peaceable settlement negotiated with the Menomonees the treaty of February 8, 1831, and by Senate amendment thereto (7 Stat., pp. 342 and 406) two townships of land on the east side of Lake Winnebago, Territory of Wisconsin, were secured by the United States for the use of the Stockbridge-Munsee tribe, and they took possession of them.

By September 3, 1839, a party grew up in the nation, the members of which were desirous of removing west of the Mississippi River. To enable them to do this the Stockbridge Nation ceded to the United States by treaty of that day (7 Stat., 580) the east half of said two townships, which sold, and the proceeds delivered to the members of said party, they departed, save a few individuals subsequently readopted into the tribe, and having had the good taste to say so, there is no further concern about them.

Between the departure of these and March 3, 1843, another party arose who desired allotment of land in severalty and United States citizenship, and Congress, at the instance of these, a minority, on said March 3, 1843, passed an act (5 Stat., 645) providing for an allotment in severalty of the west half of said two townships among the members of said Stockbridge tribe, or among such of them as by the laws and customs and regulations of said tribe were entitled to the same.

The allotment was to be made by a board of commissioners composed of five of the principal or head men of said tribe, to be elected by the Indians. This board was to report, with a map; and the seventh section recited that, after the report and map—

Shall have been filed and transmitted to the President as aforesaid, the said Stockbridge tribe of Indians, and each and every of them, shall then be deemed to be and from that time forth are hereby declared to be citizens of the United States, to all intents and purposes, and shall be entitled to all the rights, privileges, and immunities of such citizens, and shall, in all respects, be subject to the laws of the United States and of the Territory of Wisconsin, in the same manner as other citizens of said Territory; and the jurisdiction of the United States and of said Territory shall be extended over the said township or reservation now held by them in the same manner as over other parts of said Territory; and their rights as a tribe or nation, and their power of making or executing their own laws, usages, or customs, as such tribe shall cease and determine.

An election was held. The candidates of the minority were declared elected. Allotments in severalty were designated, and a report and map transmitted to the President. This done, those desiring United States citizenship, and known as the "Citizens party," took their allotments and exercised the rights, &c., and bore the burdens of citizens of the United States and of the Territory of Wisconsin. The others, who desired neither lands in severalty nor United States citizenship, and were known as the "Indian party," appealed to Congress against the act, and it, satisfied that they were entitled to relief (House Report, No. 447, Twenty-ninth Congress, first session, p. 3), passed its act therefor of August 6, 1846 (9 Stat., 55).

The first section of this act expressly repealed the act of 1843 *in toto*, so far as mere words could do it. It then continued:

And the said Stockbridge tribe or nation of Indians is restored to their ancient form of government, with all powers, rights, and privileges held and exercised by them under their customs and usages, as fully and completely as though the above-recited act had never passed.

Congress then, supposing it had, as it intended, restored by this first section the Indian status to all as it was prior to the 1843 act, went on to provide by section 2 for an enrollment of those who "shall desire to become and remain citizens of the United States."

It, by the same section, provided for a division of the township (mark the whole township, it being the W.  $\frac{1}{2}$  of the two gotten from the Menomonees) into two districts after the expiration of the three months given for making the enrollment; these to be called, respectively, "Indian district," "Citizen district." The land in the "Indian district" was to remain and be held in common by the members of the "Indian party." That in the "Citizen district" to be divided among the members of the "Citizen party," the subagent to assign his ratable proportion of land to each Indian "who becomes a citizen" by and through the enrollment.

The act was, under the existing facts, impractical, and was quickly found to be so when it was attempted to carry it into effect. For a statement of these facts see Report Commissioner Indian Affairs, 1847, p. 742.

But what is to be particularly noted is the position taken by the members of the citizen party in respect to it. They refused to come forward and enroll their names, alleging that they were already invested with United States citizenship and all its privileges under the '43 act, and that Congress had not the power to deprive them of it by this '46 act; that they were unwilling to do anything that would lead to the assignment which had been made of the lands being disturbed. (Re-

port Commissioner, 1847, pp. 741, 772; House Mis. Doc. No. 14, Forty-sixth Congress, third session, p. 2.)

The complicated condition of affairs prevented the act of '46 being carried out. It was seen that something had to be done, and consequently the treaty of November 24, 1848 (9 Stat., Treaties, p. 136) was negotiated.

In consequence of the contention and conflicting opinions in respect to the citizenship question under the '43 act, the members of the citizen party holding that they were United States citizens under that act, and repudiating that of '46, whilst the members of the Indian party, standing upon the '46 act and repudiating that of '43, it was imperatively necessary to have determined at the outset who constituted the Stockbridge tribe or nation to make a treaty.

This was recognized, and consequently the second article of the proposed treaty expressly recited—

*That no misunderstanding may exist, now or hereafter, in determining who compose said tribe and are parties hereto, it is agreed that a roll or census shall be taken and appended to this agreement, and in like manner taken annually hereafter, and returned to the Secretary of the War Department of the United States, containing the names of all such as are parties hereto, and TO BE KNOWN AND RECOGNIZED AS THE STOCKBRIDGE TRIBE OF INDIANS, WHO, &c., &c.*

By the third article *this* Stockbridge tribe ceded to the United States the Lake Winnebago township; the fifth expressing the consideration, \$16,500, to be paid.

Article 4 provided that the township so purchased should be surveyed into lots, in conformity with the plan adopted by the commissioners elected under the '43 act, and then went on to recite:

*And such of said lands as were allotted by said commissioners to members of said tribe who have become citizens of the United States (a schedule of which is hereunto annexed) are hereby confirmed to such individuals, respectively, and patents therefor shall be issued by the United States.*

Article 7 provided for a removal of the "*said Stockbridge tribe*" to the west of the Mississippi River, and article 6 for the payment of \$14,504.85 to the members of *said* tribe for their improvements. There were other money provisions.

The Senate attached an amendment providing, among other things, that the President, within two years after the ratification of the treaty, should procure for the use of said Stockbridge Indians not less than seventy-two sections of land west of the Mississippi River, *the Indians to be consulted in the selection of them.*

In making this treaty the United States most manifestly endeavored to comply with the wishes of both parties, "citizen" and "Indian." It was satisfactory to and accepted by both parties. Certain it is a careful examination of the Commissioner's reports fails to show that at the time of its making, and at any near time afterwards, was any objection made or protest presented against it by either party.

For the "citizens party" there was recognition of their United States citizenship under the '43 act, and confirmation of the allotments designated to them under that act. The treaty manifestly proceeded upon the idea that the members of this party, having renounced their Indian citizenship, and taken their share of the common country and abandoned the nation, they, for this reason, and in consideration of their rights and advantages under their acquired United States citizenship, had surrendered all right and interest to and in the property and affairs of the Stockbridge Nation.

For the "Indian party" there was conservation of their Indian na-

tionality and holding in common of their share of the country sold and of the seventy-two sections to be selected under the amendment, and a recognition that they constituted the Stockbridge Nation.

The failure of the members of the "citizen party" to come forward and be enrolled made most manifest their desire and intent not to be regarded as belonging to the nation.

The treaty was carried out promptly by the United States as to the payments due under it at the time, and there only remained to be accomplished the selection of the seventy-two sections west of the Mississippi, the removal of the tribe thither, and the payment of the ten annual installments of \$2,000 each, to be paid under the amendment after the removal.

The members of the tribe manifested a commendable zeal for the removal. (Report, 1849-'50, p. 12; Rep., 1852, p. 5.)

The first trouble that arose was the failure of the Government officials and the Indians to agree upon the selection, and matters dragged along most disadvantageously for the Indians till 1855, when Congress, by act of March 3 of that year (10 Stat., 699), appropriated \$1,500 to enable the President to treat with and arrange the difficulties existing among the Stockbridge and Munsee Indians of Lake Winnebago, in the State of Wisconsin, arising out of the acts of Congress of March 3, 1843, and August 6, 1846, and the treaty of November 24, 1848, "*in such manner as may be just to the Indians, and with their assent, and not inconsistent with the legal rights of white persons who may reside on the Stockbridge reserve, of the claim of the United States under the treaty (1848).*"

This was the situation at that time. Those who had become citizens of the United States and taken their share in severalty had squandered it and were paupers. A large number of whites had settled upon lands bought in 1848 from the tribe, whilst those disappointed and dissatisfied with the failure of the Government to locate the seventy-two sections west of the Mississippi in conformity with their selection had become desirous of remaining at and having again the township on Lake Winnebago.

The superintendent at that time was one Francis Huebschmann, an unmitigated scoundrel, as was subsequently proven in suits in Wisconsin brought against him by the Government, in which judgments were rendered against him.

It was determined to work up a new treaty as a means for saddling back upon the tribe the pauper United States citizens, and this conscienceless man, Huebschmann, was selected as the commissioner on the part of the United States for the work.

On May 3, 1855, the Commissioner of Indian Affairs wrote the Secretary of the Interior "*that, for the purpose of bringing about a result so desirable as that of restoring to these people (Stockbridges) the township of land at Lake Winnebago,*" if practicable, the Commissioner of the General Land Office should be authorized to be present at the council to be held by Huebschmann with the Indians in order that his experience in the land system of the Government might be made available in the adjustment of some points that in his mind were not free from difficulty.

On June 1, 1855, a treaty was made with the tribe, the Commissioner of the General Land Office being present. It was satisfactory to the Indians, as it restored to them the Lake Winnebago township, and was signed by them almost unanimously. But when Huebschmann transmitted it to the Department he sent with it a notification that, in his opinion, it ought not to be submitted to the Senate. It consequently

was not submitted, and the matter was relegated to Huebschmann for further proceedings.

In January or February, 1856, just after the tribe had held its annual election for headmen or councillors (at that time the tribe was living under a written constitution and written laws of their own enactment) Huebschmann came to them and gave notice at a council called at his request that the Government wanted to make another and different treaty, and, instead of restoring the township on Lake Winnebago or giving lands west of the Mississippi, to give land on Wolf River among the Menomonees.

The council knowing full well that the land there was poor, much more so than that on Lake Winnebago, and incapable of supporting a people who depended upon agriculture for subsistence, refused to entertain this and other propositions submitted by Huebschmann.

He finding that the legally constituted sachem and council would not accede to his propositions, proceeded to harangue the people, and saying that he was authorized and instructed to depose the sachem and councillors in case of their refusing to accept his propositions, declared he did depose them, and thereupon ordered an election to fill their places. An election under his auspices was held. At it persons who never belonged to the Stockbridge tribe, as were those who had formerly become citizens of the United States, taken their share of the common country, and abandoned the tribe, were permitted to vote. Only those were elected who were known to favor Huebschmann's plans and propositions.

The draft of what is known as the treaty of February 5, 1856, between the United States and Stockbridge and Munsee tribes (11 Stat., 663) was presented to the so-elected sachem and council and approved by them. It was then submitted for signatures. Men, women, and boys were induced to sign it. Most of the men who signed it were not members of the tribe and some were beastly drunk at the time of doing so. A number of women signed against the wishes of their husbands. False statements and false promises were made in order to secure signatures, and bribery and forgery were resorted to by Huebschmann.

The annuities due for three or four years previous to this had been withheld. Huebschmann brought this money with him, and used it as a bribe to attract and persuade the doubting. He promised \$10 to each one who would come forward to take it and attach his signature. The ignorant had no suspicion this was their own money, but supposed it was a generous gift from their Great Father, and that it was so much in addition to what the so-called treaty promised. Others, poor and destitute, were impelled to sign by the idea that if they did not do so they would not get their annuity money. Huebschmann most explicitly promised \$50 per head to those who would remove, to be paid before they left their homes, and before the ratification of the treaty if they so desired. He promised them they should have homes upon the lands lying directly south of Lake Shawano. This was the principal inducement offered, as the Indians knew those lands were of good quality.

There is the clearest demonstration that, notwithstanding the outrage and frauds perpetrated by Huebschmann, not one-half of those who constituted the Stockbridge tribe pursuant to the '48 treaty signed the '56 infamy. To see this, one has but to compare the roll or census taken and appended to the '48 treaty under its second article with the signatures to the '56 treaty, to see that of the 56 persons *named*, who in 1848 represented 177 souls, only 25 of them representing 76 souls in '48 signed the '56 treaty.

Immediately after the signing of the paper Huebschmann proceeded with a delegation to explore the country that the signers supposed had been promised them. Arrived there he told them they could not look at that land with the expectation of getting it, but that they must make such explorations as he directed. When told by the delegates what was their understanding of the treaty, he replied he was sorry they did not understand it when they signed it, that they had to go where he told them. Then, for the first time, the Indians saw that they had been deceived and a gross fraud practiced upon them. Many became disheartened and regretted they had ever seen Huebschmann and his treaty. The delegation readily discovered that the country it was intended they should take was vastly inferior as a farming country to that on Lake Winnebago, and could by no means come up to the treaty promise of being one-half arable.

The treaty so obtained was rushed to Washington City, and ratified by the Senate April 18, 1856, before those whose rights had been so flagrantly violated and were opposed to the treaty were able to prepare and present their statement of the facts and objections to the treaty.

The land selected by Heubschmann—two townships—was obtained from the Menomonees by treaty of February 11, 1856 (11 Stat., 679).

To appreciate how great and utterly indefensible was the outrage perpetrated upon the tribe by Huebschmann in supplanting the constitutional authorities of the tribe through the form of an election with voters thereat who were citizens of the United States and not possessed of the slightest right to a voice in the affairs of the tribe, one has but to read the admirable report of that superb lawyer, then Senator, Matt. H. Carpenter, on the status of Indians under the fourteenth Constitutional amendment. (S. Report 268, Forty-first Congress, third session.)

Great as was that wrong it was aggravated by the cruelty that was manifested in the miserable country selected for the Indians' new home.

As to this, there is the most ample testimony. The soil of the two townships is mostly yellow sand with little clay, bearing in the main groves of hemlock and pine, principally the latter. There are swamps with cedar and tamarack interspersed with ridges of hard-timber land. The north half of the east and the entire west township were valuable only for the timber.

Agent Bonsteel said in 1858 (Report Commissioner, 1858, pp. 29, 30), speaking of the complaints of the Indians, one of which was—

That the land allotted to them was unsuitable for farming purposes, and by no means such as they had a right to expect, both from the terms of the treaty and the promises of Superintendent Huebschmann. Without any disposition to censure the action of that officer, I consider it my duty to say that some portion of their complaints is founded in truth.

The country given to them is cold, by no means well fitted for farming purposes, and altogether inferior to the land conveyed by the Indians to the United States.

He said in 1859 (Report 1859, p. 40):

The land, in point of fertility, not being at all what it was represented to be.

Agent Davis said in 1862 (Report, p. 328):

The country occupied by the Stockbridge Indians would very justly be considered a *hard country for white people to live in*. It is mostly heavy timbered with hemlock, beech, birch, poplar, pine, tamarack, cedar, sugar maple, bass, &c. Pine is the principal timber of any value.

There is no disguising the fact that the condition, location, and future prospects of this tribe are unfortunate.

The agent said in 1866 (Report, p. 287):

If their location had been selected in a fertile region instead of the cold and barren sand hills of their present home, their advancement in agriculture and the arts of

civilized life would have been more satisfactory and far more beneficial to them.  
\* \* \* But the forbidding character of their country, not enabling them to realize from it a meager subsistence without occasional supplies from the Government.

In 1870 the agent said (Report, p. 312) that the superintendent who located the tribe "selected a poor sand barren and obliged them to live on it."

Notwithstanding their disappointment as to the character of the country promised, those who had become citizens of the United States went at once to the new reservation bought from the Menomonees, they having in fact no other home to go to. They were accompanied thither by the major portion of those of the tribe (we speak of the tribe constituted under and recognized by the '48 treaty) who had signed the '56 treaty.

The remainder and major portion of the tribe, refusing to participate in or assent to the '56 treaty, remained at the old or Lake Winnebago reservation. They presented their appeals to Department and to Congress, and endeavored among other things to effect a purchase of a portion of the country of the Oneidas. (Report 1859, pp. 39, 40.)

The attempted purchase came to nought. Their appeals failed to bring them relief. There was constant jarring, with collisions with the white settlers as to their respective rights to the possession and occupancy of the lands, and the Government officers withheld their improvement and removal funds.

Forced by these and other causes to succumb, they, in the fall of 1859, unwillingly gave up their old homes and went to the new reservation.

Speaking of this removal, the agent said (Report 1859, p. 40):

It is apprehended that the removal of these Indians to the new reserve will not by any means cure the growing discontent as to the situation and location of this tribe; their main object seems to be to effect a removal to some more genial climate and fertile land; their desire and wish has been to effect the purchase of the Oneida lands.

That the agent spoke not without reason, let after reports testify.

The agent in 1862 said (Report 1862, p. 329):

This tribe are very anxious to treat with the Government for the purpose of locating on better farming lands, but, in accordance with your instructions, I have informed them that, in the present disturbed state of the country, the Government could hardly be expected to treat with them.

In 1866 (Report 1866, p. 287) he said:

There are in the *tribe* men of intelligence, good farmers, and skillful mechanics. But the forbidding character of their country not enabling them to realize from it a meager subsistence without occasional supplies from the Government has bred discontent among them, and they therefore earnestly desire a remodeling of their treaty stipulations, believing that any change must be an improvement upon their present condition \* \* \* and they seem to regard themselves as mere sojourners, looking with anxiety to the future that awaits them.

In 1870 (Report 1870, p. 312) he said:

The *tribe* is disgusted with their home and discouraged with farming.

As shown above, the Stockbridge tribe—the anti 1856 treaty party—did not go to the new reservation gotten from the Menomonees till the fall of 1859, and it is gross error to say "the treaty (of 1856) was satisfactory to the tribe, and all the members accepted it as a settlement of former difficulties," &c. The official reports quoted from disprove it.

Immediately after these went in 1859 to the new reservation, the improvement and removal funds that had been withheld from them all—those members of the tribe and those not members but citizens of the United States (Report 1859, p. 10)—were paid over.

The reports of the commissioner and agent for 1860, being so very meager, assist us not at all in this inquiry, but when we come to that of 1861, p. 193, we find the agent reporting that he found not one Munsee on the reservation, and about one-half the Stockbridges gone.

In 1862 (Report 1862, p. 329) he reported:

In enumerating the members of this tribe I found 135 persons on the reservation and 214 off, principally scattered in the northeast counties in the State. The number of families on the reservation is thirty-six. Their dwellings are constructed of logs, and are substantially made. There is but one frame house, 25 by 40 feet, which is used for a church and also for a school-house. The barns, ten in number, are also constructed of logs. I found twenty deserted houses, the proprietors of which could hardly be induced to return and occupy them. *Indeed, nothing brings them back, except they hear that subsistence or funds are to be distributed.*

In his report of 1866, p. 287, the agent says:

The treaty made in that year (1856) with the Stockbridge and Munsee tribes, and the census accompanying it, present an aggregate population of both parties numbering 409 souls. A removal and improvement fund was provided them, *upon receipt of which the greater portion left the tribe, expended their money elsewhere, and their number now is reduced to about 152.*

What is to be particularly noted in this connection is that, with five or six exceptions, it was those who had become citizens of the United States under the '43 act that so left the new reservation upon receipt of their portion of the removal and improvement fund.

It is these whose only concern about the tribe is, and has been distribution of funds or subsistence and whom only that brings to the reservation.

Those who remained upon this new reservation, with the exceptions noted, were of the "Indian party"—the "Stockbridge tribe," under the '48 treaty; those who went there unwillingly in 1859—those who, year after year, voiced their wrongs to Congress and earnestly besought redress.

The '56 treaty substantially provided for a new formation of the Stockbridge tribe by making its component members to be, not alone those individuals who constituted it under the '48 treaty, but these, together with those who had become citizens of the United States under the act of '43 and all others of that blood, and Munsees, wherever living, whether in Wisconsin, New York, or west of the Mississippi River.

In other words, it contemplated bringing back as members of the tribe all who had taken their share of the common country owned at the time of the passage of the act of 1843 and abandoned the tribe, leaving it to its fate in order to have and receive a further share from what was left to, and preserved by, the others, and thereby have them receive an undue share of what was the common property.

The treaty (article 5) provided for a roll or census of—

"The persons to be included in the apportionment of the land and money to be divided and expended under the provisions of this agreement," they to "be such only as are actual members of the said Stockbridge and Munsee tribes, their heirs, and legal representatives."

A roll or census was taken and appended to the treaty. It enumerated 58 Munsees in New York, and 351 Stockbridges in Wisconsin; total, 409 souls.

The treaty of '48 gave the "Indian party," the "Stockbridge tribe" of 177 souls, the two townships to be located for them under the amendment to that treaty. It also provided, amendment and article 9, for a payment of \$20,000 to them by ten annual installments, after their removal from the Lake Winnebago Reservation, and an investment of



\$16,500 "for the purpose of making provision for the rising generation of said tribe"; total, \$36,500.

The '56 treaty, article 1, called for a cession and relinquishment of these \$36,500 to the United States, who gave in lieu thereof—by article 2—one improvement and removal fund of \$61,650 for 409 souls, viz, the 58 Munsees in New York and the 351 Stockbridges in Wisconsin; and, by the amendment, another fund of \$12,000 for said 351 Stockbridges and a fund of \$6,000 for the 58 Munsees.

The 177 souls of the tribe under the '48 treaty and their descendants could not and did not receive as much money under the '56 treaty as the '48 treaty secured to them. The figures given will aid in demonstrating this.

By the '56 treaty, articles 3 and 5, the two townships instead of belonging to the representatives of said 177 souls was to belong to 409 souls, the 58 Munsees and 351 Stockbridges, *supra*. It is easy to see how much less land the '56 treaty gave to the representatives of the 177 souls than the '48 treaty gave those 177.

Now, taking into consideration the outrages perpetrated upon the tribe by the deposition of their constitutional officers—by the imposition upon them of pauper citizens of the United States and by the carrying of an election against them by the votes of these forcibly imposed paupers—the worthlessness of the two townships selected under the '56 treaty, article 2, in comparison with the lands on Lake Winnebago sold to the United States under the '48 treaty—the enforcement, or rather contemplated enforcement, of a division of these two townships among 409 souls instead of among the representatives of the 177 souls, and the further fact that the '56 treaty did not give to said 177 representatives as much money as the '48 treaty gave the 177; now, as we say, taking these things into consideration, it is impossible to see how the 1856 treaty was in any way a benefit to the representatives of the 177 souls, the "Stockbridge tribe," as recognized by the '48 treaty. It is impossible not to see that it was a monstrous wrong, a most positive injury in every way to them.

Under such circumstances they had the right to appeal to Congress against it. It is not to be wondered at or they to be condemned for having persistently voiced their great wrongs to Congress.

Article 3 of the '56 treaty provided for an allotment among the 409 persons of the two townships to be selected under article 2, it to be made "under the direction of the superintendent of Indian affairs for the northern superintendency."

The House committee, led into error by misrepresentation, has incorrectly reported (Report 1054, Forty-eighth Congress, first session) that the townships were so allotted to the Indians immediately after their removal to their new home, and such allotments have ever since been occupied by the families to whom they were so assigned.

Such was not the case. The abolition of the office of superintendent, northern superintendency, prevented the allotment being made, and none has ever been made pursuant to the treaty. We have already seen how individuals left the reservation.

In 1871 Congress, giving ear to the appeals of those so wronged by the '56 treaty, passed its act of February 6, of that year, Chap. XXXVIII (16 Stat., 404), for the relief of the Stockbridge and Munsee tribe of Indians, &c.

This act—sections 1 and 2—provided for an examination and appraisal of the whole, and a sale of three-fourths of the two townships bought from the Menomonees under the '56 treaty, and a reservation of

the other one-fourth (eighteen sections) to and for and "subject to allotment to members of the Indian party of said tribe"; that is to say, to and for such of those and the heirs of those 177 souls who constituted and were recognized as the Stockbridge tribe under the treaty of 1848, and those adopted and recognized by them as members of said tribe *as were in said year* (1871) desirous of continuing their Indian nationality and the holding of their land in common.

N. B.—At this time a large number of those who had constituted the "Indian party," the "Stockbridge tribe," under and after the treaty of '48, had become desirous of taking their interests in severalty from the tribe and acquiring United States citizenship. These were designated and known as the "New Citizens party" in contradistinction to the old "Citizens party," whose members had acquired United States citizenship and taken their share of the common country under the act of '43.

It was to gratify the desires of the members of this "New Citizens party" that the sale was provided by said act of 1871.

It is not necessary for this consideration that we notice in detail each of the nine sections of this act of 1871.

It is sufficient to say that Congress, not attempting by this act to take back from the members of the old "Citizens party," or have them in any wise repay any part of the money received by them under the 1856 treaty, took into consideration these facts, namely: that the members of the old "Citizens party" had taken their share of the common country owned by the tribe in 1843, and disposed of it for their exclusive use and benefit; that they had acquired United States citizenship under the act of '43, and had abandoned the tribe, leaving it to its fate; that the tribe, being a nation under treaty relations with the United States, had the right to hold, and had held, these as having no longer any interest in the property or affairs of the tribe; that these gave not the least consideration to the tribe for a right to share with its members the lands of the two townships bought from the Menomonees; that the United States had not the least right to impose upon the tribe by the '56 treaty, without its free consent and upon just consideration, its pauper citizens of Indian birth—not one whit more right to impose these as citizens than to impose as such citizens a like number of its pauper white citizens; that those it then thereby attempted to enforce upon the tribe as citizens, upon getting their share of the money paid under the '56 treaty, at once left the new reservation, and a second time abandoned the tribe to its fate, and intended, so far as these United States citizens were concerned, a repeal of the '56 treaty in so far as it enabled them to share in the proceeds of the sale of the three-fourths of the two townships directed by the first and second sections of this act, or in the eighteen sections of land reserved from said sale by the proviso to the second section. This intent was made manifest by the exclusion of them from the rolls provided for by section 6.

The act of 1871 was carried into effect. A sale of the three-fourths of the two townships was made. Two rolls were prepared pursuant to section 6, showing 138 souls to the "New Citizens party" and 112 to the "Indian party," those desiring to retain their tribal relations. The proceeds of said sale were divided, and \$75,804.46 being transferred to the credit of the Indian party on the books of the United States Treasurer (sec. 5), the balance, \$94,179.57, due this "New Citizens party" (138 in number), was paid to them pro rata.

The reserved one-fourth (eighteen sections) was practically prepared for the sole occupation of the members of the Indian party and such members of the new and old citizens parties as were in occupation of

portions of these eighteen sections were, upon refusal to comply with notice to leave, declared trespassers by order of January 25, 1875, and the agent directed to remove them. (See H. Mis. Doc. 14, Forty-sixth Congress, third session, pp. 9-12.)

The members of the *old* "Citizens party" some families of whom are on the reserved eighteen sections, the order for their removal upon one pretext or another not having been enforced, are clamorous for participation in the \$75,804.46 in the Treasury to the credit of the 112 members of the "Indian party," and it is in the interest of these calling themselves the "old Citizen party of 1843," as opposed to the "Indian party," that the passage of said House bill 2889 is sought, to operate as a repeal of the act of 1871 *only as to the 112 members of the "Indian party."*

These offer the following considerations in support of their opposition to said bill 2889:

It was competent for Congress to tender by the act of 1843 United States citizenship and allotment of land in severalty to members of the Stockbridge tribe of Indians.

All such Indians as have ceased their tribal relations and been declared citizens of the United States by treaties or acts of Congress are citizens of the United States. (*Wilson v. Waul*, 6 Wall., 83.)

Our attention has been called to several treaties by which Indians were made citizens, and to the act passed in relation to Texas. All this was done under the war and treaty making powers of the Constitution and those which authorized the National Government to regulate the territory and other property of the United States and to admit new States into the Union. (*United States v. Rhodes*, 16 Am. L. R., 233; *Am. Ins. Co. v. Canter*, 1 Pet., 511; *Cross v. Harrison*, 16 How., 164.)

Naturalization is the removal of the disabilities of alienage. The making of one not a citizen to be a citizen. (*The State v. Manuel*, 2 Dev. & Beatt., 25; *The State v. Newcomb*, 5 Iredell, 253.)

Indians not being of domestic birth are under the disability of alienage. (*Scott v. Sandford*, 19 How., 417.)

The power to naturalize is vested exclusively in Congress. (*United States v. Rhodes*.)

It is quite certain those individuals who accepted the tender made by the act of '43 and took land in severalty and terminated their tribal relations and acted and were recognized by all parties as United States citizens, did become such *pleno vigore*.

Congress could not by subsequent act make them not to be citizens. Neither could this be done by treaty with them.

We have no law to decitizenize a citizen who has become such either by the natural process or the legal process of adoption. (*Atty. Gen. Bates on Citizenship*, 10 Op., 382.)

Can Congress by act make an Indian nation, *i. e.*, all the members thereof, citizens of the United States, they not desiring or accepting the same? Can it do so, for example, to the Cherokee Nation? We opine not. If it cannot be done to all, they not desiring it, does it not necessarily follow that it can be done only to those who desire and accept it?

Those Stockbridges who became United States citizens under the act of 1843 are such citizens to this day.

The Stockbridge tribe, a nation, and so recognized by the United States, had the plenary right in the exercise of the power to regulate its domestic affairs, to treat those individuals who had accepted United States citizenship, taken their share of the common country in severalty,

and dis severed their tribal relations, as having thereafter no interest in the property and affairs of the tribe.

Senator Carpenter's report, *supra*. Such surely would be the law of the United States to one or more of its citizens.

The treaty of '56 was an illegal interference by the United States in the interest of some of its pauper citizens with the possessions of the Stockbridge tribe.

The protection of the Indians in their possessions is a political question over which Congress has jurisdiction. (*Cherokee Nation v. Georgia*, 5 Pet., 20.)

Congress can by act repeal a treaty. (*Cherokee Tobacco Case*, 11 Wall., 619.) Consequently Congress, in 1871, could, if then satisfied that a wrong was done the Stockbridge tribe of Indians in respect to their possessions by the treaty of '56, in the interest of some pauper citizens of the United States, rectify that wrong in the exercise of its Constitutional power to protect the Indians in their possessions.

We have shown conclusively that great wrong was done by the treaty of '56. Congress realized this, and sought to remedy it by its act of '71, and that act should be allowed to stand, and Congress will do well to give heed to the recommendation in respect to its pauper citizens herein referred to, submitted by the Commissioner of Indian Affairs (H. of R. Mis. Doc. 14, 46th Cong., 3d sess., p. 16), and be generous to them at its own expense.

All which is respectfully submitted.

A. MILLER,  
*Delegate Stockbridge Nation.*

WASHINGTON, D. C., *June 30, 1884.*