

LEGAL COSTS INCURRED BY INDIANS IN CONTESTS RELATING TO PUBLIC LANDS.

LETTER

FROM

THE ACTING SECRETARY OF THE TREASURY,

TRANSMITTING

An estimate submitted by the Secretary of the Interior for an appropriation to pay the legal costs incurred by Indians in contests relating to public lands.

JANUARY 20, 1892.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
January 19, 1892.

SIR: I have the honor to transmit herewith, for the consideration of Congress, an estimate submitted by the Secretary of the Interior, under date of the 7th instant, for an appropriation of \$5,000 to pay the legal costs incurred by Indians in contests relating to public lands.

Respectfully, yours,

O. L. SPAULDING,
Acting Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 5, 1892.

SIR: Under the provisions of section 15 of an act of Congress approved March 3, 1875 (18 Stats., 420), any Indian born in the United States who is the head of a family, or who has arrived at the age of 21 years, and has abandoned or may hereafter abandon his tribal relations, shall, on giving satisfactory proofs of the same, be entitled under the rules prescribed by the Department to the benefits of the homestead act approved May 20, 1862 (12 Stats., 392), and the amendments thereto, excepting the provisions of its eighth section.

The act of July 4, 1884 (23 Stats., 46), provides that any Indians then located on the public domain, or who should thereafter so locate, may avail themselves of the privileges of the homestead laws as fully and to the same extent as citizens of the United States, but without the payment of fees or commissions on account of such entries or filings.

Under the fourth section of the general allotment act approved February 8, 1887 (24 Stats., 388), as amended by the act of February 28, 1891 (26 Stats., 794), it is provided that nonreservation Indians may make application to have allotted to them lands in severalty upon certain conditions and restrictions therein set forth.

In a circular relative to lands in the possession of Indian occupants, issued by the General Land Office May 31, 1884, and approved by the Department on that date, registers and receivers everywhere are instructed to peremptorily refuse all entries and filings attempted to be made by other than Indian occupants upon lands in the possession of Indians who have made improvements of any value whatever thereon, in order that the homes and improvements of such Indians may be protected. This circular was reissued by the General Land Office on October 26, 1887, and reapproved by the Department on October 27, 1887, with further directions to registers and receivers to strictly obey and follow the instructions thereof, and to permit no entries upon lands in the possession, occupation, and use of Indians, or covered by their homes and improvements, and to exercise every care and precaution to prevent the inadvertent allowance of any such entries.

In many instances Indians have been anxious to avail themselves of the benefits of the homestead laws, and have attempted to do so, but their ignorance and want of familiarity with the rules and regulations under which they must act have too frequently brought them nothing but failure. Often it is no sooner known that they have contemplated such a step than some one seizes the land they have fixed upon, or manages to dispossess them if they have actually settled upon it. Indian homestead contests are, therefore, not infrequent, and in every instance where this office has been notified of such contests immediate steps have been taken to save the lands to the Indians, but in many instances without avail for the reason that there are no funds under the control of this office that can be used for the purpose of defraying the expenses incurred by the Indians in such cases.

Recently contests have been initiated by whites against entries of lands obtained by nonreservation Indians under the provisions of the said fourth section as amended, and in these cases also there is a lack of available funds to pay the expenses incurred by the Indians.

It frequently happens also that white men forcibly dispossess Indians of lands long used and occupied by them, and upon which they have made valuable improvements, and make entry of the same in the proper local land office. In such instances, if the lands are saved to the Indians, they (the Indians) must initiate a contest of such entries, and there are no funds that can be used to assist the Indians in such cases.

As above indicated, a majority of contests involving the rights of the Indians are initiated and prosecuted by the whites, but there are a few cases where Indians, alleged to be Canadian, have sought to obtain title to lands used and occupied by American Indians.

As an illustration of the latter I have to say that I am in receipt of a letter dated July 18, 1891, from the General Land Office, submitting for the determination and action of this office the question concerning the payment of the expenses of certain Indians of the Turtle Mountain Band of Chippewas in their efforts to defend their claims to certain tracts of land in the Devils Lake land district, North Dakota. That office remarked that in contests of the character mentioned—individual against individual—the parties are required to pay their own expenses, the Government not interfering unless a party to the suit.

I am in receipt, also, of another letter, dated August 11, 1891, from that office, pertaining to the same matter, inclosing certain papers on file therein, in relation to the cases under consideration, namely, *Rose Trotter vs. Archill Alex.*, and the heirs of *Joseph Lafournasie vs. Louis Morin.*

It appears from the papers in the cases mentioned that all the parties interested are half-breed Indians; that the contestants are ignorant and extremely poor, without "even one cent" with which to pay the expenses of a hearing at the Devils Lake land office, and that in order to determine which of the parties have a superior right to the tracts in question a hearing is deemed necessary.

The expense of hearing these Indian cases, as estimated by W. N. Norville, esq., special agent of the General Land Office, and submitted by the receiver of the said local land office, is \$143.

On September 18, 1891, this office advised the General Land Office that it had no funds under its control that could be used for the purpose indicated, and in view of that fact and the further fact that the parties interested are Indians, suggested that, if not inconsistent with the rules and regulations of the General Land Office, the register and receiver of the Devils Lake land office be directed to order the testimony in these cases to be taken before a notary public or other competent officer nearest the lands in controversy, giving each claimant full and ample opportunity to present evidence in support of his alleged priority of right, and that all further action before the local land officers be suspended until this testimony could be taken.

In a letter dated October 12, 1891, the Commissioner of the General Land Office stated that he had concluded, in view of the peculiar circumstances surrounding the cases above referred to, to take no further action in respect thereto until it is determined who shall defray the expenses incident to the suits on the part of the Indians in the event they are held, and accordingly telegraphed the register and receiver at Devils Lake to continue the hearings indefinitely.

I think that Congress should be asked to make an appropriation to pay the expenses of the Indians in cases of the character indicated, and I have accordingly prepared the draft of an item for this purpose, herewith inclosed, for insertion in the proposed Indian appropriation bill for the fiscal year ending June 30, 1893, and, if you concur in my views as above set forth, I would respectfully recommend that the same be transmitted to the proper committees of Congress with your favorable recommendation thereon.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, *January 7, 1892.*

Respectfully forwarded to the honorable Secretary of the Treasury with the recommendation that the inclosed item be inserted in the Indian appropriation bill for the fiscal year ending June 30, 1893.

JOHN W. NOBLE, *Secretary.*

Item.

To enable the Secretary of the Interior in his discretion to pay the legal costs incurred by Indians in contests initiated by or against them, to any entry, filing, or other claim under the laws of Congress relating to public lands for any sufficient

cause affecting the legality or validity of the entry, filing, or claim, the sum of five thousand dollars (\$5,000): *Provided*, That the fees to be paid by and on behalf of the Indian party in any case shall be one-half of the fees provided by law in such cases; said fees shall be paid by the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, on an account stated by the proper land officers, through the Commissioner of the General Land Office.

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