

STOCKBRIDGE AND MUNSEE INDIANS.

MARCH 7, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LYNCH, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. R. 3594.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 3594) for the relief of the Stockbridge and Munsee tribe of Indians in the State of Wisconsin, respectfully report:

This bill was introduced for the purpose of settling a question of tribal rights among the members of the Stockbridge and Munsee tribe of Indians. The history of this right dates back to 1843, when it was provided that the Stockbridge tribe of Indians might become citizens. This they declined to do.

In 1846 the act of 1843 was repealed, and the tribe restored to their tribal rights, customs, and privileges.

In 1856 the tribe was removed from Calumet County to Shawano County, on a new reservation, and many of the members of the tribe took allotments of land in severalty.

In 1871 another act was passed providing for an allotment and a new enrollment of the tribe.

The act of 1871 excluded all who received allotments under the act of 1856; also those who received allotments of land under the act of Congress March 3, 1843, or August 6, 1856, and all who were not of Stockbridge and Munsee descent.

Under those restrictions and means resorted to by those intrusted with the enrollment more than half the members of the Stockbridge tribe, to the number of about 140 members, were omitted from the tribal roll in 1871. Among those so omitted were all of those who took allotments under the treaty of 1856.

Another provision of the act of 1871 directed that all persons not on the tribal roll, as made in 1871, should be put off the reservation.

The object of this bill is to provide for a correct roll of the tribe, and particularly to avoid the effect of the act of 1871, disfranchising more than half the tribe, and to restore all members of the tribe to their tribal relations under the treaty of 1856, and the act of Congress of 1871.

This is but a brief outline of the condition of membership in that tribe. The details and a complete history of all the complications are given in the letter of the Commissioner of Indian Affairs, dated February 10, hereto attached and made a part hereof. Also the brief of J. C. Adams, referred to in said letter and made a part thereof. Also the letter of the Land Commissioner, of February 29, as approved by the Secretary of the Interior, in response to an inquiry for a report from the office upon the bill. All of which are annexed hereto and made a part hereof.

The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, recommended that section 1 be amended so as to read as follows:

That all persons who were actual members of said tribe of Indians at the time of the execution of the treaty of February fifth, eighteen hundred and fifty-six, and their descendants, and all persons who became members of the tribe under the provisions of article six of said treaty, who did not in and by said treaty and have not since its execution separated from said tribe, are hereby declared members of said Stockbridge and Munsee tribes of Indians, and entitled to their pro rata share in tribal funds, and in the occupancy of tribal lands; and all members who entered into possession of the lands under the allotments of eighteen hundred and fifty-six and of eighteen hundred and seventy-one, and who by themselves, or by their lawful heirs, have resided on said lands continuously since, are hereby declared to be owners of such lands in fee simple in severalty, and the Government shall issue patents to them therefor: *Provided*, That in all cases where allotments of eighteen hundred and seventy-one shall conflict with allotments of eighteen hundred and fifty-six, the latter shall prevail.

That section 2 be amended by adding thereto the following:

Provided, That in all cases where allotments of 1871 shall conflict with allotments of 1856, the latter shall prevail.

Which amendments are recommended by the Committee on Indian Affairs, and with such amendments the committee recommends the passage of the bill.

When so amended the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, recommends the passage of the bill.

DEPARTMENT OF THE INTERIOR,

Washington, March 3, 1892.

SIR: I have the honor to acknowledge the receipt, by your reference of this day, of the correspondence in relation to H. R. 3594, "A bill for the relief of the Stockbridge and Munsee tribes of Indians in the State of Wisconsin," with request for the views of the Department thereon.

It seems from the report of the Commissioner that he has carefully considered this matter and that the amendments suggested by him provide for the relief of the so-called Old Citizen party of the Stockbridge tribe, and would be a just settlement of all the troubles existing among the Stockbridge people.

In view of this statement, the correspondence is herewith returned with recommendation for its favorable consideration.

Very respectfully,

JOHN W. NOBLE,
Secretary.

Hon. THOMAS LYNCH,
House of Representatives.

DEPARTMENT OF THE INTERIOR,

Washington, March 1, 1892.

SIR: I have the honor to transmit herewith, without consideration of the contents thereof, copy of a communication of 29th ultimo from the Commissioner of Indian Affairs and accompanying papers, being a reply to your letter of 27th January last, transmitting H. R. 3594, "A bill for the relief of the Stockbridge and Munsee tribes of Indians in the State of Wisconsin."

Very respectfully,

GEO. CHANDLER,
Acting Secretary.

Hon. THOMAS LYNCH,
House of Representatives.

Respectfully returned to the Hon. Secretary of the Interior for his opinion thereon.

Respectfully,

THOS. LYNCH, M. C.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, February 29, 1892.

SIR: In my report of February 19, 1892, relative to the question of the rights of alleged intruders on the allotted lands of the Stockbridge Indian Reservation in Wisconsin, I stated that I had received a letter from Hon. Thomas Lynch, transmitting, with request for a report thereon, a bill (H. R. 3594) introduced by him in the House of Representatives "for the relief of the Stockbridge and Munsee tribes of Indians in the State of Wisconsin," and that I would submit a report to you thereon at an early date.

This bill sets out in its preamble that a treaty between the United States and the Stockbridge and Munsee Indians was entered into February 5, 1856 (11 Stats., 663), and that by the interpretation placed by the "Government officials" on the act of February 6, 1871 (16 Stats., 404), a large part of the Indians of the Stockbridge and Munsee tribes who signed the treaty of 1856, and who have continued with the tribe from the making of the said treaty to the present time are excluded from participation in the tribal funds, and a right to occupy the reservation provided for them by said treaty of 1856. It then proposes to provide:

"That all persons who were actual members of said tribe of Indians at the time of the execution of the treaty of February fifth, eighteen hundred and fifty-six, and their descendants, and all persons who became members of the tribe under the provisions of article six of said treaty, and their descendants, who did not in and by said treaty, and have not since its execution, separated from said tribe, are hereby declared members of said Stockbridge and Munsee tribes of Indians and entitled to share in former tribal funds; and all members who entered into possession of lands under the allotments of eighteen hundred and fifty-six, and of eighteen hundred and seventy-one, and have resided on said lands continuously since, are hereby declared to be owners of such lands in fee simple in severalty and the Government shall issue patents to them."

Section 2 proposes to make it the duty of the Secretary of the Interior, without unnecessary delay after the passage of the act, to cause to be taken an enrollment of said tribe on the basis of the provisions of this act, a copy of which enrollment shall be filed in the Department of the Interior and a copy in the records of the tribe.

The object of this bill is to provide a remedy for the controversies and dissensions that have existed among the members of the tribe for so long a time, a history of which is briefly given in my report of February 19, 1892, referred to at the beginning of this report. I do not think it necessary here to repeat that history, but I inclose a copy of my said report, from which it will be seen that certain members of the Stockbridge tribe, recognized as such by the treaty of 1856, were, on account of the allotments taken by them under that treaty, excluded under the provisions of the act of February 6, 1871, from enrollment either as citizens of the United States or as Indians, and now on account of the fact that they were so excluded from enrollment, it is claimed by one faction of the tribe, known as the Indian party, that they are not entitled to the allotments made to them under the treaty.

Mr. J. C. Adams, who is a prominent, highly intelligent and respected member of the Stockbridge tribe, is now in this city, and has informally submitted to this office certain amendments which he proposes to the bill introduced by Mr. Lynch. A copy of the bill (marked A) will show the amendments proposed by Mr. Adams, and it is herewith inclosed.

I also inclose another copy of the bill (marked B), which will show the manner in which I would suggest that it be amended. It will be seen that with the exception that I do not recommend the striking out of the words "and of eighteen hundred and seventy-one," in lines 13 and 14, on page 2, the amendments I propose are the same in effect as those proposed by Mr. Adams, although the language suggested by me varies slightly from that suggested by him. Mr. Adams, however, has informally expressed his satisfaction with my suggested amendments.

I do not adopt Mr. Adams's suggestion as to striking out words in lines 13 and 14, because I think that the allotments made under the act of 1871 that do not conflict with those made under the treaty of 1856, should be confirmed and patented to the allottees as well as those made under the provisions of the treaty, and the proposed proviso to the section will save the possibility of controversy over the allotments.

The objects of the amendments proposed to the bill are:

First. To save to those parties who were recognized as members of the tribe under the treaty of 1856, and who were excluded from enrollment under the act

of 1871, all their pro rata rights in the common property of the tribe as at present held.

Second. It is proposed to strike out the word "former," in line 11, for the reason that the tribal funds were divided between those members of the tribe who became citizens of the United States under the act of 1871, and those who were enrolled under that act as Indians. If the settlement had at that time, which was made upon the basis of the numbers of the two classes participating therein, leaving out about 140 members of the tribe, were now distributed, an appropriation of moneys out of the Treasury of the United States would be necessary to restore the "former" tribal funds, as that portion which has been paid per capita to the citizens under the act of 1871 can not now be recovered. It is thought better, therefore (and Mr. Adams agrees), that the settlement had with reference to the tribal funds under the act of 1871 shall not now be disturbed.

Third. To save to those heirs of allottees under the treaty of 1856, who have occupied the allotments made to their ancestors all the rights of such ancestors in the lands so occupied by them.

Fourth. By the proposed proviso to the first section of the bill, all possibility of controversy in cases of conflict of allotments will be obviated. The allotments made under the treaty would doubtless prevail in cases of conflict with those made under the act without this amendment; but in view of the past experience of these people it seems to be best that the law should be so clear as to the rights of each class of allottees that no reasonable grounds for dissension shall exist.

Section 1 of the bill, amended as I have indicated above, would read as follows, viz:

"That all persons who were actual members of said tribe of Indians at the time of the execution of the treaty of February fifth, eighteen hundred and fifty-six, and their descendants, and all persons who became members of the tribe under the provisions of article six of said treaty who did not in and by said treaty and have not since its execution separated from said tribe, are hereby declared members of said Stockbridge and Munsee tribes of Indians, and entitled to their pro rata share in tribal funds and in the occupancy of tribal lands; and all members who entered into possession of the lands under the allotments of eighteen hundred and fifty-six and of eighteen hundred and seventy-one, and who by themselves or by their lawful heirs have resided on said lands continuously since, are hereby declared to be owners of such lands in fee simple in severalty, and the Government shall issue patents to them therefor: *Provided*, That in all cases where allotments of eighteen hundred and seventy-one shall conflict with allotments of eighteen hundred and fifty-six the latter shall prevail."

In view of the fact, as will be seen from my said report of February 19, 1892, that the so-called Old Citizen party of the Stockbridge tribe appear to have had great injustice done them by being excluded from enrollment under the law of 1871 either as citizens of the United States or as members of the Indian tribe, and by reason of such unjust exclusion from enrollment have been denied the right even to hold and occupy the allotments received by them under the treaty which were made the cause for excluding them from enrollment, I am of the opinion that Congress should make some provision to relieve them from such wrong. The bill introduced by Mr. Lynch, amended as I have suggested above, seems to me to provide a proper relief for these parties, and I think would be a just settlement of all the troubles existing among the Stockbridge people.

I would recommend, therefore, that the bill be returned to Mr. Lynch, who, as will be seen from his letter referring this bill to this office, is acting in the capacity of a subcommittee of the Committee on Indian Affairs of the House of Representatives, with the suggestion that if the bill were amended as indicated, its passage would seem to be altogether desirable, and with a recommendation for its favorable consideration.

In addition to a copy of my report, above referred to, I inclose herewith a copy of the brief of Mr. Adams in behalf of the Stockbridge and Munsee tribes on the question, and the evidence taken relative to the right of Stephen Gardner to occupy his allotment under the treaty of 1856, which accompanied Mr. Adams's said brief.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, February 19, 1892.

SIR: I am in receipt of your letter of April 20, 1891, in which you say that Senator Sawyer had on that day called upon you and recommended that "the Stockbridge Indians who are trespassers should be put off the allotted lands and allowed to settle on the reservations not allotted," and direct that unless some strong objection to this course was known at this office, this be done. Agent Kelsey, of the Green Bay Agency, was directed, April 27, 1891, to report the number of Stockbridge Indians who are trespassing upon lands that have been allotted to members of the tribe, the name of each, his status as a Stockbridge, and whether he is a member of the tribe under the act of 1871, or a citizen of the United States in accordance with the provisions of that act, or an alleged citizen of the United States, claiming to be such under the law of 1843.

Replying to this, under date of May 16, 1891, Agent Kelsey reported:

(1) The names of certain parties alleged to be citizens under the act of 1843, not of Stockbridge or Munsee descent, and on lands allotted to members of the tribe under the act of 1871, as follows:

"Stephen Gardner and George Gardner, on land allotted to Sterling Peters; Simon Gardner, on land allotted to Jeremiah Slinguland; Daniel Gardner and Joseph Gardner, on land allotted to Zachariah Miller; Lucinda Gardner, on land allotted to Sterling Peters."

(2) The names of parties alleged to be citizens under act of 1843, who are said to be trespassers on lands allotted under act of 1871, as follows:

"Jeremiah Johnston and Jacob Chicks, on land allotted to Zachariah Miller. George Bennet, jr., on land allotted to James Palmer; John Davids, on land allotted to Phebe Skickett; Walter Jourdan and Henry Jourdan, on land allotted to Benjamin Pye, 3d; Martha Hammer, on land allotted to Konkepot; Caroline Doxtater, on land allotted to Dennis Turkey."

(3) Stockbridges who are alleged to have been made citizens under the act of 1871, who are trespassers on lands allotted to the members of the tribe under that act, as follows:

"Elizabeth Gardner, on land allotted to Zachariah Miller; Algerine Jourdan, on land allotted to Benj. Yocum; Louise Peters, on land allotted to Jennison Quinney; Samuel Wilber, on land allotted to Benj. Pye, 4th; Adland Davids, on land allotted to Simon S. Metoxen; Walter Wilber, on land allotted to Sterling Peters; Wallace Tousey and Laton Tousey, on land allotted to Darius Charles; are not of Munsee or Stockbridge descent, and not known under either treaty."

Under date of May 20, 1891, Agent Kelsey was instructed to report to this office when and by whom the improvements occupied by the persons reported by him to be intruders on the allotted lands of the Stockbridge Indian Reservation were made, and if not made by the alleged intruders themselves, the date when they secured possession of the same.

Replying to this under date of June 1, 1891, Agent Kelsey said that by inquiry he had learned that little improvement has been made upon the lands since the allotments were made under the act of 1871; that Stephen Gardner had brought under cultivation about 1½ acres of land allotted to Sterling Peters, and Jeremiah Gardner had improved a half acre of land allotted to Zachariah Miller.

As there appeared from this correspondence with the agent no reason not already known to the Department why the so-called intruders on the lands allotted under the act of 1871 should not be removed, Agent Kelsey was by letter of August 31, 1891, directed to carry the instructions of the Department in its letter of April 20, 1891, above referred to, into effect.

As it appeared by communications to this office from Hon. Thomas Lynch and others, that certain parties affected by these instructions to Agent Kelsey had been parties to the treaty of 1856 (11 Stats., 663), between the Stockbridge and Munsee tribe of Indians, and had received allotments of land in accordance with the provisions of that treaty on the reservations set apart for the use of the Stockbridge and Munsee tribe, and that the land upon which they are now located is the same land that was allotted to these parties under the provisions of the said treaty, but which had been reallocated to other parties under the provisions of the act of 1871, this office directed Agent Kelsey, by letter of December 14, 1891, to suspend further action under the letter of August 31, 1891, directing the removal of certain alleged intruders for sixty days, and until further notice, in order that evidence of the rights of these parties might be submitted in proper form for the consideration of this Department and determination as to the proper action to be taken by the Government in the premises. At the same

time Mr. Lynch was advised of this action, and requested to advise the interested parties to submit their evidence as early as practicable.

I am now in receipt of a report of January 29, 1892, from Agent Kelsey, transmitting a brief on behalf of Stephen Gardner, whose case has been agreed upon as a test case, and certain affidavits, from which it appears that the said Stephen Gardner was a signer of the treaty of 1856, and had the lands upon which he is now located allotted to him under the third article of said treaty; that he has continuously resided on the lands ever since and made improvements on the same; that he has no other homestead; that he was excluded from enrollment under the act of 1871, and that his allotment under the treaty was reallocated under that act to Sterling Peters.

This office has frequently discussed the complications that exist among the Stockbridge and Munsee tribe, and the controversies that have arisen between the various classes originally composing that tribe in reports to the Department, and special agents and inspectors of the Department have time and again investigated and reported on the matter, with suggestions for the relief of all the parties.

The beginning of the complications in the status of the members of the tribe and their rights in the property thereof, was the act of March 3, 1843 (5 Stats., 645), which, after providing for a division of the lands reserved for the Stockbridge Indians in severalty, by a board of commissioners to be chosen by said Indians, for a report of the proceedings of the said Commission, in triplicate, one part to be filed with the clerk of the county within which the lands are situated, one part with the secretary of the Territory of Wisconsin, and the other part with President of the United States, and for the patenting of the lands to individuals named in said report, provides, in section 7, as follows:

"That the said report and map shall be filed with the secretary of the said Territory and in the clerk's office of said county, and shall also be transmitted to the President, on or before the first day of January, eighteen hundred and forty-four, and, after the same 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: *Provided, however,* That nothing in this respect contained shall be so construed as to deprive them of the right to any annuity now due them from the State of New York or the United States, but they shall be entitled to receive any such annuity in the same manner as though this act had not been passed."

It will be observed that by this act each and every member of the Stockbridge tribe became a citizen of the United States on the 1st day of January, 1844, if the report of the commissioners, referred to therein, and the map, were filed with the officers named in the seventh section thereof on or before that date.

It appears from a letter to the Commissioner of the General Land Office of April 5, 1844, that this office expressed the opinion "that the act of Congress has been complied with, so far as the appointment of the commissioners and their proceedings as to the filing of their doings is concerned;" and from this it would appear that each and every member of the Stockbridge tribe of Indians became citizens of the United States on the 1st of January, 1844.

The passage of the act of 1843 was the occasion for the division of the Indians into two parties. One was called the Citizens' party, and the other the Indian party. The first of these professed to accept and the last to reject the provisions of the law, but it seems that the individuals of both parties or classes availed themselves of the privileges of the act whenever they saw fit to do so. On account of the division in the tribe and the controversies existing between the two classes thereof, Congress, by the act of August 6, 1846, repealed the act of 1843 above referred to, and restored the Stockbridge Indians to their ancient form of government with the powers held and exercised by them under their customs and usages as fully and completely as though the act of 1843 had never passed, but provided that those of the tribe who shall desire might enroll themselves as citizens of the United States and that those Indians who should become citizens of the United States under this act should forfeit all rights to receive

any portion of the annuities which then might be or might thereafter become due the nation of the Stockbridges by virtue of any treaty theretofore or thereafter entered into by the Government with said Stockbridge tribe of Indians.

It appears from the records of this office that none of the Indians enrolled themselves as citizens under this act, and I believe it to be a fact that none did so enroll themselves; those who had located upon separate allotments claimed that every member of the tribe was a citizen of the United States and that it was not within the power of Congress to forfeit their citizenship any more than to forfeit the rights of property which they might have.

In connection with this matter it may not be impertinent to say here that in his opinion of January 23, 1889 (19 Opinions Attorney-General), the Attorney-General, in considering whether the National Council of the Cherokee Nation had the power to forfeit the citizenship of a person previously lawfully admitted therein, said that "the right of citizenship can not be forfeited by legislative act directly or indirectly no more than can be the right of property."

The act of 1846 provided that in the event that any members of the Stockbridge tribe should elect to become citizens of the United States in accordance with the provisions thereof, the reservation upon which the tribe was located should be divided between those so electing to become citizens of the United States and those remaining Indians. As none elected to become citizens of the United States there was no basis for a division of the reservation between the parties, and it became impracticable to execute the law according to its intent. The object of this law, therefore, which appears to have been the settlement of the existing differences between the two parties of Stockbridge Indians, was not attained. A treaty was then entered into on November 24, 1848 (9 Stats., 935), with the so-called Indian party, the so-called citizen party being excluded from any discussion of or participation in the treaty.

This treaty recommended that certain allotments of land made under the act of 1843 be patented to the Indians who were located thereon and to the white men named in the schedule attached thereto. It provided that those Stockbridges who claimed to belong to the tribal organization should move west of the Mississippi. It was amended by the Senate so as to give seventy-two sections of land west of the Mississippi and \$25,000 to the Indian party. The \$25,000 provided for was paid to the Indians, but their removal was delayed on account of difficulties in securing the seventy-two sections of land until 1852, when the Indians refused to remove, setting up a claim against the Government for not removing them sooner and applying for the township on which they were then located to be ceded to them.

This the Government refused to do, but offered them a location in Wisconsin near the Menomonee and Oneida Reservations if they should prefer it to that in Minnesota. In the mean time the moneys that had been paid to them under the treaty by the State of New York had been squandered, the lands allotted to them had been sold, and all the Indians were poor and destitute. This condition of things led to the negotiation of another treaty with these Indians which was concluded February 5, 1856. In the negotiation of this treaty all of the Indians were invited to participate, which they did, four-fifths of the entire population of the tribe signing the treaty.

This treaty, after reciting the several treaties and acts of Congress passed and had prior thereto in relation to the Stockbridge and Munsee tribes of Indians, the constant dissensions that in years past had existed among them, and the avowed object and intention thereof of relieving them from the complicated difficulties by which they were surrounded and establishing comfortably together all such Stockbridges and Munsees wherever located—in Wisconsin, the State of New York, or west of the Mississippi—as were included in the treaty of September 2, 1839 (11 Stats., 557), and desired to remain under the paternal care of the Government of the United States, provides in articles 1, 2, and 3, as follows:

"ARTICLE I. The Stockbridge and Munsee tribes, who were included in the treaty of September third, one thousand eight hundred and thirty-nine, and all the individual members of said tribes, hereby jointly and severally cede and relinquish to the United States all their remaining right and title in the lands at the town of Stockbridge, State of Wisconsin, the seventy-two sections of land in Minnesota set aside for them by the amendment to the treaty of November twenty-fourth, one thousand eight hundred and forty-eight, the twenty thousand dollars stipulated to be paid to them by the said amendment, the sixteen thousand five hundred dollars invested by the United States in stocks for the benefit of the Stockbridge tribe in conformity to Article IX of the said treaty, and all claims set up by and for the Stockbridge and Munsee tribes, or by and for the

Munsees separately, or by and for any individuals of the Stockbridge tribe who claim to have been deprived of annuities since the year one thousand eight hundred and forty-three, and all such and other claims set up by or for them or any of them are hereby abrogated, and the United States released and discharged therefrom.

"ARTICLE II. In consideration of such cession and relinquishment by said Stockbridges and Munsees, the United States agree to select as soon as practicable, and to give them a tract of land in the State of Wisconsin, near the southern boundary of the Menomonee Reservation, of sufficient extent to provide for each head of a family and others lots of land of eighty and forty acres as hereinafter provided; every such lot to contain at least one-half of arable land, and to pay, to be expended for improvements for the said Stockbridge and Munsees, as provided in Article IV, the sum of forty-one thousand one hundred dollars, and a further sum of twenty thousand five hundred and fifty dollars to enable them to remove.

"ARTICLE III. As soon as practicable after the selection of the lands set aside for these Indians by the preceding article, the United States shall cause the same to be surveyed into sections, half and quarter sections, to correspond with the public surveys, and the council of the Stockbridges and Munsees shall, under the direction of the superintendent of Indian affairs for the northern superintendency, make a fair and just allotment among the individuals and families of their tribes. Each head of a family shall be entitled to eighty acres of land, and in case his or her family consists of more than four members, if thought expedient by the said council, eighty acres more may be allotted to him or her; each single male person above eighteen years of age shall be entitled to eighty acres; and each female person above eighteen years of age, not belonging to any family, and each orphan child, to forty acres; and sufficient land shall be reserved for the rising generation.

"After the said allotment is made, the persons entitled to land may take immediate possession thereof, and the United States will thenceforth and until the issuing of the patents as hereinafter provided hold the same in trust for such persons, and certificates shall be issued in a suitable form guaranteeing and securing to the holders their possession and an ultimate title to the land; but such certificates shall not be assignable, and shall contain a clause expressly prohibiting the sale or transfer by the holder of the land described therein. After the expiration of ten years, upon the application of the holder of such certificate, made with the consent of the said Stockbridge and Munsee council, and when it shall appear prudent and for his or her welfare, the President of the United States may direct that such restriction on the power of sale shall be withdrawn and a patent issued in the usual form.

"Should any of the heads of families die before the issuing of the certificates or patents herein provided for the same shall issue to their heirs; and if the holder of any such certificate shall die without heirs his or her land shall not revert to the United States, unless on petition of the Stockbridge and Munsee council for the issuing of a new certificate for the land of such deceased person to the holder of any other certificate for land, and on the surrendering to the United States of such other certificate by the holder thereof the President shall direct the issuing of a new certificate for such land; and in like manner new certificates may be given for lots of land, the prior certificates for which have been surrendered by the holders thereof."

It will be observed that by the treaty all of the Stockbridges were recognized as having rights thereunder, and that the so-called Citizen party was recognized as being equally interested with the so-called Indian party in the reservation to which they were removed, and on a part of which they are now located.

It seems from the papers herewith, that Stephen Gardner, whose name appears signed to the treaty of 1856, received an allotment under the third article of that treaty, the west half of the northeast quarter of section 26, township 28, range 14, 80 acres, and that this is the land upon which he is now located, but which was subsequently to its allotment to him reallocated to Sterling Peters under the act of 1871 (16 Stats., 404).

On February 6, 1871, Congress passed an act to provide for the sale of a part of the Stockbridge Reservation and a division of the tribe into two parties, viz, those who desired to become citizens of the United States and those who desired to retain their status as Indians. Section 6 of that act is as follows:

"That, for the purpose of determining the persons who are members of said tribes and the future relation of each to the Government of the United States, there shall be prepared, under the direction of the Commissioner of Indian Affairs, or such person as may be selected by him to superintend the same, two

rolls, one to be denominated the Citizen roll, to embrace the names of all such persons of full age, and their families, as signify their desire to separate their relations with said tribe, and to become citizens of the United States; the other to be denominated the Indian roll, and to embrace the names of all such as desire to retain their tribal character and continue under the care and guardianship of the United States; which said rolls shall be signed by the sachem and councilors of said tribe, certified by the person superintending the same, and returned to the Commissioner of Indian Affairs; but no person of full age shall be entered upon said Citizen roll without his or her full and free consent, personally given to the person superintending such enrollment; nor shall any person, or his or her descendants, be entered on either of said rolls who may have heretofore separated from said tribe and received allotment of lands under the act of Congress for the relief of the Stockbridge tribe of Indians, of March third, eighteen hundred and forty-three, and amendment of August six, eighteen hundred and forty-six, or under the treaty of February five, eighteen hundred and fifty-six, or who shall not be of Stockbridge or Munsee descent. After the said rolls shall be made and returned as herein provided, the same shall be held as a full surrender and relinquishment on the part of the Citizen party, each and every one of them, of all claims to be thereafter known or considered as members of said tribe, or in any manner interested in any provision heretofore or hereafter to be made by any treaty of law of the United States for the benefit of said tribes, and they and their descendants shall thenceforth be admitted to all the rights and privileges of citizens of the United States."

The rolls provided for in this act were prepared in accordance therewith by H. R. Wells, who was appointed a special commissioner for the purpose. The Citizen roll contained 138 names, while the Indian roll contained 112 names. There were about 140 of the Stockbridges and Munsees who were interested in the treaty of 1856, who were excluded from enrollment on either of said rolls, in accordance with the provisions of the law. Of this number it seems that Stephen Gardner, in whose behalf the affidavits and brief, herewith, are submitted, was one.

By letter of February 23, 1891, which was referred to this office for report, the President's private secretary transmitted, with other bills, for report as to whether any objections to its approval are known to exist, enrolled Senate bill 712, "An act for the relief of the Stockbridge tribe of Indians in the State of Wisconsin." This bill provided for allotments of lands to the Stockbridges and Munsees located on their reservation and entitled thereto under the act of 1871, for the patenting of the lands in fee simple to them, and the appraisal and sale of the remainder, but the rights of the party which is now known as the "Old Citizen party," in contradistinction to the Citizen party under the act of 1871, if they had any, were entirely ignored and no provision was made for the adjudication of their claim to such rights.

In office report of February 27, 1891, thereon the complications existing as to the affairs of the Stockbridge and Munsee tribe were briefly set out as above, and the following recapitulation of the situation was submitted:

"(1) That if any member of the Stockbridge tribe became a citizen of the United States under the law of 1843, all of the members of that tribe became citizens of the United States. Under the statute the entire tribe must have become citizens, or none of the members of that tribe would have become citizens.

"(2) That the act of 1846 left the tribe in the same status that it was prior to the passage of the act; none of the Stockbridges accepting citizenship under the provisions of the act.

"(3) That this being true the treaty of 1848 could not abrogate the rights of any member of the tribe.

"(4) That the rights of the entire tribe were recognized in the treaty of 1856, and four-fifths of the entire tribe signed said treaty.

"(5) That as the reservation on which the Indians are now located was given them by virtue of the treaty of 1856, each and every member of the tribe had an equal undivided interest in the same.

"(6) That the act of 1871 unjustly excluded from the benefits of the common property of the Stockbridge tribe certain members thereof."

The bill referred to was not approved by the President, and so it did not become a law, and the further complication of this matter was prevented. Whatever relief, if any, the so-called Old Citizen party, the party to which Stephen Gardner belongs, may be entitled to, must come through the action of Congress. The executive department has not the power to interfere with the execution of the law of 1871, and therefore Congress must act in the premises before the wrong which appears to have been done can be righted.

I am in receipt of a letter of January 27, 1892, from Hon. Thomas Lynch, inclosing a bill (H. R. 3594) entitled "A bill for the relief of the Stockbridge and Munsee tribe of Indians in the State of Wisconsin." This bill was introduced by Mr. Lynch, and has for its purpose the settlement of the controversies and dissensions existing between the different parties of the Stockbridge Indians as above set forth, and he asks for a report from this office on the bill.

It proposes to provide that all persons who were actual members of the said tribe of Indians at the time of the execution of the treaty of 1856, and their descendants, and all persons who became members of the tribe under the provisions of article 6 of said treaty, and have not since separated themselves from the tribe, are hereby declared members of said tribe and entitled to share in former tribal funds, and that all members who entered into possession of lands under the allotments of 1856 and 1871, and have resided on said lands continuously since, are hereby declared to be owners of such land in fee simple in severalty, and that the Government shall issue patents to them therefor. In section 2 it provides that the Secretary of the Interior, without unnecessary delay, shall cause to be taken an enrollment of the tribe on the basis of the provisions of this act, the enrollment to be filed, a copy in the Department of the Interior and a copy in the records of the tribe.

In view of the foregoing statement of the condition of affairs among the Stockbridge and Munsee Indians, and in view of the facts contained in the affidavits and brief herewith inclosed, as to the right of Stephen Gardner, whose case, as I have already said, is made a test case, to remain on the lands now occupied by him, and in view of the fact that Mr. Lynch has introduced a bill in Congress which contemplates confirming to the allottees under the treaty of 1856 all the land allotted and now occupied by them, I have the honor to submit the matter for your consideration and for instruction as to whether the suspension of the order for removal of August 31, 1891, shall be made permanent.

A report on Mr. Lynch's bill, H. R. 3594, will be submitted to you at an early date.

The return of the accompanying papers to the files of this office is respectfully requested.

Very respectfully,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

The Stockbridge and Munsee tribe of Indians in the State of Wisconsin, beneficiaries under the treaty concluded with the United States of America at Stockbridge, in the State of Wisconsin, February 5, 1856, vs. United States.

PETITION.

The petition of the Stockbridge and Munsee tribe of Indians in the State of Wisconsin respectfully represents:

That they were parties to the treaty concluded with the United States on the 5th day of February, 1856, at Stockbridge, in the State of Wisconsin, and that they file this petition in accordance with the request of the honorable Commissioner of Indian Affairs.

(2) That on the 8th day of February, 1831, and by the Senate amendment to the treaty with the Menomonees (7 Stats., pp. 342, 406) two townships of land on the east side of Lake Winnebago, in Wisconsin, were secured by the United States for the use of the Stockbridge and Munsee tribe of Indians.

(3) That on the 3d of September, 1839, the United States purchased by treaty the east half of the two townships of land, and a portion of the tribe obligated itself to move west of the Mississippi (Stats., vol. 7, p. 580), and was paid their proportionate share "as a full compensation for all their interest in the lands held by the party who remains as well as in the lands hereby ceded to the United States."

A few years afterwards a number of these Indians returned back to the tribe, and were told "that they could remain with the tribe until a treaty could be made, whereby provisions would be made to bring them back into the tribe again."

(4) That dissension still continued to exist in the tribe; another party arose who were desirous of becoming "citizens of the United States," and, having their lands allotted, accordingly a petition was presented to Congress by a

minority of the tribe, "praying that Congress might pass a law to make the Stockbridge Indians citizens of the United States."

The advocates of this measure were called the "Citizen party," and those who opposed it were called the "Indian party."

(5) That the prayer of the petition was granted, and on March 3, 1843, the Stockbridge Indians (but not Munsees) were declared citizens of the United States after the performances of certain formalities. (Stats., vol. 5, p. 645.)

The first section of this act authorized the lands of the Stockbridges to be patented and divided among the different individuals composing the tribe and the holding of these lands by them separately and severally in "fee simple."

The second section provides that commissioners are to make a just and fair partition and division of the lands among the members of the said tribe in accordance to the laws, customs, and regulations of the said tribe, in such manner as shall be consistent with equity and justice.

The third section provides for the election of five commissioners from the individuals of the tribe by a majority of the whole number of such voters then present.

The fourth section provides for the allotment and division of the land; similar, indeed almost identical, provisions to the preceding sections for allotments of land.

The fifth section provides for the return of the report of the commissioners, and in which appeals shall be received from the allotments.

□ The sixth section provides for the return of copies of the report of the commissioners, and that the President of the United States shall cause patents to be issued to the several individuals named in the report of the lands so apportioned, and to hold the said lands "in fee simple to themselves, their heirs and assigns."

The seventh section directs the return of the report and maps to the President, and confers the right of citizenship on the Stockbridge Indians.

And there is also a proviso "that nothing in this act contained shall be so construed to deprive them of their rights to any annuity now due them from the State of New York or the United States, but they shall be entitled to receive any such annuity in the same manner as though this act had not been passed."

This act was fully complied with on part of the Stockbridge Indians, and the land was allotted. (Rep. Com. of Allotment, August 24, 1843, in Gen. Land Office, Ex. Doc. No. 1, Thirtieth Congress, first session, pp. 742, 775, 778, 781, 789, 790, 797, 798, 804 to 810, inclusive; also, Rep. Com. 1854, pp. 38-9; also, H. R. Mis. Doc. No. 14, p. 2, Forty-sixth Congress, third session). But on the part of the Government it was not carried out; patents remained to be issued to the several persons to whom lands had been set off in conformity with law (H. R. No. 447, pp. 3-15, Twenty-ninth Congress, first session).

Much discontent arose on account of the passage and carrying out this act, a portion of the tribe utterly refusing to acknowledge obedience to its provisions and insisting upon the maintenance of their tribal government. It appeared that the majority of the tribe did not ask for the act, "and that it was forced upon them." Many of the older and influential men, who had previously borne an important part in the management of their affairs, besought the Department at Washington and succeeded in preventing the issue of patents, and in 1846 by their appeal to Congress procured a total repeal of the act declaring them citizens of the United States (Stat., vol. 9, p. 55).

(6) That the said Stockbridge tribe of Indians was 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 act (1843) had not been passed.

The spirit, letter, and intent of the committee who reported the bill "believe that the ends of justice would be subserved and the quiet and happiness of the Stockbridges secured, by a total repeal of the act of 1843, and a restoration of the tribe to their ancient form of government, and in order that those dissatisfied spirits who wish to desert their nation and become citizens of the United States may be left without ground of complaint, a provision is inserted in the bill, by which the governor of Wisconsin is authorized to enroll the names of those becoming citizens, so that if a division of the tribe becomes inevitable they may be so separated and divided, territorially, as not to interfere with each other." (Rep. 447, p. 4.)

The first section of this act repealed the act of 1843 in toto.

The second section provided for the enrollment of the names of such persons of the Stockbridge tribe of Indians as shall desire to become and remain citizens

of the United States, and the division of the land into two districts, viz: "Indian district" and "Citizen district." The lands in the "Indian district" are to remain and to be held in common; those in the "Citizen district" are to be divided; and to each Indian who becomes a citizen the subagent shall assign his ratable proportion of land, and patents may be issued to the individual reservee who becomes a citizen, a title "in fee simple" shall vest in the patentee; "Provided, however, That those Indians who become citizens shall forfeit all rights to receive any portion of the annuity which may be or may become due the nation of the Stockbridges by virtue of any treaty heretofore entered into by this Government with said Stockbridges."

The third section provides for the settlement of claims, and nothing in the act shall be so construed to impair any claim against the Delaware Nation which the Stockbridges may have.

(7) That there is no evidence of record either in the General Land Office, or the Office of Indian Affairs, of this act ever being carried out, so no member of the tribe ever became a citizen under it; therefore forfeited no rights under said act. (Rep. "F" of Dec. 23, 1846, Ex. Doc. No. 1, pp. 770-1, 773-9, Thirtieth Congress, first session., Rep. Com., 1854, p. 39, Rep. Com. Gen. Land Office of Apr. 18, 1855; also letter of July 17, 1882, marked D; also letter of Com. Ind. Affairs, marked L 13008, 1882, H. R. Mis. Doc. No. 14, p. 2, Forty-sixth Congress, third session.)

It was found impracticable to carry this act into full effect, as it required an arbitrary division of the reservation into districts, which would deprive many of their improvements and impose an absolute forfeiture of all annuities and other claims upon the Government, reserved to them by the former act of 1843.

Therefore, in order to relieve both parties from their embarrassments and to secure to each their just rights, it was claimed the treaty of November 24, 1848, was made. (Stat., vol. 9, p. 955.)

(8) That this treaty was made with what was called the "Indian party" is admitted in a memorial to Congress by the sachem and councillors of the Stockbridge and Munsee tribe of Indians, p. 3, 4, copy E with Inspector Kemble's report 12, November, 1877, Exhibit F to report proper, and their statement (A) accompanying the same.

By the fourth article of the treaty it requires patent to issue to those "who become citizens of the United States," a list of whom is given, when in fact none had become "citizens," therefore no patents were to issue. But the acts of Congress and the treaty of 1848 attempted to accomplish a complete disintegration of the former tribe, and provided that none except such as were then enrolled as Indians should be afterwards recognized as members of the tribe or in any manner dealt with as such.

(9) That while the claims of the "Indian party" were fully adjusted by the treaty of 1848, those of the "Citizen party" to former annuities were not and have not since been fully provided for. They also had a right to a proportionate remuneration for lands of which the tribe were deprived by treaties with the Miami and Delawares and other lands in Wisconsin of which they were deprived of by treaties with the Winnebagoes and Menomonees. No annuities have been paid them since 1843, nor have any other of their just demands been adjusted in any manner, except by the settlement in the treaty of 1856, in which the "Citizen party" participated, all of which is more fully set forth in the report of E. C. Kemble, of November 12, 1877.

A careful examination of all the facts and circumstances connected with the treaty of 1848 warrants the conclusion that it was an attempted fraud upon both parties.

(10) That on the 3d March, 1855, the general Indian appropriation bill was passed (Stats., vol. 10, p. 699) "for the purpose of enabling the President to treat with and arrange the difficulties among the Stockbridge and Munsee Indians, arising out of the acts of Congress of March 3, 1843, and August 6, 1846, and under the treaty of November 24, 1848."

(11) That on June 1, 1855, a treaty was made with the Stockbridge and Munsee tribe of Indians, but was not approved by the Department, and was referred back to the Commissioner, who thereupon instructed the superintendent "that arrangements ought therefore to be made at once to provide them with a home * * * and it should be a home alike for the Stockbridges, whether known as 'citizens' or 'Indians,' and the Munsees, parties to the treaty of September 3, 1839, wherever they may now be, or for such of them as will remove to such new home within the limited time." (See instruction of Commissioner to superintendent of January 7, 1856.)

(12) That under these instructions a treaty was made on February 5, 1856 (11 Stats., p. 663), with the Stockbridge and Munsee Indians. This treaty was made to settle the complicated difficulties "by which the tribe was surrounded," to establish comfortably together all such of the Stockbridges and Munsees wherever they may be located.

By the first article, "the Stockbridge and Munsee tribes who were included in the treaty of September 3, 1839, and all the individual members of said tribes, hereby jointly and severally cede and relinquish to the United States all their remaining right and title in the lands at the town of Stockbridge and State of Wisconsin, the 72 sections of land in Minnesota, the \$20,000, the \$16,500 invested by the United States, and all claims set up by and for the Stockbridge and Munsee tribes, or for the Munsees separately, or by any individual of the Stockbridge tribe who claims to have been deprived of annuities since the year 1843, and other claims, are hereby abrogated and the United States are hereby released or discharged therefrom."

By the second article, in consideration of such cession and relinquishment of the Stockbridges and Munsees, the United States agrees to select as soon as practicable and to give them a tract of land in the State of Wisconsin near the southern boundary of the Menomonee Reservation, of sufficient extent to provide for each head of a family, and other lots of land of 80 and 40 acres, and to pay, to be expended for improvements for the Stockbridge and Munsees, as provided for in article 4, the sum of \$41,100, and the further sum of \$20,550 to enable them to remove, and by amendment \$18,000, \$12,000 for the Stockbridges and \$6,000 for the Munsees, to be expended in such manner as may be prescribed by the Secretary of the Interior, etc.

The third article provides for the survey of such tract and the allotment therein provided, for immediate possession thereafter by the allottee, and for issue of nonassignable certificates and the issue of patents after the expiration of ten years.

Should any of the heads of the families die before the issuing of the certificate or patent the same shall issue to their heirs and land shall revert to the United States.

Article 5 provides the persons to be included in the apportionment of the land and money to be divided and expended under the provisions of this agreement shall be such only as are actual members of the said Stockbridge and Munsee tribes, a roll or census of whom shall be taken and appended to this agreement, "their heirs and legal representatives, and hereafter the adoption of any individual amongst them shall be null and void, except it be first approved by the Commissioner of Indian Affairs."

By article 6 it provides those members of the Stockbridge tribe who emigrated in 1839, the Stockbridges and Munsees agree to receive them as brothers, "Provided, That none of the said Stockbridges or Munsees shall be entitled to any of these lands or the money stipulated to be expended under these articles unless they remove to the new location within two years from the ratification hereof."

By article 16 provides for the issue of patents to certain persons in full of all claims and demand whatsoever in lands, moneys, or annuities of the Stockbridge tribe of Indians.

(13) That by article 17 "so much of the treaties of September 3, 1839, and of November 24, 1848, as is in contravention or in conflict with the stipulation of this agreement is hereby abrogated and annulled."

By article 18 this instrument shall be binding upon the contracting parties whenever the same shall be ratified by the President and the Senate of the United States.

(14) That the treaty was accepted by the Stockbridge and Munsee tribes as a settlement of former "difficulties," and was ratified by the Senate April 18, 1856, and approved by the President of the United States September 8, 1856.

(15) That on the 11th of February, 1856, a treaty was made with the Menomonees by the United States, two townships of land was purchased for the express purpose of locating thereon "the Stockbridges and Munsee Indians" (11 Stats., p. 679). This treaty was proclaimed April 24, 1856.

(16) That about 409 removed under the appropriation of the second article of the treaty to their new homes, and the guaranty of the third article of the treaty, to hold the same in trust for such persons, securing their possessions and ultimate title to the land, has not been carried out.

(17) That a treaty between the United States and the Stockbridge and Munsee tribe of Indians, was concluded in the city of Washington, D. C., on the 15th of

February, 1867, though not ratified. According to the rolls of said treaty the tribes numbered 392.

(18) That on the 6th of February, 1871, an act of Congress was passed entitled "An act for the relief of the Stockbridge and Munsee tribes of Indians in the State of Wisconsin" (Stat., vol. 16, p. 404).

By the first section provides for the appraisement of the land and the value of improvements, and the name and owners of such improvement.

By the second section provides for the manner in which said lands should be advertised and sold on the reservation, of 18 sections, subject to allotment to members of Indian party.

By the third section provides for the payment of expenses of appraisals and sale, the amount due to individuals for improvements, amount of debts, amounting to the sum of \$11,000.

By the fourth section provides a statement, exhibiting the gross amount of money realized from the sale of the two townships of land, after deducting therefrom the sums appropriated by the preceding sections, the value of the land remaining unsold, estimating it at 60 cents per acre; also the \$6,000 held in trust by the Government, and shall constitute the entire amount due the tribe from the Government.

By the fifth section provides the sums of money shall be divided between the Citizens and Indian party, in proportion to the number of each, according to rolls thereof made and returned in conformity with the provisions of this act to Commissioner of Indian Affairs, the Citizens party shall be divided per capita, the Indian party's share shall be placed to their credit on the books of the Treasurer of the United States, and bear interest at 5 per cent per annum.

By section 6 provides, for the purposes of determining who are members of the tribe, two rolls shall be made, one shall be called the "Citizen rolls," to embrace those who become citizens, the other "Indian roll," to embrace the names of such as desire to retain their tribal character and continue under the guardianship of the United States.

"But no person of full age shall be entered upon said Citizen roll without his or her full and free consent, personally given to the person superintending such enrollment. Nor shall any person, or his or her descendants, be entered upon either of said rolls who may have heretofore separated from said tribe and received allotment of lands under the act of Congress for the relief of the Stockbridge tribe of Indians of March 3, 1843, and amendment of August 6, 1846, or under the treaty of February 5, 1856, or who shall not be of Stockbridge or Munsee descent."

By section 7 provides that "after the said rolls shall be made and returned, the said Indian party shall be known as the Stockbridge tribe of Indians."

The remaining sections are devoted to provisions for allotments of the land, etc.

(19) That on the 24th March, 1874, H. R. Wells was appointed as a special commissioner to complete the rolls provided by the act, and on the 8th of April made his report. The rolls submitted by him contained the names of 138 Stockbridge and Munsee Indians who wished to become Citizens and 112 who wished to retain their tribal relations, leaving about 142 to yet be enrolled in accordance with their previous enumeration, though there is an increase since then.

(20) In violation of the provisions of the treaty of February 5, 1856, a large portion of the tribe are deprived of their rights. The land thereby granted to the Stockbridge and Munsee Indians have been sold by the United States, and the proceeds of the sale paid into the Treasury of the United States.

(21) That for many years the Stockbridge and Munsee Indians have sought to obtain compensation for the lands thus illegally appropriated by the United States, but have failed to do so.

(22) That the Stockbridge and Munsee tribes of Indians have several times applied to Congress of the United States for relief in the premises, notably to the Forty-fourth, Forty-seventh, Forty-eighth, and Fiftieth Congresses, and the executive branch of the Government upon the the subject, to whose various reports your petitioners beg leave to refer, and especially to report of the Hon. J. D. C. Atkins, Commissioner of Indians Affairs, in response to the call of the Senate Committee on Indian Affairs, under date of April 27, 1888, and the report of Edward Kemble, of November 12, 1877; also the report of Robert S. Gardner, of November 16, 1886, and that of Special Agent William Parsons, of January 16, 1888.

(23) It is claimed on behalf of the Stockbridge and Munsee Indians that their interest in the reservation was equal to those who were enrolled; therefore they

are entitled to be enrolled likewise, as they never separated from the tribe, but have continuously resided with the tribe ever since the making of the treaty of February 5, 1856, nor have they become citizens since the repeal of the act of March 3, 1843.

(24) That these petitioners claim they had lands allotted to them by the treaty of February 5, 1856, under the third article, and that the same is duly recorded in a book of allotments made at that time, and that they have continuously resided upon the same in peace until 1871, at which time an act of Congress was passed providing for the sale of the reservation and the enrollment of the tribes.

(25) That they claim the enrollment made by H. R. Wells was unfair in the extreme, and that it was not made in accordance with the act of 1871.

(26) That they claim they were not enrolled under the act of February 6, 1871, nor have they since been enrolled, nor have they received any allotment of land under said act.

(27) That they claim Stephen Gardner had land allotted to him under the treaty of 1856, more fully described in the affidavits herewith, and that the same was allotted to Sterling Peters under the act of 1871, and that the said Peters's father separated from the tribe in accordance with the second article of the treaty of September 3, 1839, and received his full share of tribal property (Rev. Ind. Treat., p. 940, line 41890); as to which stands before the tribe and is best entitled to consideration it does not require much acumen to discover.

(28) That these petitioners claim they are justly entitled to the amount claimed in this petition, after allowing all just credits and offsets, and in support of the equity of their claim beg leave to cite the following authorities:

TREATIES.

"All treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land." (Art. 6, Const.)

"No obligation of any treaty lawfully made and ratified shall be hereby invalidated or impaired." (Sec. 2079, R. S., p. 366.)

"Congress has no constitutional right to interfere with rights under a treaty, except in cases purely political." (Holden vs. Joy, 17 Wall., 247; Wilson vs. Hull, 6 Wall., 89.)

"If the title passed by the treaty of 1856 there were no restrictions upon it.

"That a treaty after being executed and ratified by the proper authorities becomes the supreme law of the land, and the courts can not go back of it for the purpose of annulling it." (1 Cranch, 103; 6 Pet., 735; 10 How., 442; 2 Pet., 307, 309, 314; Story Const. Law, p. 695.)

LAW.

"No State shall pass any law impairing the obligation of contracts." (Art. 1, sec. 10, Const.)

"No *ex post facto* laws shall be passed." (Art. 1, sec. 9, Const.)

"Nor shall any person be deprived of life, liberty, or property, without due process of law." (5th Amend. Const.)

PROPERTY.

"Nor shall private property be taken for public use without just compensation." (5th Amend. Const.)

RIGHTS.

"The United States can rightfully make no treaty with a tribe of Indians which will deprive any member of such tribe of lawful right without just compensation." (11 O. A. G., 145-6)

"There is no authority of law by which they can be dispossessed or deprived of their legal rights and interests in the common estate of said tribe without their consent." (6 O. A. G., 148 and 663-4; sec. 6, Const. of the U. S.)

"Could the Government acquire any rights or interests in their lands without making them party to the treaty?" (1 Story's Equity Jurisprudence, sec. 222.)

TITLE.

"The nature of the Indian title to lands lying within the territorial limits of a State is entitled to be respected by all courts until it be legitimately extinguished." (6 Cranch, Rep. 87.)

"It is the duty of the Government to protect the Indian in the possession of

their lands, but he is deemed incapable of transferring the title to any other than the sovereigns of the country." (1 Kent Com., No. 258, 381, sub. 4; 9 Peters, U. S. Rep., 760.)

"The Government can only extinguish the Indian title by purchase and conquest." (1 Kent Com., No. 258.) "No title is valid which is not followed by occupation." (Vattel Bio. 18, sec. 207, 208; Hartin Pixces, p. 3; Greenhe's His. Oregon, Cal., 4th ed., 202.)

"The title which they might acquire by occupancy was a base, qualified, or determinable fee, with only the possibility of reversion and not the right of reversion in the United States, and therefore all the estate is in the Indians." (See decision of the United States district court for the western district of Arkansas, May term, 1879, United States vs. Reese, vol. 8, p. 453, Central Law Journal.)

Their lands have been sold by the Government in violation of the pledge of the treaty. These Indians are, in the language of the Supreme Court, the wards of the Government and as such *they now appeal* to their guardians to turn over to them the proceeds of their own estate.

Law and equity alike demand that their appeal should now be heard, and the relief prayed for granted.

J. C. ADAMS,

In behalf of the Stockbridge and Munsee tribe of Indians.

UNITED STATES INDIAN SERVICE, GREEN BAY AGENCY, WIS.,
Keshena, January 29, 1892.

SIR: Herewith are forwarded certain affidavits relating to allotment rights on Stockbridge Reservation, together with statement of J. C. Adams, an attorney for some alleged Stockbridge Indians.

Very respectfully,

CHAS. S. KELSEY,
United States Indian Agent.

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

STATE OF WISCONSIN, *County of Shawano, ss:*

Personally came before me Martin D. Aaron, who being duly sworn, deposes and says: That he is 35 years old, am a Stockbridge Indian, and was enrolled under the act of Feb'y 6th, 1871, on the Indian roll. That I am well acquainted with Stephen Gardner and others who were not enrolled under the act of 1871, and that they were justly entitled to be enrolled as they were signers of the treaty of Feb'y 5, 1856, and that the said Stephen Gardner had lands allotted to him under the said treaty (see Rev. Treat. p. 951) in accordance to article 3rd of said treaty, and that he has continuously resided upon the land ever since, and made improvements on the same to the amount of about 35 acres, and that he has no other homestead, and that he has always been recognized as a member of the tribe up to the passage of the act of 1871—drawing tribal funds, holding offices, and voting at all tribal elections, and in every way being recognized as a member of the Stockbridge and Munsee tribe.

MARTIN AARON.

Sworn and subscribed before me this 12th day of Dec., 1891.

[SEAL.]

AUGUST G. SCHMIDT,
Notary Public.

(On file at Pension Dept., Washington, D. C.)

STATE OF WISCONSIN, *County of Shawano, ss:*

Personally appeared before me, John Yocum, who, being first duly sworn, deposes and says: That I am 73 years old; am a Stockbridge Indian, and was enrolled under the act of Feb'y 6, 1871; am well acquainted with Stephen Gardner, and know that his name appears upon the treaty of Feb'y 5, 1856; that he had lands allotted to him on the reservation of the Stockbridges in accordance to article 3rd of the treaty, to wit: W. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 26, T. 28, R. 14; No. of

acres, 80; and that the same was entered October 28th, 1856, and the said Gardner has resided upon the land continuously ever since the making of the treaty, and that he has no other homestead; that he has made improvement on the same to the amount of about thirty-five acres, and that he has always been recognized as a member of the tribe up to the passage of the act of 1871; that he has held offices in the tribe, voted at their elections, drew tribal funds, and enjoyed all the privileges of the tribe, and that he was entitled to be enrolled as a member of the said tribe, and at the enrollment made by Special Commissioner Wells in 1874 certain parties were enrolled who were not entitled to the same, as the law prohibited them, while others were not allowed to be enrolled, who had the same status as those enrolled, though their names appeared upon the rolls of the treaty of Feb'y 5, 1856, in conformity to article 5th, and they also had lands allotted to them under the 3rd article of said treaty; and further this deponent sayeth not.

JOHN (his x mark) YOCCUM.

Sworn and subscribed before me this 12 day of Dec., 1891.

[SEAL.]

AUGUST G. SCHMIDT,
Notary Public.

(On file at Pension Dept., Washington, D. C.)

Witness to mark,
MARTIN AARON.

STATE OF WISCONSIN, *County of Shawano*, ss:

Personally came before me, George T. Bennett, who deposes and says: That I am sixty-eight years old, and a Stockbridge Indian, and was one of the members of the tribe that moved from the State of New York, in the year 1829, with his parents in connection with others of the Stockbridge Indians, and have in every instance participated in all the benefits accruing to the said tribe, both in money and land; that my rights were recognized by all parties in the treaty of Sept. 3rd, 1839, in the division of the property of said tribe made by that treaty and my share retained in Calumet County, Wis., with the main portion of the above tribe, and that from the treaty of 1829 my rights has always been respected by the Government and the Stockbridge Indians until the Quinney or Indian party faction arose after the act of March 3rd, 1843, and 1846, and the treaty of November 24th, 1848, and notwithstanding the effort of these treaties to set my rights aside, I believe that I am a full member of the tribe, which belief was confirmed by the treaty of settlement made by the Stockbridge and Munsee tribe of Indians and the Government of the United States by the treaty of Feb'y 5, 1856.

That in accordance with the stipulations of the treaty I received my allotment of land under this treaty, viz: E. $\frac{1}{4}$, NE. $\frac{1}{4}$ of Sec. 28, township 28, range 15, 80 acres; W. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 35, T. 28, R. 14, 80 acres. Entered June 3rd, 1857, and March 5, 1858; that I built a good dwelling house on one of these lots and during my absence off to work, Samuel Miller tore down said house and moved the same away on a lot that he occupied (Miller) on the reservation. That I was one of the delegates sent to examine or explore the country of the new reservation under the treaty of 1856 and was also present when the reservation was purchased from the Menomonees Feb'y 11, 1856, and that I opposed it on account of its location and on account of the "Pine Ring" and the rigors of the climate, and that I was present at the making of the enrollment of the tribe under the act of Feb'y 6, 1871, by Commissioner H. R. Wells, and that he refused to enroll all those persons who were not parties to the treaty of Nov. 24th, 1848, which treaty was abrogated by the 17th article of the treaty of Feb. 5, 1856, and was of noneffect.

That Mr. Wells admitted to me "that the whole proceedings were unjust, and that the 'headmen' were the greatest set of villains that ever went unhung." That I am well acquainted with Stephen Gardner, and that he had land allotted to him under the treaty of February 5, 1856, to wit: W. $\frac{1}{4}$ NE. $\frac{1}{4}$, sec. 26, T. 28, R. 14, number of acres 80; and that the same was duly entered October 28, 1856, and is recorded in the book of allotments made under the treaty; that the said Gardner has continuously resided upon the land, except the time he was in the United States service as a soldier, and that he has made improvements upon the same to the amount of about 35 acres, and that he has a good dwelling-house and other buildings on the place, and that he has no other homestead; that he occupies the same land that he first entered.

STOCKBRIDGE AND MUNSEE INDIANS.

That the said Gardner's name appears upon the rolls in accordance to article 5th of said treaty, which says: "The persons to be included in the apportionment of the land and money to be divided and expended under the provisions of this agreement shall be such only as are actual members of the said Stockbridge and Munsee tribes (a roll or census of whom shall be taken and appended to this agreement), and their heirs and legal representatives;" that after the expiration of ten years this deponent asked to have the patent to his allotment issued to him; but I was refused, having fulfilled the condition of the treaty on my part, and it only remained for the Government to fulfill the condition of its contract, and think we should not be held liable for the neglect of the Government to issue the patents. Further this deponent sayeth not.

GEORGE T. BENNETT.

Sworn before me this 16 day of Dec., 1891.
[SEAL.]

AUGUST G. SCHMIDT,
Notary Public for Shawano Co., Wis.

(On file at Washington, D. C., at Pension Dept.)

Witness:
F. SEYMEN.

STATE OF WISCONSIN, *County of Shawano, ss:*

Personally appeared before me Stephen Gardner, who being duly sworn, deposes and says: That I am 65 years old; am a Stockbridge Indian; am not enrolled upon either of the rolls. Have always lived with the tribe, mingled and contributed my property with the tribe, thereby greatly enhancing its value, and that I have drawn provisions, tribal funds, voted at their elections, held office in the tribe, and in every way being recognized as a member of the tribe. I am a signer of the treaty of Feby. 5th, 1856, and my name so appears upon the rolls. (Rev. Ind. Treat., p. 959, line 42720); that I have land allotted to me under the 3rd art. of the treaty, to wit: W. $\frac{1}{2}$ NE. $\frac{1}{2}$, sec. 26, T. 28, R. 14, recorded Oct. 28th, 1856, in the book of allotments made under the treaty of 1856; that I have resided continuously upon the place ever since it has been allotted to me, with the exception of my service in the U. S. A., that I was mustered in on the 9th day of Aug., 1862, and remained until I received an honorable discharge, the 12th day of June, 1865, and that I left my money with State Treasurer Samuel D. Hasting until I returned home, which I expended in making improvements upon the place, and that I also expended a portion of the money on the place, and that I received under the act of 1871 and from my improvement at Stockbridge, Calumet Co., and that I have about 35 acres improvements on the place, besides a frame dwelling-house and a barn and other buildings, and that I have no other homestead, and that I never complied with the act of March 3rd, 1843, inasmuch as the act never was carried out; patents were never issued under this act (Rep. 447, H. R., 29th Cong., 1st sess., p. 15), but on Aug. 6, 1846, this act was repealed, and the restoration of the tribe to its ancient form of government (9 Stat., 55) was effected, and that I still occupy the same land I entered on the 28th day of October, 1856.

That I was present at the enrollment made by Special Commissioner H. R. Wells, and was not allowed to enroll, and that I have not had the opportunity of enrolling since. Nor have I had the opportunity to apply for my allotment under the act of 1871. That the reason alleged for not enrolling me was that I had become a citizen under the act of March 3rd, 1843, and that I had received allotments of land under the act of 1843, which apply with equal force to those enrolled, and that I verily believe the reason for not enrolling me was that I would not enter into a contract or a money consideration to have my name placed upon the rolls. (See my affidavit of Aug. 20, 1887, before Wm. Parsons, U. S. Indian Special Agent on file in Dept. of Ind. Affairs.) Further this deponent sayeth not.

STEPHEN GARDNER.

Sworn before me this 16 day of December, 1891.
[SEAL.]

AUGUST G. SCHMIDT,
Notary Public, Shawano Co., Wis.

(On file at Pension Dept., Washington, D. C.)

Witness:
F. SEYMEN.

STATE OF WISCONSIN, SHAWANO COUNTY,
Office of the Clerk of the Circuit Court, ss :

I, C. A. Raisler, Clerk of the Circuit Court of the county of Shawano, in the State of Wisconsin, the said court being a court of record, and having a seal, do hereby certify that Aug. G. Schmidt, esquire, whose name appears subscribed to the annexed instrument, was, at the date thereof, a notary public within and for said State, residing in said county, duly appointed and qualified, and empowered by the laws of said State to administer oaths, take acknowledgments of deeds, and perform such other duties as by the law of nations or according to commercial usage may be performed by notaries public; and that to his acts and attestations, as such full faith and credit are and ought to be given, in court and out. I further certify that I verily believe said signature purporting to be his, is genuine; that the seal thereto attached is a correct impression of his official seal; and that said instrument is executed and acknowledged according to the laws of said State.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Shawano, in said county and State, on this 21st day of December A. D. 1891.

[SEAL.]

C. A. RAISLER,
Clerk of Circuit Court, as aforesaid.

I, Joseph Ganthier, United States Indian interpreter for the Green Bay Agency, do hereby certify that I am acquainted with Stephen Gardner, of the Stockbridge and Munsee tribe of Indians, and that he had land allotted to him under the treaty of February 5, 1856, and that the same was duly recorded in a book of allotments also placed upon the map of the reservation, and this map was hung up on side of the wall in the office of the agency at Keshena, so that it could be referred to when any one entered land who was a member of the said tribe, and, to my knowledge and belief, all the excluded party were at that time recognized as members of the said tribe, and those who were old enough or head of a family had land allotted to them in accordance to the said treaty, and that they have ever since resided upon the said land, and made improvements upon the same. I have also been upon the said land to appraise the said improvements before they were paid for. I was interpreter at that time, and that they have no other homestead except this land.

JOSEPH GANTHIER.

KESHENA, WIS., Dec. 21, 1891.

Personally appeared before me, Joseph Ganthier, and acknowledged the above signature to be his free act.

CHAS. S. KELSEY,
U. S. Ind. Agent.

DEC. 2ND, 1891.

STATE OF WISCONSIN, Langlade County, ss:

J. C. Adams, being first duly sworn, deposes and says:

I have carefully examined the original town records of the allotment of land to the Stockbridge and Munsee Indians, and that page 11, hereunto attached, is a correct copy of line numbered one, two, three, four, and five, and line numbered twenty-seven on page eleven of said original town record, and that said attached copy was made by me from said original record.

J. C. ADAMS.

Subscribed and sworn to before me this 25th day of March, A. D. 1892.

[SEAL.]

F. J. FINUCANE,
Notary Public in and for Langlade Co., Wis.

STATE OF WISCONSIN, County of Langlade, ss:

I, T. H. Ward, clerk of the circuit court of the county and State aforesaid, do hereby certify that F. J. Finucane is, and was at the time of taking the within affidavit, a notary public, duly appointed and qualified; and believe that his signa-

ture within written is genuine, and that he is authorized to administer oaths and take acknowledgments of paper according to the laws of Wisconsin.

Given under my hand and the seal of said court, this 25th day of January, A. D. 1892.

[SEAL.]

T. H. WARD,
Clerk of Circuit Court in and for Langlade County, Wisconsin.

“Record of lots entered by individuals of the Stockbridge and Munsee tribes of Indians in conformity to article 3rd, Treaty February 5th, 1856.”

Date.	Names of persons.	Description.	Sec.	T.	R.	No. acres.	Remarks.
1856. Oct.	* * *	* *	26	28	14	80	Head of family.
□ 28	Stephen Gardner.	W. $\frac{1}{4}$ NE. $\frac{1}{4}$.	“	“	“	“	“