

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

ADDRESSED TO

HON. JAMES HARLAN, CHAIRMAN OF COMMITTEE ON IN-
DIAN AFFAIRS,

TRANSMITTING

*Copy of a report from the Commissioner of Indian Affairs in relation to
certain selections of land made for members of the Shawnee tribe of
Indians.*

JANUARY 25, 1872.—Ordered to be printed, to accompany bill S. 536.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 11, 1872.

SIR: I have the honor to transmit herewith a copy of a report, dated the 9th instant, from the Commissioner of Indian Affairs, in relation to certain selections of land made for members of the Shawnee tribe of Indians, together with the accompanying draught of a joint resolution to confirm the sale of said selections, under the direction of the Secretary of the Interior.

The report of the Commissioner referred to contains a very full statement in relation to the subject, to which the attention of Congress is respectfully invited.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Hon. JAMES G. HARLAN,
Chairman Committee on Indian Affairs, United States Senate.

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, January 3, 1872.

SIR: I have the honor to invite your attention to the following, viz:

By the first article of the treaty concluded with the Shawnee tribe of Indians, May 10, 1854, (Stat. at Large, vol. 10, p. 1053,) said tribe of Indians ceded to the United States their reservation in the State of Kansas, estimated to contain sixteen hundred thousand acres. By the amended second article of said treaty the United States receded to the Shawnee tribe of Indians out of said reservation "two hundred thousand acres of land, between the Missouri State line and a line parallel thereto, thirty miles west of the same." The same article provides that "all Shawnees residing east of said parallel line shall be entitled, out of said two hundred thousand acres, to select, if a single person, two hundred

acres of land, and if the head of a family, a quantity equal to two hundred acres for each member of his or her family." It is further provided, in the same article that, "in the settlement known as Black Bob's settlement, whereon he resides, and in that known as Long Tail's settlement, whereon he resides, there are a number of Shawnees who desire to hold their lands in common, and all who, within sixty days after the approval of the surveys provided for, signify their election to join either of said communities and reside with them, shall have a quantity of land assigned and set off to them in a compact body, equal to two hundred acres for every individual in each of said communities," and that, "after all the Shawnees, and other persons herein provided for, shall have received their shares of the two hundred thousand acres of land reserved, it is anticipated that there will still be a residue, and as there are some Shawnees who have been for years separated from the tribe, it is agreed that whatever surplus remains, after provision is made for all present members of the tribe, shall be set apart in one body of land, in compact form, under the direction of the President of the United States; and all such Shawnees as return to and unite with the tribe within five years from the proclamation of this instrument, shall be entitled to the same quantity of lands, out of such surplus and in the same manner, and subject to the same limitation and provisions, as are hereinbefore made for those now members of the said tribe; and whatever portion of said surplus remains unassigned after the expiration of said five years, shall be sold as hereinafter provided," &c. By the eleventh section of the act approved March 3, 1859, it was provided: "That in all cases where, by the terms of any Indian treaty in Kansas Territory, said Indians are entitled to separate selections of land, and to a patent therefor, under guards, restrictions, or conditions, for their benefit, the Secretary of the Interior is hereby authorized to cause patents therefor to issue to such Indian or Indians and their heirs, on such conditions and limitations and under such guards or restrictions as may be prescribed by said Secretary."

Subsequent to the act of March 3, 1859, and, as was assumed, in pursuance of the provisions of said eleventh section thereof, the Department proceeded to receive the individual selections of members of the Shawnee tribe and to issue patents thereupon.

In making such selections, however, duplicate selections were in several instances made through inadvertence, and patents issued thereupon. In the preparation of the revised rules and regulations for the disposition by the individual Indians of their several selections, approved by the Secretary of the Interior July 23, 1869, it was deemed proper for the best interests of the tribe that these duplicate selections should be disposed of, and it was therefore provided by the fifth clause thereof, that, "in cases of allotments for which no owner or heir thereof survives, or allotments to which the allottee was not entitled, the chiefs may convey the same by deed, but the purchase-money thereof must be paid into the hands of the agent, and held by him, subject to the direction of the Secretary of the Interior, to be applied for the benefit of the tribe; and such conveyances must be certified by the agent and submitted through the Office of Indian Affairs to the Secretary of the Interior for approval."

In pursuance of such authority, and in conformity with said rules and regulations, the duplicate selections referred to have been sold from time to time by the chiefs of the tribe, and the deeds approved by the honorable Secretary of the Interior.

The validity of the titles thus conferred upon purchasers has, how-

ever, been questioned, and a test case brought before the supreme court of the State of Kansas, the particular trust in litigation being claimed by purchase under a joint resolution of Congress entitled "A resolution for the relief of settlers upon the absentee Shawnee lands in Kansas," approved April 7, 1869. (Stat. at Large, vol. 16, p. 53.) In this case the court decides that lands allotted in severalty, and afterward abandoned for other lands, do not become part of the "surplus" lands which were set apart for the absentee Shawnees; that the chiefs of the Shawnee tribe have no authority, even with the consent and approval of the Secretary of the Interior, to dispose of said lands, and make deeds therefor, and that a deed so made confers no title.

In view of the foregoing, and of the fact that the parties purchasing said lands have made such purchases in good faith, acting in accordance with rules prescribed by the Department, and paid adequate considerations for the same, I have caused to be prepared a draught of a joint resolution for the purpose of confirming these sales, which I respectfully recommend be submitted to Congress, and the attention of that body invited to the propriety of early action in the matter, in order that these *bona fide* purchasers may be spared tedious and expensive litigation, have their titles perfected, and be secured in the possession of their homes.

Very respectfully, your obedient servant,

F. A. WALKER,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

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