LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING,

In compliance with Senate resolution of February 7, 1882, copy of report of the Acting Commissioner of the General Land Office of April 25, 1881, in reference to the right of occupation by settlers of any portion of the Indian Territory.

FEBRUARY 17, 1882.—Referred to the Committee on Indian Affairs and ordered to be printed

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DEPARTMENT OF THE INTERIOR,
Washington, February 17, 1882.

SIR: In compliance with Senate resolution of the 7th instant, I transmit herewith copy of report of the Acting Commissioner of the General Land Office of date April 25, 1881, in reference to the right of occupation by settlers of any portion of the Indian Territory.

A copy of letter dated 16th instant, from the Commissioner, transmitting said copy of report, is also inclosed.

Very respectfully,

S. J. KIRKWOOD,
Secretary.

The PRESIDENT *of the Senate.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 16, 1882.

SIR: I have the honor to return herewith Senate resolution of 7th instant, received by your reference of 10th, calling upon you to communicate to the Senate the report of the Acting Commissioner of this office, dated April 25, 1881, in reference to the right of occupation by settlers of any portion of the Indian Territory, and to inclose herewith a copy of said report.

Very respectfully,

N. C. MCFARLAND,
Commissioner.

Hon. S. J. KIRKWOOD,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 25, 1881.

SIR: I am in receipt, by your reference, of a copy of a circular purporting to be issued by the "Freedmen's Oklahoma Association," promising 160 acres of land to every freedman who will go and occupy the public lands of Oklahoma. This circular is signed in the name of J. Milton Turner, who is represented as "President," and by Hannibal C. Carter, who is represented as "General Manager" of said pretended association.

It contains a letter from E. C. Boudinot, professing to state the legal character of the lands to which emigration is invited, and affirming that the same are public lands of the United States; that the Indian title thereto has been extinguished; and that said lands were purchased by the United States for the use of freedmen as well as Indians.

The circular declares that the freedmen of the United States "have an undoubted legal right to enter and settle upon these public lands."

In compliance with your request for a report upon said lands, in view of the representations contained in this circular, I have the honor to state as follows:

1. There are no lands in the Indian Territory open to settlement or entry by freedmen, or by any other persons, under any of the public land laws of the United States.

2. There has never been a period of time since the acquisition by the United States of the territory ceded by France, that any of the lands embraced within the limits of the present Indian Territory have been open to settlement or entry by any persons whomsoever under any of said public land laws.

3. The lands to which the United States holds the legal title within the Indian Territory are reserved lands by treaty stipulations and acts of Congress, and are not, and never have been, public lands subject to general occupation.

4. The entire Indian Territory, including the lands therein to which the United States holds the paramount title is "Indian country," as defined by the first section of the act of Congress of June 30, 1854 (4th Stat., 729), which act prohibits unauthorized settlements in such country, and provides for the employment of the military forces to prevent the introduction of persons and property contrary to law, and for the apprehension of every person who may be in such country in violation of law (Revised Statutes, secs. 2111–2157).

The Indian Territory comprises a remaining portion of lands originally granted to, or reserved for, the use of certain Indian tribes, and constitutes a district created by the act of Congress of May 28, 1830 (4th Stat., 411), for the removal thereto of Indians from other localities.

The territory is specifically described by geographical boundaries in the 24th section of the intercourse act (4th Stat., 733), by which act it was attached to the western judicial district of Arkansas for judicial purposes. (Revised Statutes, sec. 533.)

None of the land laws of the United States have ever been extended over said Territory, nor have any other general laws of the United States been so extended, except the criminal laws and the laws regulating intercourse with Indian country.

Prior to 1866 the whole area of the Indian Territory, except a small portion in the northeast corner which belonged to the Senecas, Shawnees, and Quapaws, was embraced in the grants made and patented to the Cherokee, Choctaw, and Creek Indians, under the treaties with said tribes, respectively.

The several treaties under which the title of the United States was conveyed to said tribes are as follows:

CHEROKEE TREATIES.

May 6, 1828, 7 Statutes, p. 310.
February 14, 1833, 7 Statutes, p. 414.
December 29, 1835, 7 Statutes, p. 478.
Patent issued to the Cherokee Nation December 31, 1838.

CHOCTAW TREATIES.

October 18, 1820, 7 Statutes, p. 210.
January 20, 1825, 7 Statutes, p. 234.
September 21, 1830, 7 Statutes, p. 333.
Patent issued to the Choctaw Nation March 23, 1842.

CREEK TREATIES.

January 24, 1826, 7 Statutes, p. 286.
March 24, 1833, 7 Statutes, p. 366.
February 14, 1833, 7 Statutes, p. 417.
Patent issued to the Creek Nation August 11, 1852.

The treaties with the Senecas, Shawnees, and Quapaws were the treaties, respectively, of February 28, 1831, 7 Stat., 348; July 20, 1831, 7 Stat., 351; and May 13, 1833, 7 Stat, 424.

By agreements approved by the United States the Choctaws conveyed a portion of their lands to the Chickasaws, and the Creeks in like manner conveyed a portion of their lands to the Seminoles.

The titles of the several tribes under the foregoing treaties and agreements were subject to the following conditions:

1st. That the land should not be conveyed by them except to the United States.

2d. If the Indians abandoned the land, or became extinct, the lands were to revert to the United States.

It was stipulated by the United States that the Indians should be protected in their homes and lands against all interference by any person or persons.

The treaties by which the United States reacquired title to any of the lands in the Indian Territory, or obtained the conditional right to control the disposal of any of said lands, were the treaties with the Seminoles of March 21, 1866; with the Choctaws and Chickasaws of April 28, 1866; with the Creeks of June 14, 1866; and with the Cherokees of July 19, 1866.

By the third article of the treaty with the Seminoles (14 Stat., 756), said Indians ceded to the United States about 2,100,000 acres of land, "in compliance with the desire of the United States to locate other Indians and freedmen thereon."

In compliance with the same desire, the Creeks, by the 3d article of the treaty with that tribe (14 Stat., 786), ceded about 3,200,000 acres to the United States, "to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon."

The freedmen referred to were the former slaves of Indian tribes. The treaty stipulations, as uniformly understood and construed, have no application to any other freedmen than the persons freed from Indian bondage. They relate exclusively to friendly Indians and to Indian freedmen of other tribes in the Indian Territroy whom it was the desire of the United States to provide with permanent homes on the lands ceded for that purpose.

The lands reconveyed to the United States by the foregoing treaties are therefore held subject to the trust named. They can be appropriated only to the uses specified, and to those uses only by the United States, and then only in the manner provided for by law. Miscellaneous immigration even by the intended beneficiaries would be unauthorized and illegal.

The Choctaw and Chickasaw cession of April 28, 1866 (14th Stat., 769), was by the 10th section thereof made subject to the conditions of the compact of June 22, 1855 (11th Stat., 613), by the 9th article of which it was stipulated that the lands should be appropriated for the permanent settlement of such tribes or bands of Indians as the United States might desire to locate thereon.

The lands embraced in the Choctaw and Chickasaw cession were also included in a definite district established by the stipulations of the treaty of 1855, pursuant to the act of Congress of May 28, 1830, the United States re-engaging by the 7th article of said treaty to remove and keep out from that district all intruders.

Articles 15 and 16 of the treaty with the Cherokees (14 Stat., 803, 804) provide that the United States may settle any civilized Indians friendly with the Cherokees and adjacent tribes within the Cherokee country, on unocupied lands, on certain terms and conditions specified in the treaty.

These provisions made the United States the agent of the Cherokees for the sale and disposal of unoccupied land in the Cherokee country for the benefit of said tribe, but restricted such sale and disposal exclusively to friendly Indians.

In pursuance of the stipulations of the foregoing compacts, and in the exercise of the trusts assumed by the United States under the several treaties, and in accordance with specific provisions of law and the lawful orders of the President, all the lands in the Indian Territory to which the United States has title have been permanenly appropriated or definitely reserved for the uses and purposes named.

It is stated in the circular referred to me for examination that there are at the present time a large quantity, to wit, some 14,000,000 acres of public land in this Territory to which the Indian title has been extinguished, and that "these public lands are surveyed and sectionized, awaiting their intended use, viz, settlement and occupation by the freedmen of the United States, giving to each settler the fee simple to a homestead of 160 acres."

It is essential for the instruction of those who may be uninformed, and necessary to the protection of those who are sought to be imposed upon, that the misleading features and false conclusions of the statements contained in said circular should be explained and exposed.

The main proposition set forth is that there are certain public lands in the Indian Territory, and the argument is that the rights of citizens to enter and settle upon the public lands must be the same in that Territory as elsewhere; and it is further as-

serted that colored people are especially protected in such rights as to these particular lands by the assumed purposes for which the lands were acquired by the United States.

That there are lands in the Indian Territory that belong to the United States in the sense that the United States holds the naked legal title thereto, is true; but it is not true that these are public lands within the meaning of the public land laws.

The term "public lands" is sometimes used in a general sense to designate lands the legal title to which is in the United States, in contradistinction to lands that are the private property of individual citizens. It is in this sense that the term is used in the surveying laws which require Indian reservations to be surveyed in the same manner as "other public lands." And the Commissioner of the General Land Office, in his annual reports of surveying operations, includes the area of surveyed and unsurveyed lands in the Indian Territory in the tables of surveyable public lands in the same manner as all Indian reservations are included in each of the other States and Territories. But this does not mean that the surveyed or unsurveyed lands embraced in Indian reservations are public lands in the sense of the laws providing for the disposal of public lands. Under these laws the term public lands has a particular signification, and is used to describe such of the lands of the United States as are open to the public for general occupation, settlement, or entry.

All lands belonging to the United States are not subject to disposal, hence all lands belonging to the United States are not public lands within the meaning of that term, as invariably used in the public land laws, and as the statutes are uniformly expounded by the courts.

Lands belonging to the United States, but which have been appropriated to any special use, or reserved for any purpose by act of Congress or Executive proclamation, or withdrawn from disposal by lawful authority, are not public lands in the legal and proper sense of those words as employed to define lands subject to disposal to the public and open to occupation by the public.

Indian reservations, and all other reservations established by competent authority, are protected from entry or settlement by positive provisions of law, and both the State and Federal courts, in an unbroken line of decision, have always maintained the inviolability of such reservations.

The pre-emption and homestead laws authorizing entries to be made on lands belonging to the United States to which the Indian titled is extinguished expressly provide, among other restrictions, that "lands included in any reservation by any treaty, law, or proclamation by the President, for any purpose," shall not be subject to such right. Hence the extinguishment of the Indian title to certain of the lands in the Indian Territory does not operate to open any of such lands to pre-emption or homestead settlement under those laws.

The title of the United States to lands in the Indian Territory is, as heretofore shown, subject to specific trusts, and it is not within the lawful power of either the legislative or executive departments of the government to annihilate such trusts, or to avoid the obligations arising thereunder.

Such trusts are for the benefit of Indian tribes and Indian freedmen. The "freedmen of the United States" are not comprehended within the policy or intention of the treaty provisions, and said lands have accordingly *not* "been purchased for the use and occupation" of the colored people of any of the States.

Were it otherwise, and if in fact any land in the Indian Territory was intended for the settlement and occupation of colored people of the United States, it would require an appropriate act of Congress to carry such intention into effect. No legal settlement can be made on any lands of the United States except in accordance with some law, and no law exists under which colored people, any more than other citizens, can occupy lands in the Indian Territory, or be permitted to intrude themselves within that Territory.

For many years efforts have been made by designing persons to effect an ingress into the Indian Territory for the purpose of despoiling the Indians of the patrimony secured to them by the most solemn obligations of the United States.

These unlawful and dangerous efforts have heretofore been thwarted by the prompt action of the Executive, under his constitutional duty to enforce the laws.

The present attempt to make use of the colored people of the country in the same direction, by deluding them with fictitious assurances that new and congenial homes can be provided for them within this Territory, deserves especial reprobation, since its only effect must be to involve innocent people in a criminal conspiracy, and to subject them to disappointment, hardship, and suffering.

Very respectfully, your obedient servant,

C. W. HOLCOMB,
Acting Commissioner.

Hon. S. J. KIRKWOOD,
Secretary of the Interior.

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