

L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

Answer to Senate resolution March 3, 1885, calling for information as to any change in the boundary of the Crow Creek Agency in Dakota.

DECEMBER 10, 1885.—Ordered to be printed, and, with the accompanying papers, referred to the Committee on Indian Affairs.

DEPARTMENT OF THE INTERIOR,
Washington, December 8, 1885.

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate, dated March 3, 1885, in words as follows, viz:

Resolved, That the Secretary of the Interior be directed to inform the Senate what, if any, changes have been made in the boundary lines of the reservation heretofore occupied by the Sioux Indians at the Crow Creek Agency in Dakota, and how much thereof, if any, has been opened for occupancy as public lands, how much remains in the occupation of said Indians, and the history of the title by which said reservation has been and still is occupied by Indians, and whether said Indians have been consulted in respect to or have consented to any change in such boundaries, together with copies of all orders and other papers in said Department concerning the same.

As there was not sufficient time to properly respond to this resolution of the Senate before the adjournment of that body, the reply has been necessarily delayed until the beginning of the present session.

As the status of the subject-matter has materially changed and much correspondence thereon accumulated since the date of the resolution, I have deemed it proper in making the reply to present copies of all papers relating thereto, which will show a full and complete history of the case to the present time.

The lands referred to are the Old Winnebago and Crow Creek Reservations, east of the Missouri River, in Dakota.

A large portion of the land, aggregating 487,947.13 acres, embraced within the limits of these two reservations was declared to be restored to the public domain by Executive order of February 27, 1885, copy inclosed. The portion of these reservations excepted from the operation of that order aggregated 140,304.61 acres, all of which will be more fully and clearly shown by a map accompanying the report of the Commissioner of Indian Affairs, dated March 20, 1885.

The history and title by which said reservations have been and still are occupied by Indians are fully shown by the papers herewith presented.

The Indians do not appear to have been consulted in respect to, or to have consented to, the change in the boundaries of the reservation

as sought to be effected by the Executive order of February 27, 1885. On the other hand it was claimed by and for them that their rights had been invaded by the issuance of that order. The matter was carefully considered and was submitted by me on March 17, 1885, to the honorable Attorney-General for opinion on certain points, to which he made reply on March 30, 1885, "that the lands in question are covered by the treaty of the 29th April, 1868, and consequently that the Executive order of the 27th February, 1885, is inoperative."

The President thereupon issued his proclamation of April 17, 1885, declaring and proclaiming "the said Executive order of February 27, 1885, to be in contravention of the treaty obligations of the United States with the Sioux tribe of Indians, and therefore inoperative and of no effect." (Copy inclosed.)

A brief history of the subject will be found in my annual report, extract from which is herewith inclosed; also a schedule of the papers accompanying this report.

I have the honor to be, very respectfully,

L. Q. C. LAMAR,
Secretary.

The PRESIDENT PRO TEMPORE OF THE SENATE.

Schedule of papers, copies of correspondence, &c., on file and of record in the Department of the Interior, accompanying the report of the Secretary, in response to Senate resolution of March 3, 1885, concerning the old Winnebago and Crow Creek Indian Reservations in Dakota.

No. 1. Report of the Commissioner of Indian Affairs of March 20, 1885, in response to Department reference of the Senate resolution, with inclosure noted therein (1086).

No. 2. Supplemental report of Commissioner of Indian Affairs of November 25, 1885, upon said resolution, with inclosures noted therein (5665).

No. 3. Communication of the Commissioner of Indian Affairs of April 12, 1881, to Department upon the status of the Crow Creek Indian Reservation in Dakota, with inclosures noted therein (772).

No. 4. Department letter to Commissioner of Indian Affairs of May 4, 1881, in reply to said communication.

No. 5. Communication of Commissioner of Indian Affairs of May 6, 1881, to Department, relative to Crow Creek Reservation (935).

No. 6. Communication from Commissioner of Indian Affairs to Department of June 16, 1881, upon same subject, with inclosures (1220).

No. 7. Communication from Commissioner of Indian Affairs to Department of July 12, 1881, upon same subject, with inclosures (1403).

No. 8. Department letter of July 20, 1881, to Commissioner of Indian Affairs in reply to several communications.

No. 9. Letter of Hon. W. B. Allison to Department of May 10, 1883, with inclosures relative to Crow Creek lands (2066-83).

No. 10. Communication of Commissioner of Indian Affairs to Department of May 18, 1883 (2066).

No. 11. Letter of Department to Hon. W. B. Allison of May 21, 1883.

No. 12. Letter of Hon. John B. Raymond to Department of January 27, 1885, relative to status of lands embraced in Crow Creek and Winnebago Reservations (448-85).

No. 13. Communication of J. A. Ennis, dated January 30, 1885, relative to Crow Creek Reservation and its settlement, referred by the President to this Department (657).

No. 14. Statement of citizens of Hughes County, Dakota, of February 3, 1885, referred to Department by Hon. John B. Raymond (764).

No. 15. Letter of S. A. Richards, Pukwana, Dak., of February 16, 1885, to Department relative to opening Crow Creek Reservation to settlement (879).

No. 16. Petition of citizens of Hughes County, Dakota, referred by Hon. John B. Raymond, relative to opening the Winnebago Reservation to settlement (no date—see No. 12).

No. 17. Similar paper, also signed by citizens of Hughes County, Dakota, referred by Hon. John B. Raymond (no date—see No. 12) (821).

No. 18. Department letter of February 25, 1885, addressed to the President, submitting draft of an order restoring to public domain certain lands within the Old Winnebago and Crow Creek Reservations in Dakota.

No. 19. Executive order of February 27, 1885, restoring lands as above requested (448).

No. 20. Letter from M. T. Garrett to Department, dated Redfield, Dak., February 17, 1885, inquiring as to opening of Old Winnebago Reservation (896).

No. 21. Department letter of March 2, 1885, to Commissioner of the General Land Office, transmitting copy of Executive order of February 27, 1885.

No. 22. Department letter of March 2, 1885, to Commissioner of Indian Affairs, transmitting copy of Executive order of February 27, 1885.

No. 23. Department letter of March 3, 1885, to General John F. Farnsworth, transmitting copy of Executive order of February 27, 1885.

No. 24. Letter of Agent Gasmann to Department, dated Crow Creek Agency, March 9, 1885, relative to Executive order of February 27, 1885 (1885-85).

No. 25. Protests of Indian Rights Association of Philadelphia, Pa., dated March 12, 1885, with inclosure, referred to Department by the President (1860).

No. 26. Letter of Commissioner of Indian Affairs to Department of March 14, 1885, requesting suspension of action by General Land Office, under Executive order of February 27, 1885 (1260).

No. 27. Communication of 17th March, 1885, addressed to Department by Senator Dawes, with inclosure (copy of which will be found with No. 25).

No. 28. Letter of Department of 17th March, 1885, addressed to Hon. Attorney-General, asking an opinion on certain questions relative to Sioux Indian lands in Dakota, with inclosures.

No. 29. Letter of Herbert Welsh, esq., of Philadelphia, Pa., dated March 21, 1885, to Department, concerning the letter of Agent Gasmann of March 9, 1885—desires to publish the same (1431).

No. 30. Further communication from Department addressed to the Hon. Attorney-General under date of March 23, 1885, upon the same subject as that of March 17, 1885—(No. 28), with inclosures.

No. 31. Protest of the clergy of the Protestant Episcopal Church against the restoration of the Old Winnebago and Crow Creek lands; no date. Received March, 1885; no date.

No. 32. Opinion of the Hon. Attorney-General, furnished March 30, 1885, in response to request of Department of the Interior of March 17, 1885 (448).

No. 33. Papers from Indian Rights Association, Philadelphia, Pa., received in March 1885 (1861).

No. 34. Letter of Hon. O. S. Gifford to Department, Canton, Dak., April 4, 1885, relative to opinion of Attorney-General of March 30, 1885 (2637).

No. 35. Telegram to Department of W. B. Hubbard, Chamberlain, Dak., April 4, 1885, relative to Crow Creek (2168).

No. 36. Letter of S. J. Moyer, dated Chamberlain, Dak., April 6, 1885; referred by the President to this Department (1780).

No. 37. Letter of Lauren Dunlap, of Huron, Dak., to this Department, dated April 6, 1885, making a statement on behalf of settlers on Old Winnebago and Crow Creek reservations (1726).

No. 38. Telegram to the Department from H. M. McDonald, dated Williamsport, Pa., April 8, 1885, asking suspension of action on Winnebago Reservation matters until he presents a brief (2309).

No. 39. Brief of H. M. McDonald referred to in foregoing telegram, with three maps inclosed (1740).

No. 40. Brief of facts prepared in the office of the Secretary of the Interior regarding the status of the Old Winnebago and Crow Creek lands in Dakota.

No. 41. Proclamation of the President of April 17, 1885, respecting the Executive order of February 27, 1885 (1991).

No. 42. Letter of S. J. Moyer to Department, dated Chamberlain, Dak., April 20, 1885, referring to his letter to the President of April 6, 1885 (see No. 36) (2069).

No. 43. Report of Commissioner of Indian Affairs to Department of April 21, 1885, relative to surveys on Old Winnebago and Crow Creek Reservations in Dakota; how the work was paid for, &c. (1992).

No. 44. Department letter of April 22, to Commissioner of the General Land Office, transmitting copy of President's proclamation of April 17, 1885 (see No. 41).

No. 45. Letter of John H. King, Chamberlain, Dak., April 23, 1885, referred to the Department by the President (2195).

No. 46. Letter of P. G. Roberts to Department, dated Kimball, Dak., April 27, 1885, relative to number of settlers on Crow Creek Reservation (2188).

No. 47. Letter of Bishop Hare to Department, dated Pierre, Dak., May 4, 1885, touching removal of settlers from Crow Creek Reservation (2331).

No. 48. Letter of Hon. Benjamin Harrison, of Senate Committee on Indian Affairs, to Department, dated Indianapolis, Ind., May 28, 1885, requesting certain information and papers relative to Crow Creek and Old Winnebago Reservation (2680).

No. 49. Letter of George R. Owen, dated Chamberlain, Dak., April 29, 1885, on behalf of settlers on Crow Creek Reservation, referred to this Department by the President (2308).

No. 50. Letter of Mrs. E. A. Birchard, dated Avoca, May 7, 1885 (with newspaper slip inclosed), concerning suffering of settlers on Crow Creek Reservation (2146).

No. 51. Letter of Hon. W. B. Allison to Department, dated Dubuque, Iowa, May 16, 1885, with inclosure noted therein, relative to situation of settlers of Crow Creek and Winnebago Reservations (2529).

No. 52. Letter of Mrs. Kidder, president of New York Indian Association, relative to restoration of lands in Old Winnebago and Crow Creek Reservations, dated May 18, 1885, referred to the Department by the President (2498).

No. 53. Letter of Hon. H. M. Teller to this Department, dated Denver, Colo., May 18, 1885, relative to settlers on Old Winnebago and Crow Creek Reservations (2692).

No. 54. Letter of M. B. McIlvaine, president of Northern New Jersey Indian Association, dated Newark, N. J., May 18, 1885, thanking the President for suspension of order throwing open Crow Creek Reservation, referred to this Department by the President (2552).

No. 55. Letter of Albert Hillert to Department, dated Canning Station, Dak., May 18, 1885, relative to discoveries of diamonds on Winnebago Reservation (2575).

No. 56. Petition of D. A. Goodsell *et al.*, addressed to Department from New Haven, Conn. (no date), desiring an investigation of the claims of Sioux Indians to the lands of Crow Creek Reservation (2495).

No. 57. Letter of Mrs. D. M. Hough, of Western New York Women's Indian Association, dated May 22, 1885, respecting Executive order affecting Crow Creek Reservation, &c., referred to the Department by the President (2574).

No. 58. Letter of C. N. Hoffman, secretary of Bryn Mawr Auxiliary of Woman's National Indian Association, of May 6, 1885, thanking the President for his action relative to Crow Creek Indian lands, referred by the President to this Department (2658).

No. 59. Letter of W. H. Parkhurst, ex-Crow Creek Indian agent, to Department, dated June 4, 1885, relative to Crow Creek lands (2793).

No. 60. Letter of W. M. Crane, York, Nebr., June 7, 1885, thanking the President for his action relative to Old Winnebago Reservation, referred to Department by the President (2911).

No. 61. Department letter of June 8, 1885, to Hon. Benjamin Harrison in reply to his letter of May 28, 1885 (see No. 48) (the inclosures mentioned in this letter will all be found among the papers transmitted herewith).

No. 62. Letter of Indian Rights Association of Philadelphia, Pa., dated June 23, 1885, inclosing proposed section to Senate bill No. 1755, with map attached (3129).

No. 63. Department letter of June 26, 1885, to Hon. John T. Morgan of Senate Committee on Indian Affairs (—).

No. 64. Letter of I. M. Bacon, secretary of Ypsilanti Woman's Indian Association, of June 16, 1885, referred by the President to this Department (3106).

No. 65. Letter from Indian Rights Association of Philadelphia, Pa., dated June 23, 1885, referring to rights of settlers on old Winnebago and Crow Creek Reservations, with map inclosed, referred by the President to this Department (3152).

No. 66. Letter of John Q. Walker, Chicago, Ill., June 25, 1885, favoring the President's action in favor of Indians on Crow Creek Reservation, &c., referred to this Department by the President (3298).

No. 67. Letter of A. M. Haviland, Crow Creek settler, dated Chamberlain, Dak., June 28, 1885, referred by the President to this Department (3262).

No. 68. Letter of Department of July 2, 1885, to Hon. John T. Morgan of Senate Committee on Indian Affairs, inclosing communication received from Philadelphia Indian Rights Association, of June 28, 1885 (see No. 62).

No. 69. Letter of Geo. R. Owen to Department dated Chamberlain, Dak., July 11, 1885, with newspaper slip relative to settlement of Crow Creek lands (3429).

No. 70. Letter of Paul Ashley dated Pukwana, July 27, 1885, relative to his settlement on Crow Creek Reservation, referred by the President to this Department (3848).

No. 71. Department letter of August 27, 1885, to Hon. Attorney-General, relative to settlers driving Government cattle from the Old Winnebago and Crow Creek Reservations.

No. 72. Department letter of August 27, 1885, with inclosures, to Hon. Secretary of War respecting removal of settlers from Crow Creek Reservation.

No. 73. Letter of Department of August 27, 1885, to Commissioner of Indian Affairs, relative to removal of settlers from Crow Creek Reservation.

No. 74. Letter of Mrs. J. O. Conrick, dated Chamberlain, Dak., November 10, 1885, relative to unfortunate condition of her family, settled on Crow Creek Reservation (5672).

No. 75. Extract from the Annual Report of the Secretary of the Interior for the fiscal year ending June 30, 1885.

No. 1.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, D. C., March 20, 1885.

SIR: I have the honor to acknowledge the receipt, by Department reference of March 6, 1885, of a resolution of the Senate, dated March 3, 1885, as follows:

"Resolved, That the Secretary of the Interior be directed to inform the Senate what, if any, changes have been made in the boundary lines of the reservation heretofore occupied by the Sioux Indians at the Crow Creek Agency in Dakota, and how much thereof, if any, has been opened for occupancy as public lands, how much remains in the occupation of said Indians, and the history of the title by which said reservation has been and still is occupied by Indians, and whether said Indians have been consulted in respect to or have consented to any change in such boundaries, together with copies of all orders and other papers in said Department concerning the same."

In response to said resolution I have the honor to state that by Executive order, dated February 27, 1885, a copy of which is herewith inclosed, very considerable changes in the boundary lines of the reservation therein referred to (there were two, commonly known as the Old Winnebago and Crow Creek Reservations), have been made by the restoration of a large portion of the territory formerly included therein, to the mass of the public domain.

Accompanying this report is a map prepared in this office, upon which the changes effected by the order in question are plainly marked. The tracts marked A and B constituted the Old Winnebago Reservation, as it existed before the issuance of the order, and those marked C and D the Crow Creek Reservation. The tracts that have been restored to the public domain are those marked A and D, and those remaining in a state of reservation are marked B and C.

The area of the Old Winnebago Reservation previous to the reduction, as ascertained by recent careful computation, was 417,988.37 acres and that of the Crow Creek Reservation 210,263.37 acres, a total of 628,151.74 acres. That portion of the Old Winnebago Reservation restored to the public domain by the Executive order of February 27, 1885 (A), contains 331,980.17 acres, and of the Crow Creek Reservation (D) 155,966.96 acres; total area restored to public domain, 487,947.13 acres.

The area of the tracts excepted from the operation of the Executive order, and left to the use and occupancy of the Indians, is 140,304.61 acres. Of this area 86,008.20 acres fall within the Old Winnebago, and 54,296.41 acres within the Crow Reservation.

Besides the two tracts B and C, the following described tracts, heretofore allotted to the Indians, and which fall within the restored tracts A and D, are excepted from the operation of the Executive order, viz.:

In Township 105 N., R. 71 W.—SE. fractional $\frac{1}{4}$ Sec. 4; Sec. 9; W. $\frac{1}{2}$ SW. $\frac{1}{4}$ Sec. 10; W. $\frac{1}{2}$ NW. $\frac{1}{4}$ Sec. 14; SE. $\frac{1}{4}$ Sec. 14; SW. $\frac{1}{4}$ Sec. 14; N. $\frac{1}{2}$ Sec. 15; S $\frac{1}{2}$ SE. $\frac{1}{4}$ Sec. 15; fractional S. $\frac{1}{2}$ SW. $\frac{1}{4}$ Sec. 15; fractional Sec. 16; fractional Sec. 22; fractional Sec. 23; SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and Lot 1, Sec. 24; fractional N. $\frac{1}{2}$ Sec. 25; in all 2,569.19 acres.

In Township 106 N., R. 69 W.—Fractional E. $\frac{1}{2}$ Sec. 5; W. $\frac{1}{2}$ Sec. 9; N. $\frac{1}{2}$ Sec. 15; N. $\frac{1}{2}$ Sec. 16; Sec. 17; fractional Sec. 18; in all 2,536.84 acres.

In Township 106 N., R. 70 W.—Sec. 10; Sec. 11; S. $\frac{1}{2}$ SE. $\frac{1}{4}$ Sec. 13; Sec. 14; W. $\frac{1}{2}$ Sec. 15; W. $\frac{1}{2}$ and SE. $\frac{1}{4}$ Sec. 22; S. $\frac{1}{2}$ NW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ Sec. 26; Sec. 27; N. $\frac{1}{2}$ Sec. 34; N. $\frac{1}{2}$ Sec. 35; W. $\frac{1}{2}$ NE $\frac{1}{4}$ and NW. $\frac{1}{4}$ Sec. 36; in all 5,200 acres.

In Township 107 N., R. 69 W.—Fractional S. $\frac{1}{2}$ Sec. 19; fractional N. $\frac{1}{2}$ Sec. 30; in all 630.02 acres.

In Township 108 N., R. 74 W.—W. $\frac{1}{2}$ SE. $\frac{1}{4}$ and E. $\frac{1}{4}$ SW. $\frac{1}{4}$ Sec. 21; S. $\frac{1}{2}$ SW. $\frac{1}{4}$ Sec. 22; NW. $\frac{1}{4}$ and Lots 1, 2 and 3, Sec. 27; fractional NE. $\frac{1}{4}$ and Lots 2, 3 and 6, Sec. 28; in all 677.95 acres.

In Township 109 N., R. 72 W.—E. $\frac{1}{2}$ Sec. 19; Sec. 20; W. $\frac{1}{2}$ Sec. 28; Sec. 29; E. $\frac{1}{2}$ Sec. 30; Sec. 31; Sec. 32; in all 3,520.80 acres.

In Township 109 N., R. 73 W.—SE. fractional $\frac{1}{4}$ and Lot 3, Sec. 35; and SW. $\frac{1}{4}$ Sec. 36; in all 257.40 acres.

The total area of these allotments is 15,392.20 acres, which, added to the area of the reserved tracts or diminished reserves B and C, makes a total of 119,696.81 acres remaining in the occupation of the Indians of the Crow Creek Agency; leaving the area of the tracts actually restored to the public domain, at 472,554.93 acres.

All tracts of land which have heretofore been selected or occupied by Indians, under treaty stipulation, if any such there be, are reserved to the Indians by the Executive order.

Following the interrogatories, in the order in which they occur in the Senate resolution, the history of the title by which the lands embraced within the limits of said reservations have been and still are occupied by Indians, would probably find place here; but inasmuch as the status of these lands, as understood by this office, and the history of the various acts by which they were originally reserved, and have since been held for Indian occupancy, are set out in former reports to the Department, copies of which I observe are with the papers referred to me by the Department with the Senate resolution, I deem it unnecessary to prolong this report by a repetition of the views therein presented; and I therefore beg leave to refer to those reports as showing the position taken and steadfastly held by this office respecting the status of the so-called Old Winnebago and Crow Creek Reservations.

The reports are dated April 12, and May 6, 1881, respectively. The copies of said reports to which I refer were prepared in this office for Hon. John B. Raymond, Delegate from Dakota, and transferred to him November 13, 1884. They are, with his letter to the Department of January 27, 1885, herewith returned.

In addition to these I invite attention also to the inclosed copy of a letter from this office (dated January 15, 1881), to General W. T. Sherman, one of the commissioners on the part of the United States who negotiated the treaty of 1868 with the various bands of Sioux, and to his reply thereto dated January 17, 1881.

The following papers received by Department reference, with the Senate resolution, are herewith returned, together with copies thereof prepared for transmittal to the Senate:

(1) Brief on the status of the Old Winnebago and Crow Creek Reservations, by Mr. Belt, chief of Indian Division, office of the Secretary of the Interior.

(2) Brief prepared by Mr. Campbell, clerk in the Assistant Attorney-General's Office, submitted to the Secretary of the Interior.

(3) Brief by Mr. Luce, clerk in the office of the Assistant Attorney-General.

(4) Argument by Judge N. J. Edgerton.

(5) Memorandum by argument by J. H. Teller.

(6) Memorandum of argument supposed to be by General Farnsworth.

(7) Brief of W. J. Vance, chief Indian Division, office Secretary of the Interior.

Other papers referred at the same time, being letters of inquiry and petitions from citizens praying for the opening of said reservations to white settlement, are also returned; but as they are of like tenor with hundreds of letters received and answered by this office within the past year or two, and have no special bearing upon the subject under consideration except to indicate that there has been a very strong desire on the part of many people to have the lands in question opened to settlement, I do not think it is required by the Senate resolution that copies thereof should be furnished.

A pamphlet issued by this office November 1, 1882, containing (pp. 19, 21, 22, and 23) the description of the Crow Creek and Winnebago Reservations, as selected by Clark W. Thompson, Superintendent of Indian Affairs, and the sundry Executive orders referred to in the several reports, briefs, and arguments herein referred to, is inclosed herewith.

In reply to the final interrogatory contained in the Senate resolution, I have to say that I am not aware of any steps having been taken to secure the consent of the Indians to the recent change in the boundaries of said reservations or that they were consulted in the matter of said change.

It may be proper to state here that under an agreement made with the Indians of the Crow Creek Agency, November 13, 1880, approved by the Secretary of the Interior January 3, 1881, the Chicago, Milwaukee and Saint Paul Railway Company has a right of way through the Crow Creek Reserve from a point in the SW. $\frac{1}{4}$ of Sec. 22, T. 104 N., R. 70 W., to the east bank of the Missouri, a distance of 26,396 feet and covering an area of 121 $\frac{19}{100}$ acres; also a tract of 188 acres for depot grounds on said reserve in Secs. 10 and 15, T. 104 N., R. 71 W., in respect of which said company has paid to the Department for the use of the Sioux Indians the sum of \$1,424.76, as per terms of said agreement, which amount has been deposited in the Treasury pending Congressional action thereon.

Furthermore, and in conclusion of this report, I respectfully invite attention to the

inclosed copy of a protest by the clergy of the Protestant Episcopal Church against the opening of the reservation in question to white settlement. The paper was referred to the Department by the President.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, January 15, 1881.

GENERAL: In the second article of the treaty of April 29, 1868, with the Sioux Indians (Stats. 15, p. 635), the United States "agrees that the following district of country to wit: commencing on the east bank of the Missouri River where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank opposite where the northern line of the State of Nebraska strikes the river, thence west across said river and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of beginning, *and in addition thereto all existing reservations on the east bank of said river*, shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them."

When this treaty was concluded a portion of the Two Kettle and Lower Yanktonais bands of Sioux Indians were occupying what is now known as Crow Creek Reservation, including the old Winnebago Reservation. In the fall of 1868 the Two Kettle Indians removed, leaving the Yanktonais sole occupants.

A question has arisen as to whether the old Winnebago Reservation and the Sioux Reservation south of it—designated on the map herewith—were intended by the commissioners on the part of the United States who concluded the treaty of April 29, 1868, to be embraced by the terms, "*and in addition thereto all existing reservations on the east bank of said river.*"

The object of this letter is to request that you will advise this office as to what was your understanding of the matter, and whether any, and, if so, what assurances, so far as you may recollect, were given to the Indians in question as to their retention of the lands embraced in said reservation. An early reply will be appreciated.

Very respectfully, your obedient servant,

E. M. MARBLE,
Acting Commissioner.

General W. T. SHERMAN,
Headquarters of the Army, Washington, D. C.

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., January 17, 1881.

SIR: I beg to acknowledge receipt of your letter of January 15, and in answer to say that I was one of the seven commissioners who treated with the various families and tribes of Sioux in the years 1867, '68, and '69, and that I, as such commissioner, signed the treaty of April 29, 1868, setting apart from the vast public domain the territory north of Nebraska and west of the Missouri River described in said treaty.

We visited the Yanktonais and Two Kettles at the old agency of Crow Creek, at Fort Thompson, below Fort Sully, and had a talk with them at Fort Sully. We also visited some of the same Indians at Burleigh's Agency, on the east bank of the Missouri River, lower down, with whom we conferred, and my recollection is that the commissioners impressed on all the Indians the great advantage to themselves to have a clearly well-defined territory set apart for their use, and for the use of such other tribes as could live in harmony with them.

But Indians always change their location grudgingly, and, therefore, the clause confirming to them the then small reservations on the east bank of the river was inserted in the treaty. I think at that time we had before us a map, furnished by the Indian Bureau (the commissioner, Mr. Taylor, being president of commission), delineating the reservations in question; but my own preference and purpose were to treat these small

reservations as temporary, to be given up as soon as the Indians could be induced to cross over and live on the west bank.

I think a journal of our proceedings was kept and returned to the Interior Department, which ought to embrace the proceedings at Fort Sully, in October, 1867, I think, which would contain contemporaneous evidence of the intention of the parties at that time.

Senator Henderson, also a member of that commission, drew up the report, which all the commissioners signed, a sort of compromise report, for the individual commissioners varied widely in opinion at the time. Nevertheless the treaty entitles the Sioux to compensation when the paramount interest of the United States compels them to relinquish their reservations on the east bank of the Missouri River.

I have the honor to be your obedient servant,

W. T. SHERMAN,
General.

Hon. E. M. MARBLE,
Acting Commissioner Indian Affairs, Washington, D. C.

Brief on the present status of the old Winnebago and Crow Creek Reservations.

Mr. SECRETARY: I have examined the papers filed by Hon. John B. Raymond relative to the present status of the lands embraced within the limits of the "Crow Creek" and the "Winnebago" Reservations in Dakota.

I have also examined the several reports from the Indian Office dated respectively April 12, May 6, May 18, and June 16, 1881, in all of which it is held that said lands are part of the Sioux Reservation, as defined under the Sioux treaty of April 29, 1868 (15 Stats., p. 635), for the reason as claimed that said lands were existing reservations on the east bank of the Missouri River at the date of said last-named treaty, and are covered by the words of article 11 of said treaty, which, after describing the reservation boundaries west of the Missouri River, reads as follows:

"And in addition thereto all existing reservations on the east bank of said river shall be, and the same is, set apart for the absolute and undisputed use and occupation of the Indians herein named," &c. (*Ibid.*, 636.)

I find that these several reports, with the questions presented in them, were considered by Mr. L. A. Luce, clerk in Assistant Attorney-General's office, in report under date of July 13, 1881, wherein he concurred in the opinion expressed by the Commissioner of Indian Affairs that the said "Old Winnebago and Old Sioux Reservations in the Territory of Dakota * * * are the ones referred to in the second article of the treaty of April 29, 1868 (15 Stats., 635), and that they belong in common to that part of the Sioux Nation of Indians that joined in said treaty, and other friendly Indians who have since been admitted among them in accordance with said article."

Following this opinion, I find that on July 20, 1881, Mr. Secretary Kirkwood, in letter to the Commissioner of Indian Affairs, held as follows:

"I return herewith the papers which accompanied your communications dated respectively April 12, May 6, June 16, and July 12, 1881, in relation to the status of the Old Winnebago and the Crow Creek Reservations on the east side of the Missouri River, and the reduction of the Crow Creek Reservation by obtaining the consent of the Sioux to the cession of a portion of the lower part thereof.

"It is deemed advisable by the Department that negotiations should be entered into with the Indians for the cession of the land indicated, but such negotiations must be had with the Sioux Nation and not with the particular bands located east of the Missouri River. It is possible that the negotiation may be effected at the meeting of Sioux chiefs to be held in this city in August next, and to that end two or three chiefs of the Sioux bands east of the river should be present at said meeting. Should the matter not be arranged at that time a commission can be sent out to the reservation afterward."

The land involved in the question under consideration is within the boundaries of the cession of territory made to the United States by the Yankton tribe of Sioux or Dakota Indians, by treaty ratified February 26, 1859. (11 Stats., 743.)

By the first section of the act of February 21, 1863, it is provided:

"That the President of the United States is authorized to assign to and set apart for the Winnebago Indians a tract of unoccupied land beyond the limits of any State, in extent at least equal to their diminished reservation, the same to be well adapted for agricultural purposes. And it shall be lawful for the President to take such steps as he may deem proper to effect the peaceful and quiet removal of the said Indians from the State of Minnesota, and to settle them upon the lands which may be assigned to them under the provisions of this act." (12 Stats., 658.)

By the first section of the act of March 3, 1863, it is provided:

"That the President is authorized and hereby directed to assign to and set apart for the Sisseton, Wahpaton, Medawakanton, and Wahpakoota bands of Sioux Indians a tract of unoccupied land, outside of the limits of any State, sufficient in extent to enable him to assign to each member of said bands (who are willing to adopt the pursuit of agriculture) eighty acres of good agricultural lands, the same to be well adapted to agricultural purposes. (*Ibid*, 819.)

No formal Executive order appears to have been issued setting aside the reservations required by the two acts of Congress. It is found, however, that Clark W. Thompson, Superintendent of Indian Affairs, acting under direction of the Indian Office, did set apart two tracts of land for and located said Indians thereon, describing said tracts in his report, dated at Usher Landing, July 1, 1863, to the Commissioner of Indian Affairs, and sending plat and field notes of the surveys made, as follows:

"The reservation for the Sioux of the Mississippi is bounded as follows, to wit: Beginning at a point in the middle channel of the Missouri River, opposite the mouth of Crow Creek, in Dakota Territory; follow up said channel of the Missouri River about fourteen (14) miles to a point opposite the mouth of Sneotka Creek; thence due north, and through the center of the stockade surrounding the agency buildings for the Sioux of the Mississippi and Winnebago Indians, about 3 miles, to a large stone mound; thence due east 20 miles; thence due south to the Cedar Island River or American Creek; thence down the said river or creek to the middle channel of the Missouri River; thence up said channel to the place of beginning.

"The reservation for the Winnebago Indians is bounded as follows, to wit: Beginning at a point in the middle channel of the Missouri River where the western boundary of the Sioux of the Mississippi reserve intersects the same; thence north, and through the center of the stockade surrounding the agency buildings of the Sioux of the Mississippi and Winnebago Indians, and along said boundary line to the northern boundary of said Sioux reserve, thence along the northern boundary of said Sioux reserve ten (10) miles; thence due north twenty miles; thence due west to the middle channel of Medicine River; thence down said river to the middle channel of the Missouri River; thence down said channel to the place of beginning." (Indian Office Report, 1863, p. 318.)

It must be borne in mind that we are considering the status of two separate and independent reservations, created under authority conferred by two separate and distinct acts of Congress, for two tribes or bands of Indians in no way connected with each other—one the Winnebago; the other, certain bands of the Sioux tribe of Indians. Neither the separate laws, the different reservations, nor the distinct tribes and bands of Indians, have up to this point any necessary relation to each other. The fact that the reservations were set apart at one and the same time by one and the same person, and that said reservations adjoin each other, should not confuse and mislead us into treating them as one reservation.

The reservation described above by metes and bounds, and set apart for the Winnebagoes, is reported to contain 416,915 acres; the one described as above and set apart for the specified bands of Sioux Indians is said to contain 203,397 acres.

These two reservations (?) adjoin each other and it is believed that they are covered by one plat, but their separate outboundaries are so described as to show the area of each separately.

It appears that the Winnebago Indians remained upon the reservation upon which they had been thus located until 1865, when, by article 1 of the treaty of March 8, 1865, proclaimed March 28, 1866, it was ceded to the United States in the following words:

"The Winnebago tribe of Indians hereby cede, sell, and convey to the United States all their right, title, and interest in and to their present reservation in the Territory of Dakota, at Usher's Landing, on the Missouri River, the metes and bounds whereof being on file in the Indian Department." (14 Stats., 671.)

The consideration received by the Winnebagoes for the above cession was a reservation in the Territory of Nebraska, described in the second article of the same treaty.

After the removal of the Winnebagoes from the reservation ceded to the United States by this last-named treaty, the better portions of the lands thus vacated were occupied by Indians of the bands of Yanctonai, Two Kettle, and Brule bands of Sioux, who were wandering about in that section of the country. (See Indian Office Report of 1867, p. 244, and of 1868, p. 189.) But they congregated on the lands of these two old reservations of their own motion, so far as can be found, without authority by this Department.

The fact that an agent for the "Upper Missouri Sioux" was located at the old Crow Creek Agency probably drew them to that locality.

The Indians, however, remained, upon the land, and were there at the date of the treaty of 1868 with the different tribes of Sioux Indians.

It seems to have been claimed by the Indians, and held by the Indian Office and by this Department, that said lands set apart on July 1, 1863, under authority of the act

of February 21, 1863, for the Winnebago Indians, were in a state of reservation for Indian purposes at the date of the treaty of 1868, and were therefore, in contemplation of the provision of the second article of said treaty, an "existing" reservation on the east bank of the Missouri River, and by said treaty made a part of the great Sioux reservation thereby created.

We are therefore brought to the consideration of the question: Were the Winnebago lands in a state of reservation and as such an "existing reservation" at the date of the treaty of 1868?

We have seen as above stated that said lands were ceded to the United States by the Winnebago Indians in the treaty of 1865. (14 Stat., 671.)

It is claimed that because no Executive action had been taken revoking the reservation created in 1863, that the lands were still in a state of reservation at the date of the treaty of 1868, notwithstanding the cession thereof made to the United States by the Winnebagoes in the treaty of 1865. Why was any such Executive action necessary? Did not the Indians cede the land to the United States by treaty? Is not that treaty the supreme law of the land? And did it not convey the title to said lands too, and in the United States? Surely it will not be denied that the treaty accomplished this, that it repealed and set aside the Department action of July 1, 1863, abolished the reservation, and that it consequently accomplished the extinguishment of the title of said Winnebago Indians to said lands.

The status of the land is however further complicated by the following:

"EXECUTIVE MANSION, *January 11, 1875.*

"It is hereby ordered that the tract of country in the Territory of Dakota lying within the following-described boundaries, viz, commencing on the east bank of the Missouri River, where the forty-sixth parallel of north latitude crosses the same; thence east with said parallel of latitude to the ninety-ninth degree of west longitude; thence south with said degree of longitude to the east bank of the Missouri River; thence up and with the east bank of said river to the place of beginning, be, and the same hereby is, withdrawn from the sale and set apart for the use of the several tribes of Sioux Indians as an addition to their present reservation in said Territory.

"U. S. GRANT."

The boundaries described include the land of both the old reservations under consideration. If said lands already belonged to the great Sioux Reservation under article 11 of treaty of 1868, why should they be again "set apart for the use of the several tribes of Sioux Indians as an addition to their present reservation in said Territory?"

On August 9, 1879, President Hayes issued an Executive order restoring certain of the lands withdrawn from sale and set apart for use of the Sioux Indians by Executive orders dated January 11, March 16, and May 20, 1875.

This order, which is of considerable length, excepts from such restoration the lands within the limits of the old Winnebago and Crow Creek Reservations, thus leaving said last-named lands within a state of reservation "for the use of the several tribes of Sioux Indians as an addition to their present reservation in said Territory."

It is a well-known fact that President Grant's order of January 11, 1875, was made to keep the whisky traffic, &c., at greater distance from the Sioux Indians, and not with the intention of giving more land to the Sioux Indians, whose treaty territory is very great.

The fact, however, exists that the lands of the old Winnebago and old Crow Creek Reservations are yet in a state of reservation by virtue of said Executive order.

The causes requiring the issuance of that and other Executive orders having so far ceased as to permit restoration of all of the lands reserved thereby, except those within the limits of the two old reservations, why should not those lands also be restored? It appears to me that such an Executive order restoring the lands within the limits of the old Winnebago Reservation would clear it of all legal incumbrances, and leave the title thereto in the United States where it was placed by the Winnebago treaty of 1865. The Sioux Nation of Indians has no just claim to the lands under any treaty provision.

If said lands shall be restored by Executive order they will become public lands, subject to pre-emption and homestead entry under sections 2257, 2258, and 2239, Revised Statutes.

The first section referred to provides that—

"All lands belonging to the United States to which the Indian title has been or may be hereafter extinguished shall be subject to the right of pre-emption, under the conditions, restrictions, and stipulations provided by law."

Acting under the belief that said lands formed a part of the Great Sioux Reservation created by treaty of 1868, allotments have been made to a number of Indians thereon, in accordance with the terms and provisions of said treaty of 1868.

As the lands are shown not to form any part of the Great Sioux Reservation reserved by the treaty of 1868, there is no warrant or authority for any allotments thereof to any Indians under that treaty, except as on public lands under the provisions of fourth paragraph of article 6 thereof, wherein the following is found:

"And it is further stipulated that any male Indians over eighteen years of age, of any band or tribe that is or shall hereafter become a party to this treaty, who now is or who shall hereafter become a resident or occupant of any reservation or territory not included in the tract of country designated and described in this treaty for the permanent home of the Indians, which is not mineral land, nor reserved by the United States for special purposes other than Indian occupation, and who shall have made improvements thereon of the value of two hundred dollars or more and continuously occupied the same as a homestead for the term of three years, shall be entitled to receive from the United States a patent for one hundred and sixty acres of land including his said improvements, the same to be in the form of the legal subdivisions of the surveys of the public lands." (15 Stats., 637.)

Under this clause of the treaty the allotments already made, as well as any that may hereafter be made to said Sioux Indians on said lands, are secured to them, to the extent of 160 acres at least.

It seems only necessary to revoke President Grant's Executive order of January 11, 1875, to clear away all incumbrances remaining upon the lands of the old Winnebago Reservation, to restore them to the public domain as public lands subject to pre-emption and homestead entries.

Having reached the foregoing conclusion on the old Winnebago lands, we will now resume consideration of the status of the old Crow Creek lands.

The bands of Sioux Indians which had been located on the lands adjoining and on the south of the old Winnebago Reservation did not find it a desirable location, and in 1866 a new reservation was selected for them in Nebraska, on the Niobrara River, and they were moved thither July 12, 1866. (See Indian Office Report, 1866, p. 34.) Here they appear under the title of Santee Sioux, comprising what are known in treaties and in the law of March 3, 1863, above referred to, as the Sisseton, Wahpaton, Medawakanton, and Wahapakoota bands. (*Ibid* 45 and 212.)

Those newly-selected lands were directed by the President in Executive order of February 27, 1866, to be withdrawn from market and reserved for the purposes indicated in the report of the Secretary of the Interior of the day previous, viz:

"Until the action of Congress be had with a view to the setting apart of these townships (4) as a reservation for the Santee Sioux Indians now at Crow Creek, Dak."

Additions and changes were made in this new reservation by subsequent Executive orders. (See pamphlet Existing Indian Reservation, pp. 36-38.)

No subsequent legislation by Congress setting aside said new location as a reservation for those Indians is found. The law cited on the records and reports of the Indian Office for creating this new reservation by the Executive is the act of March 3, 1863. (12 Stat., 819.)

This is the same law under which the Indian Bureau selected and designated the lands at Crow Creek as a reservation for the same Indians. It is true the President never formally designated by an Executive order or otherwise, so far as can be found, the land selected at Crow Creek as a reservation for the Indians mentioned in the law of March 3, 1863. If the action of the Indian Office in making this selection and reservation is held to be the action of the President, who by the law "is authorized and hereby directed to assign to and set apart * * * a tract of unoccupied lands" for the Indians named therein, did not such action exhaust the power of the President under said law? If it did, then there was no existing authority of law for the selection of the new reservation in Nebraska. This seems to be intimated in the correspondence withdrawing said lands, as further action by Congress is stated to be requisite to establish the reservation. But we have not found any such future legislation. Where then is to be found the legal authority for the existence of this new reservation?

By reference to report of the Indian Office of May 18, 1866, to the Secretary of the Interior, the following will be found, viz:

"The Crow Creek Reservation was selected under authority of the act of Congress of March 3, 1863, providing for a removal of the Indians to a tract of 'good agricultural land, well adapted for agricultural purposes,' outside of the limits of any State. The reservation at Crow Creek providing after three years' trial not to be such a tract, it was deemed to be within the power and duties of the President, under the law, to provide another tract which fulfill its requirements for the use of the Indians." (Indian Office Report, 1866, p. 320.)

In a similar report of June 4, 1866, we find the following:

"The selection of this reservation and the location of the Indians on the same is done under the authority conferred by the act of Congress of March 3, 1863 (Statutes at Large,

vol. 12, p. 819), providing for the selection of a tract of land 'well adapted to agricultural purposes' 'outside of the limits of any State.' The reservation at Crow Creek was first selected, but proving, after three years' trial, not to be adapted for the purposes of a reservation, has been abandoned, and the present location selected." (*Ibid.*, 233.)

These statements and the fact that to this day the reports of the Indian Office set up the act of March 3, 1863, as the authority for creating the Niobrara Reservation in Nebraska, clearly indicate that there is no other authority of law for its existence as such reservation, and none other is found. It may be claimed that its existence is recognized by the fourth paragraph of article 6 of Sioux treaty of 1868 (of which see hereafter). But the law of March 3, 1863, is given as the authority for the creation and continuance as a reservation of the original lands selected at Crow Creek. That law authorizes the President to assign and set apart "a tract of unoccupied land," &c.; it does not authorize the setting apart of two separate tracts or two reservations. The President did not actually and formally set apart the tract first selected; but did by Executive orders assign and set apart the Niobrara tract last selected as the reservation. The Commissioner of Indian Affairs reports that the first location was *abandoned* for the Niobrara tract, which latter tract has the sanction of the President for a reservation for the Indians specified in the act of March 3, 1863.

In view of these facts, which of the two tracts of land rests upon the law of March 3, 1863, as the authority for its legal existence as a reservation—the one at Crow Creek, in Dakota, or the one on the Niobrara, in Nebraska? If the latter, then the former would seem to have no legal authority for existence as a reservation, unless some other authority can be found for it.

In the treaty of February 19, 1867, with the Sisseton and Wahpaton bands of Sioux Indians (15 Stat. 505), reference is made in several instances to the Crow Creek Reservation by way of distinguishing the Indians making that treaty from those of the same bands who were "sent to the Crow Creek Reservation." Mr. Luce, in his paper, held such references as not only recognizing the Crow Creek, but also the Winnebago Reservation as existing reservations, stating that both were known at that time as the Crow Creek Reservation.

The agency for the Winnebagoes and Sioux, when they were both on these adjoining lands, was known as the Crow Creek Agency; but the alleged reservations were always known and designated as the "Winnebago Reservation" and the "Crow Creek Reservation."

It cannot be held that mere incidental reference in a treaty to a locality as a reservation, without any intention to create such a reservation, carried with it any authority to change the status of the lands in said locality. If the lands were commonly known by that designation or name, but had no legal status as a reservation, such reference to them in the treaty could not and did not change their then existing status.

It will be argued that the Indian Bureau was treating said lands as in a state of reservation, and therefore a liberal construction of the treaty of 1868 will entitle the Sioux Nation thereto. There is some slight ground for this position, but the argument is as strong on the other side. When the Sioux Indians were moved from Crow Creek to Niobrara we find that the Commissioner of Indian Affairs reported that the Crow Creek lands had been found unsuitable and were abandoned. An agency had been established there for the Sioux and Winnebagoes, and it is presumed that some one was left there to look after the property remaining behind; this, and the fact that wandering Indians of the Sioux tribes were gathering upon said lands, perhaps led many to assume that said lands were still held as reservations, and some of the agents and employes without full knowledge of the fact of the abandonment of said lands may have considered it in a state of reservation. While, therefore, it may have had somewhat the status of a *quasi* reservation, it was not legally or properly an "existing reservation" at the date of the Sioux treaty of 1868, and the Sioux Nation, in my opinion, acquired no title to those lands by said treaty.

If there were no legally "existing reservations on the east bank of said river" (Missouri) at the date of the treaty of 1868, the most liberal construction of that treaty will not entitle the Sioux Nation of Indians to any lands on that bank of the river.

I am therefore inclined to the opinion that all legal and also all equitable incumbrances upon these lands, except such as may be upon those portions improperly allotted to Indians, may, as in the case of the old Winnebago lands, be cleared away by an Executive order canceling or annulling the Executive order of January 11, 1875.

As there is no legal authority for the allotments made to Indians on these lands, such allotments should be canceled; but the equitable interest acquired by the Indians therein should be secured to them as far and as fully as practicable, either under the provisions of the fourth paragraph of article 6 of the treaty of 1868, quoted on page 3 of this brief, or under the general laws for homesteads to Indians (act March 3, 1875, 18 Stat., 402; act July 4, 1884, pamph. laws, 1883-'84, p. 98.

It would seem that such equitable interests can be better secured to the Indians under the general Indian homestead laws, as the title to lands acquired under such laws by Indians is not subject to alienation, &c.

Respectfully submitted.

R. V. BELT,
Chief Division Indian Affairs.

Brief by Mr. Campbell, law clerk in the office of the Assistant Attorney-General, Department of the Interior.

Land is within boundaries of cession to the United States by Yankton Sioux treaty ratified February 26, 1859. (11 Stat., 743.)

Section 1, act February 21, 1863, authorized the President to set apart a tract of unoccupied land beyond the limit of any State for the Winnebago Indians. (12 Stat., 658.)

Section 1, act of March 3, 1863, gave the same authority as to the Sisseton, Wahpeton, and other bands of Sioux. (*Id.*, 819.)

No formal Executive order issued, but Superintendent Thompson, under direction of Indian Office, did set apart two tracts of land for said Indians and located them thereon, in summer of 1863.

The Winnebagoes remained upon the reservation upon which thus located until 1865, when by article 1 of treaty of March 8, 1865 (14 Stat., 671), they ceded it to the United States, the consideration being a reservation in the Territory of Nebraska. The lands vacated by them were then occupied to some extent by wandering bands of Yanktonais, Two Kettle, and Brule bands of Sioux, on their own motion and without authority from this Department.

Were the Winnebago lands in reservation at the date of the treaty of April 29, 1869 (15 Stat., 635), so as to come within the terms of article 2 of said treaty, relative to "all existing reservations on the east bank of said river" (Missouri)?

I think not. The treaty of 1865 restored the lands to the public domain, taking them out of whatever of reservation resulted from the action of Superintendent Thompson in 1863, and this even though there was no Executive action following the treaty. The treaty itself extinguished whatever of Indian title there was, and abolished the reservation.

By Executive order of President Grant, under date of January 11, 1875, the lands covered by both the reservations in question were withdrawn from sale and set apart for the use of the several tribes of Sioux Indians, as an addition to their present reservation.

This Executive order must have been made upon the theory that the lands were not reserved under the treaty of 1869, for if they had been, the order was unnecessary.

August 9, 1879, President Hayes by Executive order restored certain lands set apart for use of Indians by Executive orders of January 11, March 16, and May 20, 1875. His order excepted the lands within the Old Winnebago and Crow Creek Reservations, and therefore left them in the condition placed by the order of President Grant, *i. e.*, in reservation.

Consequently all that is necessary to restore the Winnebago lands is an Executive order, and since they are no longer occupied by the Indians for whom they were set apart, there would seem to be no good reason why they should not be restored.

The other or more southerly of the two reservations in question was not found desirable by the Indian bands for which it was set apart, and in 1866 a new reservation was selected for them by order of the President, dated February 27, 1866. This order was made to operate until the action of Congress, with a view to setting apart said lands for said Indians.

To this day there has been no action by Congress.

The Executive order was made under the provisions of the act of 1863, the same act under which the lands in question were set apart, which act authorized the President to set apart a tract.

This reservation was not made by order of the President (but was by order of the Commissioner of Indian Affairs), while that in Nebraska was by formal order of the President.

Both actions being under the same law, which provided for the setting apart of a tract, one of two interpretations seems necessary: First, that the second reservation (that in Nebraska) being by formal order of the President in effect nullified the first and rendered it as if it had never been made; or, second, the law provides for the reservation of a tract—not tracts; and therefore, even if the first was a legal reservation, it, by the operation of the order of 1866 creating another, ceased to be such, and was, without further

action, released from reservation and restored to the public domain. Either of these interpretations would take the lands out of the requirements and scope of the treaty of 1868, and leave them public lands until again withdrawn by the order of President Grant in 1875. The first of these is the view taken by Mr. Belt.

JULY 13, 1881.

Mr. SECRETARY: In compliance with your verbal instructions, I have examined the reports of the Commissioner of Indian Affairs, dated respectively April 12, May 6, and June 16, 1881, concerning the title to the Old Winnebago and Old Sioux Reservations in the Territory of Dakota, and I fully concur in the opinion therein expressed, to the effect that said reservations are the ones referred to in the second article of the treaty of April 29, 1868 (15 Stats., 635), and that they belong in common to that part of the Sioux Nation of Indians that joined in said treaty, and other friendly Indians who have since been admitted among them in accordance with said article.

It is true that no formal Executive order was ever issued setting apart these reservations east of the Missouri River, but the President was authorized by the act of February 21, 1863 (12 Stats., 658), to assign to and set apart for the Winnebago Indians a tract of unoccupied land beyond the limits of any State, &c., and by act of March 3, 1863 (*ibid.*, 819), the President was authorized and directed to do the same for the Sisseton, Wahpaton, Medawakanton, and Wahpakota bands of Sioux Indians. It appears from the Indian Office report of 1863 that Clark W. Thompson, Superintendent of Indian Affairs, acting under instructions from the Indian Office, hence, in contemplation of law, by authority of the President, set apart the Old Winnebago Reservation, designated its boundaries, and made a plat thereof, to which reservation the Winnebagoes were removed; that at the same time he set apart a reservation adjoining the former one, and, as I understand the matter, by authority of the act of March 3, 1863, upon which to locate certain bands of Sioux Indians (the bands mentioned in said act of March 3, 1863) that had engaged in the massacre of 1862, which latter reservation he had also platted, and that he forwarded to the Office of Indian Affairs a connected plat of these two reservations, since which time the lands embraced in the boundaries mentioned by him have been held and treated by the Government as Indian reserves. (See Indian Office report for 1863, page 303, *et seq.*, especially pages 318 and 319; *ibid.*, for 1873, pages 244 and 246.)

I find by reference to article 1, treaty of March 8, 1865 (14 Stats., 617), with the Winnebago tribe of Indians that the old Winnebago Reserve was recognized and treated as an existing reservation, and there is no record of its restoration to the public domain; also, that by article 4 of the treaty of February 19, 1867, with the Sisseton and Wahpaton bands of Dakota or Sioux Indians (15 Stats., 505), the Crow Creek Reservation, by which name the two reserves above mentioned were then called, was recognized as an existing reservation. (This latter treaty seems to show that the reserve set apart by Thompson at Crow Creek in 1863, the old Sioux Reserve, was thus set apart by virtue of the act of March 3, 1863.)

The treaty of October 20, 1865 (14 Stats., 735), between the United States and the Yanktonai band of Sioux, does not set apart any reservation, nor mention any. The fourth article provides that the band shall withdraw from the routes overland then established or thereafter to be established "through their country." This I take to mean the country then occupied by them. At all events it cannot mean a country set apart for their exclusive use, for no such was then recognized by the Government. It may be true, as stated by Captain Dougherty in his report of May 30, 1881, that these Indians were induced to go to the Old Winnebago and Old Sioux Reserves after the treaty of 1865, but that treaty does not mention said reserves, nor recognize said Indians as having any title therein.

The fifth article provides for the location of individual Yanktonai Sioux on lands claimed by the band, and for their protection in such location, and for aid from the Government under certain circumstances.

This article is indefinite as to the territory within which the locations should be made. The fact is that this was a sort of treaty of peace, in which no rights in real estate or lands were ceded, granted, or vested. The Yanktonais, or Indians at Crow Creek Agency, cannot lawfully claim exclusive right to land occupied by them by virtue of this treaty. What individual protection is required under this treaty I am unable to say, as I do not know what has been done under the provision of the fifth article.

Now, unless these two reservations are the ones referred to in article 2 of the treaty of 1868, the stipulation that in addition to the lands set apart west of the Missouri River "all existing reservations on the east bank of said river shall be, and the same are hereby, set apart for the absolute and undisturbed use and occupation of the Indians herein named" (among whom were the Yanktonais) is without any meaning whatever, for the only other reservation on the east bank of the river in the Territory of Dakota was the Yank-

ton, about 100 miles below, which was secured to the Yankton Indians by treaty of April 19, 1858 (11 Stats., 743), in their own right, and the Yanktons did not join in the great treaty of 1868. Consequently the Yankton Reservation was not one of those referred to in the treaty last named. The fact that the Winnebago and Old Sioux Reserves were recognized by the Government as existing Indian reservations at the time of the making of the treaty of 1868 leaves no doubt in my mind that these are the reserves that were mentioned as lying on the east bank of the Missouri River, and hence that they form a part of the Great Sioux Reservation, and by the terms of the treaty they were set apart with the lands west of the Missouri "for the absolute and undisturbed use and occupation of the Indians" therein named, among whom were the Yanktonais, as before stated. I am further confirmed in this view from the fact that the said Yanktonais joined in the execution of the Great Sioux treaty of 1868 in common with the other bands of Sioux therein named, and from the further facts that in 1875 the great Sioux Reservation was enlarged by Executive orders; that the boundaries mentioned in Executive order of January 11, 1875, included the said two reservations (see report of Commissioner of Indian Affairs for 1878, pages 247 and 248); that in releasing from reservation lands thus added, and restoring them to the public domain, care was taken not to include any of the lands embraced in the Old Sioux and the Old Winnebago Reserves in the order for restoration. (See Executive order of August 9, 1879, report of Commissioner of Indian Affairs for 1879, pages 215, 216.)

The Indians now occupying the lands east of the Missouri River which formerly were included in these two old reservations cannot justly lay exclusive claim to said lands, for, in addition to what is above stated, it is a fact that in the recent contracts made with the Dakota Central Railway Company and the Chicago, Milwaukee and Saint Paul Railroad Company for rights of way across the Great Sioux Reservation the said Lower Yanktonais joined with the other bands of Sioux occupying the Great Sioux Reservation, and consequently they will participate in the proceeds arising from the sales or grants therein provided for. It is of course an illogical position for them to assume that they can participate in the fund arising from the sale of lands west of the Missouri River and maintain exclusive right to the lands east of the river. Furthermore, all the supplies, &c., which the Yanktonais on this reserve east of the river receive from the Government are appropriated and furnished in pursuance of the treaty of 1868, and the subsequent agreement of 1876 (19 Statutes, 254), to which latter agreement they were also parties.

But while this is so, and while it appears from the records of the Office of Indian Affairs and the law and treaties above referred to that the lands occupied by the said Lower Yanktonais form a part of the Great Sioux Reserve, it also appears from reports of Captain Dougherty, acting agent at the Crow Creek Agency, dated respectively May 30 and June 16, 1881, and on file with other papers in this matter, that these Yanktonais claim the lands east of the Missouri as their own, and firmly believe that they have justly the exclusive right thereto; that the western bands do not acquiesce in this claim, and that the Crow Creek Indians lay no claim to any of the lands west of the Missouri; in fact, that there is a mutual understanding between the latter and the bands west of the Missouri that their reservations are separate and distinct.

Of course such a position is not at all compatible with the acts of said Indians in joining in the treaty of 1868, the agreement of 1876, and the late agreements made with the railroad corporations above mentioned. But it must be recollected that they are Indians and not capable of understanding nice distinctions of law. Undoubtedly they are sincere and honest in the position taken by them that the reservation west is distinct from that east of the Missouri River, and that the western bands have no interest in the lands east of the river, and the Crow Creek Indians no interest in the lands west of the river.

From Captain Dougherty's reports it appears that these Yanktonais are very anxious to have the title, that is, the Indian title, to the lands claimed by them secured in themselves exclusively.

Mr. King, who has applied to be appointed a commissioner to negotiate with the Sioux for the relinquishment of a portion of the old Sioux reserve lying south of Crow Creek, states in his letter of April 22, 1881, addressed to Senator W. B. Allison, that there have arisen disputes between the Indians and settlers as to the right to gather drift-wood on the east bank of the Missouri. He also states that an effort is being made to establish a military post or station on an island opposite the town site in which Mr. King is interested.

Now, as to the question of drift-wood; by present treaty stipulations the Indian title extends to the line of low water on the east bank of the Missouri, and difficulties might occur as to the right to the drift-wood lodged on this bank; but this matter Captain Dougherty treats as of little consequence, and he thinks it is not of sufficient importance to be made the subject of negotiation.

As to the islands in the Missouri, Captain Dougherty reports that the Indians do not occupy nor use them. Most of these islands within the reserve have been surveyed,

and several cases have been brought to this Department wherein it appeared that settlers had entered lands on the islands whose entries thereof had to be canceled on the ground that the lands were reserved and not subject to disposal.

Now, in view of the foregoing, it would appear that in order to perfectly extinguish the Indian title to any of the Great Sioux reserve, whether east or west of the river, or of islands in the river, the agreement should be made with all the bands occupying or interested in the reserve as a whole, including the Yanktonais occupying the portion of the reserve east of the river.

It appears from an indorsement on a letter from Senator Allison, dated February 24, 1881, that your predecessor had determined to negotiate with the Indians for the release of the tract which Mr. King and others desired to have restored to the public domain, and that he had directed the Commissioner of Indian Affairs to issue instructions accordingly; but the matter is now in a state of suspense.

Should you deem it important to negotiate with the Indians, and should you determine to do so, I would most respectfully suggest that, in addition to an agreement for the contemplated relinquishment (in making which, in my opinion, the recommendation of Captain Dougherty, as expressed in his report of May 30, 1881, should be observed) agreements should be made to effect the following objects:

(1) To change the line of the Great Sioux reserve from the east to the west bank of the Missouri. This would put an end to all possible occasion for disputes as to drift-wood on the eastern side of the river, and leave the river free for the use of the whites.

(2) To separate the reserve on the east of the Missouri River from that on the west, and have the bands respectively occupying the same mutually relinquish to each other, which must be done by first relinquishing to the United States; that is to say, have all the western bands relinquish the lands lying west of the river, and the United States set apart as a reservation and agree that the same shall be for the exclusive use and occupation of the said Yanktonais, and the latter band relinquish all claim to lands west of the Missouri, and the United States agree that the same shall be a reservation for the exclusive use and occupation of the western bands. Of course such arrangement between the Indians should be upon an equitable basis.

Concerning this point it may be remarked that the Report of the Commissioner of Indian Affairs for 1880 shows the following facts:

(1) The old Sioux and old Winnebago reserves contain 620,312 acres of land. The Indian population occupying the same is 969. This would give 640 acres for each Indian on this portion of the reserve.

(2) The residue of the Great Sioux reserve contains 31,408,551 acres. The Indian population therein is 20,189. The quantity of land pro rata to each Indian is 1,555 acres, about two and a half times as much as the eastern portion of the reserve affords to each Indian on the eastern reserve.

As a mere question of acreage the western bands would have a decided advantage of the eastern Indians, and in case of an extinguishment of the Indian title to the entire reserve they would get a greater proportion of money or other things of value than the latter, for the Government rarely takes into account, in making agreements for extinguishing Indian titles, the difference in value or quality of the lands; but if the reserve were intended as a permanent one the western bands would have very little if any advantage over those east of the river; for it is represented by persons having knowledge of that country that the average quality of the land of the reserve east of the Missouri is much better than that west thereof; that the average acre east is about equal in value to two and a half acres west of the river. But looking at the agreement of 1876 it would appear that it is not the intention of the Government, or was not at the time of the agreement, to continue the reserve as a permanent one.

The problem, therefore, of separating the reservation so that the Yanktonais may hold theirs exclusively and of making an equitable adjustment presents some difficulties; but I think if it is intended that the reserve shall be temporary only that a clause might be inserted in the agreement by which, in the event of an extinguishment of the title to the entire reserve, the different bands should share in the proceeds in proportion to the number of their population. The main object of separating the reserves at this time is to satisfy the Indians and define the limits of the reserves over which the eastern and the western bands shall respectively have exclusive jurisdiction. But if it is probable that the eastern or all of the bands will have their present reserves for permanent homes, then no stipulation as to participation in a general fund in case of relinquishment of the entire territory need be made; for it appears that the Lower Yanktonais occupying lands east of the river would be entirely satisfied to relinquish forever all claim to the western lands, provided the lands they claim should be set apart and assured to them exclusively.

(3) To extinguish the title to the islands in the Missouri River within the present

limits of the reserve. This ought, in my opinion, to be done in any event; for the islands are useless to the Indians and may be made very valuable to the whites.

The following is a copy of a paper furnished me by the chiefs of the surveying and public lands divisions of the General Land Office:

"E. A. D.

"List of islands in the Missouri River opposite the 'Big Sioux Indian' Reservation in the Territory of Dakota, showing the area of each, as far as they have been surveyed, according to the plats in this office:

"One island lying in part in sections 22 and 23, township 96, range 67; unsurveyed and no area given.

"One island lying in part in sections 18, 19, and 20, township 98, range 6; area 129.23 acres.

"One island lying in part 22, 23, 26, and 27, township 99, range 70; area 176.12 acres.

"Hiram Wood Island, lying in sections 19 and 30, township 100, range 71, and section 24, township 100, range 72; area 262.47 acres.

"One island in sections 9, 16, 17, and 20, township 104, range 71; area 525.48 acres.

"The above seems to be all that our plats show.

"M. E. N. H."

By extinguishing the title to these islands, and changing the line to the west bank of the river as to the western part of the reserve, and to the east bank of the river for the west line of that part of the reserve occupied by the Lower Yanktonais, the river would be entirely free from any jurisdiction or control of the Indians, which, in my opinion, is an important consideration.

Very respectfully submitted.

L. A. LUCE,

Clerk in Assistant Attorney-General's Office.

The Crow Creek and Winnebago Reservations—Are they Indian lands?—Are they a part of the Great Sioux Reservation?—A complete synopsis of the law, the treaties, and the history of the Sioux lands in Dakota.

A large number of local and foreign inquiries having been received at this office, both by letter and in person, relative to the Sioux Reservation lands, the Register editor concluded to turn lawyer and, without presuming to give an opinion or advice, give the thousands of his readers the facts as found in the treaties, proclamations, and laws bearing on the subject, and especially with reference to the Crow Creek and Winnebago so-called reservation. It is conceded that unless the Crow Creek and Winnebago Reservations are a part of the Great Sioux Reservation that they are not Indian lands.

Prior to 1851, substantially all of Dakota, a great portion of Minnesota and Northwestern Iowa was in the Sioux Indian country and belonged to or was claimed by the Sioux Nation, which was composed of a large number of bands, which included the five bands now on the Sioux Reservation west of the Missouri River, the Yanktons, Upper and Lower, and the Sisseton Sioux and others farther west.

In 1851 a treaty was concluded with the Sioux Indians by which they ceded to the Government all the lands in Iowa and Minnesota and that portion of what is now in Dakota lying east of the Red River of the North, Lake Traverse, and the eastern line of the present Sisseton Reservation and the Big Sioux River from Lake Kampeska south, in what is now Coddington County, Dakota, thence following the Sioux River south. This treaty was made at Lake Traverse July 23, 1851, and ratified and proclaimed February 24, 1853. (See page 879 of the Revised Indian Treaties of the United States.)

The Yankton Sioux claimed everything south of Lake Kampeska, west of the Big Sioux, and east of the Missouri, and the claim seems to have been fully conceded by all the other Sioux tribes and by the United States Government, for at the Laramie treaty, where all the Indians east of the Rocky Mountains and southwest of the Missouri River were represented, and the Sioux tribes were all represented, the Sioux expressly agreed among themselves, and the other Indians as to their lands did not in any way interfere with the Yankton and Sisseton Reservations.

The Sioux expressly agreed that their reservation should extend from the mouth of White Earth River, on the Missouri, southwest to the forks of the Platte; thence northwest, taking in the Black Hills; thence northeast to Heart River, and down that to its mouth on the Missouri, near where Mandan now stands; thence south, following the Missouri to the White River. This treaty provided for other Indian lands also, and

was full and complete so far as the Indians were concerned, and was made at Fort Laramie September 17, 1851; and the United States and the Yankton Sioux, acting upon this agreement at Fort Laramie and the following years undisputed occupancy, did, on the 19th day of April, 1858, at the city of Washington, through and by Charles E. Mix, acting Commissioner, make the following agreement, which was ratified by the United States Senate and the President of the United States February 16, 1859. See page 856, Revised Indian Treaties.

Section 1 is as follows: "Said chiefs and delegates of said Indian tribe do hereby cede and relinquish to the United States Government all the lands now owned and possessed or claimed by them wheresoever situated, except 400,000 acres thereof, situated as follows: Beginning at the mouth of Choteau River and extending up the Missouri River 30 miles; thence due north to a point; thence easterly to a point on Choteau River; thence down said river to the place of beginning, so as to include 400,000 acres. They also hereby relinquish and abandon all claims and complaints growing out of any or all treaties heretofore made by them or other Indians, except the annuities under the treaty of Laramie of September, 1851.

Article 2. The land so ceded and relinquished by said chiefs and delegates of said tribes of Yankton is and shall be known and described as follows, to wit: Beginning at the mouth of Calmut or Big Sioux River; thence up the Missouri River to the mouth of East Medicine Knohl River (17 miles southeast of where Pierre now is); thence up said river to its head; thence in a direction to the main fork of Snake River; thence down said river to its junction with the Jacques or James River (a little above where Redfield now stands); thence in a direct line to the northern boundary of Lake Kampeska, Codington County; thence along the north shore of said lake and its outlet with the Big Sioux River; thence down the Big Sioux River to its junction with the Missouri. [They also ceded all their right to the islands in the Missouri, but this was plainly covered by the treaty of 1868.—ED.] Also this remarkable, concise section was incorporated in the treaty, and, without modification, ratified by the United States Senate, and received the indorsement and signatures of the President of the United States in due form, to wit: "And the said chiefs and delegates hereby stipulate and agree that all the lands embraced in said limits are their own, and that they have full and exclusive right to cede and relinquish the same to the United States."

Thus a portion of the Sioux, without objection upon the part of any Indians, and with the concurrence of the President of the United States and consent and ratification of the Senate were conceded and announced to be the owners of all the Indian title there was to the country that was ceded to the Government for a stipulated price agreed to in another section. This country embraced nearly all of Southeastern Dakota, and included, except the 400,000 acres in Charles Mix County, all the counties of Sully, Hyde, Hand, and part of Spink, Codington, and the counties south between the Missouri and the Big Sioux Rivers. And since that time Congress has paid millions of dollars under that treaty, and in conformity therewith, not only to these Indians, but millions more to the other Sioux tribes of Indians, they all well knowing and fully understanding their agreements and treaties.

To further settle the question as to whether the Crow Creek and Winnebago reservations were a part of the Indian country or not, we find that the Government about 1862-'63 granted to the Winnebago Indians what is still called the reservation by that name, the southeast corner coming near where Fort Thompson Agency now is, then a military post. Capt. H. J. King was then, in May, 1863, clerk of the steamer West Winds, that removed the Winnebago Indians direct from Minnesota, they coming by the Mississippi to Hannibal, from there to Saint Joe by rail, and from there to the reservation by the Missouri on the West Winds. The Indians manifested great fear of the Sioux. The captain says when they landed the presence of forty soldiers was required to allay their fears. The Sioux hated the Winnebago to death, and the latter tribe were dissatisfied, and in 1865 they made a treaty with the Government for another reservation down in Nebraska, where they now are, adjoining the Omaha Reservation, receding the Winnebago Reservation to the Government, fully and unconditionally. This treaty was made March 8, 1865, near Usher's Landing and ratified February 13, 1866, and can be found on page 1014, Revised Treaties of the United States. The first treaty made by the Winnebagoes for the country being superseded by the last, the former is not in the revised list. But this last treaty fully recedes all of the lands in that reserve to the Government. Thus we have the Government accepting the land from the Yankton Sioux, giving it to the Winnebagoes and then taking it back again.

Soon after the Winnebagoes came the Santees settled close to Fort Thompson, near Crow Creek, but they did not stay long, and soon after went down to where they now are, across from Springfield, in Nebraska.

When the Winnebagoes went away there were no Indians there. Soon after, White Ghost and his band, who had been collecting near Standing Rock, came down to the

Crow Creek country. The band was made up from Minnesota, Sisseton, and Devil's Lake Sioux Indians, and had at all times been outside of this Yankton Sioux country. They at first tented around Fort Thompson, but when the military post was abandoned it was turned into a subagency and has since then been run mostly with the Lower Brulé agency.

None of these Indians signed the treaty of 1868 under which the Indian Department claim title to this land for these Indians. Hiram Price, in his letter to the editor of this paper and to others, says the Crow Creek country was made a reservation by the treaty of 1868. The treaty of 1868 in the section he refers to uses these words: "And all existing reservations east of the Missouri River." But aside from this fixes the eastern boundary of the Sioux reservation "along the low-water mark down the said east bank" of the Missouri River to the Nebraska State line. (See Article 2, page 915.) We would like to ask the question, if not in existence before the treaty, then how was the Crow Creek country made a part of the Great Sioux Reservation by that treaty? Its metes and bounds are neither directly or indirectly referred to or marked out. But this country has still more of history. In 1874-'75, the post-traders, then run by Orville Grant, a brother of U. S., complained of trading posts being established close to and on the Missouri River, and accordingly the President issued the following order, which embraced a tract of country which is now composed Charles Mix, Brulé, Buffalo, Hand, Faulk, Edmunds, McPherson, Campbell, Walworth, Potter, Sully, Hughes, and Hyde Counties, with slight variations as to county boundary lines, said order reading as follows:

"EXECUTIVE MANSION, *January 11, 1875.*

"It is hereby ordered that the tract of country in the Territory of Dakota lying within the following-described boundaries, viz, commencing on the east bank of the Missouri River, where the forty-sixth parallel of north latitude crosses the same; thence east with said parallel of latitude to the ninety-ninth degree of west longitude; thence south with said degree of longitude to the east bank of the Missouri River; thence up and with the east bank of said river to the place of beginning, be, and the same hereby is, withdrawn from sale and set apart for the use of the several tribes of Sioux Indians, as an addition to their present reservation in said Territory.

"U. S. GRANT."

We understand that Grant issued one or two other orders, but unimportant, and we have been unable to find them if they ever existed.

Now, therefore, notice that at the time of the treaty of 1868 no order had been issued affecting this country. There is not a treaty or a Department letter intimating that it was other than Government land at that time. But Grant's order was made in 1875, eight years after the 1868 treaty, and upon which only the Department claims it a reservation.

Now the Department claims title to the Crow Creek and Winnebago country only, of all the counties described above by and through the treaty of 1876 as well, and at that time all of the counties named above, from the Fort Randall and Yankton Reservation, about which there can be no dispute, up to the twenty-sixth parallel, was all an Indian country by Grant's order, if there was any Indian country at all.

But as proof that the Government or Department did not consider these thirteen counties any part of the Great Sioux Reservation, President Hayes did, August 6, 1879, three years after the treaty, issue an order opening all of the thirteen counties named except from American Creek, where Chamberlain now is, to Medicine Creek, where Rousseau now is, and a small strip of country above and outside of the Fort Sully Reservation, one at or near Fort Bennett, a piece in what is now Walworth County, and one or two other tracts, all of which were as much bound, one as another, to be a part of the Great Sioux Reservation, and all of which tracts, except the one now called the Crow Creek and Winnebago Reservation, Secretary Teller, by the President, opened for settlement this year some time in June, which was published in many Dakota papers.

The order issued by Hayes opening this country was as follows:

"EXECUTIVE MANSION, *August 9, 1879.*

"It is hereby ordered that all that portion of the Sioux Indian Reservation in Dakota Territory created by Executive orders dated January 11, March 16, and May 20, 1875, and November 28, 1876, lying within the following-described boundaries, viz: Beginning at a point where the west line of the Fort Randall Military Reservation crosses the Missouri River; thence up and along said river to the mouth of American Creek; thence up and along said creek to the ninety-ninth degree of west longitude; thence south along said degree to a point due west from the northwest corner of the Yankton Indian Reservation; thence due east to the northwest corner of said reservation; thence

due south to the north boundary line of Fort Randall Military Reservation; thence following said boundary line northwesterly to the northwest corner of said military reservation; thence south on the west boundary line of said reservation to the place of beginning (here follows a long description of different tracts north and east of the present Winnebago and Crow Creek Reservation), be, and the same hereby is, restored to the public domain.

"R. B. HAYES."

The treaty of 1876 does not use any terms as to the reservation east of the Missouri, and article 11, on page 257 of said treaty, acts of Forty-fourth Congress, in construing the term reservation, says it shall apply to any country which shall be selected under authority of the United States as the future home of said Indians. The treaty of 1876 had provided for the removal of the Indians to the Indian Territory, but large numbers of the Indians refused to indorse this, and it was never carried into effect.

Thousands of honest, toiling people are waiting for these lands—soldiers, who fought in many battles and suffered long in prison, are waiting and watching for a home in this delectable country.

In 1858 the Government bought all of these lands from the Yankton Sioux, who were in undisputed possession for many years. They gave part of it away to the Winnebagos in 1863, and took it back in 1865-'66. Hayes opened most of this same country in 1879, and Teller opened all the balance, except the land in question, north of Chamberlain, this year, and we ask these questions: If Grant's order, reserving it as a part of the Great Reservation, was made eight years after the treaty of 1868, how did the treaty of 1868 include it or effect it? Then, if Grant's order made it a part of the reservation in 1875, and it was in any way embraced in the treaty of 1876, how could Hayes open part, or nearly all of it, in 1879, and Arthur, by Teller, open another part in 1884, and not have the authority to open the balance now? There is not a white man here that would deprive a single Indian of any of his rights, and Captain Dougherty said years ago that these Indians, White Ghost and his band, were squatters. The Sioux Commission urged to them that their title was not good. To-day this little band are surrounded by 800,000 acres of splendid land, and undisputably have millions more across the river. They cannot possibly use and cultivate 50,000 acres. The balance is idle, unproductive, and rendered useless by this grasping Indian Department and Indian policy, and the Register asks the President and the Secretary of the Interior why this land may not be opened to actual settlers at once.

CHAMBERLAIN, DAK., *September 27, 1884.*

MY VERY DEAR SIR: While holding court at this place I have had occasion to examine with some care into not only the legal status of the Crow Creek and Winnebago Reservations but also the necessity of opening the unoccupied portion of them to settlement. Of course, as to the policy to be pursued by the Indian Department I know not, but I am fully convinced that the large tract of country north of Chamberlain upon which there are no Indians for many miles should and can be legally opened for settlement by an Executive order. And I hope you will not consider me obtrusive to present my reasons therefor, because it is of great interest to many home seekers.

It seems to me, that the treaty of 1851, concluded at Lake Traverse, Minnesota, July 23, and ratified February 24, 1853, which is found on page 879 of the Revised Indian Treaties of the United States, concedes and settles to the Yankton Sioux the undisputed Indian title (be it good or not) of all the country south of Lake Kampeskey and between the Big Sioux and Missouri Rivers, which includes all the Winnebago and Crow Creek country.

What is called the Laramie Pow Wow or the treaty of the other Sioux Indians held at Fort Laramie, September 17, 1851, makes no claim for territory east of the Missouri in the Yankton Indian country, but is distinctly referred to by the treaty made with the Yankton Sioux by Charles E. Mix, April 19, 1853, and ratified February 16, 1859. (See page 856 Revised Indian Treaties.) The Yanktons held undisputed ownership and possession of all this country until the last described treaty in 1859, being eight years.

In 1862-'63 the Government of the United States ceded to the Winnebagos what is now called the Winnebago Reservation. And the Winnebagos occupied it for a time, but in 1865 the Indians (Winnebagoes) receded it back to the Government and moved down near their neighbors the Omahas. (See page 1014 Revised Indian Treaties.)

A treaty was made with the Sioux Indians in 1868, but no reference was made to the country east of the Missouri, excepting to preserve existing reservations. And that this country was not considered a part of the Great Sioux Reservation by the Government, or the Indians after, or by the treaty of 1868, is shown by its being settled up,

and entered by settlers, surveyed by the Government, and traders occupying places there up to 1875.

U. S. Grant, President, did January 11, 1875, issue an order withdrawing most or all of the land situated in what is now the counties of Charles, Mix, Brulé, Buffalo, Hand, Hyde, Hughes, Sully, Potter, Faulk, Walworth, Edmunds, McPherson and Campbell, and part of one or two others, setting all this country apart for the Sioux Indians. (See order and date above.) The treaty under which it is claimed was made in 1868, but the order taking it from sale or settlement was not made until 1875.

The treaty of 1876 made by governor Edmunds, in no way enlarged, modified, or affected the land east of the Missouri, as it in no way mentioned it, for it only attempted to fix the western, northern, and southern boundaries so as to open the Black Hills country and some in Nebraska.

That the Government Indian Department did not regard the land described in President Grant's order of 1875 as in any way affected by the treaty of 1868, is shown by the fact that R. B. Hayes, President, did in 1879, August 9, issue an order opening almost all this country in question, including most of Brulé and all of the country north of Medicine Creek except a number of little parcels or tracts of this same land reserved by U. S. Grant, which Secretary Teller opened this year, I believe only in June, perhaps earlier, leaving the Winnebago and Crow Creek country still unopened.

Now I would ask as a personal favor to me and many of the people who desire homes in this country at once, that you examine the treaties referred to, and I believe you will arrive at the same conclusion that I have unless you have other important data before you that I have not. And unless you find some legal objections more than I do I hope you will encourage the opening for settlement of the portion now not needed or used by the Indians.

Very respectfully, and truly yours,

A. J. EDGERTON.

Hon. J. K. McCAMMON,
Assistant Attorney-General, Department Interior,
Washington, D. C.

No. 8.

Memorandum of argument of J. H. Teller.

In 1863 the President was authorized by act of Congress (vol. 12, 819, Stat. at Large) to assign to certain bands of Sioux, including those now known as Santees, lands outside of any State sufficient to give each member eighty acres for farming purposes. In the same year the Santee Sioux and the Winnebagos were taken to Dakota and located in the vicinity of Crow Creek. By letter of May 28, 1863, Clark W. Thompson, Superintendent of Indian Affairs for the Northwest, reports that he had selected a tract of land, or rather two tracts, for these Indians, and describes it by metes and bounds. The tracts are now known as the "Old Winnebago" and the Crow Creek Reservations.

In 1865 the Winnebagos abandoned their location and joined the Omahas, and by treaty (vol. 14, 671) ceded to the United States any interest which they had in the Dakota lands. In 1866 the Santees were removed to Nebraska. The agency buildings were left in charge of United States troops, and were subsequently used by Governor Edmunds as a supply depot for the issue of goods to the late hostiles that he was endeavoring to bring in.

By letter of March 5, 1866 (Com. Rep., 1866, p. 165), it appears that there were then on these lands but eight lodges of Yanktonais—these are of the band now at Crow Creek—with a few Brulés. By letter (Com. Rep., 1868, p. 189) Hanson, Superintendent, reports that but one-half of the Lower Yanktonais are there, and he does not consider it advisable to keep up that agency in view of the fact that his effort to collect the Indians there has not been successful. Com. Rep., 1869, page 28, shows but 480 Lower Yanktonais there. Executive order of 1875 withdraws a large tract east of the Missouri River, including the tracts above mentioned. Executive order of 1879 restores all the tract withdrawn, *except* that now in question. It is, therefore, now a reservation by Executive order. By letter from Indian Office (Marble, Acting Commissioner, to Captain Dougherty), in answer to inquiry, it is held that the land is held as a reservation by article 2 of the treaty of 1868, by which "all existing reservations on the east bank of said river (Missouri)" are made a part of the Great Sioux Reserve.

The question is, therefore, was this land an existing reservation in 1868? In the letter referred to no reason is given for holding it was such a reservation as was contem-

plated by the treaty of 1868, except that the land had been described by Thompson in 1863, and the selection approved by the Department. From the statement of facts above made it appears that the land in question was abandoned by the Indians for whom it was selected by Thompson, and that more than half of it had actually been ceded back to the United States by the Indians who were supposed to have title to it. The records show no order from the President or the Interior Department setting this land apart for Indian occupation. It appears to have been held solely on the description made by Thompson and assented to by the Indian Office. As a matter of fact it was not considered a permanent reservation in 1868, when the treaty referred to was made, for the man in charge advises that the agency be abandoned. But few of the Yanktonais were there, and it was evidently used as a temporary station from which to reach the wandering bands in the vicinity. As late as 1869 there were but 480 Yanktonais there. It was a reservation for the Yanktonais, if it was a reservation at all, they being the only Indians who appear to have been represented there continuously since the departure of the Santee. The Lower Yanktonais, however, repudiate the treaty of 1868 *in toto* (letter in Indian office written by Agent Spencer from Crow Creek Agency.) But three of their band signed the treaty of 1868, and they, as the others claim, had no authority to act for the others. The Indians themselves do not claim this land by treaty, nor do their friends there. They have signed an agreement relinquishing all claims to lands not included in the part reserved for them, and they did this knowing that they had no title, and for the purpose of getting a title to the land they actually occupy.

Hon. H. M. TELLER,
Secretary of the Interior:

SIR: I am requested by citizens of Dakota Territory, to make application to have opened for settlement, as a part of the public lands of the United States, the territory known as the "Winnebago Reservation," situated upon the east bank of the Missouri River, and comprising portions of the counties of Hughes, Hyde, Hand, and Buffalo, in said Territory of Dakota.

Upon examining the history of this so-called reservation, I am forced to the conclusion that it is not an Indian reservation at all, and that the Indians have no rights whatever, either to the land itself or to its occupancy, and that it is only a "reservation" in the sense that all territory of the United States is a reservation while withheld from settlement.

The history of this "reservation," so far as is necessary to the present consideration of the question, is as follows:

After the Sioux massacre of 1862 in Minnesota, a number of Indians of that tribe were at Fort Snelling, Minnesota, under the surveillance of the military authorities, the question as to their disposal being under advisement. The Winnebagoes occupied their reservation in Blue Earth County, Minnesota. They had taken no part in the Sioux outbreak, but it was made a pretext for their removal, which was demanded, and, by act of Congress approved February 21, 1865 (Stats. 12, p. 658), the President of the United States was authorized to assign to and set apart for the Winnebago Indians a tract of unoccupied land, beyond the limits of any State, in extent at least equal to their diminished reservation (in Minnesota), the same to be well adapted for agricultural purposes. The President was also authorized "to take such steps as he may deem proper to effect the peaceful and quiet removal of the said Indians from the State of Minnesota, and to settle them upon the lands which may be assigned to them under the provisions of this act."

Pursuant to this authority the Winnebagoes were removed in the spring of 1863, and at the same time the Sioux at Fort Snelling were removed to Dakota and assigned contiguous reservations on the east side of the Missouri River, at a place then called "Ushers Landing," afterwards Fort Thompson, and now Crow Creek Agency.

The removal and location, under the direction of the Indian Office, were effected under the supervision of Clark W. Thompson, the superintendent of Indian affairs for the northern superintendency.

Under date of July 1, 1863, Superintendent Thompson reported that he had selected adjoining reservations for the Sioux and Winnabagoes, and forwarded a plat and field notes showing the location of the agencies and surveys made for allotments to the Indians.

The reservation boundaries are thus described:

"SIOUX RESERVATION.

"The reservation for the Sioux of the Mississippi is bounded as follows, to wit: Beginning at a point in the middle channel of the Missouri River, opposite the mouth of

Crow Creek, in Dakota Territory, follow up said channel of the Missouri River about 14 miles to a point opposite the mouth of Sue-o-creek; thence due north and through the center of the stockade surrounding the Agency buildings for the Sioux of the Mississippi and Winnebago Indians, about 3 miles, to a large stone mound; thence due east, 20 miles; thence due south to the Cedar Island River, or American Creek; thence down the said river or creek to the middle channel of the Missouri River; thence up said channel to the place of beginning.

“WINNEBAGO RESERVATION.

“The reservation for the Winnebago Indians is bounded as follows, to wit: Beginning at a point in the middle channel of the Missouri River where the western boundary of the Sioux of the Mississippi reserve intersects the same; thence north and through the center of the stockade surrounding the agency buildings of the Sioux of the Mississippi and Winnebago Indians, and along said boundary line to the northwest corner of said reserve; thence along the northern boundary of said Sioux reserve, 10 miles; thence due north, 20 miles; thence due east to the middle channel of Medicine Knoll River; thence down said river to the middle channel of the Missouri River; thence down said channel to the place of beginning.”

The Sioux reserve contains 203,397 acres; the Winnebago 416,915 acres.

The Winnebagoes were dissatisfied with the reservation set apart for them and refused to remain there, many of them leaving and joining the Omahas in Nebraska, others scattering through the country in various directions, until in March, 1865 (March 8, Stats. 14, p. 671), a treaty was concluded with them whereby they ceded, sold, and conveyed to the United States “all their right, title, and interest in and to their present reservation in the Territory of Dakota, at Ushers Landing on the Missouri River, the metes and bounds whereof being on file in the Indian Department.”

In consideration of this cession the United States agreed to, and did, set apart for their future home the northern portion of the Omaha Reservation in Nebraska, which had been ceded to the United States by the Omahas for this purpose by the treaty of March 6, 1865 (Stats. 14, p. 667).

This certainly left the land embraced within the Winnebago Reservation freed from all Indian title and exclusively the property of the United States, as much so as any part of the public domain.

Has anything happened since 1865 to divest the Government of this ownership or that should prevent the opening of those lands to settlement? I mean the 416,915 acres ceded by the Winnebagoes to the United States.

(1) It is said that some of the Sioux have “squatted” upon this land;

(2) That some of the Crow Creek Agency buildings are upon it; and

(3) That the Sioux treaty of April 29, 1868 (2 Article) (15 Stat., p. 635) recognized it as an Indian reservation belonging to the Sioux.

(1) If it was not a Sioux Indian reservation the Sioux who squatted on it had no right there. He was a trespasser.

(2) The Government had a right to build some or all the agency buildings on it. But that fact does not make it an Indian reservation or give the Sioux any right upon it. As I understand the matter, the location of this agency was made when the Winnebagoes were there, and for convenience it was located upon the line between the two reservations—some buildings upon one and some upon the other side.

(3) As to the Sioux treaty of 1868: The second article of that treaty set apart for the use of the bands of Sioux a large reservation west of the Missouri, which was particularly bounded and described, “and all existing reservations east of the Missouri River.”

Of course the term “reservation” here meant Indian reservation. It could not be intended to include all lands east of the Missouri which at the time were not open to settlement, reserved from sale or settlement by Executive orders, or not yet surveyed, &c.

The language used in that treaty, “existing reservations,” did not create a reservation, and therefore leaves the question just where it was before that treaty was made. There were “existing” Sioux reservations east of the Missouri at that time—the Yankton Sioux, farther southeast, besides this at Crow Creek adjoining the lands in question.

That clause in the treaty of 1868 was probably intended as a saving clause, lest it should be held that the treaty annulled all other Sioux reservations. Neither the Yankton Sioux nor the little band at Crow Creek were represented in that treaty. The language is certainly very far from creating any new grant.

These lands lie in the very heart of Dakota. The Sioux reserve by their side contains 203,397 acres; both contain 620,312 acres; and the Indians there number about 300 or 400. The lands have been surveyed, and hundreds of our citizens, many of them veteran soldiers, stand waiting to settle and cultivate them.

These lands have all been surveyed by the Government, like all other surveys of public lands, and hence there can be no difficulty in excepting and reserving such as are occupied either by the Government or cultivated by Indians.

Brief by Mr. Vance.

In January, 1881 (no day of month to be got at), John H. King, of Hampton, Iowa, applied to the Department to be appointed to negotiate with the Indians on the lower part of the Sioux Reservation, east of the Missouri River, in Dakota, for the relinquishment of their rights in and to that portion of the reserve lying between Crow Creek north and American Creek south (about 80,000 acres), with a view to having said tract restored to the public domain and thrown open to settlement.

This application was favorably indorsed by Congressmen N. C. Deering, G. C. Bennett, Thomas Updegraff, and C. C. Carpenter, and was referred by the Department to the Indian Office "for report on status of said lands at earliest convenience," January 11, 1881. On the 24th of February, 1881, Senator Allison wrote to the Department recommending that Mr. King's request be granted, and this letter was sent to the Indian Office February 28, "with direction to issue the necessary instructions to the Indian Agent [at Crow Creek Agency] for the required negotiations.

April 12, 1881, the Indian Office, in a formal report, took the ground that the land in question had not been reserved for the sole use and occupancy of the particular band of Sioux (Lower Yanktonais) now living on it, but for the various Sioux tribes in general; and that therefore any negotiation for the release of any portion of the same ought to be had with all the Sioux, and that the benefits that might arise from its relinquishment ought to accrue to all the Sioux alike in Dakota; the Indian Office further recommended that the agent at Crow Creek should be called upon to report as to whether the portion in question of the reservations sought to be thrown open to settlement is occupied or needed by the Indians.

By Department letter of May 4, 1881, this recommendation was approved, and on the 16th instant the Indian Office forwarded to Department two reports from the agent, dated May 30 and June 6, in which he says that his Indians claim an exclusive right to these lands, and that they would not, perhaps, be willing to allow the Sioux west of the Missouri to unite with them in disposing of the same, or share with them in the benefits arising from the proposed disposition; but stating also that very few Indians lived on the tract in question, and he had no doubt that his Indians could easily be brought to consent to sell their interest in the same.

These reports were accompanied by a letter from the Indian Office of date the 16th instant, reiterating the view formerly expressed that the Indians living upon the land were in error in laying claim to exclusive rights or ownership, and expressing the opinion that this particular band would recede from their position upon a proper representation of the facts in the case, and that the consent of all the Indians could easily be secured to relinquish the lands.

I respectfully suggest that the question as to ownership ought to be submitted to the Assistant Attorney-General for opinion, with the remark that there seems to be some ground for doubting whether the present reservation east of the river has ever been properly set aside for the purposes of a reservation; whether it is now, or ever has been, a reservation, unless by the terms of the treaty of 1868.

WILSON J. VANCE,
Chief Division Indian Affairs.

JUNE 22, 1881.

No. 2.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, November 25, 1885.

SIR: In addition to the papers transmitted with office letter of March 20, 1885, in response to the resolution of the Senate of March 3, 1885, calling for certain information relative to the reservation occupied by the Sioux Indians of the Crow Creek Agency, Dakota 9, I have the honor to transmit herewith copies of all papers received and correspondence had upon the subject since that date.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

Hon. SECRETARY OF THE INTERIOR.

[Telegram.]

CHAMBERLAIN, DAK., March 15, 1885.

Hon. L. Q. C. LAMAR,
Secretary, Washington, D. C.:

Everything satisfactory between Indians and settlers; no possible danger except from suspension of proclamation; five thousand settlers; \$200,000 property on lands open; great suffering would follow removal.

KING, KILLAM & HENRY.

BUFFALO, March 17, 1885.

MY DEAR MR. CLEVELAND: I beg in the cause of simple justice to the red men the suspension of the Executive order of the opening of the Crow Reservation lands, east (I think) of the Missouri River until the full state of the matter may be laid before the Secretary of the Interior and by him considered.

The retiring Secretary of the Interior made the order on the 27th of February (as I understand), and we believe it to be in direct violation of treaty stipulation.

It is due the friends of the Indians that a hearing be had for them, and I know that your sincere desire of justice will accord this.

I am, sincerely, yours,

JOHN W. BROWN,

Rector St. Paul's Catholic Church, Buffalo.

The PRESIDENT.

YPSILANTI, MICH., March 18, 1885.

MR. PRESIDENT: It is most respectfully but earnestly requested that the order "opening to settlement the Winnebago and Crow Creek Reservation" may be suspended or rescinded. Inclosed are two newspaper slips, which tell in a few words the situation.

If Congress should pass a law to "get the consent" of the people of Georgetown to sell their homes to Washington people, and then by starving, by threats, by misrepresentations, by undue influences and coercion, obtain such consent, as, even without obtaining a form of "consent," should authorize Washington people to take possession, while holding the Georgetown people as legal nonentities, without existence as persons in court—such a state of affairs would be similar to that now existing on this Winnebago Reservation. The interest and attention shown by yourself, Mr. President, when, introduced by Rev. Mr. Wood, of Albany, I was permitted to state to you some experience on an Indian reservation, gives me encouragement to ask your attention to this subject. A similar "opening to settlement" of a tract near us, when living in Dakota, made me acquainted with the wrongs of such movements.

It would, perhaps, be more suitable that this letter should be sent to the honorable Secretary of the Interior, but former appeals to the Department of the Interior have produced a conviction that affairs are sometimes controlled and decided by subordinate officials without coming to the accurate knowledge of higher dignitaries.

In a previous administration the chief clerk of the Indian Bureau stated in my presence that he controlled the appointment of the agent and all the affairs of one of the largest Indian agencies in the United States. This clerk was informed also in my presence that the \$60,000 bonds of the agent were fraudulent; and now, when action for \$9,000 deficiency is standing against this agent, there is no recourse to the three bondsmen, because, besides being worthless, they did not qualify on the bond. Other as surprising irregularities are well known here, occurring at Rosebud and at other agencies.

In our own case, vouchers were made out for less time than pay was due, but, after an emphatic inquiry of the Interior Department if this was done for the purpose of getting an "agency fee" (this "fee" was a per cent. taken from the pay of the employés at Rosebud Agency) a draft for more than any receipt or voucher stated was sent from Washington. It was but a few dollars more, but the query is, where did it come from?

I have recently learned that some remnant of an element which then existed in the Indian Bureau has become alarmed by hearing that I had an interview with the President-elect and is now busily circulating statements that my husband, Dr. Owen, was a violator of the liquor law on Indian reservations while at Rosebud. There is no foundation for this statement. The fact is that both Dr. Owen and myself refused to connive at the dishonesty there, and did not hesitate to condemn and report it and thus became obnoxious to the dishonest element in the Indian Bureau both at Rosebud and at Washington. Heretofore the universal practice has been when one refused to join in dishonesty on Indian reservations to charge him with some violation of law, and as one is powerless to obtain examinations or trial except at the option of an Indian Bureau of-

ficial, he has no defense nor protection, but is fortunate in some cases if he escapes with his life. A year after leaving Rosebud we learned that the agent had told the Indians that Dr. Owen said he would poison them.

It is most earnestly hoped that better days may be coming for Indians and for honest white people on Indian reservations.

Very respectfully,

MRS. G. W. OWEN.

The PRESIDENT OF THE UNITED STATES,
Washington, D. C.

[Newspaper slips.]

Open to settlement—Winnebago and Crow Creek lands ready for occupants.

[Special to the Detroit Post.]

WASHINGTON, February 28.

The President signed an executive order to-day throwing open to settlement the greater part of the Winnebago and Crow Creek Reservations in Dakota. There are 600,000 acres in the tract, and it lies east of the Missouri River and just south of Pierre. There are now about 400 Sioux Indians on those lands. Secretary Teller decided to open these reservations several weeks ago, but held the announcement back until it could be seen what would be done with the pre-emption repeal in Congress. The President and Secretary Teller are committed to repeal of the pre-emption act, and preferred to have the Winnebago and Crow Creek lands come into market after the repeal should be passed by Congress. In that event it only could be open to homestead settlement. Yesterday they were satisfied by influential Western members that there was no hope for its passage, and there was no further occasion for delay. The lands thus opened will be surveyed and put in the market in the next sixty days.

Indians resisting settlers.

MITCHELL, DAK., March 6.

Interest in the newly-opened Crow Creek Reservation is greatly increased on account of the report which reached here last night that the Indians are sweeping down on settlers, driving them off the lands and destroying their improvements. Dispatches have been received from Colonel King, of Chamberlain, requesting rifles and ammunition to be forwarded immediately, and they were sent by special train to-night. The whole country is preparing to go to the aid of the whites, and trouble is feared.

HURON, DAK., March 6.

There is a rush of settlers on the Winnebago Reservation in Crow Creek Valley. Indian police burned six settlers' shanties. There is no trouble yet in the Huron land district.

WHITE LAKE, DAK., March 24, 1885.

DEAR SIR: I see by the papers that you had requested the Land Department to suspend work on these new reservations in Winnebago and Crow Creek, through apprehension of trouble with the Indians. As I am in the land business, I went out to reservation to see the country and Indians. I saw several half-breeds that could talk and seemed to understand the situation, and were willing to abide by the order opening the reservation. They expected it to be opened. When I saw them, was before the agent, Gaskins [Gasmann], had any official order from you or any one to let settlers come on land. I think Mr. Gaskin [Gasmann] is adverse to opening it to settlement, for some cause of his own. I do not apprehend any trouble with the Indians if the agent does his duty and not try to irate them into the belief that they are superior to the white settlers and have a preference right; the white settlers have, as far as I can learn, respected the Indian squatters as neighbors, and all seem to be in harmony.

That part of the land that was declared open has all been taken by settlers, and there are quite a number of families now living on the land, as there were a great many liv-

ing at Chamberlain waiting for the reservation to open across the river, and were ready to start at a moment's notice if Congress should do anything to open the Sioux Reservation west of the river.

With a few introductory remarks I will close. I am the same party from Stuart, Iowa. I had a recommendation from Mr. Gray, an old friend of mine, and also of yours. I write this letter that you might know about the situation here, and if you should want any information that I can give I will gladly do so.

Yours, respectfully,

W. B. HUSSEY.

HON. HIRAM PRICE,
Indian Commissioner, Washington, D. C.

UNITED STATES INDIAN SERVICE,
Crow Creek Agency, Dakota, March 30, 1885.

SIR: I have the honor to inform you that in consequence of the Executive order of ex-President Arthur, published unofficially in the newspapers, opening to settlement a large portion of this reserve, and dated Washington, D. C., February 27, 1885, most of the lands thus opened have been squatted upon by white settlers.

This invasion was both sudden and unexpected; hundreds of white men rushed in upon the reservation without a word of warning to myself or Indians, and took possession, many of them coming by night and thus greatly alarming the Indians, some taking up the lands held by Indians in severalty, and still holding them.

I immediately sent out the police with a written warning, ordering them off and notifying them that I had no official knowledge of the opening of the reservation, the effect of which was in most instances to arouse a spirit of defiance and threatened armed resistance.

I called the Indians together and counseled them not to resist or commit any acts of violence, and so far am pleased to report that they have heeded my counsels and behaved themselves admirably under most trying circumstances, the only exception being the reported burning of a few unoccupied shanties by some young Indians, who, I think, were unaware of the existence of the order.

This act, however, has been magnified by the newspapers, and I write this report for the purpose of contradicting all statements to the effect that these Indians are or have been in any wise guilty of hostile acts.

The situation, however, is very trying, both to myself and Indians, and daily complaints come to me from Indians, who live on their claims in the neighborhood of the squatters, of encroachments upon their timber lands, of threatening demonstrations when resisted; and in one case an unoffending Indian was shot at, and the ball passed through his moccasin.

Such acts have occurred, and still in no case have the Indians retaliated. I question very much if there is another Sioux tribe to be found that would have borne such treatment with like patience. It is the proud record of these people, once a powerful tribe, and possessors of a wide domain, gradually reduced, although never sold by them to the Government, that they have always remained firm in their friendship, and that their hands are clean from the white man's blood.

I am aware that there is a treaty in existence, made by the Yanktons with the Government in 1859, selling these lands; but as far as I am able to find out the Yanktons had never possessed these lands, nor had any right to them, and sold them, I believe, in ignorance as to their extent.

I trust that these people shall not now be dispossessed of what little remains to them, and made paupers in return for their good conduct and unbroken friendship.

I cannot but believe that their title will be found good and sufficient by impartial and wise legal judgment, and that the order should be revoked and their lands restored to them.

If, however, this cannot be, I trust that it may at least be so modified as to leave to them that portion which is known here as the Big Bend, and made up of the following townships, viz: 109-72, 109-73, 109-74, and 108-73, 108-74, 108-75, and 108-76. This portion of land is not valuable except for grazing purposes, being too broken and hilly for agriculture. It will never be sought by settlers, but will be taken up by speculators as cattle ranches. It is the only location where the Indians can hold cattle in any number; it is the only location fit to hold and winter the agency beef herd. If taken away from the Indians it robs them of one their principal hopes of self-support, and it will compel the Government to hold the beef cattle of the agency on the opposite side of the Missouri River, so entailing a great deal of labor and expense and constant danger of losing cattle by straying and starvation.

Under these circumstances I most earnestly beg that early and favorable action may be had, and that I may be informed of the same before it shall become known to the public. This I ask in simple justice to myself and family and the white employés of the agency, and also that I may have sufficient time to take such action as shall insure peace and prevent bloodshed. I would further beg leave to again remind the Department that if the Big Bend is taken away I shall be compelled at once to remove the agency beef herd, and I fear many of the cattle will perish before the spring grasses come, as we have no other winter pasture.

Very respectfully, your obedient servant,

JOHN G. GASMANN,
United States Indian Agent.

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

[Extract from Agent Gasmann's monthly report for March, 1885.]

UNITED STATES INDIAN SERVICE,
CROW CREEK AND LOWER BRULÉ CONSOLIDATED AGENCY,
Crow Creek Agency, Dakota, March 31, 1885.

* * * * *

On the last days of February, owing to the reported order of ex-President Arthur opening to settlement a large portion of this reservation, a rush of white men was made upon the Indian lands thus reported open.

On the night of the 28th of February hundreds of men, with teams and wagons, and with much excitement, came in among the Indians and began at once to locate claims, build shanties, and prepare to settle down for good. This, as may be imagined, caused no small commotion among the Indians.

I had received no notification (official) of the order, and sent out the police (Indian), under the direction of the agency farmer, with written warning to the squatters to remove, directing them (the police) to use no violence, but simply read my order. No notice was taken of my order except to bring out threats of armed resistance and much violent abuse in local papers. I am able to report that during all this time the Indians have behaved very well. They have been sorely pressed upon, and at times I have feared they might commit some act of violence in retaliation for the many acts of a like nature on the part of the whites. The only act that can at all come under the title of violence was that of one of the young men burning a few small shanties or little piles of lumber, three or four pieces in a pile. This was done before he, the Indian, was aware of the order of the President, and before he had been informed of my order not to resist; since then no act, that can at all be considered hostile, has been committed.

The most serious annoyance I have had has been owing to the disturbance of the beef cattle. These animals are wintered in what we call the "Big Bend," the only place on the reserve fit to winter cattle in. Being wild Texas steers they were greatly disturbed by the sudden influx of people among them, and I feared I would be compelled to move them; and this I knew would involve great loss, as there is no other place on the reserve where they could find anything to eat at this season of the year.

Great portions of the Bend were burned over, and word was sent me by the white intruders to remove the cattle. I am glad to report that so far we suffered but small loss, and I hope the danger is now over.

The public press now informs me that the Attorney-General has rendered his opinion to the effect that this reserve is included in the Great Sioux Reservation by treaty of 1868. This is now known to the Indians, and they seem to feel very glad and confident that the whites will soon be removed from their lands.

It is reported that many of those who have come upon the Indian lands and built shanties and houses intend to resist any order of the Government removing them. I fear it will require more power than I possess (ten Indian police) to enforce the order of the Government, if made, to remove these squatters. The most serious opposition, I think, will come from the town of Chamberlain, adjoining the reservation on the south-east.

Here about fifty houses have been built, some of them quite substantial, forming an addition to the present town.

I trust speedy action may be taken in the premises, as every day adds more people and property to be removed, and aggravates the people, both Indians and whites, by being kept so long in a state of uncertainty.

Very respectfully, your obedient servant,

JOHN G. GASMANN,
United States Indian Agent.

CANTON, DAK., April 1, 1885.

SIR: The attention of the people here has been called to the protest and statements filed by the Indian Rights Association and others against opening the Winnebago Reservation.

It is proper under the circumstances that a statement should be made in reference thereto by the settlers upon the reservation and the people of this Territory.

It should require no citation of authorities, nor a review of the acts of Congress or orders of the Department, at this time, to sustain the order made by President Arthur.

It has been conceded for years that this reservation was subject to Executive orders. The officers of the Department and leading members of Congress have so regarded it in all their transactions in connection therewith, and, moreover, the subject-matter of the order was justly and fairly considered for months before it was signed. The only parties who are now taking an opposite view are directly interested in keeping the reservation closed to settlement and their immediate friends, the agents, traders, missionaries, &c., and those good friends of the Indians in the East who are overzealous in their kindness to them. I say kindness, for the reason that it is manifestly a mistaken idea that the Indians will be benefited by keeping the reservation closed to settlement.

This leads us to consider the policy of the order opening the reservation.

The order was not made in great haste, nor in any haste whatever. Everybody knows all over the country that the subject was under consideration by the Department for more than six months before made. In fact the subject has been urged repeatedly for years, and the people certainly expected the order would be made long before it was.

It is strange indeed that the Indian Bureau should require an official notice of the order. One would suppose that it is the duty of the chief of the bureau to take notice of the orders of the head of his Department. The idea that the Indian Committee of the Senate and House had no opportunity to pass upon the wisdom or justice of the order is the merest quibble. Who and what prevented the committee from considering this matter?

If any legislation was required why has it been delayed until the people of the West and the Administration felt the most pressing need for action?

But we are told that the friends of the Indians are committed to the policy of reducing these reservations whenever the rights of the Indians can be secured. We trust this may be true, for it is no act of kindness toward the Indians to keep the reservation closed to settlement. Of what benefit is it to give them a vast unoccupied country to roam over? This is in strict accordance with their savage tastes and habits, and it encourages them to continue the same. They will never become self-supporting so long as they are allowed to occupy a vastly greater extent of country than is required for their wants. If experience is worth anything it teaches this fact. These Indians have been upon this reservation under the charge of the Government for more than twenty years. Money, cattle, clothing, agricultural implements, machines, and teachers have been lavishly furnished them, and yet the amount of land actually utilized by them or for their benefit for agriculture, grazing, and every other purpose will not aggregate ten sections.

Is this a satisfactory result? Indians upon reservations reasonable in size in proportion to the number of occupants have certainly made greater improvements.

We are told that only 136,000 acres is reserved for the Indians. That is more than a quarter section of land for every man, woman, and child upon the reservation, and much more than they will ever actually use under the most favorable circumstances. So far as the quality is concerned the settlers would gladly exchange for it. In fact, we all know that the portion reserved embraces some of the finest bottom and upland as well as some of the best timbered portion of the reservation. In what possible manner can this order be "disastrous to the Indians?" There is but one contingency by which the order can work an injury to the Indians. If they persist in the future as in the past in troubling and interfering with the settlers, it would be strange indeed if some of them were not "gathered to their fathers" in a summary manner.

It certainly can work no hardship towards these Indians to require each adult to occupy not more than one section of land. They can occupy and perfect their title to all the land necessary the same now as before the order was made. Their improvement and actual settlement are amply protected by the order upon every portion of the reservation.

It is said that the settlers interfere with the Indians, and that the herd of agency cattle is in danger of being stampeded. That is a gross mistake; no such state of affairs exists. The fact is, the agent and other parties interested in keeping the reservation closed lead the Indians to believe the whites have no business upon the reservation. This causes them to be bold and impudent; to interfere with the settlers in many ways, and the settlers are compelled to defend themselves. The settlers simply desire that the agent and others should perform their duty and make the Indians understand the real condition of affairs, and the sooner and more emphatic this is done the better it will be for them.

We respectfully submit that the Department should take into consideration the real interest of this Territory and of the Indians themselves. This unreasonable opposition to opening the reservation by the friends of the Indians in the East will certainly exasperate and alienate their friends here.

There can be no possible advantage in longer withholding it from settlement; the people have gone there, not as adventurers, but for the purpose of making it their homes, and they should be allowed to at once file upon their claims, and it is absolute injustice to longer deprive them of this right. It prevents them from determining their titles at the very time they desire to commence the cultivation of their land and make substantial improvements, and it encourages litigation.

This delay causes and encourages litigation over the title to their claims, which is most prejudicial to the substantial improvement and growth of a new country.

These settlers simply desire their just rights. It is not strange that this reservation should be quickly occupied. These settlers are not beyond the bounds of civilization; railroads, schools, and bright and flourishing towns are up on the very borders of the reservation. They respectfully represent that the terms of the order opening the reservation are perfectly in accordance with the best interests of the settlers. There should be no delay in its taking effect or in carrying out its terms. The settlers who first make their improvements should be allowed to immediately file upon their claims and end all disputes at once.

Give these settlers a few months of undisturbed possession of their claims, with the knowledge that their titles are secure, and that portion of the reservation opened to settlement, instead of being a source of encouragement to the Indians to retain their savage roaming habits of life, will be covered with the happy homes of a peaceful and refined people.

All of which is respectfully submitted.

HON. L. Q. C. LAMAR,
Secretary of the Interior, Washington, D. C.

O. S. GIFFORD,
Delegate, Dakota.

WASHINGTON, April 2, 1885.

SIR: I have the honor herewith respectfully to transmit a telegram received this morning from Crow Creek Agency, which explains itself. The person is the same as named in my letter to your office of March 10 ultimo. It appears therefrom that whites are not only taking possession of the land of the Indians but destroying their property. I respectfully request that telegraphic instructions be sent the proper authority preventing such outrages, and as speedily as possible enforcing the law. It appears that the Executive order of February 27, 1885, apparently restoring a large part of the Crow Creek Reservation to the public domain, was really procured in a hasty and imperfect manner and was never, I believe, officially promulgated by the General Land Office or the Interior Department.

Any pretended settlements made under it have been on private information by telegraph and otherwise, the full investigation of which will, I doubt not, reveal a conspiracy of certain interested parties for their own benefit at the expense of the moral and legal rights of the Indians. The opinion of the Attorney-General of March 30 declares the Executive order referred to wholly inoperative and void, so that the old boundaries of the reservation as secured by the treaty of April 29, 1868, are, and always have been since that time, the legal boundaries of the reservation.

It is clearly impossible for white people to obtain a title to any of these lands under the circumstances; and it is unjust to allow any to rest under such an illusion, if, indeed, it has ever really existed in any mind, while the Indians are greatly disturbed and provoked almost to desperation by the trespassers.

I am, sir, very respectfully,

A. J. CARRIER.

Hon. J. D. C. ATKINS,
Commissioner of Indian Affairs, Washington, D. C.

[Telegram.]

CHAMBERLAIN, DAK., March 1, 1885.

A. J. CARRIER
(Care Department of Indian Affairs),
Washington, D. C.:

Will letter reach you before you leave Washington? My buildings destroyed by whites.

SARAH LACROIX.

BRYAN, OHIO, WILLIAMS COUNTY, 4, 2, 1885.

SIRS: Will you please [give] information, with regard to Dakota lands, under the name of "Crow Creek" Reservation, either in or adjoining Huron district.

Is there difficulty with the Indians with regard to land rights? Is the treaty with that tribe complete; or, in other words, can the Government make me a good title to land I should enter in said locality?

Please do me the kind favor of information in the matter immediately.

Yours,

F. B. YATES.

DEPARTMENT INTERIOR.

[Telegram.]

CHAMBERLAIN, DAK., April 4, 1885.

The PRESIDENT,
Washington, D. C.:

Thousands of honest, earnest settlers appeal to you for their homes. They pray you not to rescind order issued by Arthur opening lands to settlement.

KING, DUNCAN, HENRY,
And hundreds of others.

CHICAGO, April 4.

DEAR SIR: I was employed by citizens of Dakota, and filed a brief with Secretary Teller, in the application to open the Winnebago Reservation (so called) to settlement.

I see by dispatches that there is talk of revoking the order and removing the settlers from their claims.

Upon examination you will find, as I did, that the portion, some 400,000 acres, which was at one time the "Winnebago Reservation," has been for many years a part of the public domain, and in no sense an Indian reservation, and only needed the Executive order to open it for settlement.

My brief gives a history of the matter; as to the "Sioux" portion (some 200,000 acres) at Crow Creek, it stands differently.

The Winnebago part is properly opened to settlement at least, and should not be interfered with.

Very respectfully,

JOHN F. FARNSWORTH.

Hon. J. D. C. ATKINS.

HIGHMORE, DAK., April 4, 1885.

DEAR SIR: From the daily papers we learn that there is a probability that the Winnebago Indian Reservation, part of which is in this (Hyde) county, will revert to the Indians.

From your standpoint you may not see why it would be detrimental to have such a course taken. Many of the settlers came here with but money enough to get themselves and their household goods on the opened reservation, and they are there in good faith awaiting the action of the Land Office to make filings. It would be a great injustice to them to compel them to vacate the land. Many have commenced breaking, and others have begun putting in their spring crop, and to force these actual settlers from the land would not be right.

Yours truly,

O. P. EVERHARD.

L. Q. C. LAMAR,
Secretary, Washington, D. C.

[Telegram.]

PIERRE, DAK., April 5, 1885.

GROVER CLEVELAND,
President, Washington, D. C.:

Three thousand actual settlers on Winnebago Reservation desire to be heard before order is revoked.

F. W. PRATT,
Cashier Dakota Central Bank.

[Telegram.]

PIERRE, DAK., *April 5, 1885.*

GROVER CLEVELAND,
President, Washington, D. C.:

Over three thousand actual settlers residing on Winnebago Reservation who desire to be heard before order revoked.

GEORGE W. HARRIS,
Sheriff.

[Telegram.]

BLUNT, DAK., *April 6, 1885.*

The PRESIDENT,
Washington, D. C.:

Having invested all our means in homes on the Winnebago Reservation as United States citizens we ask for a hearing before Arthur's order is revoked.

OVER HUNDRED SETTLERS.

[Telegram.]

PIERRE, DAK., *April 6, 1885.*

The PRESIDENT,
Washington, D. C.:

Would especially urge that you defer acting on report of Attorney-General Garland in the Winnebago Reservation matter until settlers have a hearing.

HENRY BLAKELY,
Mayor of Pierre.

MADISON, WIS., *April 6, 1885.*

SIR: I notice an argument in the telegraphic dispatches from Washington to the effect that a very large number of people are on the Crow Creek Reservation, drawn there by the so-called opening of the reservation by the order of February 27, 1885, and that this will be powerfully used to stay the ejection of the people, &c. But I happen to know that people have for ten years past selling out good homes in other portions of the western country for the purpose of venturing to Dakota, and that thousands of them have returned in disgust to their former abodes, in consequence of deception deliberately practiced on them by certain kinds of overstatements of the desirability of Dakota and its advantages. This has been systematically practiced, especially by town-site combinations and others, for their own selfish ends, and when no Indian lands were in question. But we have heard no tearful regrets from these interested parties, after the "fly has walked into the parlor," such as it is now sought to impress you and the President with the hope of allowing the syndicate who procured the illegal action of the last administration. I sincerely trust that justice to the helpless Indians will not be hampered by such tricks. I will be at Crow Creek Wednesday next.

Respectfully, &c.,

A. J. CARRIER.

Hon. L. Q. C. LAMAR,
Secretary of the Interior, Washington, D. C.

SAINT LOUIS, *April 2, 1885.*

The Hon. COMMISSIONER OF INDIAN AFFAIRS:

The Indian Rights Association, of Saint Louis, by executive committee, begs to express its strong approval of the revocation of the order by which the Crow Creek Reservation in Dakota was recently being wrongly opened to white settlers, contrary to treaty stipulations. It begs to assure you further of its entire support in all your efforts to secure justice and fair dealing with Indians.

C. F. ROBERTSON,
President Saint Louis Branch Indian Rights Association.

CHARLES E. BRIGGS,
Secretary pro tem.

MATTOON, ILL., *April 19, 1885.*

MY DEAR SIR: I am in receipt of your favor of 2d instant conveying the welcome intelligence that at last justice has been done a much wronged people, and the faith of the Government, once broken, has been at this late day made good, and I trust that the little remnant that remains of Chief Joseph's band of Nez Percés may now be on their way back to their old homes in Idaho, and that the present Administration may so manage its trust that every Indian tribe in the country may be benefited and their condition improved, and their childlike faith in the Great Father fully restored and their affairs so honestly and yet firmly conducted that before many years, we, as Americans, can point to them with pride as an example of the result of honest and just treatment of a once powerful but now subdued race.

I read with pleasure the President's proclamation regarding the Winnebago Reservation in Dakota, and inclosing you a clipping from the Chicago Tribune accompanying it, and as one who has had considerable experience in Territorial emigration, I wish to assure the President, who I believe has never had the opportunity of visiting the frontier settlements, that all such cries of the ruination of honest home-seekers is simply bosh and raised in the interest of land-grabbers, and from what I know of the raid on the reservation referred to I will assert that not one out of fifty who squatted inside the line after Arthur's proclamation went there with the honest intention of making the claim he or she took a future home. For days before every town within 50 miles of the line had parties preparing to haul a little pile of boards over the line to hold a claim, and every girl, waiter, or servant in the hotel, every clerk, barkeeper, lawyer, and even ministers of the gospel joined in the raid, and are to-day making a monthly trip to their claim on the Winnebago lands.

Old soldiers! I should say so! Many of them have staked claims in every county through Minnesota to their present "shack," and always stood ready through the agency of some land agent to relinquish for a consideration all their valuable improvements—which generally consist of two or three acres rough breaking and a twenty-five dollar shack—and move on to a new claim.

Why the last Congress failed to repeal both pre-emption and free-claim acts I cannot see, for they are both used by unscrupulous parties to get possession of the large quantities of land, to lay idle for future speculation. I could go on all night and cite cases that I know of, but fear I am already proving a tiresome correspondent; but I shall watch affairs closely, and whenever I see the present Administration doing goodly work I shall feel entitled to applaud.

Yours, very truly,

J. QUINCY WALKER,
3362 Prairie Avenue, Chicago.

Hon. JOHN D. C. ATKINS,
Commissioner of Indian Affairs, Washington, D. C.

[Newspaper slip.]

Specials from Chamberlain, Canning, Mitchell, Huron, Pierre, and other points interested in the Winnebago Reservation indicate much feeling, and great hardship will ensue from the proclamation of President Cleveland vacating Arthur's order opening the reservation to settlement. Indignation meetings will probably result when the order is generally promulgated. The settlers have been seeding and have all they have invested in improvements, and to be evicted will bankrupt many. Old soldiers among the settlers say it is rank injustice that their little homesteads shall be taken after entered in good faith, when no benefit would accrue to the Indians, who will make no use of the. Trouble is feared, for force may be required to dispossess them. Troops will undoubtedly be necessary to enforce the provisions of the proclamation.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, April 21, 1885.

SIR: Referring to our recent conversation, when the question arose as to whether the surveys which have been made within the old Winnebago and Crow Creek Reservations were paid for out of funds appropriated for the survey of the public lands, or out of funds appropriated for the survey of Indian reservations, I have the honor to state that it is found upon examination of the records of this Bureau and General Land Office that the

survey of township, section, and subdivisional lines within the reservations, except as hereinafter noted, were all paid for out of funds appropriated "for the survey of Indian reservations and subdividing portions of the same." (Act approved June 23, 1874; Stat. 18, p. 213.)

I find that on May 25, 1874, this office recommended to the Department that the Commissioner of the General Land Office be instructed to enter into contract for "the survey of the Old Sioux and Winnebago Reservations in Dakota, lying on the east side of the Missouri River, and made a part of the general Sioux Reserve by the treaty of 1868, into 160-acre tracts, except those fractional townships lying along the Missouri River, which should be subdivided into 40-acre tracts."

On September 26, 1874, the Department approved said recommendation, and directed the General Land Office accordingly.

Contract for the work was made with Deputy Surveyor James W. Miller under date October 2, 1874, and paid for out of the appropriation for survey of Indian reservations, as before stated.

I have spoken of certain exceptions; it appears that the public surveys were extended over a very inconsiderable portion of the southern part of the Crow Creek Reservation in 1868.

For some reason, which I have not been able to ascertain in the hurried examination made, but probably through an oversight, the public surveys in Dakota were extended, in 1868, a short distance (3 or 4 miles) north of American Creek, including townships 104 north, ranges 69, 70, and 71 west, and the work was paid for out of funds appropriated for the survey of the public lands. (Act July 20, 1868; Stats. 15, p. 110.) But aside from this, which at best is of but trifling importance, all the surveys made within the Old Winnebago and Crow Creek Reservations have been paid out of funds appropriated for the survey of Indian lands, and not out of funds appropriated for surveys of the public lands.

In 1882, for its own convenience and for the purpose of defining the reservation boundary and separating the Indian reservation lands from the public lands, the General Land Office completed the meandering of American Creek and extended the south line of the Crow Creek Reservation to a point due south of the 18-mile post on the east boundary of the reservation as established by Deputy Surveyor Miller. I mention this simply because it is a matter touching the question of surveys in connection with these reservations.

As showing that the Miller surveys were not made with a view to opening the lands to white settlement, as some people have alleged, I quote the following from a letter addressed to Agent Livingston, of the Upper Missouri Agency, on October 6, 1874:

"You are advised that a contract for the survey of the Old Sioux (Crow Creek) and Winnebago Reservations, in Dakota, lying on the east side of the Missouri River, and made a part of the General Sioux reserve by the treaty of 1868, into 160-acre tracts, except those fractional townships lying along the Missouri River, which are to be subdivided into 40-acre tracts; also for the survey of a tract of country within the Sioux Reservation on the west side of the Missouri River, commencing at the mouth of White River and extending up the same the length of three townships, and also extending 1 township in width on each side of the river, the same to be divided into 40-acre tracts (as recommended in office report of the 25th ultimo to the Hon. Secretary of the Interior) has been awarded to J. W. Miller, esq., who will proceed at once to the execution of the work.

"To enable Mr. Miller to execute the work promptly, and to guard against any opposition thereto on the part of the Indians of that vicinity, you are instructed to hold a counsel with the Indians at your agency and explain fully to them the nature and purpose of these surveys, and to do all in your power to secure their assent and to keep them peaceful and friendly during the prosecution of said survey.

"Assure the Indians that this survey is not made with any reference to the occupation of their country by white people, but for their own benefit as soon as they shall be ready to take each his own portion of land for himself according to their treaty." * * *

It would seem as if no further evidence were needed to contradict the claim that the surveys were made with a view to opening the lands to white settlement.

Very respectfully, your obedient servant,

JNO. D. C. ATKINS,
Commissioner.

Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, *Washington, April 22, 1885.*

SIR: I transmit herewith for your information and guidance copy of a proclamation by the President, dated the 17th instant, defining the status of the tracts of country in

the Territory of Dakota, known as the Old Winnebago Reservation and the Sioux or Crow Creek Reservation, and lying on the east bank of the Missouri River, and declaring the same to be Indian reservation.

Very respectfully,

L. Q. C. LAMAR,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

(NOTE.—For copy of President's proclamation see No. 41 of accompanying paper.)

HURON, BEADLE COUNTY, DAKOTA, *April 23, 1885.*

DEAR SIR: Please mail me a copy of the Executive order opening the Winnebago and Crow Creek Reservations of Dakota to white settlement, and oblige

Yours, truly,

E. J. DEAN.

The SECRETARY INTERIOR,
Washington, D. C.

P. S.—Speculators in Pierce and Chamberlain and some other towns will do all they can to stir up the settlers to hold their claims, so that they may unload—that is to say, sell the claims they hold. Some of them have fifteen to twenty claims apiece, and they are determined to provoke all the opposition possible to the Government.

I publish here the Huron Herald, and believe that President Cleveland is right and ought to be sustained.

E. J. DEAN.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, May 1, 1885.

SIR: In compliance with request contained in your letter to the Secretary of the Interior of the 23d instant, I inclose herewith a copy of an Executive order, dated February 27, 1885, relating to the Sioux or Crow Creek and Old Winnebago Reservations, on the east side of the Missouri River, in Dakota Territory.

In furnishing you with a copy of this order, it should be stated for your information that by a public proclamation of the President, dated April 17, 1885, said order was declared to be inoperative and of no effect.

Very respectfully,

JNO. D. C. ATKINS,
Commissioner.

E. J. DEAN, Esq.,
Huron, Dak.

[Extract from Agent Gasmann's monthly report for April, 1885.]

UNITED STATES INDIAN SERVICE,
Crow Creek Agency, May 6, 1885.

* * * * *

I wish particularly to draw attention to the conduct of the Indians at Crow Creek during the past month. Pressed upon by the white settlers on all sides, who came in upon the reservation under the order of President Arthur, they have yet refrained from any hostile or violent act. Some have complained of ill treatment from the settlers, yet I have not heard of a single instance where they have returned evil for evil; and in many instances have even shown great friendliness to their white neighbors. I have constantly counseled them to act kindly and rather to endure wrong than to commit wrong.

I have explained to them the order of President Cleveland revoking the order of ex-President Arthur and giving them their lands back, and warned them to refrain from any acts calculated to disturb the settlers and to wait for the Great Father to move off.

THE SETTLERS.

I feel it my duty, in view of the many false reports circulated by the press as to the number and improvements of these people, to make the following statement:

In the first place, as to the number of actual settlers I feel confident that there not at

present four hundred on the reserve. Some have gone away, and others say they will stay until removed by troops. Threats are made that if they are removed they will again return, and if the attempt is made to remove them by means of Indian police they will resist or fight. Citizens of neighboring towns have inquired of me as to my intention in regard to sending out police (Indians) to drive off the settlers.

I have informed them that I have no orders to do so, and that I do not expect that the police will be used for that purpose. There exists on the part of many of the border settlers a feeling of hostility towards the Indian, and it would be unwise to use the Indian police to remove these people, already bitter in their feelings toward them. I trust the Department will not call upon them for this duty.

In regard to the improvements made by the settlers on the reservation, I believe that outside the addition to Chamberlain (some thirty or forty houses) the shanties built will not average in value above \$10 or \$15.

Exaggerated statements are being circulated both as to numbers of actual settlers and the value of improvements. The greatest amount of improvements have been made by people living in neighboring towns and villages, and these are the parties most violent in their remonstrance against being removed.

The question of the right and title of the Indians to the lands seems to be entirely ignored, and the fearful hardship imposed upon the white man in not allowing him to rob the Indian of what little remains to him is dwelt upon with great emphasis.

I believe the order of President Cleveland will teach a lesson on the subject much and for a long time needed.

There are people among the settlers who are innocent sufferers, and I trust some way will be devised by which they can be reimbursed for their loss of time, labor, and material.

The great majority, however, are speculators and have made but very slight improvements. I have counted hundreds of "shacks" not worth \$5. I have gone over parts of the reserve and find that these "shacks" are unfit to live in, and, as far as I have seen, not one in fifty is inhabited.

It speaks well for the Indians that scarcely one of these shanties have been disturbed and not a single white man injured in person or property. They have confidence in my representations to them that the Government will see justice done them, and are waiting patiently for the time to expire.

Very respectfully, your obedient servant,

JOHN G. GASMANN,
United States Indian Agent.

HOME OFFICE OF THE DAKOTA
FIRE AND MARINE INSURANCE COMPANY,
Chamberlain, Dak., May 13, 1885.

DEAR SIR: Yours of May 8, 1885, received. Please observe by the letter that I do not ask for any opinion, but I do ask for a copy of any order or law, or even a departmental letter, creating a reservation north of American Creek and about Crow Creek prior to the treaty of 1868, because if not in existence at that time it was not created by the words "existing reservations."

Please do not treat this matter formally or lightly as it is honest and very important.

I ask for no opinion, but a copy of the law or authority or anything showing that it was a reservation prior to that time, which you must have had to come to the conclusion that it was an existing reservation.

Will you do me the courtesy to send it if there is any, and inform me if there is none?

Very respectfully,

JOHN H. KING.

A. H. GARLAND,
Attorney-General, Washington, D. C.

[Unofficial copy newspaper slip Saint Louis Globe-Democrat, May 19, 1885. Special dispatch to the Globe-Democrat.]

The settlers must vacate—Another proclamation by Governor Pierce concerning the Indian reservations.

BISMARCK, DAK., May 18.

Governor Price has issued to-day to the settlers upon the Crow Creek and Winnebago Reservations a supplemental address, based on a letter from the President.

“EXECUTIVE OFFICE,
“Bismarck, Dak., May 18, 1885.

“To the settlers upon the Crow Creek and Winnebago lands:

“The following communication has been received at this office from the President of the United States, and is published for the information of all concerned:

“EXECUTIVE MANSION,
“Washington, D. C., May 13, 1885.

“DEAR SIR: Your letter of May 6 is received, and I thank you for the interest you have evinced in the subject of the Crow Creek and Winnebago Reservations. I regret exceedingly that there are any settlers in good faith upon these reservation lands who will suffer at all by the enforcement of the last Executive proclamation, but it was issued because the law, justice, and a due regard for the treaty obligations of the Government demanded it.

“The reasons which operated upon the Executive and his advisers, inducing the issuing of the proclamation, still exist in full force and manifestly render it impossible to suspend or modify such proclamation, or extend the time within which the same may be complied with.

“Very respectfully,

“GROVER CLEVELAND.’

“To Hon. GILBERT A. PIERCE,
“Governor of Dakota.

“It will be seen by the above that any expectation of a suspension of the order for a vacation of the lands is delusive, and can only bring disappointment.

“I therefore renew the request made in a former paper from this office, and enjoin upon the settlers to comply promptly and quietly with the command of the Executive.

“Let the President see that the settlers on these lands are law-abiding, and that whatever the personal sacrifice, they will interpose no obstacle to the peaceable execution of the order.

“I repeat that nothing is to be gained, while much may be lost, by a failure to observe this injunction. The same regard for the moral obligations of the Government which inspired this order will insure justice to the innocent sufferers by it if they evince that spirit of obedience to the constituted authorities which becomes American citizens.

“GILBERT A. PIERCE,
“Governor.”

416 WALNUT STREET, PHILADELPHIA, May 26, 1885.

MY DEAR SIR: I take the liberty of asking if you can furnish me with a copy of your opinion in reference to the validity of Presidential order of February 27 ultimo, opening to settlement certain portions of the Crow Creek and Old Winnebago Reserves, Dakota. The opinion was given, I believe, about the 2d of April last. Also, if it is not asking too much, a copy of your recent opinion touching the eligibility of an Indian to the office of postmaster in Indian Territory.

I ask for these for the use of the law committee of the Indian Rights Association. Hoping you will pardon my troubling you,

I am, with great respect,

HENRY S. PANCOAST,
Chairman of Committee on Law, Indian Rights Association.

Hon. Attorney-General GARLAND.

DEPARTMENT OF JUSTICE,
Washington, May 27, 1885.

SIR: I have the honor to send you for your action thereupon a copy of a letter of the 26th instant from Henry S. Pancoast, chairman of the committee on law of the Indian Rights Association, asking for a copy of the opinion recently rendered to your Department as to the Presidential order of February 27 ultimo, opening to settlement certain portions of the Crow Creek and Old Winnebago Reservations in Dakota.

Very respectfully,

A. H. GARLAND,
Attorney-General.

The SECRETARY OF THE INTERIOR.

UNITED STATES INDIAN SERVICE,
Crow Creek Agency, June 22, 1885.

SIR: Referring to the proclamation of the President of April 17 ultimo, ordering all white settlers off this reservation within sixty days, I have the honor to inform you that but a small number have heeded the order, and owing to newspaper reports to the effect that they were to be allowed to remain until Congress meets, a number of those who had previously removed have returned "and are determined to stay on the Indian lands until removed by the Government."

The herders holding the beef cattle in the "Big Bend" report that a number of white men have again invaded that locality, and that it will be impossible to hold the cattle for the coming year there unless they are removed. There being no other place on this reservation where a beef herd can be wintered, I trust that such action may soon be taken as will enable me to hold the cattle soon to be received there.

The improvements made by the settlers in that locality are but small, the lands there generally are unfit for agriculture, and are only valuable for grazing purposes. In connection with this reservation the "Big Bend" is of great value, both for present and prospective use, as a place where the beef herd can be wintered, and where, when the Government shall cease to furnish beef, a herd for that purpose can be held by the Indians. Their future self-support will depend greatly on keeping this portion of their reservation intact.

Very respectfully, your obedient servant,

JOHN G. GASMANN,
United States Indian Agent.

HON. COMMISSIONER INDIAN AFFAIRS,
Washington, D. C.

CHAMBERLAIN, DAK., June 22, 1885.

SIR: I desire to know what lands included in the late Crow Creek Reservation opened by order of President Arthur have been allotted to the Indians.

Also if lands allotted to individuals or families of the Crow Creek band, but not occupied, and never having been settled upon by them, can be held by them as allotments?

This information will greatly oblige and assist.

Respectfully,

SCOTT HAYES,
County Surveyor, Brulé County.

General WILLIAM A. J. SPARKS,
Commissioner General Land Office, Washington, D. C.

[Referred to Indian Office by General Land Office.]

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, August 26, 1885.

SIR: A copy of your letter of the 17th instant, in relation to settlers on the Old Winnebago and Sioux or Crow Creek Reservations, and their driving Government cattle off that part of the reservation known as Big Bend, and the holders of the cattle so driven off by parties outside the reservation, has this day been forwarded with report to the Hon. Secretary of the Interior, with the recommendation that authority be granted the agent in charge to remove from the reservation all settlers falling within the terms of the President's proclamation of April 17, 1885, and all other unauthorized persons, and that if he is unable to do so, to call upon the proper military officer for sufficient force to effect the desired end. Also that the Hon. Secretary of War be requested to instruct the proper officer to furnish the requisite force upon the call of the agent.

A copy of your letter has also this day been forwarded to the Hon. Secretary of the Interior, with recommendation that the Hon. Attorney-General be requested to instruct the United States District Attorney to prosecute the parties taking possession of Government cattle and driving them off the reservation; also that the district attorney be further instructed to immediately take the necessary steps to replevy the cattle now held by parties outside, for damage resulting from trespass.

You will place yourself in communication with the district attorney and furnish him with the names and residences of the persons driving the cattle off the reservation, and of those parties now holding them, as well as the names and residences of the witnesses

by whom the fact can be proven, and such other information and facts as may be necessary to enable him to proceed intelligently in the matter.

You will be further advised as to the action taken by the Department in respect of the removal of settlers from the reservation.

Very respectfully,

J. D. C. ATKINS,
Commissioner.

JOHN G. GASMANN, Esq.,
United States Indian Agent, Crow Creek Agency, Dakota Territory.

DEPARTMENT OF THE INTERIOR,
Washington, August 27, 1885.

SIR: I have considered your report of the 26th instant, referring to the President's proclamation of April 17, 1885, declaring inoperative and of no effect the Executive order of February 27, 1885, which sought to restore to the public domain a portion of the old Winnebago and Crow Creek Reservations in Dakota, said proclamation requiring all persons upon said lands under color of said Executive order to remove therefrom within sixty days, which period has already expired.

It is now reported by Agent Gasman, in charge of the Crow Creek Agency, that by reason of the presence of the intruders—alleged settlers—upon those lands he is having great difficulty in holding the beef herd of cattle on the reservation.

In view of this fact, and in compliance with your recommendation, you are hereby authorized to instruct the proper Indian agent to remove all alleged settlers and other unauthorized persons from the reservation, and, if it should be necessary to accomplish this purpose, to call upon the commanding officer of the nearest military post for such aid as may be required.

The honorable Secretary of War has this day been requested to cause the necessary instructions to be issued to the proper military officers to furnish, upon call of the agent, such force as may be required to effect the removal of the persons referred to from the reservation.

Very respectfully,

L. Q. C. LAMAR,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

[Telegram.]

OFFICE OF INDIAN AFFAIRS,
Washington, August 29, 1885.

GASMANN,
Agent, Crow Creek, Dak., via Chamberlain:

Secretary has granted you authority to remove all settlers and unauthorized persons from reservation, and, if necessary, to call on commanding officer nearest military post for force sufficient to effect their removal.

Proceed at once to remove them and their effects. See office letter, twenty-sixth copy of authority by mail.

J. D. C. ATKINS,
Commissioner.

[Telegram.]

OFFICE OF INDIAN AFFAIRS,
Washington, D. C., August 30, 1885.

JNO. G. GASMANN,
Agent, Crow Creek, Dak., via Chamberlain:

You will receive, by due course of mail, explicit instructions as to the proper steps you are to take to remove all settlers and unauthorized persons and their cattle from the reservation.

J. D. C. ATKINS,
Commissioner.

[Telegram.]

OFFICE OF INDIAN AFFAIRS,
Washington, D. C., August 30, 1885.

GASMANN,

Agent, Crow Creek, Dak., via Chamberlain:

Await further instructions from me before proceeding to remove settlers referred to in telegram yesterday, or calling on military for aid.

J. D. C. ATKINS,
*Commissioner.*DEPARTMENT OF INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, August 31, 1885.

SIR: Referring to office letter to you of the 26th instant, informing you of the action taken upon your letter of the 17th instant, relative to settlers upon the Old Winnebago and Sioux or Crow Creek Reservations, I have now to advise you that the honorable Secretary of the Interior, under date of the 27th instant, granted authority (copy inclosed) for the removal of all alleged settlers and other unauthorized persons from the reservation, and, if it should be necessary, to accomplish this purpose, to call upon the commanding officer of the nearest military post for such aid as may be required. The Secretary has requested the Secretary of War to direct the commanding officer of the nearest military post to furnish sufficient force to effect the desired end upon call of the agent. Reference being had also to telegrams of the 29th and 30th instant, I have to direct that you will proceed at once to remove the parties and their effects from the reservation, and, if unable to do so with the force at your command, you will call upon the proper military officer for the requisite force to execute the authority. The removal should be made in such a manner as to avoid conflict and the loss of property.

The settlers should be allowed an opportunity to remove themselves and property, and if they fail to do so then other measures should be resorted to, using, of course, as little force as the spirit of the settlers and the circumstances of the case will permit of.

You will report fully your action to this office.

You will confine your operations first to that portion of the reservation known as the "Big Bend," and report results before taking action as to other portions of the reservation.

Very respectfully,

J. D. C. ATKINS,
Commissioner.

JNO. G. GASMAN, Esq.,

*U. S. Indian Agent, Crow Creek Agency, Dakota.*HEADQUARTERS DEPARTMENT OF DAKOTA,
Fort Snelling, Minn., September 8, 1885.

SIR: Referring to your reference, dated September 4, 1885, of copies of correspondence, on the subject of removal of alleged settlers and other unauthorized persons from the Old Winnebago and Crow Creek Reservations, with orders to carry out the instructions of the Secretary of War and the Lieutenant-General commanding the Army in regard thereto, I have the honor of reporting that the commanding officer at Fort Sully, Dak., has been furnished with copies of the correspondence and ordered to furnish to the agent, Mr. John G. Gasman, such military aid as he may require, for the purpose under consideration, and Agent Gasman has been informed of the fact.

I have further instructed the commanding officer, Fort Sully, as follows:

"The duty to be performed by the troops is a delicate one, and the officers sent to perform it must be very carefully selected for their good judgment and discretion; they will be instructed to act only under the orders of the agent.

"The force sent should in no case be less than one company, and in case resistance should be encountered, or apprehended, it should be reinforced sufficiently to enable it to overawe all opposition.

"Whenever a detachment is furnished Mr. Gasman you will please report by telegraph the force sent out and the names of the officers with it."

Very respectfully, your obedient servant,

ALFRED H. TERRY,
*Brigadier-General, Commanding.*The ADJUTANT-GENERAL, DIVISION OF THE MISSOURI,
Chicago, Ill.

[First indorsement.]

HEADQUARTERS DIVISION OF THE MISSOURI,
ASSISTANT ADJUTANT-GENERAL'S OFFICE,
Chicago, September 11, 1885.

Respectfully forwarded to the Adjutant-General of the Army.

* * * * *

J. M. SCHOFIELD,
Major-General, Commanding.

[Telegram.]

OFFICE OF INDIAN AFFAIRS,
Washington, D. C., September 15, 1885.

GASMANN,
Agent Crow Creek, Dak., via Chamberlain :

What progress have you made in removing settlers from the Big Bend? This office is surprised at your silence on this subject.
Charge Indian Office.

J. D. C. ATKINS,
Commissioner.

[Telegram.]

CROW CREEK, VIA CHAMBERLAIN, DAK., *September 17, 1885.*

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

Notice given to settlers in Big Bend to vacate within ten days from 10th instant; shall proceed to Bend Monday next and see if order has been complied with. Am informed that settlers are leaving; intend personally to visit every settler on reservation and serve notice to vacate within twenty days. Think they will leave without interference of military. Will take at least eight days to visit settlers; will report on my return. Am I doing right?

GASMANN,
Agent.

[Telegram.]

OFFICE OF INDIAN AFFAIRS,
Washington, D. C., September 18, 1885.

GASMANN,
Agent Crow Creek, Dakota, via Chamberlain :

Telegram 17th received. Instructions August 31 direct you to confine operations as to settlers to Big Bend country, and report results before taking action as to other portions of reservation. Action as to settlers in Big Bend approved.

J. D. C. ATKINS,
Commissioner.

CHAMBERLAIN, BRULÉ COUNTY, DAKOTA,
September 19, 1885.

DEAR SIR: Since Rev. S. D. Hinman returned from presenting the Crow Creek settlers' case to your honor and President Cleveland, bringing the promise that the settlers should not be disturbed and the question should be left for Congress to settle, quiet and peace have reigned.

But now, like a thunderbolt from a clear sky, comes an order from Agent Gassman, of Crow Creek Agency, for all settlers to remove, with their improvements, within twenty days.

As the people on the border here feel that he has for years done all in his power to make the pioneer's life more unhappy than necessary, and that this order may not be concurred in at headquarters, I write to know the facts in the case, as a misunderstanding may make more trouble than would otherwise be raised.

Mr. Gassman, I see, in a letter to yourself some time ago, argues that the Indians need

the Big Bend near the agency for pasture. With an average of 500 acres per family still left to the Indians, we can hardly see how that is, but if that were the case, why not let them have that, and not remove all the settlers and their improvements, which have cost them their little all, and who occupy land the Indian never has dreamed of using?

In the interest of an unfortunate, poor, but brave-hearted people, I take the liberty of writing, and cherish the hope of an early and favorable reply.

Most respectfully, yours,

G. R. OWEN,
Secretary Settlers' Association.

His honor SECRETARY LAMAR.

THE CROW CREEK SETTLERS' CASE IN BRIEF.

The title to this land was conceded to be in the Yankton Indians. (See action of Congress in accepting it in 1858 and paying for it, and also Indian powwow of Sioux, at Fort Laramie, in 1851, page 1048, same book; also page 856 in treaty of 1858.)

The Government moved the Winnebagoes and the Santees to Crow Creek in 1863, from Minnesota, by Mr. Thompson—John P. Williamson accompanying them as missionary—and then, without confirming the land to them, either by act of Congress or Executive order, moved them away (or rather the Indians refused to stay) in 1866; and neither by act of Congress, Executive order, or Department letter set apart either the Crow Creek or Winnebago Reservation, now so called, either in whole or in part, for these or any other Indians, or designated it as Indian lands or as a part of the Great Sioux Reservation, and it remained as public lands until 1875.

The present Indians came there in 1869, drifting down from Standing Rock, without direct authority from the Government; no Indians living there in 1868 (see statement of missionary John P. Williamson, who was all over these lands in 1868). Agent Hansen compelled or authorized a few of the Two Kettles to get their rations there in 1868; but none of them lived or habited there that year.

White Ghost and his band, who now claim the land, drew rations at Standing Rock and other agencies in 1868, as shown by the records, and came on these lands in 1869, with no authority, except that they have since been suffered to remain.

The records show that the land was withdrawn from market by Executive order in 1875, and restored in 1885 by the same authority. (If by treaty of 1868 it was Indian land, why did it need be withdrawn from settlement?)

The records show a portion of this land was surveyed in 1868-'69, after the treaty, and plats filed in the Springfield land office for settlement in 1870, and remained until withdrawn in 1875—a part having been surveyed in 1874. (If Indian land by treaty of 1868, why was this done?)

The interpreter, Hinman, Commissioners Sanborn and Terry, all say that no one intended to make this a portion of the Great Sioux Reservation.

The words "existing reservations on the east bank of the Missouri River" were to cover all questions about the Yankton lands, Devil's Lake lands, or Sisseton or Wahpeton, or any other existing reservation, if any. One commissioner says it is a mistake, and should be side instead of bank of the Missouri River. To claim that this land was made a reservation by the treaty of 1868, and brought into existence by that treaty when it used the words "existing reservations," is a singular construction of the English language.

Arthur opened a lot of these same lands in 1884, that Grant had withdrawn at the same time. Why don't Cleveland restore these? There were some half a dozen tracts above and about Fort Sully.

The Sioux Commission expressly told these Indians that they had no title to these lands, thereby not recognizing Indian right to the land, but trying to treat for it with that across the river, for convenience, believing it was the easiest and quickest way to get possession of it, but not the only way.

The missionary at Yankton Agency, Rev. John P. Williamson, who thoroughly understands the situation, says these Indians have no right or title to these lands by virtue of any treaty whatever. Mr. Williamson is more familiar with the actual facts than any other living man, being the longest in the missionary service of any Indian missionary on the Missouri River, and an honest man, if there is any in the United States.

The settlers have been perfectly peaceable, built homes, and want only what legally belongs to them.

The rapid settlement of the reservation, so called, does not argue as stated that it was a speculative scheme. The facts are these:

It has been known East and West for years that these lands were at any time liable to

be opened to settlement, and hundreds of people moved here from Eastern, Western, and Southern States, and settled in towns along the Chicago, Milwaukee & Saint Paul Railroad, which skirts the very edge of said lands, so as to be sure of a farm and home of their own when the "promised land" did open. They have lived here some of them one year, many of them more, their little capital daily diminishing, as business has been dull, and must be with only half of the country developed. These people, by authority of the Government, of course, made a great rush for free homes with what little they had left, and many of them are now in financial distress. If it is argued that many of the settlers have left the reservation, it must be remembered that it is by order of the nation's highest Executive, and shows them to be loyal citizens. Also that many women and children brought up in eastern homes cannot be kept out in the country on land near by Indians with reports weekly being circulated that the troops are coming to put them off and burn their homes, followed by reports that the Indians, though now peaceable, are coming soon, &c., especially when the men, not having in sufficient crops for fear they will not be left to harvest them, have to be away earning bread for the family.

While this is the case with many, there are brave ones who still stay on their claims and till the soil, not believing that this great Christian nation will drive them from the homes they have taken under its invitation and at the expense of their all.

There are some empty houses on the reservation built by men who have gone East for their families, and while preparing to move them here learned that this great nation could not be relied on and had countermanded its order. They are still in the East awaiting results. Many in towns here fearing to leave their families on the lands, or unable to support them there without right to till the soil with surety of title, are anxiously waiting, while others still living there look in each other's faces in anxiety and inquire of every passer-by, "What's the news?" Shall these be turned off and all improvements—amounting to hundreds of dollars with some, the little all with others—be lost until some great Sioux bill can be passed, and then return to find them destroyed.

The white soldier or settler can take but 160 acres for a homestead, and no married woman or child can take any to add to the family inheritance, while the Indians on the Crow Creek and Winnebago lands still have left by Government survey 125,000 acres. There are about one thousand of them all told, and if averaging four in each family, say 250 families, and this amount of land equally divided would give them 500 acres per family, after the white settlers are allowed each their little farm; the Indians first having had their choice.

Must the settler go and beg or starve without having the privilege of occupying what has cost him much or all of his means, or of tilling the soil until Congress can meet and adjust this question, and pay the Indian any fancied claims he may think he has, while the Indian in the mean time has this land lying idle for him to look at, and himself and family supported in idleness by the Government?

Many settlers have broken up their homes, and with crushed hopes and sad hearts have left in obedience to President Cleveland's command; some with tears and others with curses on the Indian Rights Association, which they recognize as being at the bottom of their troubles, while not one Indian has been disturbed or likely to be on the so-called Crow Creek Reservation. Many have no other home to go to or means left to go with, while others declare they will not go, and all are determined to stand to the last for their rights and the homes which they made through great hardship in February and March, and at (to them) great expense, by invitation and authority of the highest executive of the nation, and not as trespassers. The money the settlers would have to pay the Government in "proving up" and taking title to their land would more than pay the Indian his fancied claims (and which he had not thought of until set up to it by scheming white men), and this will be found a much cheaper way for the Government to adjust this question than trying to force from their homes those who have acted in good faith with her and trusted in her honor. Even if able to accomplish such a foul deed the settlers will demand pay in full for the thousands of dollars thus lost, which even if returned would not compensate them for the hardships endured, the loss of the year, or heavy expenses in coming to the West to settle or replace them in their Eastern homes.

While the above are facts, shall this land, much of it valuable and running up to the corporate limits of fine railroad towns, and now partly under cultivation, go back to the savage, whom we have shown has no title to or claim on, or need of it, and lie yet for years an unused wilderness, and hundreds of families be turned out as paupers on the world? Not if there is any justice to be looked for in the present Administration or to be found in the courts.

By order of settlers' committee.

G. R. OWEN, *Secretary.*

PUKWANA, September 23, 1885.

Your honor, President of United States:

Pardon me that I trouble you with this letter.

Hundreds of families are in about the same shape as I'm in. Most all of us, the real settlers, who went last spring on the Crow Creek Reservation in good hope of making a home there, had rented land from speculators around here to make our living till the reservation would be open.

We wouldn't have come here if the leading newspapers had not told us that the reservation would be open in a short time, and so we've been waiting for it some years already.

These last two years we had awful poor crops, especially this year, and hail struck besides, so that the most of us had to take a mortgage on our horses and cattle.

Now, last spring when President Arthur opened the reservation, we all went on and built our little houses, dug wells, broke land, planted some corn, beans, and potatoes, and thought that we would feel all right and happy about our new homes if we didn't get scared so much about getting driven off by soldiers. We all think that if you knew how poor we are and how badly we are fixed you never would drive us off. If we had to leave our homes here the mortgage-holders of our stock would take that and sell it right off by sheriff's sale, and so dull as times are here, we would not get a cent out of it and be thrown right on the road.

Now, when the winter knocks at the door, we just got notice from the Crow Creek Indian agent, Mr. Gasman, to leave the reservation or be driven off by the soldiers.

Everything lays in your hands to help us, and we pray you not to throw us out with wife and children in the cold winter.

I am very sorry that I troubled you, but I couldn't help it.

Very respectfully,

AUGUST WAGNER.

UNITED STATES INDIAN SERVICE,
Crow Creek Agency, September 25, 1885.

SIR: I have the honor to make the following report in regard to settlers in the Big Bend, in compliance with Department letter dated August 31, 1885:

Upon receipt of letter I at once sent notice to settlers to vacate, and to enable them to do so gave them ten days. At the expiration of the time stated I proceeded to the Big Bend to see if order had been complied with, and found that quite a number had vacated, leaving generally their sod shanties standing, in some instances locked, and containing a little furniture, such as stoves, rude beds, and some other home-made furniture; these I left undisturbed. I found also, living in the Big Bend, eleven families who had made considerable improvements; building houses and stables, breaking land, planting corn and potatoes, putting up, in two instances, large quantities of hay. Two of these parties are holding cattle and have put up large quantities of hay, one 35 tons and the other 125 tons. One man, an ex-soldier, claims that he has expended \$1,200 in building house and making other improvements, and that he has nothing left, and is unable to move himself and family from the reserve, as he has no team or means to hire one; he himself is suffering from disease contracted while in the Army, his wife also is in delicate health. He expressed willingness to comply with order of the Department, but stated that he was unable to do so for reasons above stated.

Another party, living in a frame-house, costing about \$100, had 20 tons of hay put up, and all his means expended. He also expressed himself as desirous to comply with Department order, but owing to the fact that his wife was expecting to be confined within a few days, and was then confined to her bed, he requested permission to remain until he could remove her with safety. I promised to report and expressed the opinion that his request would be granted. The parties (two) holding cattle, and who had made preparations to winter them where they were, also informed me that they desired to comply with order, but that it would be their ruin, as they had no place to go to, and it was now too late in the season to put up hay and make other preparations for them. One of them informed me that if I or any other person should undertake to destroy his property he would certainly shoot him. He claimed that he was there by Presidential order, and that if he could remain until spring he would then remove.

Still another informed me that he had come from Wisconsin, had expended his all in building and improving the land, was now in poor health and was unable to move. He stated that he should remain until removed by the military "in order to get the whole question before the courts." Two widows I found living in miserable mud huts, having a small garden and a cow or two; one of them had some hay put up, and a few acres broken; she, with her son, after much weeping, promised to remove, but trusted the Government would buy her hay and pay for her improvements. I promised to report, and took an inventory of her possessions. The other one, an Irish woman, living alone with a young

daughter in a most forlorn hut, in true Irish fashion, wept aloud and made great lamentation, declaring she would remain where she was and be shot by the military. Under the circumstances I felt compelled to postpone calling for troops and to make the above reports. Two things are certain to come to pass if troops are ordered to remove these people. First, great suffering; and, second, an effort to bring the question of the justice of removal into the courts. I am placed in a most painful and critical position. The press in this part of the country is continually charging me with being the cause of the order of removal, that I am an enemy of the poor settlers, and generally inflaming the minds of the community against me. My situation is made still more painful from the fact of my being a clergyman. The work of evicting settlers, destroying their property, and generally causing much distress to widows and old people being so utterly against my profession and feelings, I beg that should the Department feel compelled to resort to this extremity the order to remove may be, if practicable, executed directly by the military or be placed in the hands of a special agent—one well versed in the law bearing upon this complicated question.

In compliance with that portion of Department letter of August 31 which directs me to "at once remove the parties and their effects from the reservation," and that "the removal should be made in such a manner as to avoid conflict and loss of property," I have to report that I, on the 17th instant, issued the accompanying notice (copy herewith). I am informed that some of the settlers are complying and withdrawing from the reserve; others are remaining awaiting removal by military in order to get the matter before the courts. The above action I felt compelled to take, in order to comply also with that portion of letter above referred which directs "that the settlers should be allowed opportunity to remove themselves and property, &c." My action in regard to Big Bend is in compliance with last clause of above-quoted letter.

Owing to the great difficulties in the way, and the unavoidable animosities aroused against me, and for other reasons above referred to, I would respectfully request that the order to evict the settlers should either be given directly to the military, or that a special agent may be sent here for the purpose, who shall in no way be complicated with parties or persons on or near the reservation. Trusting that my action may meet with approval from the Department, I am,

Very respectfully, your obedient servant,

JOHN G. GASMAN,
United States Indian Agent.

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

NOTICE.

To whom it may concern:

The following is an extract copy from communication received from the honorable Commissioner of Indian Affairs:

"WASHINGTON, August 31, 1885.

"I have now to advise you that the Hon. Secretary of the Interior, under date of the 27th instant, granted authority [copy inclosed] for the removal of all alleged settlers and other unauthorized persons from the reservation, and, if it should be necessary to accomplish this purpose, to call upon the commanding officer of the nearest military post for such aid as may be required.

"The Secretary has requested the Secretary of War to direct the commanding officer of the nearest military post to furnish sufficient force to effect the desired end, upon call of the agent.

"Reference being had also to telegrams of the 29th and 30th instant, I have to direct that you will proceed at once to remove the parties and their effects from the reservation, and if unable to do so with the force at your command, you will call upon the proper military officer for the requisite force to execute the authority."

In conformity with the above, I hereby notify all persons to comply therewith within twenty (20) days from date, as otherwise I shall be compelled to call upon the military to carry out the order of the Hon. Commissioner of Indian Affairs, above quoted.

JOHN G. GASMAN,
United States Indian Agent.

CROW CREEK AGENCY, DAKOTA TERRITORY,
September 17, 1885.

[The Chicago Music Company, 148 and 150 Wabash avenue.]

CHICAGO, ILL., September 29, 1885.

MR. PRESIDENT: This is the first time in my life I ever attempted to write a letter to the President of the United States. I do not see how it is possible for you to have so little heart as to drive the settlers from the Crow Creek Reservation. It was declared open by the only power that could open it. People left their homes, spent their all to get there, went in good faith, and by orders or by permission of the Government. Now you order them to leave. How can you do it? If it was wrong for Arthur to open it, even then you should not drive them away from their homes unless you pay them for all money and time they have expended in making their homes. Only can't you let them alone until Congress convenes, and let them attend to it. Then you, at least, will get rid of the amount of cursing you are now receiving, and I do not think you will do much harm to the brave red man. Listen to reason, and not to a few religious Indian cranks.

Yours, hopefully,

GROVER CLEVELAND.

C. E. LESLIE.

No. 3.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, April 12, 1881.

SIR: Under departmental references, dated 11th and 15th January and 28th February last, there were received at this office the inclosed communications relative to proposed negotiations with the Sioux Indians for the relinquishment of their rights to a portion of the Crow Creek Reservation, in Dakota.

The first named is a communication and inclosure from John H. King, esq., of Hampton, Franklin County, Iowa, whose high standing and reliability are attested by Hons. N. C. Deering, G. G. Bennett, Thomas Updegraff, and C. C. Carpenter, of the House of Representatives, setting forth, in substance, that that portion of said reservation lying south of Crow Creek is unoccupied and not needed by the Indians, who, as alleged, are located north of Crow Creek, with perhaps a few exceptional cases where the southern bank of that stream is occupied by a few Indian tepees, and asking for himself and others that steps be taken to negotiate with the Indians to procure from them a relinquishment of any claim they may have to the land for the purpose of having it opened to settlement under the public-land laws. Mr. King also applies to be appointed as commissioner or otherwise authorized to secure said relinquishment.

The departmental reference on this letter is for report on the status of said lands, and I have therefore the honor to report as follows:

What is now known as the Crow Creek Reservation embraces the Old Winnebago Reserve as well as the Sioux Reserve adjoining, which were established simultaneously in 1863.

After the Sioux massacre of 1862 in Minnesota, a number of the Indians of that tribe were at Fort Snelling, Minn., under the surveillance of the military authorities, the question as to their disposal being under advisement.

The Winnebagoes occupied their reservation in Blue Earth County, Minnesota. They had taken no part in the Sioux outbreak, but it was made a pretext for their removal which was demanded, and by act of Congress approved February 21, 1863 (Stats. 12, p. 658), the President of the United States was authorized "to assign to and set apart for the Winnebago Indians a tract of unoccupied land, beyond the limits of any State, in extent at least equal to their diminished reservation [in Minnesota], the same to be well adapted for agricultural purposes"; and the President was also authorized "to take such steps as he may deem proper to effect the peaceful and quiet removal of the said Indians from the State of Minnesota, and settle them upon the lands which may be assigned to them under the provisions of this act."

Pursuant to this authority the Winnebagoes were removed in the spring of 1863, and at the same time the Sioux at Fort Snelling were removed to Dakota and assigned contiguous reservations on the east side of the Missouri River at a place then called "Usher's Landing," afterwards Fort Thompson, and now Crow Creek Agency.

The removal and location under the direction of this office were effected under the supervision of Clark W. Thompson, then superintendent of Indian affairs for the Northern Superintendency.

Under date of July 1, 1863, Superintendent Thompson reported that he had selected

adjoining reservations for the Sioux and Winnebagoes, and forwarded a plat and field notes showing the location of the agencies and surveys made for allotments to the Indians. In this report the reservation boundaries are thus described:

“SIOUX RESERVATION.

“The reservation for the Sioux of the Mississippi is bounded as follows, to wit: Beginning at a point in the middle channel of the Missouri River opposite the mouth of Crow Creek, in Dakota Territory; follow up said channel of the Missouri River about 14 miles to a point opposite the mouth of Sue-o-ika Creek; thence due north and through the center of the stockade surrounding the agency buildings for the Sioux of the Mississippi and Winnebago Indians, about 3 miles, to a large stone mound; thence due east, 20 miles; thence due south to the Cedar Island River, or American Creek; thence down the said river or creek, to the middle channel of the Missouri River; thence up said channel to the place of beginning.

“WINNEBAGO RESERVATION.

“The reservation for the Winnebago Indians is bounded as follows, to wit: Beginning at a point in the middle channel of the Missouri River where the western boundary of the Sioux of the Mississippi Reserve intersects the same; thence north and through the center of the stockade surrounding the agency buildings of the Sioux of the Mississippi and Winnebago Indians, and along said boundary line to the northwest corner of said reserve; thence along the northern boundary of said Sioux Reserve, 10 miles; thence due north, 20 miles; thence due west to the middle channel of Medicine Knoll River; thence down said river to the middle channel of the Missouri River; thence down said channel to the place of beginning.”

A diagram showing the two reservations thus defined is herewith inclosed.

The Sioux Reserve contains 203,397 acres; the Winnebago, 416,915 acres.

The Winnebagoes were dissatisfied with the reservation set apart for them, and refused to remain there, many of them leaving and joining the Omahas, in Nebraska, others scattering through the country in various directions, until in March, 1865 (March 8, Stats. 14, p. 671), a treaty was concluded with them whereby they ceded, sold, and conveyed to the United States “all their right, title, and interest in and to their present reservation in the Territory of Dakota, at Usher’s Landing, on the Missouri River, the metes and bounds whereof being on file in the Indian Department.”

In consideration of this cession the United States agreed to, and did, set apart for their future home the northern portion of the Omaha Reservation, in Nebraska, which had been ceded to the United States by the Omahas for this purpose by the treaty of March 6, 1865. (Stats. 14, p. 667.)

Upon the removal of the Winnebagoes the Sioux occupied, and have since continued to occupy, the bottom lands along the Missouri River, as well as portions of the western part of the old Winnebago Reserve.

The reservation made in 1863 has never been revoked, and this and the Sioux Reserve being existing reservations and occupied by the Sioux at the date of the Sioux treaty of 1868 (Stats. 15, p. 635), were, by the second article of that treaty, “set apart for the absolute and undisturbed use and occupation” of the Sioux Indians, “and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them.”

The foregoing extended reference to the establishment of the Winnebago Reservation was deemed necessary in view of the fact that the Winnebago and Sioux from Minnesota and the establishment of reservations for each was simultaneous; and because, as before stated, the Sioux now occupy both reservations and allotments of land have been made, under the treaty of 1868, to Sioux on the former Winnebago Reserve, their right to the land having thus been recognized by this office.

The agent’s residence, agent’s office, large new warehouse recently erected, issue-house, dispensary, quarters occupied by some of the employés, the saw-mill, several storehouses, corrals, slaughter-house, boarding-school building belonging to the Government, also recently erected at a cost of about \$3,000, and in fact all the more valuable buildings belonging to the Crow Creek Agency, as well as large agency farm, are situated on the portion formally occupied by the Winnebagoes.

Both these tracts are also embraced in the boundaries of the reservation created by Executive order, dated January 11, 1875 (see Indian Office report for 1878, p. 247), withdrawing from sale and setting apart as an addition to the Sioux Reservation, west of the Missouri River, a large extent of country east of that river, and they were not included in the restoration of lands to the public domain by Executive order, dated August 9, 1879. (Indian Office report for 1879, p. 215.)

In view of the foregoing this office is of opinion that the tract of country embraced within the limits of the Old Winnebago Reservation and the adjacent Sioux of the Mississippi Reservation, as defined in 1863, was an "existing reservation" at the date of the Sioux treaty of 1868, and as such was, by that treaty, made a part of the reservation set apart for the Sioux tribe of Indians.

If this view be correct any negotiations for the relinquishment of any portion of these lands should be with the whole tribe or duly authorized representatives thereof, and not merely with those bands occupying this particular portion of the reservation, as the whole tribe have an interest in every portion of the reserve, and whatever compensation shall be received for the sale of any part must inure to the benefit of the whole tribe.

In any event the lands have been reserved by Executive order of January 11, 1875, before referred to, and are still in a state of reservation under that order, and no steps should be taken looking to a reduction of the Crow Creek Reservation without commensurate compensation to the Indians.

It is suggested that before authorizing any one to negotiate the agent at Crow Creek Agency, Captain Dougherty, be called upon for report as to whether that portion of the reservation sought to be opened to settlement is occupied, or, in his opinion, needed by the Indians, or that an inspector be sent to investigate and take the necessary initial steps.

The reservation being one created by treaty any agreement made with the Indians for a reduction of the reserve would necessarily have to be sanctioned by Congress in order to be effective.

Very respectfully, your obedient servant,

E. M. MARBLE,
Acting Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

SIR: In behalf of many good and law-abiding citizens of the United States, I apply to you, representing that certain lands situated in the north of Brulé County, and in the south of Buffalo County, Dakota, between American Creek and Crow Creek, a tract about fifteen miles more or less—said lands now claimed by the Crow Creek, and, possibly, other Sioux Indians, but said lands are now unoccupied and not used by the Indians in any way, or needed in any way by them, they being located north of Crow Creek, aforesaid—should be opened for settlement.

And for myself and many others I ask that steps be taken to negotiate with the Indians aforesaid to procure from them a relinquishment of any claim they may have therein to and in favor of the United States Government, for the purpose of sale and settlement, the same as other portions of the public domain.

And to this end I apply to be either appointed commissioner, or authorized to secure said relinquishment to the Government.

Yours, truly,

JOHN H. KING,
Hampton, Franklin County, Iowa.

Hon. CARL SCHURZ,
Secretary Interior.

(Affidavits of Senator F. M. Goodykoontz and John T. Stearns, esq., attached.)

[Indorsement.]

Hon. SECRETARY OF THE INTERIOR:

We personally know the Hon. John H. King (writer of within letter) to be a gentleman of high standing and reliability. We also believe the object sought to be a highly proper one, and we recommend Mr. King as a suitable person to confer and treat with said Indians, and hope that authority may be conferred upon him to that end.

N. C. DEERING,
G. G. BENNETT,
THOS. UPDEGRAFT,
C. C. CARPENTER.

STATE OF IOWA,
Franklin County:

I, John T. Stearns, being duly sworn, do depose and say that I am a resident of Chamberlain, Brulé County, Dakato Territory; that I have resided there since Octo-

ber last; that I am an attorney at law; that I am thirty-nine years of age; was for six years postmaster at Hampton, Iowa; have been engaged in real estate business for many years; have been for many years express agent; have charge of the sale of the town lots at the said Chamberlain; am familiar with the country, the people, the soil, the location of streams, towns, railroad; have been frequently to Fort Thompson, Fort Hale, Brulé City, Crow Creek, Lower Brulé Agency; that the land lying between American Creek, in Brulé County, Dakota Territory, and Crow Creek, in Buffalo County, same Territory, is good land for agricultural purposes, is prairie, a little rolling; that the Indians do not occupy or use any of it for any purpose whatever, except it may be a few huts or tepees, may be on the south side of Crow Creek, immediately on the banks contiguous to the stream; that they have a great deal more land than they use for any purpose north of said Crow Creek, and said land is, so far as I was able to judge, as good as the land south of the creek; if the land south of the creek was open to settlement I firmly believe it would, three-fourths of it, be taken by June 1, and all of it by and within one year; that country is settling up very rapidly; that the Milwaukee and Saint Paul Railroad runs along the south side of it, so that it is contiguous to the railroad, and very desirable for settlement, and the people are very anxious for the privilege of settling upon it; that, according to my best judgment, it will in no way harm or prejudice the Indians; they do not claim the same to a certainty; that I believe, from a long acquaintance, Hon. John H. King, of Hampton, Iowa, would be a proper and satisfactory person to be appointed to settle any interest, claim, or right, either equitable or legal, that those Indians may have or claim to have in said lands; that there is no disposition or desire to crowd or wrong the said Indians, but to use the unoccupied ground. All of which is true in substance and in fact, so help me God.

JOHN T. STEARNS.

Subscribed and sworn to before me and in my presence by J. T. Stearns, this December 27, 1880. Witness my hand and seal notarial.

[NOTARIAL SEAL.]

JAS. T. McCORMICK,
Notary Public in and for Franklin County, Iowa.

STATE OF IOWA,
Cerro Gordo:

I, F. M. Goodykoontz, being duly sworn, do depose and say that I have been for many years a resident of Iowa; that this last fall I concluded to change my residence to Brulé County, Dakota Territory; that I have been for one year last past state senator from the forty-sixth senatorial district of Iowa; that I am a practicing attorney; that I am expecting to personally locate at Chamberlain, Dakota Territory; that I am personally acquainted with John T. Stearns, of Chamberlain, Dak.; that I have read his affidavit hereto annexed, and with the exception that I have not been to all of the places therein named, otherwise I am familiar with the country, and especially with Chamberlain and vicinity, having been there frequently and for some time; that the statements made by Mr. Stearns in his said affidavits are true in substance and in fact as to the situation of the land around Chamberlain, including that part north of American Creek, and I believe public policy and good judgment would dictate that said land be placed upon the market as other Government land in the Territory; that I am personally acquainted with Hon. John H. King, of Hampton, Iowa, for several years a member of the Iowa house of representatives; that I can recommend him as a suitable person to be appointed to negotiate and settle with the Indians north of Crow Creek for any claims they may have for or to said land, and I ask his appointment to that position.

Witness my hand this the 28th day of December, 1880.

F. M. GOODYKOONTZ.

Subscribed in my presence, and sworn to before me by the said F. M. Goodykoontz, this December 28, A. D. 1880.

[NOTARIAL SEAL.]

JAS. J. CLARK,
Notary Public.

WINDSOR EUROPEAN HOTEL, TRIBUNE BLOCK,
Chicago, January 14, 1880.

DEAR SIR: We desire and believe that my letter of authority should embrace the question of settling the title to the Winnebago and the Santee Reservation both.

I think the Indians should have that portion they desire, and that the title should be

confirmed in them as to the portion they are to have of the Winnebago, the same as the Santee.

You will remember Capt. D. explained this.

Yours,

JOHN H. KING,
Hampton, Iowa.

Hon. CARL SCHURZ,
Secretary Interior.

UNITED STATES SENATE CHAMBER,
Washington, February 24, 1881.

MY DEAR SIR: You will remember that John H. King, of Hampton, Iowa, called upon you with a view to some arrangement for a portion of the Sioux Reservation, and he was to have some authority to enable him during the summer to negotiate with them for the release of certain portions of their reservation. Mr. King writes me that he is very anxious that this authority should be given.

I hope you will see your way clear to do so at an early day.

I would call to see you personally about this, but I am so busy every morning that I cannot find time to do so.

Very truly, yours,

W. B. ALLISON.

Hon. CARL SCHURZ,
Secretary of the Interior.

No. 4.

DEPARTMENT OF THE INTERIOR,
Washington, May 4, 1881.

SIR: Referring to your communication of the 12th ultimo in relation to request of J. H. King and others to enter into negotiations with the Sioux Indians for the relinquishment of certain lands of the Crow Creek Reservation for town-site purposes, &c., you are instructed in accordance with the suggestion presented by you to call upon Capt. W. E. Dougherty, acting United States Indian agent of the Crow Creek Agency, for a report "as to whether that portion of the reservation sought to be opened to settlement is occupied, or, in his opinion, needed by the Indians.

Very respectfully,

S. J. KIRKWOOD,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

No. 5.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, May 6, 1881.

SIR: In office report of 12th ultimo to the Department in relation to the status as to title of the Old Winnebago and Crow Creek Indian Reservations in Dakota, this office expressed the opinion that the lands embraced in said reserves are a part of the Great Sioux Reserve in the contemplation of the Sioux treaty of April 29, 1868.

In connection with the matter, and as an additional reason for the opinion therein expressed, I desire respectfully to submit whether the terms in the second article in said treaty declaring that in addition to the region west of the Missouri River set apart as the great Sioux Reserve "all existing reservations on the east bank of said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named," have any application whatever unless the Old Winnebago and Crow Creek Reservations were the reservations contemplated in that treaty.

At the date of the Sioux treaty of 1868 the only lands in Dakota occupied by Indians as reservations on the east bank of the Missouri River were the reservations under consideration, and upon which, as stated in the report of the 12th ultimo, the Sioux were then living, and the "Yankton" Reserve, about 100 miles farther down the Missouri

River. The last-named reservation was created by the treaty of April 19, 1858, with the Yankton tribe of Sioux Indians (Stat. 11, p. 743).

By the first article of this treaty the Yankton tribe of Sioux ceded and relinquished to the United States all the lands then owned, possessed, or claimed by them, wherever situated, except 400,000 acres which are embraced in their present reservation, and in the tenth article of said treaty it is stipulated that said Indians should not alienate, sell, or in any manner dispose of any portion of their reservation except to the United States, and the same article authorizes the Secretary of the Interior to divide the lands therein among the Indians as he shall think proper, "so as to give to each head of a family or single person a separate farm, with such rights of possession or transfer to any other member of the tribe or of descent to their heirs and representatives as he may deem just."

Under the second article of the Sioux treaty of 1868 the reservation thereby created is "set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them."

The bands of Sioux Indians represented in that treaty were the Brulé, Ogallalah, Minneconjou, Yanktonais, Uncpapa, Blackfeet, Cutheads, Two-Kettle, Sans Arch, and Santee bands.

The Yankton band or tribe were not parties to the treaty of 1868, and in the opinion of this office they hold the title to their reservation under the treaty of 1858, unaffected by the treaty of 1868.

If this be so the Old Winnebago and Crow Creek Reserves were the only reservations to be affected by the treaty of 1868, being, as before stated, the only reservations on the east bank of the Missouri river (except the Yankton) at the date of that treaty. It is submitted that if they were not reservations in the contemplation of that treaty the terms in the second article above quoted, "and in addition thereto all existing reservations on the east bank of said river," have no meaning, and it is a well-established principle of interpretation that "in the construction of a statute every part of it must be viewed in connection with the whole, so as to make all the parts harmonize, if practicable, and give a sensible and intelligible effect to each; nor should it be presumed that the legislature meant that any part of a statute should be without meaning or without force or effect." (2d Circ. (N. Y.), 1832. *Ogden vs. Strong*, 2 Paine, 584.)

Very respectfully, your obedient servant,

E. L. STEVENS,
Acting Commissioner.

Hon. SECRETARY OF THE INTERIOR.

No. 6.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, June 16, 1881.

SIR: Referring to office report of the 12th April, last, relative to the status, as to title, of the Crow Creek Reservation in Dakota, and to Department letters of May 4, following, directing that the agent at the Crow Creek Agency be called upon for a report as to whether that portion of the Crow Creek Reservation sought to be opened to settlement, asset out in said report, is occupied or, in his opinion, needed by the Indians, I have the honor to say that Agent Dougherty, having been called upon for such report, writes under date of May 30, last, giving his views in the matter.

It appears from Agent Dougherty's report that the tract of land sought to be opened to settlement has never been occupied by the Indians, save three or four families who have taken *homesteads* there within the present year, and that it is of but little value comparatively. Nevertheless, he believes the question of its relinquishment, as proposed, to be one which will require delicate treatment.

The agent appears to side with the Indians in the belief that they (the Lower Yanktonais) have a paramount title, as against the other bands of Sioux, to the reservation within the limits of which the lands in question that are desired for occupation by settlers are included.

Upon this subject I would say, briefly, that under the treaty of April 29, 1868 (Stats. 15, p. 635), the Sioux Indians hold their lands *in common*, and no paramount title to any portion of the same can be set up or maintained by any particular tribe or band or by any individual Indian as against any other tribe or band or individual Indian, save in cases where the lands have been selected by individual Indians for cultivation, or certified to them and recorded in the manner provided for in the said treaty.

Therefore, any claim by this band (the Lower Yanktonais) of sole and exclusive right to the lands of the Crow Creek Reservation, except in cases of selection by individual Indians, is without foundation.

The second article of the treaty referred to is explicit, and there can be no doubt that the lands in question, unoccupied as they are, are the common property of the tribe, parties to the treaty, and whenever any portion thereof is sold it must be for the common benefit of all, and the proceeds should be made available for them in proportion to their respective populations.

On May 28, last, this office referred to Agent Dougherty a letter, dated April 22, 1881, from John H. King, esq., received by hand of Hon. William B. Allison (herewith) relative to alleged disputes that have arisen between the Indians of the Crow Creek Reservation and the whites about the ownership of drift-wood on the river bank; the establishment of a military post on an island in the Missouri River, &c. In reply to above Agent Dougherty writes, under date June 6 (his report herewith) and, after disposing of the drift-wood matter and the military post, discusses at some length the question of the status, as to title, of the Old Winnebago Reservation, now occupied in part by the Crow Creek Indians. While it is a question that may deserve attention in the interest of peace and good feeling, yet it is not the one nor does it directly concern the one under present consideration.

As to question of title of the Crow Creek Reservation proper, discussed in the latter part of Agent Dougherty's report, I have to say that the views of this office upon that subject are fully set out in office report hereinbefore mentioned (April 12, 1881).

It will be seen that Agent Dougherty (Report May 30) is of opinion that the Indians would be willing, although he has not mentioned the subject to them, to relinquish that part of their reservation which lies south of Crow Creek and which is desired by the whites for settlement, if the matter be properly presented, and provided they may be assured that they alone (the Crow Creek Indians) will receive the benefits accruing from such relinquishment. He recommends, however, that a certain portion of Crow Creek Valley be retained in order to secure to the Indians the use of the timber and a winter range for their cattle.

For reasons already stated, I fail to see how the Indians can maintain the position taken by them as to exclusive rights as against the other tribes or bands of the Great Sioux Nation.

It is not the first time that an attempt of the kind has been made. The Lower Brulés not long ago set up a similar claim to distinct and separate rights in land matters as against the other bands or tribes; but this office has never recognized any such exclusive rights. It is the opinion of this office that upon a proper presentation of the case to the Indians they would recede from the position taken, and that the relinquishment of the lands now the subject of consideration, which should be had only with the consent of all the bands or tribes, could be effected without trouble.

I respectfully request the return of the papers properly belonging to the files of this office.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

HON. SECRETARY OF THE INTERIOR.

HAMPTON, IOWA, *April 22, 1881.*

DEAR SIR: I have answered the communication sent me by Hon. H. Price, with the suggestion that we had talked over the points named and understood them, and saying as briefly as I could what I thought of the situation.

By the terms of the treaty the Indians own both banks of the Missouri, and there has arisen some disputes between the Indians and the settlers about drift-wood on the east bank upon localities where the Indians made no claim to a reservation on the east bank. I am satisfied that this might at the same time be very pleasantly arranged. I do not think it is necessary to mention such a thing in the commission, but there might be a clause inserted to cover in some general terms "to treat in relation to lands, rights, &c., on the east bank of and islands in the Missouri River at points south of Crow Creek in Buffalo County, Dakota Territory, and north of Military Reservation in Charles Mix County, Dakota Territory." This covers the objectionable ground; and where no Indians are on the east bank drift-wood lodges, and of course is considered by all settlers free plunder, but this winter Indians have undertaken to exact pay in some instances, as I am credibly informed, and the settlers would not pay, and while it led to no serious trouble, yet it is these little matters that do lead to trouble between the whites and the Indians. I am informed by the agents and others that the chiefs are as anxious as

the whites to have even the causes of trouble removed where no benefit is derived. Again we are trying, and General Phil. Sheridan has already appointed his engineer, to have a military station established on an island which is thought to be permanent in the Missouri opposite our town; it has on it about 500 or 600 acres of timber, or possibly more. No Indians live upon it but they claim it of course, and it is theirs by treaty; yet, there being others, they no doubt would be willing to part with it.

I think the commission should in some way cover this ground, so if it, the apoint, could be nicely made, to do it. Above and over all, Senator, we insist on these two points, that all we ask is that what land we get shall be thrown open for settlement upon the basis of the public lands, and that there is no private speculation in it. That our benefits are indirectly to our town by having this land settled, and this follows that proposition that it is not a private speculation; that the land is to be thrown open to settlement; that no man should be asked to go all over this Sioux Nation and incur the expense and trouble consequent upon it all himself. The Government should do it. If there is no money to pay he will have to wait until there is; but certainly it can be managed. Now, Senator, I have troubled you considerably, but this question and the accomplishment of it in all its details is very near to me, as also it is to a good many of your constituents, and I can only thank you for the attention you have given it and ask you to press it to an early and thorough conclusion, and thus to greatly oblige us all.

Yours,

JOHN H. KING.

If possible see Price and explain it to him fully. My only fears are that Kirkwood and Price, being so engrossed, will not have time to get a full understanding of it.

K.

UNITED STATES INDIAN SERVICE,
Crow Creek Agency, Dakota, May 30, 1881.

SIR: I have the honor to acknowledge the receipt of your letter, "L 7416, 1881," of May 6, together with inclosures as stated.

This subject is one that requires very delicate treatment. This tribe has for a long time felt very sore about the insufficiency of their title to these lands. In the treaty made with them at old Fort Sully, October 20, 1865 (14 Stats., 735), in accordance with which they moved to this reservation, they were undoubtedly induced to believe that the title to the Winnebago and Sioux-of-the-Mississippi Reservations was then and there vested in them. When I was appointed agent one of the first things that they asked information about was this title. Up to that time it was evident to me that they believed the ownership of this reservation was vested in this tribe, and though this tribe was not established by the said treaty it seems to have been recognized in the fourth and fifth articles, of which recognition there appears to be concurrent evidence in the third and fourth articles of a treaty made with the Sisseton and Wahpeton bands on the 22d of April, 1867. (15 Stats., 504.) From time immemorial there have been recognized by the Dakotas themselves two great divisions of the nation and two great divisions of the Dakota land. This appears to have been unknown, or to have been ignored, in every treaty with the Sioux, and it is at the present time the cause of much jealousy and bad feeling between the Eastern and Western Sioux. The latter, by common consent, occupied all the territory from the Missouri River to the region about Laramie Peak at the head of the Platte west, and from the Platte to the Yellowstone north. The Sioux of this tract are known as the Teton branch.

The other division of the Sioux territory is embraced between Lake Traverse and the Minnesota River and the Missouri west, and from the Big Sioux on the south to a small stream nearly opposite Standing Agency, known as Apple River. This tract has always been accepted by the Yankton and Yanktonnai tribes and other tribes kindred of the Santees of Minnesota. The whole of these are called by the Tetons the "Wicheyela," as distinctive from themselves. There is no known English word for this name, but the Indians say that it means the original people. These lines and distinctions have been strictly maintained. I have myself seen a party of Yanktonnais driven off the territory on the west side of the Missouri by the Brulés, for hunting there without permission, and I know that the Tetons make no pretense of ownership or title in the land on the east side of the Missouri, and that the Yanktonnais waive any title to the land on the west side.

There are no adverse claims or disputes by any other of the Sioux tribes affecting their tenure of this reservation, and I think it but justice to them that their title in it should be secured by act of Congress. A petition praying for this concession is now on file in the Department.

The tract which Mr. J. H. King and others ask to have relinquished consists of about 80,000 acres, more or less. About one-fifth of this is not arable and will always be waste land. The Indians have never made use of any of the land on the south side of Crow Creek until this year, when three or four families took homesteads on the other side; nor do I think that any considerable number will ever locate south of the Creek. On the south side of Crow Creek the hills are very high and precipitous and recede southward from the creek from 1 to 3 miles to the summit, the intervening space being very broken and difficult. Ten miles up the valley this aspect entirely disappears; the valley spreads out and runs into quite gentle slopes that unite it with the table land.

I have not spoken of this matter to the Indians for the reason that anything like this makes a sensation in an Indian tribe that unsettles it and interrupts its quietness and industry for a considerable length of time. I have no doubt, however, that the people will concede the relinquishment if the business is properly conducted and they are assured that the tribe only will derive the benefit accruing from the sale. I would recommend, however, that the Crow Creek Valley, from the mouth of the stream to the junction or confluence of the South Fork, be reserved to the Indians under all circumstances to secure to them the use of the timber and a winter range for their cattle. The land is valueless and can never be used by either whites or Indians; besides, it would be desirable to have a margin of neutral ground between the white and Indian settlements. With this modification I recommend that the subject be favorably considered, for I believe it quite impossible that this tribe or the descendants of these people will ever have occasion to occupy any of this land. Nearly the whole tribe has already taken homesteads on the upper part of the Old Sioux and upon the Old Winnebago Reservations, and there is still arable land enough of the best quality left for ten times the total number of the tribe.

I am, sir, very respectfully, your obedient servant,

WM. E. DOUGHERTY,
Captain First Infantry, Acting Agent.

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

UNITED STATES INDIAN SERVICE,
Crow Creek Agency, Dakota, June 6, 1881.

SIR: I have the honor to acknowledge the receipt of your letter "D 8936, 1881," of May 28, 1881, inclosing copy of letter from Mr. John H. King to Hon. William B. Allison on the subject of the Indian land comprised in the Crow Creek Reservation.

Mr. King's letter to Senator Allison appears to have been based upon unreliable report or rumor.

The main subject, which is not directly referred to in this letter, was responded to by me in a letter dated May 30, which doubtless you have ere this time.

The Yanktonnais pretend no right or title in the land on the west bank of the Missouri River, and never have had any dispute with the white people or misunderstanding about drift wood. Moreover, as the alleged disputes are declared to have arisen last winter I may properly observe that as the Missouri River froze across and closed last November and remained closed by ice until the 27th of March, a question as to property in drift wood could hardly have arisen during that time. If it did it must have been an old and pretended grievance of the Lower Brulés, the people on the west bank, directly opposite the town or city of Chamberlain; certainly I have never heard of any complaint from these people on this matter. We are about 25 miles above Chamberlain, on the river. In the contemplated negotiation with the Indians it would be advisable to ignore entirely any such trifling matter.

The island referred to as being opposite Chamberlain is known now as American Island. I very much doubt that the military post will be moved to that place for the obvious reason that being on an island it would be placed in a situation very similar to that occupied by General Butler's army at Bermuda Hundred, on the James River, in 1864.

By the second section of the treaty made with the Western Sioux at Fort Laramie on the 29th of April, 1868, all the islands of the Missouri River from 46° to the Nebraska line, are reserved to those Indians. The Yanktonnais make no claim to these nor have any interest in them whatever. American Island, however, is the only one of these not occupied by white people now, and when I was agent at Brulé I had to make a show of force to keep them off of that.

These islands are of no use to the Indians. They never live on them, and they might as well be ceded to the Government. This treaty was ratified in February, 1869, and I presume it will require an act of Congress to divest the Indians of their tenure, even with their consent, which I think can be readily obtained.

Referring back to the letter of Hon. Commissioner Marble, dated April 12, 1881, inclosed in yours of the 6th May, it will be found that the assumption that the land now known as the Crow Creek Reservation is reserved Sioux land is based upon: (1) The act of Congress under the provisions of which the Winnebagoes were removed to Dakota, and, pursuant to that act, the letter of Hon. Clark W. Thompson, Superintendent of Indian Affairs, dated Usher's Landing, Dakota, July 1, 1863; (2) the treaty made with the Sioux in 1868; and (3) the Executive proclamation or order dated January 11, 1875.

There does not appear to be anything mandatory in the act of Congress under which the Winnebagoes were removed, except that they be removed and located somewhere beyond civilization, and it is disputed that the paper known as the Department letter of Hon. Clark W. Thompson is sufficient warrant for the reservation of public land. It thus appears that this land never was expressly reserved for Indians in the manner in which Indian lands are usually declared reserved, the obvious consequence being that it was not an "existing reservation" in the sense contemplated in the second section of the treaty of 1868. It has been adduced in support of this hypothesis also that even admitting that the land was reserved for the Winnebagoes the treaty that tribe made in March, 1865, in which they "ceded, sold, and conveyed to the United States all their right, title, and interest in and to their present reservation in the Territory of Dakota," wholly extinguished its character as a reservation, that thereby it lapsed to the public domain, and that since that time it has not been restored to the status of reserved land, nor excepted specifically or otherwise from the conditions that qualify the public land as distinguished from reserved land.

I may observe here that the Yanktonais did not occupy the reservation until the October or November following the March (1865) in which the cession was made by the Winnebagoes, and that there is thus an interruption to the Indian succession and occupation, which it is deemed confirms the restoration to the public domain. If the foregoing views be correct as regards the Winnebago Reservation, a strict reading of the subsequent Executive orders does not appear to alter or amend this status, and there must therefore be some doubt that the land formerly known as the Winnebago Reservation has still the character of reserved land; though being in possession of the Indians at present, and for the last sixteen years, must to some extent resuscitate the Sioux Indian title in fact.

I know that the foregoing views are entertained by the best lawyers in the Territory, and I have heard Hon. G. G. Bennett, ex-associate justice of Dakota, and recently the Delegate from this Territory to Congress, concur in these opinions.

This lengthy notice of the disputed status of this land is made with the hope that the Department may be pleased to regard the evident necessity of devising some means, as soon as may be, to secure to the present occupants the title of ownership, which they have earned and deserved by a compliance with their treaty obligations, by a continuous acceptance, and by their evident desire evidenced during the last three years to meet the expectations of the Government in accepting the forms, habits, and customs, and to a great extent the laws, of American civilization.

Concerning the other portion of the reservation, that formerly set apart for the Sioux of the Mississippi, it does not seem that this land was ever definitively reserved by such authority as would leave the question beyond dispute. As in the case of the Winnebago Reservation, it is claimed that the descriptive declaration contained in the official dispatch of Superintendent Thompson, dated at Usher's Landing, July 1, 1863, is sufficient to give the land the character of a reservation, unless, however, it may appear that this declaration was confirmed and validated by a law (see Statutes at Large, vol. 15, p. 635. I have not this authority at hand, and can only refer to it). If such is the case, it is probably the foundation of the doubt entertained by the lawyers in the Territory that the Sioux Reservation was legally reserved, and therefore not an existing reservation as contemplated in the second section of the treaty of 1868.

The chief justice of the Territory, however, has decided that the Sioux Reservation of Crow Creek is "Indian country, reserved," in the case of the United States vs. Silas Frank Beebe, indicted for a murder committed on the Old Sioux Reservation in 1879. The ruling was given after long consideration and much research, and was based alone on the occupation of the land by the Indians and on the constructive recognition by Congress of the Crow Creek Reservation and its occupation by the Yanktonai Indians in annually making appropriations for the tribe under treaty agreement. Exception was taken to the ruling, but not argued on the appeal to the Supreme Court.

Unless all doubts are speedily settled on the status of the Crow Creek Reservation I apprehend that there will be continuous trouble and annoyance to both the agent and the Indians. Only as late as the 26th ultimo I was obliged to remove from a part of the reservation adjoining the town of Chamberlain a man named McKinley, who, by the advice of two lawyers, took a homestead, and I have no doubt that there will be constant attempts to obtain possession until the question, if there is a question, is settled. Mr

King may be assured that while the people of Chamberlain and its vicinity in any intercourse they may have with our people treat them with the same consideration they exact themselves and bestow on each other, it will be wholly impossible for any misunderstanding to take place, and that the white people are welcome to all the drift-wood they can recover from the Missouri River without price.

I am, sir, very respectfully, your obedient servant,

WM. E. DOUGHERTY,
Captain First Infantry, Acting Agent.

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

No. 7.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, July 12, 1881.

SIR: In connection with office reports of April 12 and June 16, last, relative to the proposed restoration to the public domain, with a view to opening the same to settlement, of that part of the Crow Creek Reservation in Dakota lying south of Crow Creek, I have the honor to transmit herewith a supplementary report dated June 20, ult., from Agent Dougherty, the tenor of which is—approval of the proposed reduction of the reservation in the direction named, and also of the appointment of Mr. J. H. King as a commissioner to negotiate with the Indians for the desired cession.

Agent Dougherty states as his belief that the Indians would willingly cede the lands in question for a fair consideration.

I would respectfully request the return of the letter with the other papers in the case.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

UNITED STATES INDIAN SERVICE,
Crow Creek Agency, Dakota, June 20, 1881.

SIR: Supplementary to my letters dated May 30 and June 6, respectively, in reply to yours, "L, Dakota," of May 6, I have the honor to report that Mr. John H. King, the gentleman who petitions to be appointed a commissioner to negotiate with the Sioux of this agency for the cession of a part of the reservation, called on me at this place on the 7th inst. and made known to me his position in the present matter. His statement to me was essentially the same as that made in his letter to the Department.

Mr. King is one of the owners of the town-site of Chamberlain, the present terminus of the Chicago, Milwaukee and Saint Paul Railway, on the Missouri River. American Creek divides the town-site from the Indian Reservation on the north. The motive that actuates the town-site people appears to be laudable enough. They declare that, being hedged in on one side by the reservation for about sixteen miles, the town will be thus deprived of about one-half of its natural resources, as its prosperity will depend mainly upon the settlement and development of the surrounding region by an agricultural population, which must be tributary to the new town, and will also make it a market. Chamberlain is beginning to grow rapidly, and about all the desirable land on the south side of the American Creek is now occupied by settlers.

The cession of the land in question, if obtained, and if the land ceded is opened for settlement under the land laws, cannot, as well as I can judge, inure to the immediate or direct benefit of the persons seeking the cession other than in the way indicated above, and there appears to be a very general desire on the part of all persons in this part of the Territory who are interested in immigration and who have business interests here to have the cession obtained.

I do not know of any objection whatever to Mr. King as a commissioner, being thus accredited, for the purpose of negotiation with the Indians. He declares his anxiety to have such relations established with the Indians as will endure indefinitely on a friendly basis, such as already exists, as the prosperity of the new city must greatly depend on such good understanding. I believe that the Indians will willingly cede the land for a fair compensation.

I have the honor to be, sir,

Very respectfully, your obedient servant,

WM. E. DOUGHERTY,
Captain First Infantry, Acting Agent.

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

No. 8.

DEPARTMENT OF THE INTERIOR, *July 20, 1881.*

SIR: I return herewith the papers which accompanied your communications dated respectively April 12, May 6, June 16, and July 12, 1881, in relation to the status of the Old Winnebago and the Crow Creek Reservations on the east side of the Missouri River, and the reduction of the Crow Creek Reservation, by obtaining the consent of the Sioux to the cession of a portion of the lower part thereof.

It is deemed advisable by this Department that negotiations should be entered into with the Indians for the cession of the land indicated; but such negotiations must be had with the Sioux Nation and not with the particular bands located east of the Missouri River. It is possible that the negotiations may be effected at the meeting of Sioux chiefs to be held in this city in August next, and to that end two or three chiefs of the Sioux bands east of the river should be present at said meeting.

Should the matter not be arranged at that time a commission can be sent out to the reservation afterward.

Very respectfully,

The COMMISSIONER OF INDIAN AFFAIRS.

S. J. KIRKWOOD,
Secretary.

No. 9.

DUBUQUE, IOWA, *May 10, 1883.*

MY DEAR SIR: I inclose you letter from John H. King, of Chamberlain, Dak., relating to land east of the Missouri River. You will see from this letter that he understands that the land in question is not a part of the Sioux Reservation or of any other Indian reservation. If this be true and you are satisfied of the fact I can see no objection to opening this land up to homestead entry. I have no doubt it will be rapidly taken up as the land is of great value for agricultural purposes. I will thank you, after reading this letter, to return it to me, and if not inconsistent with the rules of the office I will be glad to know what is likely to be done in the matter.

Very truly yours,

W. B. ALLISON.

Hon. H. M. TELLER,
Secretary of Interior.

[Inclosure.]

CHAMBERLAIN, DAK., *May 7, 1883.*

DEAR SIR: Yours received as to the real status of the reservations. I supposed you understood it.

The facts are: the Treaty of '76 (?) defined the boundaries of the Great Sioux Reservation, tracing the east bank of the Missouri River, and then allowing such reservations as were then established, such as the Yankton, Sisseton, and Wahpeton and one or two others.

Some time during Grant's administration all of this land north and south of the creek was open for settlement, and then Grant took it all out of the market, both north and south of American Creek. He afterward allowed that south of the Creek to be put in market again. He could just as well put that north of the Creek in; but he did not. The Indian Department seized this pretext to claim it as Indian land, and that portion of the Interior Department so ruled.

When the Sioux commission was appointed they found, on examination with Governor Edmunds, J. H. Teller, the Secretary's brother, and Judge Shannon, they all being agreed, upon investigation, that the land on the east of the Missouri, north of American Creek, was not a part of the Sioux Reservation. But Secretary Teller ordered them to treat with the Indians on Crow Creek any way, and they did so, but only assuming to fix the boundaries of a new reservation which the Secretary agreed they should have confirmed to them, and they have agreed that the other may be open, and the commission have recommended that it be done at once.

We induced J. H. Teller to go on to Washington and see his brother in regard to it, and he prepared a thorough and exhaustive brief, and filed and showed conclusively to the Secretary of the Interior that it was not a part of the Sioux Reservation, and the Secretary assured him that he was entirely satisfied. The Indian Department, however,

refuse to be convinced of their error, and just simply hang on to it, saying, better leave it to Congress. Now, if the Secretary could feel that he would be indorsed by such men as yourself in opening it I am sure he would do so at once, as he is entirely free on the legal part of it, and his right (through the President) to do so. Now, even beyond the legal point, which we urge is beyond any reasonable doubt the most important point, is it right and is it satisfactory to the Indians and should it be done?

As to the right part: The land is needed by the whites very much; we are really suffering for it. The Indians do not want it; have signed the agreement to have it opened; are satisfied to have it opened, and are not occupying it nor needing it. (2) No possible harm can come from it, but great good; and as a matter of public policy it ought to be done at once. It adjoins our town-site, and farmers should live on it so as to bring trade to our town.

I have examined this matter personally and know all of these matters to be true; and what we would like would be if you could write the Secretary urging him, if he is satisfied on the law points, as a matter of public policy to open it an early day for homesteads only. That saves any question of speculation, as the lands are very valuable and will be taken by an actual homesteader in thirty days.

What we want is careful and sure work.

Yours,

J. H. KING.

No. 10.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS
Washington, May 18, 1883.

SIR: I have the honor to acknowledge receipt, by your reference for report thereon, of a letter dated May 10 (instant) from Hon. W. B. Allison, inclosing a communication addressed to him by J. H. King, esq., of Chamberlain, Dak., dated May 7 (instant), in which it is urged in the interest of settlers who are anxious to settle thereon, and as a matter of public policy as well, that the lands on the east bank of the Missouri belonging to the Great Sioux Reservation (within what is known as the Crow Creek and Old Winnebago Reservations) that are not included in the tract recently agreed upon by the Sioux commissioners and the Indians of the Crow Creek Agency as a permanent reservation for said Indians (agreement concluded February 26, 1883), be thrown open to homestead entry and settlement.

It is represented that the Indians would be perfectly satisfied to have the residuary lands in question open to settlement, and it appears to be the opinion of the writer (Mr. King) that this can be properly done by Executive order. This opinion is evidently shared by the Sioux commission. (See their report transmitted to the Department April 12, 1883.)

As the views of this office in respect of the status of the Crow Creek and Old Winnebago Reservations have been fully set out in former reports to the Department, it will perhaps be unnecessary to go further than to invite your attention to said reports and to the decision of your predecessor (Secretary Kirkwood) dated July 20, 1881.

The reports to which reference is had are dated respectively April 12, May 6, June 16, and July 12, 1881.

That the position taken by this office, which was, briefly, that the tract of country embraced within the limits of the Old Winnebago and Crow Creek Reservations, as defined in 1863, was an "existing reservation" at the date of the Sioux treaty of 1868, and as such was by that treaty made a part of the reservation set apart for the Sioux tribe of Indians, was sustained by Mr. Kirkwood is evident, I think, from the language of his said letter, to which I respectfully invite your careful attention.

I see no reason to recede from the position heretofore taken by this office regarding the status of the lands in question, and holding to the view that they belong to and are a part of the Great Sioux Reservation I think the question of opening the lands to settlement as urged by Mr. King and recommended by the Sioux commission should rest until Congress has acted upon the agreements that may be presented to that body for ratification.

Senator Allison's letter and enclosure are herewith returned.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

(NOTE.—See No. 9.)

No. 11.

DEPARTMENT OF THE INTERIOR,
Washington, May 21, 1883.

SIR: Your letter of the 10th instant, inclosing one from J. H. King, esq., of Chamberlain, Dakota Territory, relative to opening a certain portion of the Crow Creek Reservation on the east side of the Missouri River, opposite the Sioux Reservation, to settlement, was referred to the Commissioner of Indian Affairs, and I have the honor to inclose for your information a copy of his report of the 18th instant on the subject, in which he expresses the opinion that "the question of opening the lands to settlement, as urged by Mr. King and recommended by the Sioux commission, should rest until Congress has acted upon the agreement that may be presented to that body for ratification."

Very respectfully,

H. M. TELLER,
Secretary.

Hon. W. B. ALLISON, U. S. S.,
Dubuque, Iowa.

(NOTE.—For inclosures see Nos. 9 and 10.)

No. 12.

HOUSE OF REPRESENTATIVES UNITED STATES,
Washington, D. C., January 27, 1885.

DEAR SIR: It is believed by a large number of the citizens of Dakota, and alleged by good lawyers who have carefully examined the question, that the Sioux tribe of Indians have no legal title to any of the lands embraced in the Crow Creek and Old Winnebago Reservations in Dakota, and as settlement has been made on all the lands adjacent thereto, and thousands of people waiting to occupy the same as soon as the question of title is settled, I have the honor to respectfully request that you cause an early examination of the laws and treaties bearing on the subject to be made, and the lands embraced in these reservations restored to the public domain and opened up for settlement under the various laws for occupying Government land.

This is a matter of great moment to our citizens, and especially those living near and desiring to occupy them, and it is important to them that this question of title be speedily determined.

Respectfully, yours,

JNO. B. RAYMOND.

Hon. H. M. TELLER,
Secretary of the Interior.

P. S.—I hand you herewith copy of letters from the files of the Indian Office and a history of the acts and treaties bearing on the subject, and ask your attention to a brief prepared by Hon. J. H. Teller, now on file in your office.

JNO. B. RAYMOND.

(NOTE.—For the inclosures noted herein see Nos. 3 and 5 and paper (memorandum of argument of Hon. J. H. Teller) with inclosures of Commissioner of Indian Affairs' report of March 20, 1885, referred to in the schedule of papers.)

No. 13.

CHESTER A. ARTHUR,
President of the United States:

The undersigned are a committee representing three or four hundred people who came to the County of Brulé, Territory of Dakota, intending to take up Government lands in accordance with the laws of the United States, and make homes for themselves and their families, but who, as yet, have been unable to do so. They came to the vicinity of the Crow Creek Indian Reservation, so called, under the assurance and belief that it was not Indian Reservation in law, but was temporarily held by a few Indians, by favor of the Government, and could and would be opened to settlement by whites by the President.

In this we have been sadly disappointed. Your administration, or Indian Commissioner Price assuming to speak for it, decided that the Crow Creek lands are part and parcel of the Great Sioux Reservation, and can be opened only by act of Congress. The

decision of the Commissioner has not been reversed, and, we fear, stands as the decision of the administration.

These lands were long ago ceded to the United States by the Indian tribes, thus extinguishing their title, as we are informed and believe. Some Indians, who never had any interest in them, were afterwards allowed to occupy them temporarily by President Grant. Since that time two Presidents have confirmed the soundness of our views by opening portions of these same lands to settlement, viz: President Hayes in August, 1879, and President Arthur in June, 1884. That the residue may be opened in the same way seems too plain for serious argument.

The Indians make no use whatever of the great bulk of these lands. They neither live on them, hunt on them, cultivate or pasture them, or even ride over them.

We have been waiting here, some one, some two, and some three years. The means of many are entirely exhausted, and of many others nearly so, and their hopes are gradually fading out. We ask you most earnestly, as one of the last acts of an honorable and successful administration, to open these lands of the Crow Creek Reservation to settlement by whites. It would be an act of humanity on your part, for actual want stares many in the face.

If the legal point regarding ownership is in the way, then we desire an investigation and decision of that by some higher authority than the Indian Commissioner.

We are law-abiding and not law-defying citizens. But if we fail to get an investigation of this matter by petition, then we propose to test the ownership of the Crow Creek lands by the exercise of the only other means we know. As soon as springs opens we intend to occupy some of these lands with our teams, build shanties, and break up portions of them for cropping. If, as we claim, they belong to the United States Government, then we feel certain that no officers or soldiers will be sent to drive us away or disturb us in such occupancy. We shall at least acquire squatters' rights. If, on the other hand, they are Indian lands, as Commissioner Price holds, then we shall have to take the consequences of wrongful occupancy. We are determined to take the chances, for we have homes to gain, and many of us have little left to lose in case of failure.

And this much, at all events, will be gained: a decision under this or the succeeding administration of the disputed question whether these are Government lands or Indian lands. This decision will emanate from some official or tribunal for which we shall have more respect than we have for that of ex-Commissioner Price.

With great respect,

J. A. ENNIS,
H. BRUMLEY,
J. W. CROSBY,
H. LOWE,
OLE THORSEN,
Committee.

PUKWANA, BRULÉ COUNTY, TERRITORY OF DAKOTA,
January 30, 1885.

[Indorsement.]

EXECUTIVE MANSION, *February 3, 1885.*

Respectfully referred to the Secretary of the Interior.
By direction of the President.

O. L. PRUDEN,
Secretary.

No. 14.

We, the undersigned, citizens of Hughes County, Dakota Territory, do hereby state that we reside along the borders of the Old Winnebago Indian Reservation, situate east of the Missouri River and south of Medicine Creek, and have been on and over said reservation, and do further state, of our own knowledge, that at this date and during the past year there is and has not been more than eight (8) Indian families, comprising not more than thirty (30) Indians, men, women, and children, residing or living thereon.

GEORGE W. HARRIS.
J. W. ADAMS.
FRED DEINDINGER.
CHAS. A. BERGER.
CHARLES A. JARVIS.
L. J. HERBISON.
L. NATHAN.
A. S. GUTHRIE.

M. J. McCANN,
CARL FINDEISER.
W. S. POCKARD.
W. H. BATY.
JOHN LOWERY.
MOSES LACY.
D. CHAMBERLAIN.

Subscribed and sworn to before me this 3d day of February, A. D. 1885.

[SEAL]

CHAS. SPENCER,

Notary Public, Hughes County, Dakota Territory.

[Indorsement.]

HOUSE OF REPRESENTATIVES,

[No date.]

Respectfully referred to the Secretary of the Interior for consideration in connection with the opening of the Winnebago and Crow Creek Reservations.

JNO. B. RAYMOND.

No. 15.

PUKWANA, BRULÉ COUNTY, DAKOTA, *February 16, 1885.*

DEAR SIR: Your interposition is being sought in behalf of the opening of a portion of what is known as the "Crow Creek Indian Reservation" by Executive order, inasmuch as Congress seems little likely to reach the Dawes bill this session.

I am not a politician, simply a citizen resident upon the border for two years past, and am moved to write and urge upon you this just measure of relief to the white settlers who have been here waiting for from one to three years. Not only much loss, but also much suffering will ensue if the opening should be deferred another year, as the majority of these people here have small means and many must become bankrupt unless matters can very soon be put upon a safe and prosperous basis by opening up this land to settlement.

It is generally understood here that the so-called Crow Creek Reservation is not a reservation in the technical and legal sense, Congress alone having the power to make a reservation through treaty stipulations. It is understood to be a fact that all this land was once open to settlement; was afterwards withdrawn, and under the direction of the Commissioner of Indian Affairs assigned for occupancy to the Crow Creek Indians, who thus took possession by courtesy of the Government. The theory that this tract of land is part of the Great Sioux Reservation we understand to be based upon the treaty of April 29, 1868, which amended boundaries. That treaty, after very explicitly defining all boundary lines to reservation lands lying west of the Missouri River, closes the boundaries by stating "and all existing reservations on the east bank of the Missouri River." The land occupied by the Crow Creek Indians not being at that time an Indian reservation, does not come under that treaty. Government seems to have held to this opinion, for only a few years since a portion of this so-called Crow Creek Reservation was opened by Executive order. Pukwana is located on land so opened.

The Crow Creek Indians hold by this precarious title some 700,000 acres of choice farming land; they are a small band of from 1,000 to 1,100. This gives them between six and seven hundred acres of land to each man, woman, and child, besides which Government feeds, clothes, houses, and gives them schooling free.

It is superfluous to call attention to the fact that at present the Indians utilize only the merest fragment of this land; even under a very high state of civilization they could not bring it all under cultivation; the 400,000 acres which it has been proposed to open to settlement is the least desirable part of the tract, since the Indians would retain all the timbered creeks; but it is all good enough.

In behalf of the claims of the settlers, it may be said the city of Chamberlain is located at the terminus of the Chicago, Milwaukee and Saint Paul Railway on the Missouri River; it contains about 1,200 inhabitants, enterprising citizens who have built their homes and invested their capital upon the expectation and assurance that this country would be thrown open to settlement, and thus become tributary to Chamberlain. Further west is Pukwana, still on the border of the reservation. In these towns are hundreds waiting for land; back of these are an untold number eagerly waiting the summons to come and occupy. It is safe to say that in two weeks' time from the opening every quarter section of land would have an occupant, and in five years' time this whole region would blossom as the rose. No one would be more benefited by such a transformation than the Indians themselves. Nothing civilizes them so rapidly as close contact with civilization. The progress made by the Crow Creek Indians as compared with those across the river is very marked.

Congress shows no interest in this matter to us so all important; and we appeal to

you for relief. Your enlightened views on Indian and land questions, as set forth in your various reports, lead us to believe that you will appreciate the justice of our claims and that you will not fail to recommend the opening of the so-called Crow Creek Reservation by an Executive order before March 4.

Very respectfully,

S. A. RICHARDS.

Hon. SECRETARY OF THE INTERIOR.

No. 16.

The Hon. SECRETARY OF THE INTERIOR:

We, the undersigned, citizens of Hughes County, do respectfully represent that all of the Government land in South Dakota offered has been filed upon and taken up by settlers: that the Winnebago Reservation, in and adjoining Hughes County, is not open to settlement, and that there are not more than 30 Indians now living upon said reservation: Wherefore

Your petitioners respectfully ask that said Winnebago Reservation be at once thrown open to settlement.

(Signed:)

Thos. H. Enser, J. A. Lang, Thos. P. Kane, Richard Galvin, W. H. Kym, L. M. Jones, Jesse Woolliserop, R. Innychy, J. N. D. Smith, J. C. Smith, W. S. Taylor, G. S. Jones, W. L. French, H. L. Sherman, B. P. Johnson, A. O. Clapp, C. M. Stone, J. A. White, R. C. Fosdick, Alex. White, R. P. Hoskyn, J. M. Burge, D. J. Davis, Richd. Maher, J. W. Tollark, P. T. Hayden, E. B. Gorvin, H. A. Chase, J. E. Jaques, M. E. Robinson, L. J. Kenyon, Ed. T. Kemp, J. I. Hautz, T. M. Taylor, H. E. Westover, P. M., W. M. Kemp, R. Norton, E. E. Feistkorn, H. I. Woolson, D. V. Leeds, E. C. Kelley, Robt. Sutherland, F. W. Jewett, Wm. C. Grier, R. Thornson, Oliver Riggle, J. P. Howard, H. C. Pickering, W. A. Shepherd, J. N. Gaines, D. W. Ober, H. H. Steer, Frank Pilgrim, A. L. Taylor, Fred. Scharping, Frank Moore, Henry Weber, J. L. Eicholze, M. H. Newman, E. T. Mercer, F. N. Lewis, J. A. Hoffman, J. O. Cox, J. Ruby, John T. Mercer, P. H. Johnson, Ed. Maloney, D. H. Pattison, J. F. Highlaro, J. W. Kirkpatrick, P. H. Blackwood, Geo. S. Congdon, G. W. Webb, Step. Maloney, J. M. Stebbins, F. C. Gardner, W. S. Gooding, Frank F. Malcolm, I. A. Gooding, Frank Price, Robert Barkley, H. Willsey, H. W. Sprague, D. W. Hyde, J. F. Bowman, T. W. Cox, J. O. Vinyard, H. Lodge, John Campbell, Henry Thickson, J. Cournyer, H. J. Stebbins, Jas. F. Watson, Will Hencke, Berger O. Stone, Sol. Rimer, Manuel Ash, J. W. Drumond, Amos Wiley, G. W. Riggle, J. M. Horney, Scott Dehart, A. Riggle, E. J. Tethcoat, J. Lamler, A. Dehart, P. Robbins, Ira B. Hutton, Frank M. Gratt, Rob't O. Dwyer, Wm. H. Heisler, W. W. Waite, A. P. Reid, John Kroack, A. E. Brown, O. A. Snow, E. E. Dickover, O. J. Williams, William Rowland, Morris Shea, Louis F. Havig, Fred. S. Coddington, Frank M. Morris, H. E. Kimmel, R. Clark, Lewis H. Cass, Jno. J. Hannagan, W. M. Fuller, M. B. Smith, Archey Brown, Henry Hoffman, A. D. Lillie, Bernard Compton, I. F. Volts, M. A. Wilkensen, Godfrey Fostier, T. W. Thompson, Sol. Morris, J. H. Franklin, M. E. Felty, Wm. Lemington, Thomas Bonyer, Wm. Love, Geo. G. Gilson, Gus. Brown, J. Duncan, R. S. Hart, James Martin, F. B. Stebbins, Jas. B. Root, Sam. Stebbins, J. A. Young, H. R. Thompson, M. A. Bancroft, E. J. Moore, H. McDonough, S. Jewett, F. A. Blaine, Chas. Volts, Major J. W. Pine, U. S. A.; Geo. Rood, Thos. F. Fitz Gerald, Frank Van Horn, W. O. Brock, A. Lewis, E. P. Hoover, W. W. Airhart, N. A. Schonweiler, J. McLaughlin, J. A. McHenry, R. D. Samuel, H. Babeck, M. C. Gans, Dan. C. Hall, W. A. Mitchell, James Hall, Wm. W. Hughes, Wm. Hall, Ozra Straup, S. C. Noland, Frank Denny, N. Johnson, Chas. H. Burke, C. R. Tilton, Thos. L. Holliday, C. N. Hawley, John Stone, M. E. Schonweiler, A. J. Philips, C. H. Baker, J. W. Plummer, Joseph Batterson, E. C. Winebruener, M. S. Alcock, W. S. Radcliffe, M. H. Prichard, G. D. Williams, Jno. Slater, J. S. Thompson, A. J. Crary, C. J. Thompson, J. M. Barkley, C. R. Huntington, A. Kleinsmidt, E. W. Riggle, G. H. Maxwell, S. F. Akers, Jas. Dougherty, W. Karr, Ed. Haskyn, W. B. Wooliscroft, H. Turbett, D. Wooliscroft, S. E. Dickover, W. H. Brown.

[Indorsement.]

(No date.)

Respectfully referred to the honorable Secretary of Interior for file, with my application for opening the Winnebago and Crow Creek Reservations.

JNO. B. RAYMOND.

No. 17.

The Hon. SECRETARY OF THE INTERIOR:

We, the undersigned, citizens of Hughes County, Dakota Territory, do respectfully represent that all of the Government land in South Dakota has been filed upon and taken up by settlers; that the Winnebago Reservation, adjoining Hughes County, is not open to settlement; and that there are not more than thirty Indians living upon said reservation: Wherefore your petitioners respectfully ask that said Winnebago Reservation be at once thrown open to settlement.

(Signed:)

Allen Peelen, Charles Eakright, R. W. Luther, E. W. Dickie, O. N. Beim, Henry Manch, John Z. Vance, Henry Whitman, G. Hutchison, M. E. Billings, John Kelly, L. D. Riggle, W. A. Vance, E. A. Lawler, C. W. Davis, C. F. Hilgenboeker, James Caldwell, J. V. Lewis, J. J. Caldwell, P. P. Jennings, A. H. Hutchison, Jas. Murray, Charles A. Metzger, M. E. Redick, A. H. Champion, H. A. Delano, Richard Parry, S. Drew, John J. Simons, W. M. Snow, Z. T. Thomson, J. M. Murray, G. W. Smith, W. Scott Thompson, F. L. Fuller, C. C. Hinsey, W. J. Mack, W. A. Olmstead, H. C. Olmstead, Albert Rich, Will Hickox, T. Y. Rippey, E. A. Searle, A. H. Caller, William Armstrong, John Kramer, John E. Faust, B. B. Billings, Warren Snow, H. A. Scovel, Frank D. Caldwell, H. C. Pickering, F. M. Powers, Wm. Trumbo, Elihu Shipley, E. W. Pyne, L. Marrison, L. M. Klotz, C. C. Hinsey, F. L. Fuller, O. Greenwood, James Wilson, Wm. Boylan, Wm. Greenwood, Saml. Wiggins, L. M. Johnston.

[Indorsement.]

(No date.)

Respectfully referred to the Hon. Secretary of Interior for file with my application for opening to settlement the Crow Creek and Winnebago Reservations.

JNO. B. RAYMOND.

No. 18.

DEPARTMENT OF THE INTERIOR,
Washington, February 25, 1885.

SIR: I have the honor to submit herewith the draft of an order restoring to the public domain certain lands within what is known as the Old Winnebago and the Crow Creek Indian Reservations in the Territory of Dakota.

I also inclose a brief by the chief of the Indian Division of this Department, showing a full history of the status of these lands.

I respectfully request that the order may receive your signature.

The return of the inclosures is also respectfully requested.

Very respectfully, your obedient servant,

H. M. TELLER.
Secretary.

The PRESIDENT.

(NOTE.—For draft of Executive order see No. 19, and for brief see papers accompanying report of Commissioner Indian Affairs (No. 1), dated March 20, 1885.)

No. 19.

EXECUTIVE MANSION, *February 27, 1885.*

It is hereby ordered that all that tract of country in the Territory of Dakota, known as the Old Winnebago Reservation and the Sioux or Crow Creek Reservation, and lying on the east bank of the Missouri River, set apart and reserved by Executive order dated January 11, 1875, and which is not covered by the Executive order dated August 9, 1879, restoring certain of the lands reserved by the order of January 11, 1875, except the following described tracts: Townships 108 north, range 71 west; 108 north, range 72 west; fractional township 108 north, range 73 west; the west half of section 4, sections 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33 of township 107 north, range 70 west; fractional townships 107 north, range 71 west; 107 north, range 72 west; 107 north, range 73 west; the west half of township 106 north, range 70 west; and fractional township 106 north, range 71 west; and except also all tracts within the limits of the aforesaid Old Winnebago Reservation and the Sioux or Crow Creek Reservation, which are outside the limits of the above-described tracts and which may have heretofore been allotted to the Indians residing upon said reservations or which may have heretofore been selected or occupied by the said Indians under and in accordance with the provisions of article 6 of the treaty with the Sioux Indians of April 29, 1868, be, and the same is hereby, restored to the public domain.

CHESTER A. ARTHUR.

No. 20.

REDFIELD, SPINK COUNTY, DAKOTA, *February 17, 1885.*

DEAR SIR: I want to know the situation in regard to the opening of the Winnebago Reservation for settlement, and whether settlers will be allowed to squat on the land as settlers before the day set for opening the same or not, and whether the Indians are to be removed or not.

I want to go there with a few neighbors as soon as any one is allowed to go there and not be molested. The neighbors look to me for information, and whether it will all be opened or only a part of the same, and if you know what parts will be opened. Please let me hear from you if convenient to do so.

I remain, truly yours,

MILTON T. GARRETT.

Post-office, Redfield, Spink County, Dakota.
The SECRETARY OF THE INTERIOR,
Washington, D. C.

No. 21.

DEPARTMENT OF THE INTERIOR,
Washington, March 2, 1885.

SIR: I transmit herewith for your information and that of the local land officers copy of an Executive order of 27th ultimo, opening up to settlement, with exceptions noted therein, the lands of the Old Winnebago and Crow Creek Indian Reservations, lying on the east bank of the Missouri River in the Territory of Dakota.

Very respectfully,

H. M. TELLER,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

(NOTE.—For copy of Executive order see No. 19 of accompanying papers.)

No. 22.

DEPARTMENT OF THE INTERIOR, *Washington, March 2, 1885.*

SIR: I transmit herewith for your information an Executive order of the 25th ultimo, opening up to settlement, with exceptions noted therein, the lands of the Old Winne-

bago and Crow Creek Indian Reservations, lying on the east bank of the Missouri River, in the Territory of Dakota.

A copy has been furnished this day for the information of the General Land Office.

Very respectfully,

H. M. TELLER,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

(NOTE.—For copy of Executive order see No. 19 of the accompanying papers.)

No. 23.

DEPARTMENT OF THE INTERIOR, *Washington, March 3, 1885.*

SIR: In compliance with your verbal request I transmit herewith copy of the Executive order of February 27, 1885, opening up to settlement, with exceptions noted therein, the lands of the Old Winnebago and Crow Creek Reservations in Dakota.

Very respectfully,

M. L. JOSLYN,
Acting Secretary.

General JOHN F. FARNSWORTH,
Washington, D. C.

(NOTE.—For copy of Executive order see No. 19 of the accompanying papers.)

No. 24.

UNITED STATES INDIAN SERVICE,
Crow Creek Agency, Dakota, March 9, 1885.

SIR: Acknowledging receipt of telegram of Acting Secretary Joslyn of 6th instant, informing me of reduction of Winnebago and Crow Creek Reservation by Executive order of February 27, 1885, and stating that all rights of Indians are fully protected by said order, I have the honor to beg leave to make the following statement and to ask that it may receive your wise and just consideration.

The telegram above referred to was the first official communication received by me to inform me that an Executive order reducing the reservations occupied by the Indians under my charge had received Presidential signature. I had seen several unofficial announcements to that effect, but had placed no credence in them. I telegraphed the honorable Commissioner on or about February 16 last, asking if action had been taken to open reservations above referred to to settlers, and received on the 19th ultimo the following answer:

"No action has been taken by my office in reference to opening Crow Creek Reservation. Possibly some action may be taken by Congressmen.

"H. PRICE,
"Commissioner."

In the mean time large numbers of squatters had rushed in upon the reservation, surveying, locating claims, and building houses.

The Indians, seeing this, became much alarmed, and begged me to drive them off. I deemed it my duty to comply with their request, and sent out policemen (four) to the different parts of the reserve encroached upon, with written warning to them to withdraw from reservation and to remove their property, stating that in case they refused to do so their property would be confiscated and themselves prosecuted as the law directed. This notification had very little effect.

Again, on 2d instant, not yet having received any official notification, a similar warning was again sent out with like effect, except in that it caused much excitement among the intruders and their friends, and arms and ammunition were sent for, and violent threats uttered.

I deemed this second order necessary because Indians living upon lands taken in severalty were pressed upon, and the other Indians generally were very anxious. I am

glad to report that no act of violence has been committed by any of the Indians, although so fearfully provoked. I have from time to time earnestly counseled them to keep quiet and to refrain from all acts of violence, and I have also stated to them that I could not believe the reports circulated, as I had received no official warning. I told them that I knew the Government would treat them justly and protect them. These assurances had the effect desired.

As yet I am uninformed officially of the extent to which the reservation has been opened, and where the new boundary lines are located, as will be seen by referring to telegram of Acting Secretary Joslyn of 6th instant. Through private channels I have received a copy of what purports to be the Executive order, reducing the reservations in my charge, from which I find that in the neighborhood of 500,000 acres of land are taken from these Indians without compensation of any kind, and leaving the title to what remains very precarious.

The reservation left to these people in acres may seem sufficient for them, but a great deal of it is rough, sterile, and utterly worthless territory.

A large number of the Indians have taken up lands in severalty on that portion of the reservation which is proposed to be opened to settlers, and will consequently be outside of the lines of the proposed reserve. Surrounded by white settlers, some of them the very worst kind, it will be beyond the power of any agent to protect them or control them as they require. It will be but a short time ere they are cheated out of everything they have, and will be driven back to the reservation, paupers. Whisky, the curse of the Indian, as of the white man, only in a more intense degree, will be largely instrumental in bringing about this result.

One of the most serious injuries caused by the proposed reduction is the taking away from these people their pasture lands. The only fit portion of the reserve for winter pasture is that portion which is here familiarly known as the Big Bend, consisting of ranges 73, 74, 75, and 76, township 108. By far the greater portion of this bend consists of rough, broken lands, high bluffs, and deep ravines, utterly unfit for agriculture, and will never be sought by any one except some land speculator, who will take it up as a great pasture. It is the locality where the agency beef herd in winter; in fact, it is the only place where a herd can be held during winter without starving to death.

At the present time the beef herd held there is constantly disturbed, and, being wild Texas steers, are in danger of being stampeded by the large number of settlers who are taking up every little valley and every patch of timber in the bend. My herders inform me that the cattle are very restless, and that they fear they cannot be held there much longer. If I am compelled to remove them a large number will certainly perish before the spring grasses come, thus entailing great loss to the Government and almost certain starvation to the Indians.

I am aware that it is the intention of the Government to assist the Indians to become self-sustaining. By taking away these pasture lands from them one of the principal avenues leading to this result will be closed. If it can be retained, and these people can receive even a moderate number of cows at the present time, to be turned into this natural pasture and properly cared for there, it will take but a few years ere the increase will not only furnish beef for the tribe; but also aid them in producing work cattle and milch cows.

If it is determined that this reservation must be reduced at the present time would it not be possible to so modify the order as to keep this bend, with a portion of land connecting it with the reduced reserve, making the northern boundary conform to that laid down by the proposed Dawes bill?

I deem it my duty as an agent of the Government for these poor people to bear testimony on their behalf as to their present and past good conduct. It is their constant boast, grounded in fact, that they have always been, as they now are, firm friends of the white men; that they have never at any time joined with any of the other bands of Sioux in hostilities against the whites. Whenever hostilities occurred they have always placed themselves near some military fort, many of them serving as scouts and doing whatever they could in reducing refractory bands to a peaceful condition. There are men now living in the tribe who, when white women and children had been taken captive by the hostiles, went out to their camps, taking with them presents of ponies, blankets, and whatever they had, to purchase these unfortunate creatures from their cruel captors in order to restore them to their friends. Great pressure was frequently brought to bear upon them to compel them to join in raids and hostilities with their wilder brethren of the Sioux Nation, but their record will show that they invariably resisted and remained firm in their friendship.

This band of Lower Yanktonai Sioux was once a numerous tribe, presided over and guided by the wise and peace-loving chief, Bone Necklace, the father of the present noble and gentle and courteous head chief, White Ghost.

Their dominion extended over the entire central portion of Eastern Dakota, and al-

though there is no treaty in existence showing that they have ever disposed of one foot of their territory, yet, by the gradual and steady encroachments of the white man, they have been driven back and back until to-day they occupy their present narrow and to them almost insignificant reservation.

Their natural means of support have been taken from them; their hunting-grounds are now the white man's wheat-fields; their timber lands destroyed have built the white man's cities, towns, and farm-houses, and yet they have never resisted—not because they were cowardly, but were gentle and peace-loving; and shall these people, with such a record, now be crushed and almost utterly impoverished by the Government that should protect them; shall their little remnant of land be taken from them without price in a moment, without a warning of any kind? Can we expect that these poor, ignorant, helpless people shall ever embrace our civilization and Christianity when they experience such treatment from him who is to them the embodiment of the Government, and whom they call their "Great Father." If, honorable sir, it was in the heart of him who held the high position you now occupy thus fearfully and secretly to worry these poor children, I pray God that it may be in yours to right them; and, in conclusion, permit me to remind you that this small band is a member of the great Sioux family. that they are looked up to by many of the wilder members of the tribe as civilized Indians. The treatment they receive is known to all, and those who are opposed among the Sioux to civilization will be ready to make the ill-treatment of these people by the Government an excuse for still greater opposition and justify them in their own minds in many acts of violence.

If I understand their treaties with the Government it seems to me that their title is not only perfect because of their hereditary rights, but secured to them by provisions oft repeated by the Government; and as one further proof of title I would beg leave to draw your attention to the fact that the Government sent here in the year 1882 a commission which was authorized to negotiate with them for the purchase of a certain portion of their land, and when here, as elsewhere, they failed to obtain the consent of these Indians to the sale of their lands, the honorable Senate required subsequent action to obtain the same; and in order that there should be no fraud perpetrated upon the Indians in this connection a Senatorial committee was created with instructions to fully investigate the matter and to see if the Indians had been unduly pressed or influenced to enter into the agreement. The result was the rejection of the proposed Sioux commission treaty and the substitution for it of the Dawes bill, which all true friends of the Indian hoped to see enacted, and which was in abeyance at the time that the Executive order was signed.

I think that I may be pardoned for presuming to address this communication to you, honorable sir, personally. If in doing so I transgress any of the rules that should guide one holding my humble position, I beg that I may be pardoned and that my earnest desire for the welfare of the people intrusted to my care may plead in my behalf.

Very respectfully, your obedient servant,

JOHN G. GASMANN,
United States Indian Agent.

Hon. L. Q. C. LAMAR,
Secretary of the Interior, Washington, D. C.

No. 25.

The PRESIDENT:

SIR: We, the undersigned, members of the executive committee of the Indian Rights Association of Philadelphia, submit with great respect the inclosed statements relative to a recent Executive order opening to public settlement large portions of the Crow Creek and Old Winnebago Reservations in Dakota.

We feel justified in making this claim upon your time mainly for the following reasons:

(1) After investigation of this Executive order of February 27, 1885, we firmly believe it to be illegal and absolutely invalid. We hold that the reservations in question were included by treaty in the Sioux Reserve, and that therefore it cannot be opened by Executive order.

(2) The order was made with great haste at the close of the administration. The Indian Bureau had no knowledge of it whatever, it never having been submitted to it, nor was the Indian Committee of the Senate or House given any opportunity to pass upon its wisdom or justice.

(3) The effect of the order, if carried out, will be painfully disastrous to the Indians, who have been led to believe that they occupy the land under treaty; the danger to be

apprehended from disturbances between the whites and the Indians is manifest and natural.

We submit that an order affecting the property of so many persons and dealing with the interests of a people peculiarly under the protection of the Government and of the Executive should have been neither hasty nor unadvised; that this order is as notoriously opposed to right and national respect as we believe it to be against the law; and for these and other reasons we earnestly beg you to consider the inclosed statements and to suspend the order until its legality and wisdom can be inquired into by the proper persons.

We are, with great respect, your obedient servants,

WAYNE MACVEAGH, *President.*
 JAMES E. RHODES, *Vice-President.*
 HERBERT WELSH,
Corresponding Secretary Indian Rights Association.
 HENRY S. PANCOAST,
Chairman Committee on Law of Indian Rights Association.
 CHARLES E. PANCOAST,
 J. RODMAN PAUL,
 RICHARD C. DALE,
 ROBERT FRAZER,
Committee on Law.

[Indorsement.]

EXECUTIVE MANSION.

The within communication is respectfully referred to the Secretary of the Interior.
 By direction of the President.

DANIEL S. LAMONT,
Private Secretary.

Facts regarding the recent opening to white settlement of Crow Creek Reservation in Dakota.

(This statement is a duplicate of that found in No. 31 of accompanying papers, except that is there signed by A. Cleveland Coxe et al.)

416 WALNUT STREET, PHILADELPHIA, PA.

The above is respectfully submitted not as a law brief, for it has been incumbered with no citation of authorities, but simply as a statement of what seems to us a position more than strong enough in law and in conscience to warrant the suspension of the order until proper investigation has been made.

Should the Secretary of the Interior or the gentlemen to whom he may see fit to refer the matter desire any further facts or references, the law committee will be glad to be of any assistance.

HENRY S. PANCOAST,
Chairman Law Committee.

3, 12, 1885.

[Indorsement.]

EXECUTIVE MANSION.

The within communication is respectfully referred to the Secretary of the Interior.
 By direction of the President.

DANIEL S. LAMONT,
Private Secretary.

No. 26.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
 Washington, D. C.; March 14, 1885.

SIR: In view of the fact that it is stated upon good authority that white men in great numbers are now crowding into the Old Winnebago and Crow Creek Reservations on the east bank of the Missouri River, in Dakota, thereby alarming the Indians, and in the judgment of many good citizens endangering the lives and property of the people in that vicinity, I have the honor to recommend that pending response by this office to the resolution of the Senate, dated March 3, 1885, calling for information regarding the history, status, &c., of said reservations, the General Land Office be directed to suspend all action under Executive order, dated the 27th ultimo, relating to said reservations, and that such suspension be continued until further orders from the Department.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

No. 27.

UNITED STATES SENATE,
Washington, D. C., March 17, 1885.

MY DEAR SIR: I was very sorry not to find you in last night, for I wanted very much to talk with you about the Crow Creek proceedings of the last days of your predecessor. I took the liberty to inclose with the letter I promised you in the morning a printed copy of a brief sent me from Philadelphia. I hope that in the multitude of pressing business you will find time to consider it.

This morning I have received from Mr. Gasmann, the agent at Crow Creek Agency, a copy of a letter which he states to me he has forwarded to you. I beg you to read that letter in connection with the argument, which shows that the whole proceeding is taking away from these Indians what they and all the world, including the Interior Department, up to the last moment, believed was included in their treaty title. The letter will show the condition in which these Indians are left. It calls very loudly upon your justice and good sense, in both of which I am happy to say the people have the utmost confidence. I feel great confidence that you will not disappoint them as to either.

Let me say in reference to Mr. Gasmann that the committee which prepared what he calls "the Dawes bill" consisted of General Logan, Mr. Cameron of Wisconsin, Mr. Vest, and Mr. Morgan, with myself. The committee visited that reservation, as well as all of the others of the Great Sioux Reservation, before they prepared that bill. In adjusting the boundaries of the reservation to be left for the Crow Creek Nation, they held consultations with both Indians and all of the white men in that vicinity, and when that bill was reported the lines were perfectly satisfactory. That bill passed the Senate without a dissenting voice, and was recommended to Congress specially in his message by the President. Its lines, as Mr. Gasmann tells in his letter, are all broken up by this new arrangement, and the Indians are disinherited and left where they will be sure to become a public charge. I think with him that there will be great danger of an outbreak in the Sioux Nation. Mr. Gasmann, at the time this committee were there, impressed them very much with his sound sense and practical, honest purposes. I beg you to consider whether the public good, as well as justice to the Indians, will not best be promoted by your suspending entirely this whole matter until you can have time to understand fully its effect. I do not want to attempt to dictate a policy to you. I speak mostly from personal knowledge in this matter, and I hope that after this matter has been so brought to your attention your action upon it will add to the confidence which I have assured every friend of the Indian you are entitled to in dealing with him. I think it would be a bad thing to have such a letter as Mr. Gasmann has addressed to you published in the newspapers at this time; but there is a good deal of apprehension in the public that a great wrong is being inflicted upon these Indians, and in the present state of public sentiment in regard to them I beg you to consider whether prompt action by you in the line indicated would not be best for all concerned.

Excuse me for troubling you again this morning with a long letter. I am,
Truly, yours,

H. L. DAWES.

Hon. L. Q. C. LAMAR,
Secretary of the Interior.

[NOTE.—A copy of the paper of the Indian Rights Association, referred to by Senator Dawes as an inclosure to his foregoing letter will be found with No. 25 of the papers, herewith noted in the schedule.]

No. 28.

DEPARTMENT OF THE INTERIOR,
Washington, March 17, 1885.

SIR: I have the honor to present for your consideration the following facts regarding the status of certain lands in the Territory of Dakota, and to request your opinion on the questions hereinafter submitted.

The act of February 21, 1863, authorized the President to set apart a tract of unoccupied land beyond the limits of any State for the Winnebago Indians. (12 Stat., 658.)

The act of March 3, 1863, gave similar authority regarding the Sisseton, Wahpeton, and other bands of Sioux Indians. (*Ibid.*, 819.)

Under and in pursuance of the provisions of these laws a superintendent of the Indian service, under direction of the Commissioner of Indian Affairs, did select on the east side of the Missouri River in Dakota Territory two tracts of land, and did locate the said Indians thereon. The two tracts of land selected are more particularly described in exhibits A and B herewith.

The lands selected were unoccupied lands, being within the boundaries of the territory ceded to the United States by the "Yankton tribe of Sioux or Dakota Indians" by treaty ratified February 26, 1859 (11 Stat., 743), and payment made therefor.

The tracts of lands selected were not reported to the President for his approval, and no Executive orders were issued setting apart said lands, under the laws referred to, for the Indians therein designated.

The Winnebago Indians remained upon the tract selected for them until 1865. It was found unsuitable, and they by treaty of March 8, 1865, ceded all their right, title, and interest therein to the United States, the consideration being a reservation in the Territory of Nebraska and certain money payments. (14 Stat., 671.)

The Sioux Indians designated in the act of March 3, 1863, remained upon the tract selected for them until 1866; that tract having also been found and reported as unsuitable it was abandoned and so reported by the Indian Bureau, and the Indians removed to another tract selected and set apart for them in the Territory of Nebraska by Executive order of February 27, 1866. (See Exhibit C.)

The records of the Department refer to the act of March 5, 1863, as the authority of law for the creation of the latter reservation, as no subsequent legislation has been enacted authorizing its establishment. This is known as the Old Crow Creek Reservation.

By Executive order, dated January 11, 1875, a large tract of land on the east side of the Missouri River was set apart for the use of the several tribes of Sioux Indians, as an addition to their then existing reservation, as defined by the treaty of 1868. (See Exhibit D.) The lands described in this Executive order embrace the two tracts first selected under the laws of February 21 and March 5, 1863, for the Indians therein designated.

By Executive order of August 9, 1879, the lands withdrawn from sale and set apart for the use of the Sioux Indians by said Executive order of January 11, 1875, and also certain other lands withdrawn and set apart for the same purpose by Executive orders of March 16 and May 20, 1875, were restored to the public domain, except the lands embraced within the tracts originally selected for the Winnebago and Sioux Indians under the laws of February 21 and March 3, 1863. (See Exhibit E.)

The status of those portions of said lands not restored to the public domain by Executive order of August 9, 1879, remained unchanged until February 27, 1885, when President Arthur issued his order restoring certain portions thereof to the public domain, leaving certain designated townships and parts of townships still in reservation, and excepting from the operation of the order all lands that had been allotted to settlers [settled on] or occupied by Indians. [See Exhibit F.] The reports, briefs, and arguments which were before the Department, and upon which the last-named Executive order was based, are inclosed herewith.

In view of these facts I have the honor to request your opinion on the following questions:

First. Whether the lands comprising the two tracts or either of them, first selected for the Indians, and as described in Exhibits A and B were, at the date of the treaty of April 29, 1868, with the Sioux Indians, in a state of reservation, and "existing reservations" within the meaning and intent of Article II of said treaty? (15 Stat., 635.)

Second. Whether it was within the power and authority of the Executive to restore to the public domain those parts of the lands in question sought to be thus affected by the Executive order of February 27, 1885?

As this matter is of great and pressing public interest I will thank you to give it early consideration and favor me with your opinion on the questions presented.

The return of the accompanying papers is respectfully requested.

Very respectfully,

L. Q. C. LAMAR,
Secretary.

Hon. ATTORNEY-GENERAL.

(NOTE.—Copies of all the inclosures noted in this letter are, with the papers, scheduled, being reports of the Indian Office, briefs, &c., and Exhibit, not herewith, is No. 19 of schedule. Exhibits A, B, C, D, and E are attached hereto.)

EXHIBIT A.

Old Winnebago Reserve.

USHEE'S LANDING, DAK., July 1, 1863.

SIR: With this report I transmit a plat and field notes of the surveys made for the Sioux and Winnebago Reservations by Mr. Powers, and to which I desire to call your attention.

* * * * *

The reservation for the Winnebago Indians is bounded as follows, to wit: Beginning at a point in the middle channel of the Missouri River where the western boundary of the Sioux of the Mississippi Reserve intersects the same; thence north and through the center of the stockade surrounding the agency buildings of the Sioux of the Mississippi and Winnebago Indians, and along said boundary line to the northwest corner of said Sioux Reserve; thence along the northern boundary of said Sioux Reserve 10 miles; thence due north 20 miles; thence due west to the middle channel of Medicine Knoll River; thence down said river to the middle channel of the Missouri River; thence down the said channel to the place of beginning.

Very respectfully, your obedient servant,

CLARK W. THOMPSON,
Superintendent of Indian Affairs.

Hon. WM. P. DOLE,
Commissioner of Indian Affairs.

EXHIBIT B.

DAKOTA.

Crow Creek Reserve.

USHER'S LANDING, DAK., July 1, 1863.

SIR: * * * With this report I transmit a plat and field notes of the surveys made for the Sioux and Winnebago Reservations by Mr. Powers, and to which I desire to call your attention.

* * * * *

The reservation for the Sioux of the Mississippi is bounded as follows, to wit: Beginning at a point in the middle channel of the Missouri River, opposite the mouth of Crow Creek, in Dakota Territory; follow up said channel of the Missouri River about 14 miles, to a point opposite the mouth of Sne-o-tka Creek; thence due north and through the center of the stockade surrounding the agency buildings for the Sioux of the Mississippi and Winnebago Indians, about 3 miles, to a large stone mound; thence due east 20 miles; thence due south to the Cedar Island River or American Creek; thence down the said river or creek to the middle channel of the Missouri River; thence up said channel to the place of beginning. * * *

Very respectfully, your obedient servant,

CLARK W. THOMPSON,
Superintendent of Indian Affairs.

Hon. WILLIAM P. DOLE,
Commissioner of Indian Affairs.

EXHIBIT C.

NEBRASKA.

Nebraska Reserve.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 26, 1866.

SIR: I have the honor to submit herewith a letter addressed to this Department by the Commissioner of Indian Affairs, requesting the reservation from pre-emption or sale of townships 31 and 32 north, range 5 west, and townships 31 and 32 north, range 6 west of the sixth principal meridian, in Nebraska Territory, until the action of Congress be had, with a view to the setting apart of these townships as a reservation for the Santee Sioux Indians now at Crow Creek, Dakota; and recommend that you direct those lands to be withdrawn from market and held in reserve for the purpose indicated.

I am, sir, very respectfully, your obedient servant,

JAMES HARLAN,
Secretary.

The PRESIDENT OF THE UNITED STATES.

EXECUTIVE MANSION, *February 27, 1866.*

Let the lands within named be withdrawn from market and reserved for the purposes indicated.

ANDREW JOHNSON,
President of the United States.

EXECUTIVE MANSION, *July 20, 1863.*

Let the townships embraced within the lines shaded *red* on the within diagram be, in addition to those heretofore withdrawn from sale by my order of 27th February last, reserved from sale and set apart as an Indian reservation for the use of Sioux Indians, as recommended by the Secretary of the Interior in letter of July 19, 1866.

ANDREW JOHNSON,
President.

The above order embraces township 31 north, range 8 west; township 31 north, range 7 west; that portion of township 32 north, range 8 west, and of township 32 north, range 7 west, lying south of the Niobrara River, and that portion of township 35 north, range 5 west, lying south of the Missouri River in Nebraska. [For diagram, see letter from the Commissioner of the General Land Office, dated November 23, 1878.]

DEPARTMENT OF THE INTERIOR,
Washington, D. C., November 15, 1867.

SIR: For the reasons mentioned in the accompanying copies of reports from the Acting Commissioner of Indian Affairs and the Commissioner of the General Land Office, dated, respectively, the 7th and 13th instant, I have the honor to recommend that you order the withdrawal from sale, and the setting apart for the use of the Santee Sioux Indians, the following-described tracts of land, lying adjacent to the present Sioux Indian Reservation on the Niobrara and Missouri Rivers in Nebraska, viz: Township 32 north, of range 4 west of the sixth principal meridian, and fractional section 7, fractional section 16, fractional section 17, and sections 18, 19, 20, 21, 28, 29, 30, 31, 32 and 33, of fractional township No. 33 north, of range 4 west of the sixth principal meridian, be withdrawn from market, and that fractional township No. 32 north, of range 6 west of the sixth principal meridian, now a portion of the reservation, be restored to market.

I am, sir, very respectfully, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

NOVEMBER 16, 1867.

Let the within recommendations of the Secretary of the Interior be carried into effect.
ANDREW JOHNSON.

EXHIBIT D.

Sioux Reserve.

EXECUTIVE MANSION, *January 11, 1875.*

It is hereby ordered that the tract of country in the Territory of Dakota lying within the following-described boundaries, viz: Commencing on the east bank of the Missouri River, where the forty-sixth parallel of north latitude crosses the same; thence east with said parallel of latitude to the ninety-ninth degree of west longitude; thence south with said degree of longitude to the east bank of the Missouri River; thence up and with the east bank of said river to the place of beginning, be, and the same hereby is, withdrawn from sale and set apart for the use of the several tribes of Sioux Indians, as an addition to their present reservation in said Territory.

U. S. GRANT.

EXHIBIT E.

EXECUTIVE MANSION, *August 9, 1879.*

It is hereby ordered that all that portion of the Sioux Indian Reservation in Dakota Territory created by Executive orders dated January 11, March 16, and May 20, 1875,

and November 28, 1876, lying within the following-described boundaries, viz: Beginning at a point where the west line of the Fort Randall military reservation crosses the Missouri River; thence up and along said river to the mouth of American Creek; thence up and along said creek to the ninety-ninth degree of west longitude; thence south along said degree to a point due west from the northwest corner of the Yankton Indian Reservation; thence due east to the northwest corner of said reservation; thence due south to the north boundary line of Fort Randall military reservation; thence following said boundary line northwesterly to the northwest corner of said military reservation; thence south on the west boundary line of said reservation to the place of beginning. And also the following-described land: Beginning at the east bank of the Missouri River at the mouth of Medicine Knoll Creek; thence up and along the Missouri River to the boundary line of Fort Sully military reservation; thence northeasterly along said boundary line to the southeast corner of said military reservation; thence northwesterly along the boundary line of said reservation to the northeast corner thereof; thence due north to the east bank of the Missouri River; thence up and along the east bank of said river to the mouth of the Bois Cache; thence due north to the east bank of the Missouri River; thence up and along the east bank of said river to the south line of township one hundred and twenty-nine north; thence east along said township line to the line between ranges seventy-eight and seventy-nine west; thence north along said range line to Beaver Creek or the north boundary line of the reservation set aside by Executive order of March 16, 1875; thence west along said creek to the east bank of the Missouri River; thence up and along said east bank to the southeast corner of Fort Rice military reservation; thence northeasterly along said military reservation to the east corner of said reservation; thence in a direct line to a point on the south bank of Beaver Creek where said creek is intersected by the one hundredth degree of west longitude; thence south with said one hundredth degree of longitude to the forty-sixth parallel of north latitude; thence east with said parallel of latitude to the ninety-ninth degree of west longitude; thence south with said degree of longitude to its intersection with the north boundary line of the old Sioux or Crow Creek Reservation; thence west along the north boundary line of said reservation to the eastern boundary line of the old Winnebago Reservation; thence north along said east line to the northeast corner of said Winnebago Reservation; thence west along the north boundary line of said reservation to the middle channel of Medicine Knoll Creek; thence down the middle channel of said creek to the place of beginning, be, and the same hereby is, restored to the public domain.

R. B. HAYES.

No. 29.

HANCOCK STREET,
Germantown, Pa., March 21, 1885.

SIR: I am in receipt of a communication addressed to yourself, under date of March 9, 1885, Crow Creek Agency, Dakota, from United States Indian Agent John G. Gasman. In his letter Major Gasman narrates the events which have recently occurred at his agency, and the calamity which has fallen upon the Indians by the issue of an Executive order, under the last Administration, throwing open the Crow Creek Reservation to white settlement. Major Gasman has forwarded me a copy of his letter to you for the information of the friends of the Indians. His statements are made in so sober a spirit, and the facts which they contain are at once so distressing and so important, that I venture to inquire whether you object to their full and public use on the part of the Indian Rights Association. I have long known Major Gasman as a reliable and efficient servant of the Government, a warm yet judicious friend of the Indians; and I therefore feel assured that the publication of his letter (if you entertain no objection to such action on our part) will render important service to the cause of Indian rights. Before closing permit me to express the deep satisfaction felt by the Indian Rights Association at your recent action in suspending the Executive order of February 27—an order which we are forced to believe, from careful examination of the facts of the case, was not only unjust and cruel, but likely to entail the gravest and most unfortunate consequences.

With great respect, I remain your obedient servant,

HERBERT WELSH,
Corresponding Secretary Indian Rights Association.

Hon. L. Q. C. LAMAR,
Secretary of the Interior.

No. 30.

DEPARTMENT OF THE INTERIOR,
Washington, March 23, 1885.

SIR: In connection with the matter of the lands of the Old Winnebago and Crow Creek Reservations in Dakota, which was presented to you for your opinion on certain questions propounded in Department letter of the 17th instant, I have the honor to inclose a copy of a letter from General W. T. Sherman, dated January 17, 1881, to the Commissioner of Indian Affairs, and also extracts from the journal referred to in said letter, bearing upon the question under consideration; an extract copy of "General Orders No. 4, Headquarters Military Division of the Missouri, Saint Louis, Mo., August 10, 1868," together with a pamphlet by the Indian Rights Association on the subject.

Please return all papers.

Very respectfully,

L. Q. C. LAMAR,
Secretary.

The Hon. ATTORNEY-GENERAL.

(NOTE.—For pamphlet of Indian Rights Association noted in foregoing letter see No. 25 of schedule inclosures.)

GENERAL ORDERS HEADQUARTERS MILITARY DIVISION OF THE MISSOURI,
No. 4. Saint Louis, Mo., August 10, 1868.

Certain duties connected with Indian disbursements having been devolved upon the Lieutenant-General commanding by law, in connection with his military command, and in order that the same may be conducted in full harmony with the military interests of the frontier, the following orders are made:

I. Commanders of departments, districts, and posts charged with the peace and policy of the frontier will construe themselves so far the agents of the "plains Indians" as to afford them temporary support to conduct them to their reservations hereinafter named, and to report to their immediate superiors all matters requiring their notice. No supplies or presents of any sort will be made by military commanders to Indians outside of their reservations except for special services rendered, unless the Indians be actually in distress and *en route* to their proper homes.

When Indians are on reservations with civilian agents actually present with them no interferences will be made, but military commanders may note any neglects or irregularities on the part of said Indians or their agents, and will report the same for the information of the Government.

II. The following district of country is set aside for the exclusive use of the Sioux Nation of Indians, viz: Bounded on the east by the Missouri River, south by the State of Nebraska, west by the one hundred and fourth meridian of longitude west from Greenwich, and north by the forty-sixth parallel of latitude, and will constitute a military district under the command of Bvt. Maj. Gen. W. S. Harney, United States Army, who will have the supervision and control of the Sioux and of all issues and disbursements to them, subject only to the authority of the Lieutenant-General commanding, but in matters affecting the United States troops stationed in said district he will be subject to the department commander, Bvt. Maj. Gen. A. H. Terry.

* * * * *

By order of Lieut. Gen. W. T. Sherman:

W. A. NICHOLS,
Assistant Adjutant-General.

[Extract copy from the journal of the Indian Peace Commissions.]

Council of the Indian Peace Commission with the various bands of Sioux Indians at Fort Rice, Dakota Territory, July 2, 1868.

Present: Commissioners Generals William S. Harney, A. H. Terry, and John B. Sanborn.

"Two Bears" said: What I am going to tell you is what the whole seven commissioners say to you.

General Sanborn then said: Chiefs and soldiers, you meet to-day three commissioners from the President of the United States and all his white people. Seven were appointed

to meet all the Indians in trouble with the whites. So many tribes had to be visited that the commissioners concluded to divide. Some of them are now beyond the Rocky Mountains talking with the Indians there; others are below the Arkansas to meet Southern Indians. We are here to meet you; you must know well the purpose for which we are sent to you. * * * We have already met and agreed upon terms of peace with the Comanches, Kiowas, Apaches, Southern Cheyennes, Southern Arapahoes, Northern Cheyennes, Northern Arapahoes, and the Brulés, Ogallala and Minneconjoux Sioux. We have now called into council the Yanctonias, Santees, Sissetons, Blackfeet, Uncpapa, Sans Arch, Two Kettle, and all other Dakotas present, for the purposes of agreeing upon terms of perpetual peace, if peace can be made, and if it cannot to satisfy ourselves of that fact. We propose now to have all the Dakotas here sign the same treaty that the Brulés, Ogallalas, and Minneconjoux have already signed. By this treaty you will bind yourselves to remain at peace with the whites. You will agree to make redress through your agent for any depredation upon or wrong done a white man.

We make the same promises for the whites in all cases of injury done to Indians by the whites. We also agree to exclude all whites, except your agents and other men in the Government service, from the country lying between the L'eau qui cours and Grand River, and the Missouri River and western base of the Black Hills, and to remove all the military posts along the base of the Big Horn Mountains, and hold the country between the Black Hills and the summit of this mountain as unceded Indian lands, until you cede it by treaty. All Indians who have, or hereafter shall, abandon the chase and settle down permanently will do so in the country from which the whites are excluded, west of the Missouri River, and not elsewhere. All who wish to roam and hunt can do so whenever they please while they remain at peace and game lasts. To those who settle down and commence farming we agree to furnish food for four years, and cattle and horses, tools to work the ground, teachers, farmers, blacksmiths, machinists, and physicians, and to give a good suit of clothes each year to every Indian man, woman, and child, and such other things as shall enable them to live well for thirty years. To those who continue to hunt we agree to give a good present of such things as they most want for the same time. The terms we propose are more liberal than you have ever had; perhaps more liberal than any before offered to any Indian nation. You should not think of rejecting them, for so liberal terms are not likely again to be offered. Several of the commissioners are in favor of extending the country from which the whites will be excluded, so as to include the Yancton Reservation and the James River country, now occupied by Yanctonais. We shall do this if we can, and if we cannot it is not probable that any commission can; and hence it is better for the Yanctonais and all the Indians east of the river to trust to us. We shall do the best for you all that we can, and all that is necessary to be done.

We shall be prepared to feed all Indians who cannot subsist themselves by farming or the chase at Fort Randall, and soon at all the other reservations on the river. If peace is made the Indians will have all needed assistance at the several reservations on the Missouri next year. For all these things, we only ask of you to remain at peace, to settle down and commence farming into the country designated for your home, when you abandon hunting and surrender such lands as no longer afford you any game. We are your friends, and desire to make your people a great and prosperous people. We have thought much upon and carefully examined all matters pertaining to your relations and welfare. The plan we have adopted and the terms we have proposed are the best that we can devise. We feel confident that if you accept them, war and your days of trouble and suffering will soon terminate. If you execute the treaty, you have peace and the protection and assistance of the President and whites. If you refuse to treat and remain at war, you will soon have no country that you can call your own, nor the aid or protection of any.

"TWO BEARS" (Lower Yanctonais). * * * Now I will tell you one thing that I don't like; you are going to put all the tribes together, and I do not approve of it. I speak for my own band; our country is over on the other side of the river; we are Yanctonais. * * *

"MAUNETON" (Cat Head). My friends, I am a big man, and my father was also a big man, and you know it. Many years ago when we made treaties with the whites I was told that the country on the other side of the river was ours. My father died when I was quite young. You ought to listen to what the commissioners tell you. I was raised on the other side of the river. * * *

GENERAL SANBORN (president *pro tempore* Indian Peace Commission). In talking to you this morning we told you that we would do what was best. You ask us to remove the posts on this river. Now, if we did this we would be doing you a very great injury. These posts are here to keep the whites out of your country. Our officers and army often have to fight our own people. If peace was assured we would not so much need them; but when war is often going on we are obliged to keep them, so that the military posts

on the Missouri cannot be removed. The posts at the base of the Big Horn Mountains are in a game country, and we are removing those posts. There are thousands of whites who would rush in here were it not for the river posts, and we keep them back from your country. You can easily see the difference between these posts and those that are going to be removed. The steamboats that run on the river do not disturb your game. They have been running on the river previous to many of you here being born. General Harney was here forty-three years ago. We have white people living way beyond your country, and we have to send them supplies, and we also send your supplies to you by this means. We shall, however, take steps to have your own people cut the wood on the river for the boats, or so that you shall receive the benefit of it. Of powder and lead we are quite willing to give you as much as we have.

In regard to the country from the L'eau qui cours and Grand River, it is for those that will go farming, settling down there and cultivating the soil. You can hunt there also. Between that land and the base of the mountains there is a country where we allow you to hunt and anywhere you can find the game. We shut the whites out of a country which will be your own; and besides we give you the privilege of hunting wherever the game can be found. * * *

Council of Indians with Indian Peace Commission on board Steamer Agnes, from Fort Rice, Dakota Territory, July 5, 1868, coming down the Missouri River.

GENERAL HARNEY. I advised you to go and cultivate the soil, and the Two Kettles were the first that commenced, and I shall not forget them. The Yanktonais were the next. I shall be very glad to see all your band living together. It would be better for you all. Will your whole band agree upon any one place or tract of country where you can live together?

LONG MANDAN. Last year we made a bargain among ourselves to pick out a place opposite the mouth of the Big Cheyenne.

THE COMMISSIONERS. Do you think you can agree among yourselves to select a place? We would prefer it on the west side of the river.

LONG MANDAN. We all agreed last summer to farm at the mouth of the Big Cheyenne, but whether we will all now farm together I cannot now say. I will consult among all my band, and try and settle upon some place. I now change my mind, and will select the mouth of the Big Cheyenne to have all our farms. The reason I select it is because in winter there is plenty of game there. The Big Cheyenne goes on both sides of the Black Hills, and I have a right to claim it. I want you to put it down in writing that I have selected the Big Cheyenne for our reservation.

No. 31.

Facts regarding the recent opening to white settlement of Crow Creek Reservation in Dakota.

The following letter from Prof. C. C. Painter, the representative of the Indian Rights Association at Washington, shows a state of facts of so grave and pitiable a character as to demand instant public attention. *Three hundred thousand acres of land have been snatched from peaceable and well-disposed Indians, and, without compensation to them, has been given to occupancy by the whites.* Looked at in all fairness, quietness, and moderation, apart from any partisan or personal feeling, it does not appear that the facts are capable of any other explanation than one unfavorable to the officers of the Government concerned. The public has a right to be fully informed upon the public acts of its servants, for these acts are at least ostensibly and in theory done in the interests of the people, and are indeed the acts of the public by its chosen delegates. Public indifference in these matters is a grave responsibility, unfortunate in its tendency and results.

A brief recital of the position is necessary.

The Crow Creek and Winnebago Reservations in Dakota are adjoining tracts on the east of the Missouri River, set apart for the use of Indians as far back as 1863. They are now known as the Crow Creek Reservation. These reservations have at present a population of at least 1,500 Indians. They are an inoffensive, peaceful, and industrious people, among the most advanced in civilization of our Indian tribes. About three-fourths of them wear citizen's clothing. They have made progress in farming, and their condition gave every reason for encouragement.

By the terms of the treaty with the Sioux in 1868, as that treaty has been until within a few days understood by the Government, and as it is still understood by the Indians, the Crow Creek and Winnebago Reserves were included within the Great Sioux

Reservation. Two years ago a commission was sent to conclude an agreement with the Sioux and with these Sioux on the east bank of the Missouri for the cession of eleven million acres of their reservation. This so-called agreement was obtained by such methods and was so unfortunate in its terms that it did not secure the ratification of Congress.

According to the testimony taken by a Senate committee and given at large in their report, the commission sent out by the Secretary of the Interior induced the Sioux Indians to sign an agreement by threats, by directly misleading them, and by other irregular practices, Secretary Teller having sanctioned the violation of an important term of the treaty of 1868, under which the agreement was made. The ratification of this agreement was prevented, but its supporters have apparently been working to delay the passage of a bill to secure substantially the same end in an honest and proper way, and have, with significant haste at the close of the administration, obtained an Executive order throwing open to white settlement Indian land which, it has been believed by both parties, the Indians occupied under the treaty of 1868.

A bill providing for the equitable and honest cession of this reservation land has been delayed in Congress, although every effort has been made by prominent supporters to have it taken up.

Within a few days from the close of the last administration there was issued an Executive order throwing open to public settlement more than one-half of the Crow Creek and Winnebago Reserves.

This was done without the official knowledge of the Department of Indian Affairs; nor was Senator Henry L. Dawes, of Massachusetts, consulted in regard to it on behalf of the Indian Committee of the Senate, of which he is the chairman. The minute knowledge of Senator Dawes concerning the condition of these Indians and the position of their reservation is well known, and would have rendered his opinion upon the advisability of the order extremely valuable.

Senator Dawes was chairman of a Senate committee sent to investigate the action of the Sioux commission, concerning which the committee reported unfavorably. He was also the draftsman and most prominent advocate of the bill providing for the cession of a portion of the Sioux Reservation to the United States. Part of the land included in the terms of this bill is, we understand, now thrown open by this Executive order.

When we add that it is firmly held that this order is not only extraordinary in its haste and in its practical secrecy, not only to produce the greatest consequences, not only morally iniquitous, but also, we believe, absolutely illegal and void, we have done, and leave the facts to the public without further comment.

The rush of settlement to the country thus thrown open and the consequences which may follow this hasty and unadvised order are indicated in the letter of Professor Painter. The nature and object of this whole transaction and the methods employed in attaining that object require but little comment.

WASHINGTON, *March 9, 1885.*

MY DEAR SIR: You wish to know the facts in regard to the Crow Creek Reservation and the Executive order of the 27th ultimo, throwing it open to white settlement. Two years ago Secretary Teller appointed three commissioners—Messrs. Edmunds, Teller (brother of the Secretary), and Shannon—to negotiate with the Sioux Indians of Dakota for a reduction of their reservation. The published correspondence shows that these gentlemen protested in advance that it would be impossible to procure the consent of three-fourths of the adult males, which, under the treaty of 1868, was necessary to an agreement for a cession of reservation land, and that Secretary Teller instructed them that they should waive this provision and seek the consent of the chiefs and headmen only.

The commissioners visited the subagency of Crow Creek and failed to secure the consent of the Indians there.

When these negotiations failed the Senate appointed a committee to investigate the whole matter and report. Their report revealed the objectionable methods by which these commissioners sought to accomplish the purpose of the Secretary. This committee of the Senate also reported a bill which proposed the same end, desirable in itself, in such a way as would have been just to the Indians and honorable to the Government, neither of which was true of the attempted agreement.

This bill had the unanimous vote of the Senate, was approved by the Commissioner of Indian Affairs, the Secretary of the Interior, and the President. If it had become a law it would have accomplished what the railroads, at whose instance the commission, it is understood, had been appointed, what the people of Dakota desired, so far at least as this can be harmonized with any reasonable view of the Indians' right to a home in that Territory, and it had the support of those "self-constituted friends of the Indian" who had opposed and helped to defeat the so-called agreement.

With all this support it has been a wonder to many, inexplicable to those who watched matters closely, why the bill has not come up in the House for consideration. It now seems evident that there was somewhere a determination that the Crow Creek Reservation should not be allotted and settled under the provisions of that bill.

This bill was still awaiting action in the House, when, suddenly, without warning, without the consent of or knowledge of the Indian Bureau, with no hint to the committee of the Senate who had prepared the bill, whose work also is thus made of none effect, an Executive order is thus issued, dated the 27th ultimo, which opens, according to the agent's estimate, more than half of the Old Winnebago and Crow Creek Reservations for immediate settlement by the whites.

If the newspapers are rightly informed, on the next day after the publication of the order two thousand settlers burst in upon the startled Indian; and as he objects to being ousted from what he believes to be his home, the papers say that car-loads of muskets and ammunition are on the way as affording the best means of convincing him that he is an intruder and must go elsewhere.

The order excepts from its operation certain specified sections, all allotted lands, and all lands upon which Indians have made improvements. The value of the selections is unknown to me; they were not made by the Indian, his agent, or his friends, but in the office of the Secretary of the Interior by three gentlemen, Messrs. Teller, Raymond, and Day, one of whom, it is said, hastened back to superintend the new allotment as soon as the order should be published.

All allotted lands are also excepted. The books of the bureau show that there are two hundred and thirty-nine of those allotments, varying from forty to three hundred and twenty acres. But the value of this exception is not to be found in the aggregate number of acres, but in the fact that if this is not a treaty, but an Executive reservation, the allotments are worthless, since they cannot be made on an Executive reservation. Neither are they valued under the sixth article of the treaty of 1868, because they are on a reservation and not of it. Their only value, therefore, is in the fact that they are continued as so many tracts, reserved by this Executive order.

Also lands upon which the Indians have made improvements are excepted. These Indians have prayed that their lands might be surveyed, so that they might be able to improve lots which would be their own. Agent Gasmann, in his last report, says: "*Constant applications are made to me for allotments of land by Indians who desire to settle on claims of their own, make improvements, and become property-owners in severalty. Owing to the fact that I have no surveyor to do the work I am compelled to put off the applicants indefinitely to their great discouragement and injury.*"

The answer of Secretary Teller to this oft-repeated prayer is an order throwing open these lands, because unimproved, to white settlers.

It is not strange, inasmuch as good lawyers believe this is a treaty reservation and it was so treated two years since by the Secretary himself, that these Indians should believe that they had a right to it as their own, on which they have lived for more than twenty years, and they could not be blamed if they should fight for it. By act of Congress the President was directed to select, in 1863, a reservation of good agricultural land for certain bands of Sioux and one for the Winnebagos. The Interior Department, as his agent, selected this Crow Creek tract for the Sioux and an adjoining one for the Winnebagos. The latter was subsequently exchanged for the one in Nebraska on which these Indians now live. In 1865, complaint having been made that there was not enough good farming land on the Crow Creek tract, the President selected an additional one constituting the present Santee Reservation in Nebraska, which is also to be open for homesteads after the 15th of next month.

That this new selection was intended to be additional to and not a substitute for the old one is evident from the fact that no proclamation was made adding the old one to the public domain, and the agency was continued there to care for the Indians who remained upon it. Subsequently others have come to it, so that there are now 1,009 Sioux who have had here their home.

In 1868 a treaty was made with the Sioux Nation, including these bands on this reservation, by which the bounds of their lands were established. The second article of this treaty, in addition to the territory set apart on the west side of the river (Missouri), explicitly says: "All existing reservations on the east bank of the Missouri River." There can be no question that these Indians were at that time living on this reservation; that they were a party to this treaty, and that this clause had reference to this land, and was understood by the Indians to secure it to them.

It is believed that this clause of the treaty was intended to and did erect this, which had been a reservation by Executive order, under act of Congress, into a treaty reservation, and it is held therefore that the Executive order of February 27, 1885, is *ultra vires* and invalid.

The Executive orders of President Grant in 1875, intended to protect these and the

Indians on the west side of the river from whisky traders, which set apart the Old Winnebago and an additional tract extending to the north as a reservation for the benefit of these Indians, and President Hayes's order of 1879 opening this up again, excepting the Crow Creek and a small part of the Old Winnebago Reservations, do not affect the main question now at issue, that is, whether this is a treaty reservation, but do touch the subordinate one as to validity of settlement on certain sections mentioned in this order.

Whatever decision may be finally made as to the technical legality of the order there can be no question as to the fact or manner of issuing it. It was unjust, reckless, ill-advised, and must result in infinite damage, not alone to those Indians but to all their brethren on the west side of the river.

Yours, very truly,

C. C. PAINTER.

Dr. JAMES E. RHOADS,
Vice-President Indian Rights Association,
1315 Filbert street, Philadelphia.

STATEMENT OF FACTS.

By acts of Congress passed in 1863 (Statutes at Large, vol. 12, pages 658, 819), the President of the United States was authorized to set apart two reservations for the use of Indians in Dakota.

Under and by virtue of these acts the Commissioner of Indian Affairs, on or about July 1, 1863, did set apart as reservation two tracts of land, particularly described, on the east bank of the Missouri River, in Dakota, and known respectively as the Old Winnebago and Crow Creek Reservations. (See annual report Secretary of the Interior, 1863, page 420.)

By treaty between United States and the Winnebago tribe of Indians, then occupying the said Old Winnebago Reservations, concluded with amendments on February 20, 1866, the Winnebagos conveyed to the United States all their right and title in their said reserve, in consideration of the grant to them by the United States of another reserve in Nebraska. (Revision of Indian Treaties, page 616.)

In 1865 the President set apart for the use of Santee Sioux, then occupying the Crow Creek Reservation, a reservation in Nebraska (now known as the Santee Reserve), and the Yanktonais Indians took possession and were suffered to occupy the Crow Creek Reservation. This they have continued to do up to the present time.

In 1868 a treaty was concluded between the United States and the various bands of Sioux Indians, and in which the Yanktonais joined, by the second article of which (hereafter set forth) "all existing reservations on the east bank of the Missouri River" were made part of the Great Sioux Reserve.

By Executive orders of January 11, 1875, March 16, 1875, May 20, 1875, and November 28, 1876, large tracts of land on the east of the Missouri River, in Dakota, in which was the tract known as the Old Winnebago and Crow Creek Reserves were set apart "for the use of the several tribes of the Sioux Indians, in addition to the present reservation in said Territory." (Report Indian Commissioner, 1882, page 263.)

By Executive order of August 9, 1867, a portion of Sioux Reservation created by the above Executive order was restored to the public domain.

The present order, as we understand it, aims to throw open "all that tract of country known as the Old Winnebago Reservation and the Sioux or Crow Creek Reservation with the exception of certain townships, occupied lands," &c., and which, it seems to be alleged, was reserved only by Executive order of 1875 and not included by treaty of 1868 in Sioux Reserve.

1. It is not necessary to inquire whether the title to the two tracts of land commonly known as the Old Winnebago and Crow Creek Reservations was exclusively in the United States at the time of the treaty of 1868, because of the alleged substitution for those reserves of others in Nebraska, or whether the Indians occupying them at that time, by the sufferance or implied permission of the Government, had acquired any interest or qualified title therein. In either case they were lands expressly and formally withdrawn from the public domain not settled by the whites, and the exclusive right to them resided in either the United States or in the United States and these Indian occupants. This being so, the United States in treaty with these Indians had ample and undoubted power to include the two tracts within the limits of the Great Sioux Reserve. The question is simply, Were they so included by the treaty of 1868? If such was the intention of the parties to that treaty, and if that intention was sufficiently manifest, by words describing and including these two tracts with reasonable certainty, they were thereby made part of the Sioux Reserve, even though the descriptive words may not have been technically exact, and they cannot now be opened by Executive order.

2. That such was the intention of the parties is apparent from the terms of article 2 of the treaty of 1868. That article, after describing the boundaries of the reserve set apart upon the west side of the Missouri River, concludes as follows, to wit: "And in addition thereto all existing reservations on the east bank of said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them."

The words of this clause are clear and explicit, leaving little room for construction. It is only necessary to interpret them in the light of contemporary facts, and inquire what were the reservations on the east bank of the Missouri River at that time.

(a) The tracts of land known as the Old Winnebago and Crow Creek Reservations were Indian reservations, at the least, within the ordinary, popular, and accepted meaning of the term; and the word "reservation" must be considered an apt and sufficient word of description and definition.

They were lands set apart for the use of Indians by the Executive department of the Government under the powers given by the act of 1865. They had not at the making of the treaty of 1868 been thrown into the public domain. They were at that time occupied by Indians; agencies had been and were maintained thereon; they possessed all the notorious and apparent marks of an Indian reservation, and were in fact commonly known and considered as such. No other word could have described them. Everybody considered them "existing reservations." If, for technical defects, they were not so in fact, they were "reservations" in the natural and ordinary signification of the word. In construing statutes words must be given their natural and ordinary signification. They must therefore be considered to have been then in the minds of the parties in the treaty of 1868, and intended to be included in the term used. The intention will govern. If the lands were not then legally constituted reservations they were at any rate within the power of the United States to grant, and therefore, if within the meaning and intention, were within the operation of the treaty of 1868.

(b) Where a granting statute uses a descriptive term, and there is at the time something which, in the ordinary sense, fulfills that description, which is and has been recognized as fulfilling it, which is in the power of grantor to grant, a construction which would exclude the thing because it is afterwards found to be technically outside of the description, and which would so make the whole section of the act relating thereto insensible, must be against the law.

(c) To construe the clause to article 2 as conveying no land east of the Missouri River would force us to presume that the Government intended fraud. If this clause was inoperative and conveyed no land, it was a fraud upon the Indians. The courts will not adopt such construction *a fortiori*, when there is nothing to show that fraud was intended and where the words are susceptible of a contrary interpretation which is plain and consistent. It can never be presumed that either treaty-making power intended fraud; the provisions of the treaty are to be considered as *bona fide*. (U. S. v. Amistad, 15 Pet., p. 578.)

3. That the commission appointed by the United States, and who, as their representative, negotiated the treaty of 1868, then intended to include therein the Crow Creek and Old Winnebago Reservations appears conclusively from the statement of one of the members. In his letter of January 17, 1881, to Hon. E. W. Marble, then Acting Commissioner of Indian Affairs (see Office of Indian Affairs, 964, received Jan. 18, 1881, file 10, 158), General Sherman says: "I was one of the commissioners who treated with the various families and tribes of the Sioux in the years 1867-'68-'69, and that I as such commissioner signed the treaty of April 29, 1868, setting apart from the vast public domain the territory north of Nebraska and west of the Missouri, also in said treaty. *We visited the Yanktonais and Two Kettles at the old agency of Crow Creek at Fort Thompson, below Fort Sully, and had a talk with them at Fort Sully. We also invited some of the same Indians at Burleigh's agency, on the east bank of the Missouri River, lower down, with whom we conferred, and my recollection is that the commission impressed on all the Indians the great advantage to themselves to have a clearly defined territory set apart for their use and for the use of such other tribes as could live in harmony with them. But Indians always change their location grudgingly; and, therefore, the clause confirming to them their small reservations on the east bank of the river was inserted in the treaty.**

That such was the intention of the party to that treaty is further clearly shown by the fact that since that time both the Indians and the United States have acted on this supposition. Under act of Congress, 1882, authorizing the Secretary of the Interior to negotiate with the Sioux Nation for a cession of part of Sioux Reserve, a commission was sent out to treat with the Indians. This commission officially considered the Crow Creek Reserve as part of the Sioux tract set apart by the treaty of 1868, treated with

*Italics ours.

the Indians on that basis, and so reported to Congress. There was no intimation from any one that the Crow Creek Reservation was not part of the Sioux Reserve.

The Executive department, the treaty-making part of the Government, have thus emphatically and distinctly construed the treaty, and the greatest weight should be given to that construction.

"The construction of treaties adopted by the Executive department should be followed when not repugnant to the language or purpose of the treaty." (*Castro v. De Uriarte*, 16 Pet. Reports, p. 93; *United States v. Recorder*, 1 Blatchford, p. 222; 1 Opinions Attorney-General, 52.)

It is further contended that the validity of the Executive order in question is entitled to the most careful legal consideration, because of the interests involved and the manifest equities of the case.

Lands *prima facie* reserved to Indians by treaty and occupied by them upon that understanding, lands apparently included in the official maps and reports within the boundaries of a treaty reserved, lands which have been officially acknowledged as a part of a treaty reservation by the very Executive which now seeks to open this by an Executive order, and by the Senate committee appointed to investigate the action of the Sioux committee, should not be suffered to be hastily opened by Presidential order without time for proper investigation.

All these facts of themselves establish presumption so strong that nothing but the most clear and undisputed proof should be permitted to overcome it. The extreme haste of the proceeding, the order being made within a few days from the close of an administration, giving no time for protest or examination, the inconsistent and flatly contradictory attitude assumed by the Executive power by recognizing the tract in one year as a treaty reservation, and shortly afterward opening it by Executive order, render it a matter of simple right and justice that this Executive order be suspended until the question of its validity can be duly passed upon by the proper authorities.

We, the undersigned, clergy of the Protestant Episcopal Church, do humbly pray that the above petition may be granted, and ever remain, &c.

A. CLEVELAND COXE,
Bishop of Western New York.

JOHN M. BROWN,
Rector Saint Paul's Cathedral Church.

SAMUEL R. FULLER,
Rector Saint John's.

I. M. HENDERSON,
Rector Church of the Ascension.

A. SIDNEY DUDLEY,
Assistant Rector Trinity Church.

CHARLES H. SMITH,
Rector Saint James's Church.

M. C. HYDE,
Rector of All Saints' Church.

C. F. J. WRIGLEY,
Rector Saint Mary's Church.

WALTER NORTH,
Rector Saint Luke's.

F. GRANGER,
Assistant Saint James's Church.

LOUIS B. VANDYCK,
Rector Grace Church.

O. R. HOWARD,
Chaplain Church Home.

L. VAN BOKKELEN,
Rector Trinity Church.

GEORGE F. ROSENMÜLLER,
Rector Saint Peter's, Niagara Falls, N. Y.

No. 32.

DEPARTMENT OF JUSTICE,
Washington, March 30, 1885.

SIR: Your communication of the 17th of March, instant, requests my opinion as to whether those contiguous tracts of land lying on the east bank of the Missouri River in

the Territory of Dakota and designated the *Old Winnebago and Crow Creek Reservations*, and sometimes going by the last name only, are embraced by the treaty concluded with various bands of the Sioux Indians on the 29th of April 1868 (15 Stat., 635), and whether the Executive order of the 27th of February, 1885, restored the lands in question to the public domain.

In replying to the first question, as to whether the lands referred to come within the treaty of 1868, it will be necessary to give particular attention to their condition prior to, and at the time of, the conclusion of the treaty.

By an act passed on the 21st of February, 1863 (12 Stat., 658), the President was authorized to remove the Winnebago Indians from the State of Minnesota and settle them upon such unoccupied lands, beyond the limits of any State, as he might assign and set apart for them in conformity to the law.

On the 3d of March, 1863 (12 Stat., 819), a similar law was passed authorizing and directing the President to assign and set apart for the Sisseton, Wahpaton, Medawakanton, and Wahpakoota bands of Sioux Indians a tract of unoccupied land outside the limits of any State, in the manner required by the law.

In furtherance of those acts Clark W. Thompson, a superintendent of the Indian service, proceeded, by direction of the Commissioner of Indian Affairs, to lay off two adjoining tracts or reservations of the public domain on the east bank of the Missouri River, in the Territory of Dakota, and on the 1st of July, 1863, he reported to the Commissioner that he had completed the surveys and transmitted the plats and field notes with his report. The Winnebagoes were settled on the upper tract or reservation and the Sioux on the lower, but no Executive order was made setting the lands apart for the use and occupation of these Indians.

The Winnebagoes remained on their reservation until 1865, when, by a treaty dated the 8th of March of that year (14 Stat., 671), they ceded, sold, and conveyed to the United States "all their right, title, and interest in and to their present reservation in the Territory of Dakota, at Usher's Landing on the Missouri River, the metes and bounds whereof being on file in the Indian Department." After this treaty the Winnebagoes removed to their new reservation in Nebraska.

In 1866 the Sioux were also removed to a new reservation in Nebraska, set apart for them by an Executive order dated the 27th of February, 1866, and founded on the act of the 3d of March, 1863 (*supra*), but without any cession or formal relinquishment.

After the removal of the Winnebagoes and Sioux, wandering bands of Sioux belonging to the Yanktonias, Two-Kettle, and Brulé tribes entered and took possession of the abandoned reservations, and have remained on them up to the present time, although their original entry was without the sanction of Government. Nevertheless the two reservations have not to this day, as a matter of fact, become merged in the public domain, but have been continuously known, since the removal of the Indians for whom they were set apart, as the *Old Winnebago and Crow Creek Reservations*, or simply as the Crow Creek Reservation. This will be at once apparent by reference to the maps prepared from time to time under the direction of the Commissioner of Indian Affairs and by the reports of that officer. They are so laid down on the map accompanying the Commissioner's Report for the year 1884, entitled "Map showing the location of the Indian reservations within the limits of the United States and Territories, compiled from official and other authentic sources, under the direction of the Hon. Hiram Price, Commissioner of Indian Affairs." Indeed this is conceded in all the discussions of the subject that have been brought to my attention.

In this condition of things the United States and various tribes of the Sioux Nation came together and concluded a treaty on the 29th of April, 1868.

By the second article of this treaty "the United States agrees that the following district of country to wit, viz: Commencing on the east bank of the Missouri River where the forty-sixth parallel of north latitude crosses the same; thence along low-water mark down said left bank to a point opposite where the northern line of the State of Nebraska strikes the river; thence west across said river and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich; thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same; thence due east along said parallel to the place of beginning, and in addition thereto all existing reservations on the east bank of said river, shall be and the same is (sic) hereby set apart for the absolute and undisturbed use and occupation of the Indians herein named and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them * * * (15 Stat., 635.)

A reference to the treaty will show that the tribes or bands to which the Indians belonged, or had belonged, who entered and occupied the abandoned reservations, were parties to the treaty, and it may have been, and very probably was the case, that the occupants of these reservations were represented in the negotiations, if they were not

parties to the treaty, otherwise than by the chiefs of the tribes from which they had wandered. But whether that be the case or not they have certainly remained where they are with the consent of the United States and the tribes of the Sioux with whom the treaty was made.

The questions submitted for opinion turn upon the interpretation of these words of the second article of the treaty—that is to say, “and in addition thereto *all existing reservations on the east bank of the river* shall be, and the same is (sic) set apart for the absolute and undisturbed use of the Indians herein named. * * *

If the lands known as the Old Winnebago and Crow Creek Reservations answered to the description of “existing reservations on the east bank of the river” at the time the treaty was entered into, they are protected by it, and the Executive order of the 27th of February, 1885, restoring certain portions thereof to the public domain is wholly inoperative and void, being in violation of the treaty.

But it is urged in support of the order restoring the lands in question to the public domain that they were not originally set apart and dedicated as reservations by an Executive order, in the customary way, and, therefore, at the time the treaty of 1868 was made they did not answer to the description of reservations in the legal technical sense, and, consequently, did not come under the protection of the treaty.

I shall not stop to consider whether the laying off of these two bodies of land by direction of the Commissioner of Indian Affairs, and the removal of the Indians to them, were equivalent to a formal Executive order, because I find that by the third and fourth articles of the treaty between the United States and the Sisseton and Wahpeton bands of the Sioux Indians of the 19th of February, 1867 (15 Stat., 505), reservations are set apart for certain members of the said bands, “*who were not sent to the Crow Creek Reservation.*” In proclaiming this treaty, thus excepting from its operation members of the tribes who were parties to it on the ground that they had been already provided with a settlement on the Crow Creek Reservation, the Executive necessarily recognized and adopted all that had been done toward establishing the reservations now in question, which, it may be proper to say, are, since the removal from them of the Indians for whom they were originally laid off, sometimes regarded as one reservation, and called simply the Crow Creek Reservation, there being no longer any reason for keeping up the old division. Whatever, therefore, was needed to complete the dedication attempted under the acts of 1863, would seem to have been supplied by the Executive in concluding and proclaiming this treaty.

It will be observed that this action of the Executive was subsequent to the removal of the Winnebagoes and Sioux and the cession of the former, by treaty, of their interest in the lands which, it is argued, had the effect of restoring them to the national domain.

At the time of the treaty, then, the lands in question had been validly appropriated as Indian reservations, and being on the east bank of the Missouri River fell within the treaty and were protected by it from the power of the Executive to throw open lands to entry.

But supposing I am wrong in this view, and that the lands had never been legally appropriated as reservations at the time of the treaty of 1868, I am still of opinion that they are covered by the treaty.

It must be regarded as a well-settled principle, in interpreting statutes, that if possible “no clause, sentence, or word, shall be superfluous, void or insignificant,” and I see no reason why this principle is not as applicable to treaties as statutes.

Now, if the argument in support of the Executive order of February, 1885, is sound, the treaty of 1868, in so far as it professes to secure lands to the Sioux on the east bank of the Missouri, is made to have no effect or operation whatever because there is no land so situated which answers to the description used in the treaty, and the eminent and intelligent gentlemen who represented the Government in concluding the treaty are placed in the somewhat embarrassing position of having offered to the Indians reservations on the east bank of the river, when there were none there, for it is a fact that, if the lands in question were not reservations there was no reservation on the east bank of the river except the Yankton Reservation which, however, could not possibly have been in contemplation, because it was established by a previous treaty, made in 1859 with the Yanktons, who were not parties to the treaty of 1868 and could not therefore be affected by it.

If, then, it be true that these lands were not technical reservations at the time of the treaty of 1868, it is obvious the contracting parties must have used the term reservation in some secondary sense, and when we see that there has been an uninterrupted practical appropriation of the lands as Indian reservations from 1863 down to the promulgation of the Executive order of February, 1885; and that, as already said, they are so described in the map of Indian reservations accompanying the Indian Commissioner’s report submitted to the last Congress by the Secretary of the Interior, we cannot for a moment be at a loss as to what that sense was.

Nothing would seem to be better established in reason or authority than that when the expounder of a statute or other instrument is satisfied that a term occurring in it is not to be taken in its normal or technical acceptation, but in some other, it becomes his duty to give it the sense in which it appears to have been used. So, here, if the lands in question are found not to be reservations in a strict legal sense, but to have been understood to be such, generally, and even by the Government itself, surely the grant, which would otherwise fail in this particular, must be held to refer to such lands as were reputed to be reservations.

The words of description used in the treaty are, when so interpreted, amply sufficient to point out the portion of the public domain intended to be ceded, and the competency of the treaty-making power to make the cession is not open to discussion, so that we have all the conditions necessary to a public grant.

To these considerations may be added, that Indian treaties are not construed strictly, but liberally in favor of the Indians. (2 Opin., 465; *The Kansas Indians*, 5 Wall., 737.)

In conclusion, I am of opinion that the lands in question are covered by the treaty of the 29th of April, 1868, and, consequently, that the Executive order of the 27th of February, 1885, is inoperative.

I have the honor to be, sir, yours, very respectfully,

A. H. GARLAND,
Attorney-General.

THE SECRETARY OF THE INTERIOR.

No. 33.

The Indians Rights' Association of Philadelphia inclose certain documents and protest against the opening to settlement (Executive order, February 27, 1885) of certain lands in the Crow Creek and Old Winnebago Reservations, Dakota Territory; state that after careful investigation the association is of the opinion that these lands were held by treaty right and not by Executive order, and respectfully represent that the action referred to is illegal and, therefore, invalid; that the order was made hastily and at the close of the last administration—was kept secret and was not known to the Indian Office nor to the House or Senate committees; that collision between Indians and whites is dreaded in consequence of the order.

In view of the above facts beg immediate personal attention of the Secretary, postponement of the order, and submission of the question of legality to unbiased parties.

A detailed statement sustaining the association's views.

A letter of Hon. John Welsh to Mr. Bayard, introducing Mr. H. Pancoast of the association, referred by Mr. Bayard, who begs that the Secretary will consider the letter addressed to himself.

A letter [March 7, 1885] of General J. R. Anderson introducing Mr. H. Welsh of the association.

A letter from Mr. H. Welsh inclosing General Anderson's letter of introduction and calling the Secretary's attention to above matters.

SIR: The Indian Rights Association of Philadelphia respectfully asks your personal attention to the following:

By an Executive order of February 27, 1885, more than one-half of the Crow Creek and Old Winnebago Indian Reservations in Dakota Territory has been thrown open to settlement and made part of the public domain. Upward of 300,000 acres of valuable land have been taken without warning and without compensation from peaceable and industrious Indians. In the opinion of the law committee of the Indian Rights Association, who have given the matter their careful personal investigation, this act is illegal, as Crow Creek Reservation is held by the Indians living upon it, not by Executive order, but by the firm tenure of the treaty right. This reservation is included in the terms of the treaty of 1868. Not only is it maintained by the Indian Rights Association that the Executive was not legally justified in throwing open this reservation to settlement, but that this action is ill-advised and likely to be followed by serious consequences to the honor of the Government, to the welfare of the whites and Indians of Dakota. The Executive order above referred to was obtained with such secrecy that no official information regarding it was communicated to the honorable Commissioner of Indian Affairs, nor were the members of the Indian committees of House or Senate advised with upon the subject. In view of these facts and the grave results which are likely to follow what

we confidently claim to be a serious violation of the national faith with the Indians herein designated we respectfully and earnestly beg that you will give this important question your immediate attention, so that in the event of your view of it coinciding with our own you may be enabled to secure the postponement of this Executive order until its legality and justice shall have been subjected to adequate scrutiny. In addition to this request we respectfully urge that since the legal advisers of the outgoing administration are those upon whose opinion the legality of opening Crow Creek Reservation to white settlement has been based you will submit the legal investigation of this subject to those who in your opinion are likely to consider it without bias or prejudice. We respectfully invite your attention to the accompanying communications, in which you will find such additional detailed statements of the question at issue as will enable you to gain a clear conception of the whole matter.

HERBERT WELSH,
Corresponding Secretary Indian Rights Association.

Hon. L. Q. C. LAMAR,
Secretary of the Interior.

SIR: We, the undersigned members of the executive committee of the Indian Rights Association of Philadelphia, submit with great respect the inclosed statements relative to a recent Executive order opening to public settlement large portions of the Crow Creek and Old Winnebago Reservations, in Dakota.

We feel justified in making this claim upon your time mainly for the following reasons:

First. After investigation of this Executive order of February 27, 1885, we firmly believe it to be illegal and absolutely invalid. We hold that the reservations in question were included by treaty in the Sioux Reserve, and that therefore it cannot be opened by Executive order.

Second. The order was made with great haste at the close of the administration. The Indian Bureau had no knowledge of it whatever, it never having been submitted to it, nor was the Indian Committee of the Senate or House given any opportunity to pass upon its wisdom or justice.

Third. The effect of the order, if carried out, will be painfully disastrous to the Indians, who have been led to believe that they occupy the land under the treaty. The danger to be apprehended from disturbances between the whites and the Indians is manifest and natural.

We submit that an order affecting the property of so many persons, and dealing with the interests of a people peculiarly under the protection of the Government and of the Executive, should have been neither hasty nor unadvised; that this order is as notoriously opposed to right and national respect as we believe it to be against law; and for these and other reasons we earnestly beg you to consider the inclosed statements, and to advise the suspension of the order until its legality and wisdom can be inquired into by the proper persons.

We are, with great respect, your obedient servants,

WAYNE MACVEAGH, *President.*
JAMES E. RHOADS, *Vice-President.*
HERBERT WELSH,
Corresponding Secretary Indian Rights Association.
HENRY S. PANCOAST,
Chairman Committee on Law.
J. RODMAN PAUL.
CHAS. E. PANCOAST.
RICHARD C. DALE.

Hon. L. Q. C. LAMAR,
Secretary of the Interior.

PHILADELPHIA, *March 10, 1885.*

MY DEAR SIR: This will be presented to you by Henry Pancoast, esq., who visits Washington on the business of which I wrote to the Secretary of the Interior, and which I alluded to in my note to you of yesterday. If you will kindly commend him to the Department of the Interior as worthy of their highest regard you will serve him and his cause, and greatly oblige,

Yours, very sincerely,

JOHN WELSH.

Hon. T. F. BAYARD,
Secretary of State.

[Indorsement.]

MARCH 11, 1885.

Respectfully referred to Secretary Lamar with the request that he will consider the letter addressed to himself personally by the Hon. Jno. Welsh (late United States minister to Great Britain).

T. F. BAYARD.

RICHMOND, VA., *March 7, 1885.*

MY DEAR SIR: It is a pleasure to me to bring two such characters together; hence I make no apology for giving this letter of introduction to Mr. Herbert Welsh, of Germantown, Pa. I dare say you already know him by reputation. If you had had the privilege we enjoyed here a few evenings ago of hearing his address on the subject of the Indians, to which he is devoting most of his time, no other introduction would be necessary.

I have told Mr. Welsh that I have no doubt but that he would find you a sympathizer in his work, and have advised him to call on you when he goes to Washington.

Believe me, my dear sir, to be, with great respect and esteem,

Your obedient servant,

JOSEPH R. ANDERSON.

Hon. L. Q. C. LAMAR,
Washington, D. C.

Office of O. S. Gifford, attorney-at-law.

CANTON, DAK., *April 4, 18—.*

SIR: Since my communication of April 1, in reference to the order opening the Winnebago Reservation, the settlers and the people in the Territory have learned of the opinion of the Attorney-General holding adversely to the order of the President declaring the reservation open. It is difficult to estimate the probable hardship to the settlers upon the reservation which would inevitably follow an absolute and unconditional revocation of the order, but it will certainly exceed anything of the kind in our experience, as there are probably five thousand or more actual settlers upon the reservation. It is true many have erected only temporary residences and improvements, but they have made their settlement with a view of remaining, and have made all preparations for permanent homes. They moved upon the reservation in good faith, believing the order would be carried out, and many took their all with them and have no means to go elsewhere. We respectfully submit that simple justice demands that they should be protected in their present settlement. An unconditional revocation of the order will simply turn thousands of men, women, and children, from their homes without any preparation whatever, and at a time when they cannot secure lands elsewhere for cultivation this spring.

These people are dependent upon raising crops for the support of themselves and families, and are now preparing in the best manner possible under the circumstances for that purpose. It is simply impossible for them to move elsewhere, secure and prepare land in time for a crop this season.

We most earnestly urge upon the Department that these settlers be protected in their rights under the order as an act of justice and humanity.

Respectfully submitted.

O. S. GIFFORD,

Delegate to Congress, Dakota Territory.

Hon. L. Q. C. LAMAR,
Secretary of the Interior, Washington, D. C.

No. 35.

[Telegram.]

CHAMBERLAIN, DAK., *April 4, 1885.*

To Secretary LAMAR,
Interior Department, Washington, D. C.:

Misrepresentations concerning the Crow Creek Reserve have been made to you by Indian Rights Association. Await statement by mail.

WM. B. HUBBARD.

No. 36.

[Office of S. J. Moyer, a lawyer.]

CHAMBERLAIN, DAK., April 6, 1885.

DEAR SIR: Only the great interest of the settlers, as shown in the annexed application, leads us to intrude upon your time. Please favor us with a reply in due time.

Respectfully,

S. J. MOYER.

Hon. GROVER CLEVELAND,
President of United States.

[Indorsement.]

From Executive Mansion.

To the honorable Grover Cleveland, President of the United States:

We, the undersigned, your petitioners, do most respectfully show that we are acquainted with the following tract of land, to wit:

Lots 2, 3, and 4, and the southeast quarter of the southwest quarter, and the west half of the southeast quarter of section 10, and lots 1, 8, and 9 of section 15, township 104 north, of range 71 west fifth principal meridian, Brulé County, Dakota Territory.

That said tract of land is bounded on the west by the Missouri River and on the south by American Creek, and forms a part of the city of Chamberlain, in Dakota Territory, by an act of incorporation passed by the legislature of said Dakota Territory, and approved by the governor March 7, 1885.

That said tract of land is at the extreme southwest part of the Crow Creek Reservation, opened to settlement by Executive order February 27, 1885. That said tract of land has not been occupied by the Indians for years past.

That said tract of land is occupied as a town or city as follows:

That the only ferry landing and good natural harbor within the city of Chamberlain, Dak., exists where said land joins to the waters of the Missouri River; and in said harbor there are two serviceable steamboats used in said river navigation, at which harbor they have been harbored, the one for two years and the other since its construction one year past, and used for transportation and travel.

That on said tract there is a natural grove or park, and the only one accessible to the people of said city, who have occupied it for outdoor gatherings for a number of years.

That the city of Chamberlain has an engine and engine-house and pump valued at \$3,000 on said land, used in supplying water for said city from the Missouri River.

That there are forty-four dwelling houses on said tract of land, with the usual appurtenances to the occupancy of land as a city. That there are three business buildings erected on said tract of land, and that the improvements of said tract of land herein mentioned are valued at \$20,000. That about 125 people reside on said tract of land, and that the greater part of said inhabitants have made great sacrifice to erect a home in that part of said city; and that said improvements have been chiefly made since said Executive order of February 27, 1885.

Now, we most respectfully call your attention to the following words of the treaty with the Sioux Nation of Indians, advised February 16, 1869:

"They withdraw all pretense of opposition to the construction of the railroad now being built along the Platt River and westward to the Pacific coast; and they will not in the future object to the construction of said railroads, wagon roads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States. But should such roads or other works be constructed on the lands of their reservation, the Government will pay the tribe whatever amount of damage which may be assessed by three disinterested commissioners to be appointed by the President for the purpose; one said commissioner to be a chief or head man of the tribe."

Also to the following provision of the laws of the United States, section 2380 Revised Statutes:

"The President is authorized to reserve from the public lands, whether surveyed or unsurveyed, town-sites on the shores of harbors, at the junction of rivers, important portages, or natural or prospective centers of population."

Now we most respectfully ask you to make an order reserving said land for the purposes of said town-site; and that a commission be appointed to treat with any Indians that your honor may know to have an interest in said tract of land. Or that in the event you cannot grant said request that you will make an order permitting said inhabitants

to occupy said tract of land, and that their property thereon be protected until further action may be had for their relief by the Congress of the United States.

Names of heads of families who reside on said land:

W. V. Lucas, C. C. Howard, S. L. Kistler, H. C. Mussmann, P. J. Gerin, Charles S. Blair, F. C. Gilman, J. H. Bridgeman, E. C. Dean, L. D. Alred, D. W. Overocker, C. D. Hubbard, H. W. Le Blond, P. H. Gray, B. B. Colborne, B. F. Stacy, A. Phillips, E. P. Rye, O. McElroy, S. J. Moyer, J. F. Sisson, D. W. Sisson, W. McKenzie, Samuel Atkinson, T. W. Frame, Sue L. Hines, W. W. Egleston, B. F. Sisson, M. L. Barker.

No. 37.

TERRITORY OF DAKOTA, DEPARTMENT OF IMMIGRATION AND STATISTICS,
Huron, April 6, 1885.

SIR: If I may be permitted to do so I would like to make a statement on behalf of the settlers who have gone upon the lands included in those portions of the Winnebago and Santee Sioux (Crow Creek) Reservations restored to the public domain by Executive order.

The good faith of those people cannot be questioned. During the five years that have elapsed since the settlement of the central portion of Dakota began in earnest, there has been no attempt to seize upon these lands—which have at no time been occupied by the Indians—although it was the common belief that the lands in question were not included in the Sioux treaty of 1868, and were therefore only withheld from settlement by an Executive order—that of 1875—which could be superseded by another order at the pleasure of the Government. Upon this point every authority on military and Indian affairs with whom I have any acquaintance, or whose opinion I have been able to obtain in the course of an investigation of the subject during the last two years, agrees with the opinion upon which the Executive order issued by his excellency President Arthur was based.

The people of Dakota, and the public generally, were led to believe from the agitation of the matter in the newspapers that such an order was certain to come in time, and consequently when that order was issued and the long-coveted lands thrown open to settlement in the regular way the settlers were quick to take advantage of what became lawfully theirs, and proceeded in large numbers to establish their residence upon the reservation lands.

Before the suspension of the Executive order, by direction of your honorable office, the squatters on these lands reached the estimated number of 3,000. At the present time there cannot be far from that many persons residing on what are described as the restored portions of the reservation.

These people have built houses to live in, and are complying with the land laws in "holding down" their claims as squatters, prior to the recording of the plats, when they have hoped to be able to make their filings.

I beg to call your attention to one or two things in particular by way of correcting certain erroneous newspaper reports and some false impressions which seem to be entertained abroad as to the true situation and real facts bearing on the moral proposition involved by the opening of the Winnebago Reservation.

There are only, as nearly as I can learn at the present writing, about six hundred Indians receiving rations at the Crow Creek Agency at Fort Thompson. These Indians mostly reside along the Missouri River and near the agency. The lands they are actually occupying are not taken from them by the suspended Executive order, but, on the contrary, are still reserved for their exclusive use and enjoyment.

The lands thus permanently reserved comprise the equivalent of five townships, or 115,200 acres of land, and are much the choicest portion of the old reserve, having an extended river frontage, and being wooded in places. There were a few Indians not living within the limits of the new reservation; but in most cases, as I am informed, they will continue to reside on the lands they have been occupying, and establish their residence on the same under existing provisions of law.

These five townships would give the Indians about 200 acres for each member of every tribe and band, and for every woman and child likewise.

There has been no uprising by the Indians, and there will be none unless it is brought about by designing white men who have a purpose of their own to serve that is opposed to the interests alike of the Indians and white settlers.

On the contrary, there is good reason to believe that the Indians will be inclined to welcome the nearer approach of the white settlements. The Indians at Fort Thompson

are used to the whites, and frequently visit the railroad towns to the south and north of them. They are friendly, and very fond of worrying all the charity they can out of their white neighbors.

They would probably soon grow accustomed to the white people as nearer neighbors, and derive no little benefit therefrom, not alone as beggars, but from the practical examples set them in the arts of agriculture, in stock-raising, and of the white man's civilization as the best means of earning a livelihood.

It would be presumptuous in me to touch upon such facts as relate to the legal status of the Winnebago Reservation, but I have thought it proper and within my duty to call your attention to the facts herein presented.

You will pardon me for stating it to be my firm belief that the revocation of the Executive order, now suspended, would work great hardship to several thousand of our people, and that the rights of the Indians concerned cannot be seriously impaired should that order be restored and allowed to take effect.

I am, with great respect, your obedient servant,

LAUREN DUNLAP,
Commissioner.

Hon. L. Q. C. LAMAR,
Secretary of the Interior.

No. 38.

[Telegram.]

WILLIAMSPORT, PA., April 8, 1885.

L. Q. LAMAR,
Secretary of Interior,
Interior Department, Washington, D. C.:

Will you kindly, before deciding Winnebago matter, await brief, with additional facts, which I will send from Rochester to-night?

H. M. McDONALD.

No. 39.

[Statement on behalf of the settlers upon the Winnebago Reservations, filed by H. M. McDonald, Pierre, Dak., as to the validity of the Executive order of February 27, 1885, opening the Crow Creek and Winnebago Reservations for settlement.]

History of the Crow Creek and Winnebago Reservations.

By the treaty of Fort Laramie, concluded in 1851 (see treaty Fort Laramie, 1851), the Sioux and other Indians conceded the ownership and occupancy in all lands in what is now Dakota, south of a line extending west to the Missouri River from the foot of Lake Kempeska and situate east of that river, to the Yankton Sioux. (See map 2.)

Previous to the year 1858, the Yankton Sioux Indians held exclusive and undisputed occupancy of all lands in Dakota east of the Missouri River and south of a line extending due west from the foot of Lake Kameska. (See map 2.)

Within the above limits both the reservations known as the Crow Creek and that called the Winnebago Reservation were included.

At Washington, on the 19th of April, 1858, the Yankton Sioux entered into the following agreement with Charles E. Mix, Acting Indian Commissioner, which agreement was ratified by the United States Senate and the President of the United States February 16, 1859. (See page 856, Revised Indian Treaties.)

AGREEMENT.

Section 1 is as follows:

"Said chiefs and delegates of said Indian tribe do hereby cede and relinquish to the U. S. Government all the lands now owned and possessed or claimed by them where-soever situated except 400,000 acres thereof, situated as follows: Beginning at the mouth of Choteau River and extending up the Missouri River thirty miles; thence due north to a point; thence easterly to a point on Choteau River; thence down said river to

the place of beginning, so as to include 400,000 acres. They also hereby relinquish and abandon all claims and complaints growing out of any or all treaties heretofore made by them or other Indians, except the annuities under the treaty of Laramie of September, 1851.

"ARTICLE 2. The lands so ceded and relinquished by said chiefs and delegates of said tribes of Yancton, is and shall be known as follows, to wit: Beginning at the mouth of Calmut or Big Sioux River; thence up the Missouri River to the mouth of East Medicine Knoll River (17 miles southeast of where Pierre now is); thence up said river to its head; thence in a direction to the main fork of Snake River; thence down said river to its junction with the Jaques or James River (a little above where Redfield now stands); thence in a direct line to the northern boundary of Lake Kampeska (Codington county); thence along the north shore of said lake and its outlet with the Big Sioux River; thence down the Big Sioux River to its junction with the Missouri."

(The section of country ceded to the United States by the above treaty is indicated upon the accompanying map, marked 11).

After the Minnesota massacre of 1862 the people of that State were very desirous that all Indians should be removed from within the boundaries of their State. The Winnebagoes occupied a reservation in Blue Earth County, and situate in the southern portion of the State. In deference to the above desire on the part of the people of Minnesota Congress, at the session of 1862-'63, passed an act authorizing commissioners to treat with the Winnebagoes for an exchange of their Minnesota reservation for a reservation of equal size outside of the limits of any State. (See United States Statutes at Large, 1862-'63.) The Winnebagoes thereupon entered into an agreement to accept such a reservation, and in pursuance of such acceptance Commissioner Thompson, in the spring of 1863, laid out for the Winnebagoes that tract of country on the east side of the Missouri River since known as the Winnebago Reservation, and containing about 416,000 acres. Commissioner Thompson then filed in the Indian Department at Washington a map and plats of the above reservation, based upon actual surveys of the same made under his direction. (See map marked 111.)

About the same time the above Commissioner surveyed and laid off a tract of land, containing some 203,000 acres of land, lying directly south of and adjoining the Winnebago Reservation and extending westward to the east bank of the Missouri River. This tract the Commissioner designated as the Crow Creek Reservation. The Commissioner also filed in the Land Office (see Land Office files) a map of the Crow Creek Reservation, which map is entirely distinct from that indicating the Winnebago Reservation. (See map marked 111.)

The Crow Creek Reservation was also formed for an entirely different and distinct purpose from that of the Winnebago, namely, as a location to which were to be transferred a number of Sioux Indians who had engaged in the Minnesota massacre of 1862, and who had since the defeat of the Indians engaged in the massacre been confined at Fort Snelling, in Minnesota.

In May, 1863, the Winnebagoes were removed from Minnesota to their Dakota Winnebago Reservation. At the same time the Sioux who had been confined at Fort Snelling were removed to their Dakota Crow Creek Reservation.

The Fort Snelling Sioux within a very short time after their removal from Minnesota to the Crow Creek Reservation wholly abandoned the same and removed to Nebraska. At the time of their location in Nebraska they acquired and have ever since borne the name of Santee Sioux.

In 1865, the President of the United States, by Executive order, assigned to the Santee Sioux as a reservation for their use and occupancy the lands occupied by them in Nebraska. This order was based upon the act of Congress of 1862-'63 to which reference has been made. This act authorized the location of a reservation for the Fort Snelling Sioux. This reservation was, as we have seen, located in Dakota, in 1863, and designated as the Crow Creek Reservation. The same Indians (now known as the Santee Sioux) received and accepted as a full equivalent for the Crow Creek Reservation a reservation in Northern Nebraska. The Santee Sioux, however, made no formal release to the United States Government of whatever interest, if any, they may have had in the Dakota Crow Creek Reservation.

The Santee Sioux certainly have had since 1865 no equitable interest in the Crow Creek Reservation, but, as the legal title to the lands contained in the aforesaid reservation seems to still be in these Indians (the Santee Sioux), it may be questionable whether the Executive had authority to open to settlement the lands contained in this reservation (the Crow Creek) as was attempted to be done by the Executive order of February 27, 1885.

The Winnebago Reservation stands upon altogether a different footing, as the following facts will indicate, viz: the Winnebagoes were from their first location upon these lands dissatisfied with the Dakota Reservation. They therefore, in conformity with an

act of Congress passed in 1865, made and entered into a formal treaty for a reservation in Nebraska where they are now, adjoining the Omaha Reservation, in that State. They ceded the Dakota Winnebago Reservation fully and unconditionally to the Government by virtue of the terms of the above treaty made March 8, 1865, at Usher's Landing, on the Missouri River in Dakota, and ratified by Congress and the President February 13, 1866. (See page 1014, Revised Treaties of the United States.)

NOTE.—The first treaty, that of 1862, made by the Winnebagoes for the Winnebago Reservation being superseded by the last—that of 1865—which receded the above reservation to the United States, the former, that of 1862, is not included in the revised list of Indian treaties.

Since the treaty of 1865 with the Winnebagoes, by which they ceded the Dakota Winnebago Reservation to the United States Government, no Indians have continuously occupied the lands contained in what had previously been comprised in the above reservation, and within the past two years at no time have thirty Indians, including women and children, occupied these lands. (See affidavits on file in Indian Department.)

In 1868, the Sioux Indians occupying the Territory west of the Missouri River entered into a treaty with the United States Government conveying certain lands to the Government. This treaty fixes the eastern boundary of the Sioux Reservation as "the Eastern bank of the Missouri River at low-water mark." It also provided that the Sioux Reservation is to include "all existing reservations lying on the east bank of the Missouri River." (See treaty of Fort Rice, July 2, 1868.)

In 1874-'75, the post traders complained to the Government that trading posts were being established by private parties along the east bank of the Missouri River, and that the trade of the regular trade posts was being thereby much injured. General Grant, therefore, as President, issued the following Executive order, namely:

"EXECUTIVE MANSION, *January 11, 1875.*

"It is hereby ordered that the tract of country in the Territory of Dakota lying within the following-described boundaries, viz: Commencing on the east bank of the Missouri River, where the forty-sixth parallel of north latitude crosses the same; thence east with said parallel of latitude to the ninety-ninth degree of west longitude; thence south with said degree of longitude to the east bank of the Missouri River; thence up and with the east bank of said river to the place of beginning, be, and the same is hereby, withdrawn from sale and set apart for the use of the several tribes of Sioux Indians, as an addition to their present reservation in said territory.

"U. S. GRANT."

(See map marked III.)

ARGUMENT.

(A) The order of General Grant of January 11, 1875, does not affect the question at issue.

1. The President has no power except it be given by act of Congress to set apart any permanent Indian reservation.

The United States Statutes contain no act giving the President authority to add to the Sioux Reservation as defined by the treaty of 1868. President Grant's order therefore merely constituted the country east of the Missouri River, covered by the terms of his order, a temporary reservation which could at any time in the discretion of the President be re-opened to settlement.

2. This was the view taken by President Hayes, for he by the following order restored to settlement the greater portion of the tract embraced in General Grant's order of January 11, 1875.

"EXECUTIVE MANSION, *August 9, 1879.*

"It is hereby ordered that all that portion of the Sioux Indian Reservation in Dakota Territory created by Executive orders dated January 11, March 16, and May 20, 1875, and November 28, 1876, lying within the following-described boundaries, viz: Beginning at a point where the west line of the Fort Randall military reservation crosses the Missouri River; thence up and along said river to the mouth of American Creek to the ninety-ninth degree of west longitude; thence south along said degree to a point due west from the northeast corner of the Yankton Indian Reservation; thence due east to the northwest corner of said reservation; thence due south to the north boundary line of Fort Randall military reservation; thence south on the west boundary line of said reservation to the place of beginning (here follows a long description of different tracts north and east of the present Winnebago and Crow Creek Reservation), be, and the same hereby is, restored to the public domain.

"R. B. HAYES."

(See map marked III for section of country opened by order.)

3. If President Hayes had authority (and it has not been questioned but that he had) to issue the order of August 9, 1879, then the order of General Grant (January 11, 1875) has no force in the way of making the legal status of the Winnebago Reservation different from what it was prior to the date of the order of January 11, 1875. The issuance of General Grant's order does not, therefore, affect in any way whatsoever the question at issue.

(B) The Winnebago Reservation was not included directly or by implication in the clause of the treaty of 1868, including in the Great Sioux Reservation "all existing reservations lying on the east bank of the Missouri River."

(1) The Yankton Sioux Reservation, constituted by the treaty of 1858, and the Crow Creek Reservation, set apart by Commissioner Thompson in 1863, both lying on the east bank of the Missouri River, fully and completely answer the terms of the clause, "all existing reservations lying on the east bank of the Missouri River."

It may be urged that the Yankton Sioux were not parties to the treaty of 1868, and therefore it was unnecessary that the reservation occupied by them and reserved to them by the treaty of 1858 should again be reserved to them by the terms of a treaty, *i. e.*, that of 1868, to which they were in no wise parties. It must, however, be remembered that the treaty made at Fort Rice, July 2, 1868, was entered into by the Sioux as a nation, and it was therefore the duty of the tribes who were parties to the above treaty to reserve distinctly the reservations occupied by Indians who were not parties to the aforesaid treaty.

Furthermore, there was nothing at the time of the formation of the treaty of 1868 at Fort Rice in relation of any tribe or tribes of the Sioux Indians to the Winnebago Reservation to indicate that the Sioux or any tribe or band thereof claimed any right, title, or interest in said lands. No considerable number of Indians were even temporarily occupying these lands at the time of the treaty entered into at Fort Rice, July 2, 1868, nor had there been for three years prior to this time. (See letter March 5, 1866, Commissioner's reports 1865, page 165; Com. Rep. 1868, p. 189.)

Moreover, the journal containing the report of the speeches made by the commissioners and by the Indian chiefs present at the time the negotiation and signing of the aforesaid treaty of July, 1868, clearly indicate that it was the purpose to restrict the occupancy of lands by the Indians, as far as possible, to those lying west of the Missouri River.

General Sanborn, speaking for the Indian Commission, stated to the Indian chiefs at the opening of the negotiation at Fort Rice, July 2, 1868: "We agree to exclude the whites from the country lying between the Keya Paha River and Grand River and the Missouri River and western base of the Black Hills. All Indians who have and hereafter shall abandon the chase and settle down permanently will do so in the country from which the whites are excluded, west of the Missouri River and *not elsewhere.*" * * *

General Sanborn continued: "Several of the commissioners are in favor of extending the country from which the whites will be excluded, so as to include the Yankton Reservation and the James River country now occupied by the Yanktonai. We shall do this if we can; and hence it is better for all the Yanktonai and all the Indians east of the river to trust to us."

The latter part of General Sanborn's address, given above, was made in response to the demand of the Yanktonai to be given a reservation in the Jim River country, which section they had prior to this time been occupying. General Sanborn finally asked the chiefs of the Yanktonai if they could not find a reservation west of the Missouri which would suit them. It was answered on the part of the Indians (the Yanktonai) that they thought they could find such a reservation about the mouth of the Cheyenne River, on the west side of the Missouri. (See journal of the commission of 1868, on file in the Interior Department.)

The entire scope of the foregoing negotiation shows: First, that the commissioners stated that it was their design to remove all the Sioux west of the Missouri River. Second, that they doubted their authority to set apart reservations anywhere east of the Missouri River. Third, that there was no intimation, either on the part of the commissioners or the Indian chiefs present, that the Winnebago Reservation, so-called, was an existing reservation, or that the Indians of any tribe or band of the Sioux claimed any right, title, or interest in the lands contained in the above reservation.

It must, therefore, be concluded that neither the terms of the treaty, either directly or by implication, or anything that was stated at the time of the negotiation of the treaty of 1868, would indicate that the lands contained in the Winnebago Reservation were intended to be reserved to the Sioux or any tribe thereof.

It may be well in this connection to call attention to a letter of General Sherman's, now on file in the Indian Department, written in 1881, which would seem to indicate that General Sherman, the presiding officer of the Indian commission, appointed to treat with all the Indian tribes in the far West, believed that certain small reservations, in-

cluding the Winnebago, lying on the east side of the Missouri River, were intended to be reserved to the Indians by the treaty of 1868. General Sherman, in substance, states that he thinks that these reservations were reserved because, as a rule, Indians very grudgingly leave their lands.

It may be said in reply: First, that General Sherman's letter was written some thirteen years after the negotiations of the treaty of 1868, and, therefore, the statement of General Sherman is based solely upon his memory of events which had occurred a long time previously; second, the journal of the commission shows that General Sherman was not at any time present at the negotiation conducted with the tribes constituting the Sioux Nation; the work of the commission had previously been divided and General Sherman had gone to the Southwest with a number of the members of the commission to treat with the Indians occupying that section of country; third, an order of General Sherman's issued in the fall of 1868 or the spring of 1869, and now on file in the Interior Department, would indicate that General Sherman at the time of the issue of the aforesaid order had no knowledge that reservations had been reserved east of the Missouri River for the occupancy of Indians represented at the treaty of Fort Rice in 1868. For by the terms, the order mentioned, General Sherman constitutes the lands lying west of the Missouri River and including the Great Sioux Reservation, a military district, and directs the commander of said district to prevent the occupancy of the Indian lands in his district by the whites and also to keep the Indians located upon said reservation within the bounds of the reservation.

Is it not reasonable to believe that had General Sherman known at that time (1868-'69) that there were Indian reservations upon the east bank of the Missouri River reserved for Indians, parties to the treaty of 1868, he would have included such reservation within the bounds of the military district constituted by the terms of the order to which reference has been made in order that their lands might also be protected from the whites who might be inclined to trespass thereon, and the Indians occupying such reservation be brought under military jurisdiction as were the Sioux occupying the lands lying west of the Missouri?

(C) The Winnebago Indians, by the formal treaty of 1865, ceded the Dakota Winnebago Reservation to the United States. They had complete title and full power to convey the same to the United States. They received ample and satisfactory consideration for the lands conveyed, viz: The reservation now occupied by them in Nebraska.

The Winnebago reservation consequently, by the treaty of 1865, became a portion of the public domain. The President had power at any time to make his order opening these lands to settlement. This, in his discretion, he did February 27, 1885. And having, as we have seen, full power to make such order it should not be revoked as touching the lands contained in the Winnebago Reservation proper.

It may, perhaps, be added with propriety that the writer personally knows that at least two thousand settlers, many of them with their families, and most of them having taken with them all their worldly possessions, have made settlement upon the lands opened to settlement by the order of February 27 last. These settlers have taken up their homes upon these lands in good faith, relying implicitly upon the invitation contained in President Arthur's order. They believe sincerely that they have acquired rights and equities in these lands, of which the Government cannot in justice summarily deprive them. They have the sympathy of all the people of the Territory of Dakota and the Northwestern States. Should an effort be made to expel these settlers from these lands the result may be most serious in its consequences. It would, therefore, seem to be the part of wisdom that if possible such a course of action be avoided. The writer would, therefore, without presumption, suggest that were an Executive order issued reaffirming the terms of President Arthur's order, as far as applicable, to the Winnebago Reservation proper, and calling upon the settlers who have occupied the land contained in the Crow Creek Reservation proper to abandon their settlement upon the latter reservation, they would probably without delay do so.

No. 40.

Facts regarding the status of the Winnebago and Crow Creek or Sioux Reservations east of Missouri River, in Dakota.

These lands are embraced within the boundaries named as embracing the cession made by the Yankton Sioux to the United States by treaty of February 26, 1857. (11 Stat., 743.)

They were selected for location of the Winnebago and certain bands of Sioux in pursuance of acts of February 21 and March 3, 1863, respectively. (12 Stat., 658 and 819.)

Superintendent Thompson, who selected the lands, reported as follows:

"Having located these two tribes of Indians adjoining, I can see no impropriety in having the agency building adjoining, and thus avoid the expense of two stockades and two military guards.

"I have therefore made the line dividing these two reservations run through the center of the stockade, putting the Winnebago buildings on the west and the Sioux on the east, as laid down in the plat B. (See I. O. Report, 1863, p. 318.)"

Thus we see that the buildings for the agency were put in one inclosure planned to be 400 feet square.

These buildings located in part on each of the reservations became the agency for all the Indians there, and by its location near Crow Creek soon took the name of "Crow Creek Agency." Therefore the Crow Creek Agency means the Winnebago and the Sioux Reservations, selected under the acts of February 21 and March 3, 1863, above referred to.

Both the Winnebagoes and the Sioux were subsequently moved to Nebraska. The Winnebagoes ceded their rights at Crow Creek Agency to the United States by treaty of March 25, 1866 (14 Stat., 671), and the Sioux abandoned their rights without formal treaty in the same year.

No one has disputed the fact that the agency is on a reservation.

If the square tract of ground inclosed as a stockade, in which the agency buildings are located, equal portions of which are within the limits of each of the reserved tracts, is recognized and held as in a state of reservation, and no formal action is shown to have been taken restoring any portion of either of said reservations to the public domain, then the whole of each of them must be in the same condition as the stockade tract which acts as a grappling-iron, holding in its firm embrace so much of each tract as to control every portion of the whole in a state of reservation.

The lands were so held at the time of the treaty of March 17, 1866, with the Yanktonais band of Sioux Indians, which was a treaty of peace and amity, wherein it is stipulated that "should any of said Indians desire hereafter to locate upon any land claimed by said band, for the purpose of agricultural or other similar pursuits, it is hereby agreed by the parties to this treaty that such individuals shall be protected in such location against any annoyance or molestation on the part of whites or Indians," &c., with provisions for certain payments when the designated number of lodges shall have so located. (14 Stat., 735.)

This land must have been in clear contemplation of the treaties with the Two Kettle and Lower Yanktonais bands of Sioux (14 Stat., 723 and 735), as we find that three of the commissioners who negotiated those treaties wrote to the Indian Office August 29, 1866, suggesting that instead of making certain improvements for the Lower Brulés near the mouth of White River, &c., "efforts should be made to induce those Indians with the Two Kettle and the Lower Yanktonais to settle at the Crow Creek Agency recently vacated by the Santees," &c. (See I. O. Report, 1866, p. 166-'7.)

The same parties report that "some of the Yanktonais and Two Kettles at Crow Creek have also entered upon the cultivation of the soil." (*Ibid.*, 170.)

In pursuance, therefore, of the treaties, the Two Kettles, Lower Yanktonais, assembled in quite a large number around the "Crow Creek Agency," on both the old reservations, and showed by this act that they claimed those lands. Having located on the said lands, the Government, as a party to the treaty, guaranteed to them protection "against annoyance or molestation on the part of whites or Indians." To secure that protection, the Indian Office and the Department, as is abundantly shown by their acts, have recognized those lands, both Winnebago and Sioux, to be in a state of reservation. They were so treated and recognized at the date of the treaty of April 29, 1868, and are, by the second article of that treaty, made a part of the Great Sioux Reservation as "existing reservations on the east bank of said river (Missouri)."

A number of the Yanktonais band who signed the treaty of March 17, 1866, also signed the treaty of April 29, 1868, viz:

Treaty of 1866.—Chief Shon-kah-we-te-ko, "The Fool Dog;" Tah-chonk-pee-sappah, "The Black Tomahawk;" Ma-to-non-pa, "Two Bears."

Treaty of 1868.—Skun-ka-we-tko, "Fool Dog;" Can-Hpi-sa-sa, "Black Tomahawk;" Mah-to-non-pa, "Two Bears."

In the Indian appropriation act of March 2, 1867, provision is made for the Two Kettle and Yanktonais Sioux, respectively, "for first of five installments, being \$25 for each lodge or family located on lands for agricultural purposes, in pursuance of the treaty of amity and peace of 1866, above referred to, \$2,825 for the former and \$2,875 for the latter (14 Stat., 509).

By act of July 27, 1868, the second of the five installments is provided for; also \$500 for each band for erection of blacksmith shop, as per same article of treaty (15 Stat., 216).

These appropriations no doubt were made upon reports and estimates submitted by the Indian Office and this Department, that these Indians were located on land claimed

by them, &c., thus recognizing the claim of those Indians to said lands and their right to locate thereon. (See Indian Office Report, 1880, p. 21, &c.)

The "Crow Creek Reservation," which appears to be a term used to designate both the Winnebago and Sioux Reservations, is recognized in the treaty of May 2, 1867, with the Sisseton and Wahpeton Sioux Indians (15 Stat., 505, Articles III and IV).

Congress has almost continuously since 1867 provided in the Indian appropriation acts for an agency and an agent, &c., at that point, generally under the title of the "Crow Creek Agency" (see act of March 3, 1875, 18 Stat., 421, and subsequent acts).

The agent there has charge of the Lower Brulés, on the west side of the river, and the Lower Yanktonais, &c., on the east side of the river, occupying the Winnebago and Sioux Reservations.

Congress has also provided in a number of the more recent Indian appropriation acts for the support of an Indian industrial school at the "Crow Creek Agency," and such a school is now in operation close by the agency buildings. (See act of May 27, 1878, 20 Stat., 80, and subsequent acts.)

Mr. Secretary Kirkwood, in letter of July 20, 1881, recognized both reservations as belonging to the Sioux Nation under treaty of 1868.

Two agreements made under directions of this Department for right of way, &c., across the lands for Chicago, Milwaukee and Saint Paul Railroad Company and the Dakota Central Railroad Company were negotiated with the Sioux Indians, one in November and the other in December, 1880, and the companies have paid the money for the land thus acquired. (See Senate Ex. Doc. 20 and H. R. No. 11, 48th Cong., 1st sess.)

A number of Indians have made selections of land on the *old Winnebago Reservation*, and the certificates of allotments have been approved by this Department and issued to them. (See 1571 I. O., 1881.)

Under a clause in the sundry civil act of August 7, 1882, certain agreements were negotiated with the Sioux Indians for the purpose of opening up a part of their land. (22 Stat., 328.)

In pursuance of this law an agreement was negotiated with the Indians at the Crow Creek Agency for surrender of their claims to those lands to the Winnebago and Sioux Reservations. (Senate Ex. Doc. 70, 48th Cong., 1st sess.) These agreements have not yet been ratified by Congress.

General Sherman says in a letter of January 17, 1881: "I think at that time [time of negotiation of treaty of 1868] we had before us a map furnished by the Indian Bureau [the commissioner, Mr. Taylor, being the president of commission] delineating the reservations in question."

No map has been found with the papers of the commission, but as all the maps of the General Land Office issued since about the time the land was selected for the Winnebago and Sioux Indians have had these lands marked and designated thereupon as Indian reservations, it is safe to assume that the map before the commission showed the lands to be Indian reservations.

In the clause of the act of August 15, 1876 (19 Stat., 192), making appropriation for the Sioux Indians it is provided that "hereafter there shall be no appropriation made for the subsistence of said Indians unless they shall first agree to relinquish all right and claim to any country outside the boundaries of the permanent reservation established by the treaty of 1868 for said Indians; and also so much of their said permanent reservation as lies west of the one hundred and third meridian of longitude."

The Sioux Indians, by agreement of June 23, 1875, relinquished their claims and hunting privileges on lands specified in articles 11 and 16 of their treaty of 1868, and outside of their permanent reservation. (See I. O. Report 1875, p. 179.)

They also complied with the further requirement by relinquishing their right, &c., to the lands west of the one hundred and third meridian of longitude, &c., by agreement of September 26, 1877, ratified February 28, 1877. (19 Stat., 254.)

In recognition of these agreements as full compliance with the law of 1876 Congress has continued regularly to make appropriations for subsistence of these Indians, notwithstanding they did not relinquish their claim to the land of the Winnebago and Crow Creek Reservations.

This must be construed as a recognition on the part of Congress that those lands east of the Missouri River, and claimed by said Indians, are within the boundaries, and are part and parcel of the permanent reservation established by the treaty of 1868 for said Indians."

In the agreement last above referred to (19 Stat., 254) the following is found in article 8: "The provisions of said agreement of 1868, except as herein modified, shall continue in full force, and, with the provisions of this agreement, shall apply to any country which may hereafter be occupied by the said Indians as a home."

It is presumed that this clause, under strict construction, would be confined to the new location in the Indian Territory, then contemplated by the fourth article of said treaty,

but as the courts have held that treaties must be construed most liberally for the Indians, the clause quoted seems to clear away any doubt which remained as to the right of the Sioux to the land on the east bank of the Missouri River, occupied by them as a home before and after said agreement.

If these facts do not show a technical and legal right and title to said lands in the Sioux Indians, they do disclose such a strong equitable title thereto in them as to demand that they should be protected in their possession thereof if possible.

If this be not now possible under the existing state of the matter, then the Indians should be fully assured by the President and this Department that they will do all in their power to secure from Congress such appropriations and beneficial provisions of law as will fully compensate them for the portions of the lands opened to settlement by the Executive order of February 27, 1885.

In the mean time some discreet and energetic special agent of the Land or the Indian Bureau should be sent to the locality to see that the Indians occupying lands inside of the tract open to settlement by said order are not disturbed in their rights, &c.

No. 41.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas by an Executive order, bearing date the 27th day of February, 1885, it was ordered that "all that tract of country in the Territory of Dakota known as the Old Winnebago Reservation and the Sioux or Crow Creek Reservation, and lying on the east bank of the Missouri River, set apart and reserved by Executive order dated January 11, 1875, and which is not covered by the Executive order dated August 9, 1879, restoring certain of the lands reserved by the order of January 11, 1875, except the following-described tracts: Townships number 108 north, range 71 west; 108 north, range 72 west; fractional township 108 north, range 73 west; the west half of section 4, sections 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33 of township 107 north, range 70 west; fractional townships 107 north, range 71 west; 107 north, range 72 west; 107 north, range 72 west; the west half of township 106 north, range 70 west, and fractional township 106 north, range 71 west; and except also all tracts within the limits of the aforesaid Old Winnebago Reservation and the Sioux or Crow Creek Reservation, which are outside of the limits of the above-described tracts, and which may have heretofore been allotted to the Indians residing upon said reservation, or which may have heretofore been selected or occupied by the said Indians, under and in accordance with the provisions of article 6 of the treaty with the Sioux Indians of April 29, 1868, be, and the same is hereby, restored to the public domain."

And whereas upon the claim being made that said order is illegal and in violation of the plighted faith and obligations of the United States, contained in sundry treaties heretofore entered into with the Indian tribes or bands, occupants of said reservation, and that the further execution of said order will not only occasion much distress and suffering to peaceable Indians but retard the work of their civilization and engender amongst them a distrust of the National Government, I have determined, after a careful examination of the several treaties, acts of Congress, and other official data bearing on the subject, aided and assisted therein by the advice and opinion of the Attorney-General of the United States, duly rendered in that behalf, that the lands so proposed to be restored to the public domain by said Executive order of February 27, 1885, are included as existing Indian reservations on the east bank of the Missouri River by the terms of the second article of the treaty with the Sioux Indians, concluded April 29, 1868, and that consequently being treaty reservations the Executive was without lawful power to restore them to the public domain by said Executive order, which is therefore deemed and considered to be wholly inoperative and void.

And whereas the laws of the United States provide for the removal of all persons residing or being found upon Indian lands and territory without permission, expressly and legally obtained of the Interior Department—

Now, therefore, in order to maintain inviolate the solemn pledges and plighted faith of the Government, as given in the treaties in question, and for the purpose of properly protecting the interests of the Indian tribes as well as of the United States in the premises, and to the end that no person or persons may be induced to enter upon said lands where they will not be allowed to remain without the permission of the authority aforesaid, I, Grover Cleveland, President of the United States, do hereby declare and pro-

claim the said Executive order of February 27, 1885, to be in contravention of the treaty obligations of the United States with the Sioux tribe of Indians, and therefore to be inoperative and of no effect, and I further declare that the lands intended to be embraced therein are existing Indian reservations and as such available for Indian purposes alone and subject to the Indian intercourse acts of the United States. I do further warn and admonish all and every person or persons now in the occupation of said lands under color of said Executive order, and all such person or persons as are intending or preparing to enter and settle upon the same thereunder, that they will neither be permitted to remain or enter upon said lands, and such persons as are already there are hereby required to vacate and remove therefrom with their effects within sixty (60) days from the date hereof; and in case a due regard for and voluntary obedience to the laws and treaties of the United States, and this admonition and warning, be not sufficient to effect the purpose and intentions as herein declared, all the power of the Government will be employed to carry into proper execution the treaties and laws of the United States herein referred to.

In testimony whereof I hereunto set my hand and cause the seal of the United States to be affixed.

Done at the city of Washington this seventeenth day of April, one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth.

[SEAL.]

GROVER CLEVELAND.

By the President:

T. F. BAYARD,
Secretary of State.

No. 42.

[Office S. J. Moyer, a lawyer. Reference, First National Bank, Chamberlain, Dak.]

CHAMBERLAIN, DAK., *April 20, 1885.*

DEAR SIR: On the 6th instant I had the pleasure of forwarding to the worthy President an application relating to a town-site in public lands. He informed me that he had placed the same in your care. If you will feel at liberty to consider additional information I shall be pleased to forward you proof of its occupancy as a town hitherto prepared for filing in the local land office.

I have every reason to believe that the Indian agent for the bands of Indians to whom this land belongs, also the chief of the tribes and other Indians, will signify in writing that no Indians have, for many years past, nor now, desire to occupy said land. It is a matter of great importance to these people. Any information that you may feel at liberty to communicate in this matter will be thankfully received.

Respectfully,

S. J. MOYER.

Hon. LAMAR,
Secretary Interior, Washington, D. C.

No. 43.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, April 21, 1885.

SIR: Referring to our recent conversation, when the question arose as to whether the surveys which have been made within the old Winnebago and Crow Creek Reservations, were paid for out of funds appropriated for the survey of the public lands or out of funds appropriated for the survey of Indian reservations, I have the honor to state that it is found, upon examination of the records of this Bureau and General Land Office, that the survey of township, section, and subdivisional lines within the said reservations, except as hereinafter noted, were all paid for out of funds appropriated for the survey of Indian reservations and subdividing portions of the same. (Act approved June 23, 1874; Stat. 18, p. 213.)

I find that on May 25, 1874, this office recommended to the Department that the Commissioner of the General Land Office be instructed to enter into contract for "the survey of the Old Sioux and Winnebago Reservations in Dakota, lying on the east side of

the Missouri River, and made a part of the General Sioux Reserve, by the treaty of 1868, into 160-acre tracts, except those fractional townships lying along the Missouri River, which should be subdivided into 40-acre tracts."

On September 26, 1874, the Department approved said recommendation, and directed the General Land Office according.

Contract for the work was made with Deputy Surveyor James W. Miller under date October 2, 1874, and was paid for out of the appropriation for survey of Indian reservations, as before stated.

I have spoken of certain exceptions. It appears that the public surveys were extended over a very inconsiderable portion of the southern part of the Crow Creek Reservation in 1868.

For some reason, which I have not been able to ascertain in the hurried examination made, but probably through an oversight, the public surveys in Dakota were extended, in 1868, a short distance (3 or 4 miles) north of American Creek, including townships 104 north, ranges 69, 70, and 71 west, and the work was paid for out of funds appropriated for the survey of the public lands (act July 20, 1868, Stats. 15, p. 110), but aside from this, which at best is of but trifling importance, all the surveys made within the Old Winnebago and Crow Creek Reservations have been paid for out of funds appropriated for the survey of Indian lands, and not out of funds appropriated for survey of the public lands.

In 1882, for its own convenience, and for the purpose of defining the reservation boundary and separating the Indian reservation lands from the public lands, the General Land Office completed the meandering of American Creek, and extended the south line of the Crow Creek Reservation to a point due south of the 18-mile post on the east boundary of the reservation as established by Deputy Surveyor Miller. I mention this simply because it is a matter touching the question of surveys in connection with these reservations.

As showing that the Miller surveys were not made with a view to opening the lands to white settlement, as some people have alleged, I quote the following from a letter addressed to Agent Livingston, of the Upper Missouri Agency, on October 6, 1874:

"You are advised that a contract for the survey of the Old Sioux (Crow Creek) and Winnebago Reservations, in Dakota, lying on the east side of the Missouri River, and made a part of the general Sioux Reserve by the treaty of 1868, into 160-acre tracts, except those fractional townships lying along the Missouri River, which are to be subdivided into 40-acre tracts; also for the survey of a tract of country within the Sioux Reservation on the west side of the Missouri River, commencing at the mouth of White River and extending up the same the length of three townships, and also extending one township in width on each side of the river, the same to be divided into 40-acre tracts (as recommended in office report of the 25th ultimo to the honorable Secretary of the Interior), has been awarded to J. W. Miller, esq., who will proceed at once to the execution of the work.

"To enable Mr. Miller to execute the work promptly and to guard against any opposition thereto on the part of the Indians of that vicinity, you are instructed to hold a council with the Indians at your agency and explain fully to them the nature and purpose of these surveys, and to do all in your power to secure their assent and to keep them peaceful and friendly during the prosecution of said survey.

"Assure the Indians that this survey is not made with any reference to the occupation of their country by white people, but for their own benefit as soon as they shall be ready to take each his own portion of land for himself according to their treaty." * * *

It would seem as if no further evidence were needed to contradict the claim that the surveys were made with a view to opening the lands to white settlement.

Very respectfully, your obedient servant,

JNO. D. C. ATKINS,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

No. 44.

DEPARTMENT OF THE INTERIOR,
Washington, April 22, 1885.

SIR: I transmit herewith for your information and guidance copy of a proclamation by the President, dated the 17th instant, defining the status of the tracts of country in the Territory of Dakota known as the Old Winnebago Reservation and the Sioux or

Crow Creek Reservation, and lying on the east bank of the Missouri River, and declaring the same to be Indian reservations.

Very respectfully,

L. Q. C. LAMAR,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

(NOTE.—For copy of President's proclamation, see No. 41 of accompanying papers.)

No. 45.

[Home Office of the Dakota Fire and Marine Insurance Co., capital stock \$100,000.]

COLUMBUS, DAK., *April 23, 1885.*

DEAR SIR: Is it not possible for you to submit this Crow Creek Reservation question to the courts, and bide their decision? The Yanktonai Indians ceded this land to the Government in 1858. Can the Attorney-General discover an Executive order or an act of Congress defining the metes and bounds, or including the land between American and Crow Creeks as in any reservation prior to 1868? If it was not a reservation prior to 1868, pray, my dear sir, how do the words "existing reservations," in the treaty of 1868 make it a reservation if it did not exist before? There are many more people upon this reservation than you have been informed of, I think fully six thousand. Can any question be raised or any facts presented that can modify or change your proclamation? Will you listen to anything further from these people relative to this matter, or is the case closed against them whether or no? This letter is written with all due respect, and in the best of feeling, and a reply is earnestly solicited. What shall we do?

Very respectfully,

JOHN H. KING.

G. CLEVELAND, *President,*
Washington, D. C.

Refers to Senators W. B. Allison and H. L. Dawes.

There has never been the least trouble between the whites and Indians, and the Indians have double the land they can use left, and their own choice.

[Indorsement.]

From Executive Mansion.

No. 46.

[Office of Gabe E. Schwindt, attorney at law, real estate and investment broker.]

KIMBALL, DAK., *April 27, 1885.*

I am a resident of Brulé County, Dakota Territory, within a few miles of the Crow Creek Reservation, and to my personal knowledge there is not one hundred and fifty actual settlers on said reservation. John H. King, the present postmaster of Chamberlain, Brulé County, is one of the leading spirits advising the settler to remain on the said land until arrested and then to stand the Government a suit. There has been one meeting held by a few to organize and resist the Government.

I have no other motive in sending you this information than to give the facts.

I have mailed you one copy of John H. King's paper, the Chamberlain Register.

C. P. G. ROBERTS.

Hon. SECRETARY OF THE INTERIOR.

No. 47.

MISSIONARY DISTRICT OF SOUTH DAKOTA,
Pierre Dak., May 5, 1885.

SIR: I have been moving about lately in the neighborhood of the Crow Creek Reservation and know something of the condition of affairs. While no doubt a good deal of the land thrown open by President Arthur's proclamation has been taken up purely for speculative purposes, there is a very large number of worthy *bona fide* settlers, persons

who believed the Executive order, which declared the reservation open, to be without taint or question and to be final and conclusive and ample authority for their settlement within it, chiefly persons of small means, who have spent their little all in reaching the reserve and making improvements on their claims. Their absolute dispossession would, I believe, work incalculable hardship and drive them almost to desperation. Their case appeals powerfully to every fair-minded man. I venture most respectfully to lay it before you and earnestly to invoke for it the generous and immediate consideration of the Government.

Very respectfully, your obedient servant,

WILLIAM H. HARE.

Hon. L. Q. C. LAMAR,
Secretary of the Interior.

No. 48.

INDIANAPOLIS, IND., May 28, 1885.

SIR: Before the adjournment of the Senate I was designated by Mr. Dawes, chairman of the Senate Committee on Indian Affairs, as chairman of a subcommittee charged with the duty of making some investigations among the Indian tribes in the Northwest.

The special object of investigation designated to the committee—though the resolution of the Senate authorizing the investigation in their scope included other matters—were the leasing of the lands of the Crow Indians in Montana by the cattle-men, and the subject of the opening under an Executive order of the Crow Creek or Winnebago Reservation in Dakota. It is my present purpose to leave Chicago with the subcommittee between the 1st and 15th of July. We shall probably go first to the Crow Creek reservation, and my purpose is to make an investigation of all the circumstances connected with the opening of that reservation and the present status of affairs there. I would be obliged to you if you would furnish me with copies of any reports or communications which have been received by you upon this subject, including copies of the original order of ex-President Arthur opening the reservation, the subsequent order of President Cleveland revoking that order, and also a copy of the opinion of Attorney-General Garland upon that subject. I also desire to be furnished with any communications you may have received since the adjournment of the Senate on the subject of the leasing of the Crow lands in Montana; and also with such maps of the Indian reservations in the Northwest as would be useful to the committee.

Very respectfully, yours,

BENJ. HARRISON.

Hon. L. Q. C. LAMAR,
Secretary of the Interior, Washington, D. C.

No. 49.

CHAMBERLAIN, DAK., April 29, 1885.

In behalf of hundreds of needy sufferers I desire to say that unless you can soon announce that steps will be taken to pay the Indians on Crow Creek and Winnebago Reservation something for their fancied claim on said lands I shall have to advertise in papers throughout the country for relief funds.

The cry for bread is beginning to be heard. Hundreds have used their all in getting here and building their homes, while those who expected to have help and keep on improving have stopped. Business in neighboring towns has dropped with a thud. No work, no bread for their families, is the awful fact staring hundreds of men in the face. The Indians still have four to five hundred acres left per family and that of no use to them. Confidence of both whites and reds in the Government would be restored quickly in that way, and it would suit the Indians much better than having back so much useless land.

Or to extend the time until Congress could settle it would restore confidence and help them.

In the name of justice and suffering humanity I ask this.

Believing facts have been *terribly* misrepresented to you.

I am your humble servant,

GEO. R. OWEN,
Secretary Settlers' Union.

His excellency GROVER CLEVELAND,
President of the United States.

[Indorsement.]

From Executive Mansion.

No. 50.

AVOCA, May 7, 1885.

DEAR SIR: Inclosed you will find a poem that speaks in a measure the sentiments of many a woman and places before the mind a picture of that individual family. But each family makes a picture of its own, according to its own circumstances. In my own case my husband went to Brulé County, took up a claim, went to work to make a home for us. We were delighted in the prospect of a home and having our family together again. But our hopes are blasted, and the little means we could command nearly gone; our family broken up, husband working in Dakota to pay his expenses, my daughter teaching school. Now we are waiting, hoping that something will be done in favor of the settlers that went there in good faith to make homes; that at least there may be something done to remunerate what they have expended. Is there nothing that can be done? I feel that the situation has been misrepresented to you. From one that is waiting in suspense for the sixty days to expire—perhaps waiting for the last hope to expire.

Respectfully, yours,

MRS. ELIZA A. BIRCHARD,
Avoca, Iowa.

President CLEVELAND.

[Indorsement.]

EXECUTIVE MANSION.

The within communication is respectfully referred to the Secretary of the Interior.
By direction of the President.

DANIEL S. LAMONT,
Private Secretary.

The fame of Crow Creek has become the theme of poets. A. J. Waterhouse, of Mitchell, pens a very fine production which is published in the Daily Inter-Ocean of the 25th. He tells of the young man and wife who left their poor eastern home and sought to take advantage of the promises made by Uncle Sam, of giving a home to those who would occupy land on the western prairie:

We sold the old home as soon as we could,
And little it brought, for little it would;
Then we packed our treasures and bid farewell
To the poor old home and our friends as well,
And the tears would start as we said good-bye
To all we had loved; and the tremulous sigh
Bespoke the thoughts when lips were dumb—
But the vision of hope still beckoned, come.

We reached our home in the West at last,
And half believed our trials past;
For the land was pleasant and fair to see,
And the air seemed laden to mine and me
With the breath of hope, while Crow Creek laughed
In silver ripples where cattle quaffed
Its cooling waters. I cannot tell
All that we dreamed when we said "'tis well."

And with us there came a thousand more
Of hardy settlers, with little store
Of worldly goods, but rich in hope;
And they gave to their visions freest scope.
We built our homes where waters ran,
And we tilled the soil and there began
A new, fair life, while our days were filled
With strange, glad dreams which our being thrilled.

And so we lived from day to day,
While our stores grew less, and our hopes all lay
In the future's plenty; and we blessed the land
Which dowers its children with bounteous hand.
But one day there came a letter from Uncle Sam,
A letter which much as follows ran:
"Dear nephews and nieces, I am informed
That a few score Indians have lived and swarmed,

On the land I gave you. Imagine my grief
 When compelled to state I find no relief
 For your case save in migrating from the land,
 And abandoning now the schemes you have planned.
 The red men are angry, 'tis part of my plan
 To give them some rifles to kill the white man.
 The Indians thereby may perchance be appeased,
 And the fears of their agents considerably eased."

And so ran the letter. Our hopes it rent
 Like the dread lightning shaft from heaven sent;
 Our dreams are shattered, our hearts most mourn,
 The sun from our lives is faded and gone.
 Low, low, by the waters we kneel in the dust.
 In thee, our own country, in thee was our trust.
 But thy mandate is spoken; the vision is sped;
 Low, low, by the waters, we kneel with our dead.

Shame, shame, O my country! The men whom ye ill
 Are life of thy life; their glad pulses thrill
 In an ecstasy grand while thy glory is named;
 They would die ere that glory were tarnished or shamed.
 Shame, shame, and dishonor! Their sorrow is thine,
 For the hopes of each freeman with others entwine.
 Shame, shame, and dishonor! Ye freemen, bow low,
 Thy hopes are all shattered, thy vision must go.

No. 51.

DUBUQUE, IOWA, *May 16, 1885.*

MY DEAR SIR: I inclose you a letter from an intelligent citizen of Pierre, Dak., respecting the situation of the settlers on the Winnebago and Crow Creek Reservations, so called. This letter indicates that great hardships will result to the settlers if they are forced to leave their new settlements this summer. It seems to me, if possible, some arrangement should be made whereby these lands can be opened up. I suppose it can only be done by agreements with the Indians: I am told that they have made no use of these lands for many years.

Respectfully yours,

W. B. ALLISON.

Hon. L. Q. C. LAMAR,
Secretary of Interior.

PIERRE, DAK., *May 6, 1885.*

DEAR FRIEND: No doubt you are interested in knowing the true state of affairs on the Winnebago and Crow Creek Reservations. The reports telegraphed to the Eastern press relative to the great loss and suffering the President's revocation will have on the three thousand settlers has not been overestimated. To understand the pitiable situation fully and see it in its true light need a visit to the lands in question.

These lands have anxiously been awaited by settlers for years, as every person here knew that a proclamation from the President was all that was needed and Delegate Raymond had virtually given the people to believe that the proclamation was only a question of a little time. This caused hundreds of men with their families to reside near the reservations, and immediately upon the receipt of the news these men at once set out for the lands selected.

At the present time the settlers have all put in their crops, and should the proclamation be carried out all would be a total loss and hundreds made paupers.

Delegate Gifford writes to-night that he would advise the settlers to remain, as in his judgment the order would not be enforced.

If you could in any way say one favorable word for these poor pioneers I wish you to do so. No matter if you only intimate that you will bring the matter before the Senate. Such a word would make you thousands of friends in Dakota.

Do you think Congress will look into the matter?

Hoping to hear something from you, I am,

Truly, yours,

T. G. KRETSCHMER.

Hon. W. B. ALLISON,

Dubuque, Iowa.

P. S.—Ziebach has Senator Morgan, of Alabama, interested for the settlers.

No. 52.

His Excellency GROVER CLEVELAND,

President of the United States:

The New York Indian Association desire to express to you their unfeigned gratification at your prompt and just decision to suspend the order of your predecessor in office by which the Crow Creek Reservation was thrown open to white settlers. In view of all true principles of honesty and right we entreat you to continue the policy of a rigid enforcement of our national treaty obligations with the Crow Creeks and all other aboriginal tribes.

We are not unaware of the desperate and unscrupulous efforts that will be made to even yet carry out the projected robbery of an innocent, unsuspecting, and defenseless people. But we confidently rely upon your firmness and sense of justice, as expressed in your proclamation, to thwart, by all the power of the Government, the schemes of designing men to accomplish objects alike injurious to the Indians and discreditable to our national honor.

With grateful recognition of the policy so well initiated, we are,

Very respectfully yours,

MRS. D. P. KIDDER,

President.

LOUISA EASTON,

Secretary.

MAY 18, 1885.

[Indorsement.]

EXECUTIVE MANSION.

The within communication is respectfully referred to the Secretary of the Interior by direction of the President.

DANIEL S. LAMONT,

Private Secretary.

No. 53.

DENVER, COLO., *May 18, 1885.*

DEAR SIR: I have read with care the opinion of the Attorney-General with reference to the Executive order issued on the 27th of February last concerning the Crow Creek and Winnebago Indian Reservation. I have also read the proclamation of the President warning the settlers who went on between the date of said order and the proclamation of the President, that they must remove therefrom. I have noticed in the newspapers of the day the charge that the order of February 27 was issued without a careful consideration of the question said to be involved by the treaty of 1868.

Allow me to say that this question was presented to me more than a year before the order was made; that I gave it a careful consideration and arrived at the conclusion that the lands were not within the terms of the treaty of 1868. Without expressing any opinion on the question I submitted it to Mr. McCammon, Assistant Attorney-General, who after a careful consideration thereof came to the same conclusion I had. It cannot be said therefore that the case was not carefully examined and duly considered before action was taken. I withheld the order for some time hoping that the bill pending in Congress for the repeal of the pre-emption and timber-culture laws would pass the House of Representatives and become a law, for I desired, if possible, to save those lands not needed by the Indians for actual settlers under the homestead laws.

I do not intend in this letter to discuss the question which must occur to you—that is, whether the question of the proper construction of the treaty of 1868 having been con-

sidered by the Executive and decided did not become final and beyond the jurisdiction of his successors. That I must leave to be considered at another time and in a different manner.

Whatever may be the power of the present Executive over this question, it must be conceded that if the Executive order of February 27 had been allowed to stand the settlers would be now recognized in the Land Office as in the legal possession of the lands thrown out of the reservation by said order. Then any settler who went on those lands between the 27th of February and the 17th day of April last, went there with the approval of the Interior Department and without notice that a subsequent administration might revoke the order restoring the lands to the public domain.

It cannot be claimed that any turpitude attached to such occupation even if it is admitted that the proclamation of April 17 was authorized by the law and the facts in the case. The settlers, supposing the land to be public domain, went into occupation thereof, having the highest authority in the land for supposing that the occupation was legal and would be undisturbed and that in due time they might make title to their homes.

It cannot be said in this case that because a subsequent Administration revoked the order of February 27 the citizens who went on these lands were charged with the knowledge of the law in the case, and therefore are not entitled to be considered as occupants in good faith. The construction of a treaty is left to the political department of the Government, and that department has decided that the treaty did not give title to the Indians. All good citizens were authorized in supposing that decision as not only correct but a final determination of this question, there being no forum provided for the review of the determination of the political department in a case of this kind.

It appears to me that inasmuch as the settlers have gone on to the said lands under the circumstances I have mentioned, and inasmuch as such occupation in no wise interferes with the Indians, the Government should allow the settlers to remain until the question of the right between the Government and themselves may be settled by the action of Congress. If these lands belong to the Indians they should be paid for; they cannot use them now; very much more land than it is possible for them to make use of, even if they were inclined to do so, which they are not.

You will find a precedent for allowing the settlers to remain in the action of President Hayes with reference to the Uncompahgre Utes in Southwestern Colorado. Certain settlers having gone onto this reservation supposing it to be public land were subsequently included within the lines of the reservation by an Executive order to correct the lines as erroneously established. President Hayes ordered the settlers off, but, on its appearing that they had made the settlement in good faith, allowed them to remain until Congress treated with the Indians for the lands occupied by said settlers.

I trust, therefore, you will see your way clear to allow the settlers to remain until Congressional action can be had, for I am assured that great suffering will follow if they are compelled to abandon their homes thus made on what they supposed to be public domain.

I am, very respectfully,

H. M. TELLER.

HON. L. Q. C. LAMAR,
Secretary of the Interior.

No. 54.

NEWARK, N. J., May 18, 1885.

His excellency GROVER CLEVELAND,
President.

The Northern New Jersey Indian Association thank you for the suspension of the order to throw open the Crow Creek Reservation, as well as for your former services in the same cause.

They hope that if it shall ever be opened to settlers there will be such safeguards to property and to morals as will benefit both whites and Indians.

The steps you have so wisely taken betoken a better and juster treatment of the red man, so long the victim of greed and faithlessness.

I remain your obedient servant,

M. B. McILVAINE,
President.

(In behalf of Northern New Jersey Indian Association.)

[Indorsement.]

EXECUTIVE MANSION.

The within communication is respectfully referred to the Secretary of the Interior. By direction of the President.

DANIEL S. LAMONT,
Private Secretary.

No. 55.

CANNING STATION, WINNEBAGO RESERVATION, DAK.,
 May 18, 1885.

I have found various diamonds. There is a large bed of them; if you will be so good to send a man here. I am in the Winnebago Reservation. This land is very rich in diamonds of all kinds.

ALBERT HILLERT.

(Translation of letter in envelope addressed to the Secretary of the Interior.)

No. 56.

SIR: Whereas an order was issued on February 27, under the advice of ex-Secretary Teller, by which 500,000 acres of the Crow Creek Reserve were thrown into public lands; and whereas the representatives of the Indian Rights Association and others claim that said order is illegal and in violation of treaty obligations; and whereas its execution would involve much distress and suffering among peaceable Indians and would threaten the destruction of the work of civilization and philanthropy already begun among the Indians, and might lead to an Indian war of disastrous consequences in which our Government would stand accused before the world of injustice and attempted spoliation: Therefore, we, the undersigned, citizens of the United States, in New Haven, Conn., do humbly petition and pray that pending the suspension of said order, which has been directed by President Cleveland, the most thorough investigation may be made by your honorable Secretary of the claims of the Indians upon the above-mentioned reservation, and that if the representations of your petitioners be found to be in accordance with fact, said order may be revoked and the faith of the Government be assured and maintained to the Indians upon said reserve in all particulars and with all necessary executive authority.

D. A. GOODSSELL,
 President Indian Rights Association.

Hon. SECRETARY OF THE INTERIOR.

(Signed:)

Henry B. Harrison, Newman Smyth, Noah Porter, James D. Dana, Theodore D. Woolsey, C. R. Ingersoll, I. M. B. Dwight, Geo. P. Fisher, John H. Niemeyer, A. Van Name, M. Bailey, John J. DuBois, A. J. DuBois, F. B. Dexter, Stewart Means, E. T. Sanford, H. P. Nichols, Benj. R. English, C. S. Moorehouse, Edwin S. Lines, Charles Clark Camp, George S. Dickerman, Oliver S. White, Francis G. Anthony, Elias P. Merriman, William Hutt, G. I. Gilbert, George D. Watrous, Wm. K. Townsend, John P. Studley, Albert B. Hill, C. A. Terry, Sam'l Lloyd, Geo. W. Curtis, Gilbert F. Thompson, E. E. Beardsley, Edwin Harwood, Haslett McKim, jr., C. E. Woodcock, J. Streibert, E. W. Babcock, Geo. F. Holcomb, Jos. C. Earle, Clarence Deming.

The signatures to the foregoing petition comprise those of the governor of the State, Hon. Henry B. Harrison; the mayor of the city, Hon. George F. Holcomb; a Democratic ex-governor, the Hon. Charles R. Ingersoll; the president of Yale College, Rev. Noah Porter, LL. D.; the venerable ex-president of the same, Hon. Theodore D. Woolsey, LL. D., and many of its most eminent professors, such as James D. Dana and George P. Fisher, and others in every department of that institution; the officers of the New Haven branch of the Indian Rights Association; also many rectors or pastors of the largest and most influential parishes and congregations in New Haven, and a number of lawyers and other professional and business men of the highest respectability and consequence among our citizens.

No. 57.

85 PLYMOUTH AVENUE,
 Brooklyn, N. Y., May 22, 1885.

DEAR SIR: The "Western New York Women's Indian Association" requests me, as secretary of the society, to send you a note of thanks for your prompt righting of the Crow Creek wrong.

They also wished me to express their gratification with the sentiments of good-will towards the Indians given in your inaugural address, and the hope that fair and honorable treatment of them will endear your administration to all lovers of right and justice.

Very respectfully,

GROVER CLEVELAND,
President of United States.

MRS. D. M. HOUGH.

[Indorsement.]

EXECUTIVE MANSION.

The within communication is respectfully referred to the Secretary of the Interior.
By direction of the President.

DANIEL S. LAMONT,
Private Secretary.

No. 58.

BRYN MAWR, *May 26, 1885.*

DEAR SIR: The Bryn Mawr Auxiliary of the Woman's National Indian Association wish to testify their deep appreciation and gratitude for the prompt and energetic measures you have deemed it wise to take to right the wrongs of the Crow Creek Reservation, and look forward with hope, now that justice is being done to Indians by the "Great Father at Washington" to a brighter for the wards of the nation.

Very respectfully,

C. N. HOFFMAN,
Secretary B. M. I. A.

Hon. Mr. CLEVELAND,
President U. S. A., Washington, D. C.

[Indorsement.]

EXECUTIVE MANSION.

The within communication is respectfully referred to the Secretary of the Interior.
By direction of the President.

DANIEL S. LAMONT,
Private Secretary.

No. 59.

No. 913 G STREET, NORTHWEST,
Washington, June 4, 1885.

SIR: At the request of some of the friends of the Indian, I venture to trespass upon your valuable time with some statements regarding the "Crow Creek Indians," as they are termed, and also as to the "status" of their lands, which, by Executive order, were in part opened for settlement by the action of the late Executive, and which has since been revoked.

Allow me to remark that I was appointed their agent some three years since, and know of what I speak in relation to them and their lands.

By a treaty made with them in 1865 they were settled upon the lands they now occupy, and at the time it was understood that they were to be permanently located there, and for twenty years they have been in peaceful and undisturbed possession of the lands in question.

Prior to that time they were residing in what is the present a part of the State of Minnesota, and at the time of the Indian outbreak (some twenty or more years ago) they left their homes and placed themselves under the protection of the United States troops, refusing to become parties to the war then going on in any manner, and abiding by the treaty made by them, or their ancestors, with the whites in 1825-'26, a copy of which they have, and which they claim they have always kept.

At the time of this location they virtually gave up all their rights to other lands, with the understanding that the lands they were then to be located upon were to be their home in lieu of the lands they formerly had, and which have been sold, the proceeds turned into the Treasury, and from which they have never received any benefit whatever.

I wish to bear witness to their many virtues as a whole, as a patient, honest, hard-working people. True, there are some among them who are idle, but the proportion will not suffer in comparison with their white neighbors when both are taken into account; and for their "honesty," I think I can speak of them as the most "honest" community I have ever seen as a whole. As their agent I was in close relationship with them, and at all times found them willing to do as they were directed, and at all times willing to follow the ways of peace.

So much for the character of the Indians in question; and now as to their lands. In all they have about 625,000 acres, a part of which is not fit for agricultural purposes, but will do well for stock farming, and if they are to follow that as a means of subsistence they have no more land than is necessary for that purpose. Many of them have taken up lands in severalty, and the certificates have been issued in good faith, and they have in a large number of cases commenced the improvement of their several allotments, and in some cases these allotments are in a part of the lands that are thrown open to settlement, and from which they must be evicted if the order should be finally carried out.

I would desire to call your attention particularly to the agreement made between them and the "Sioux commission" that visited them in the winter of 1882-'83, when, after a long and protracted struggle, an agreement was finally made (and which failed of ratification by the Senate).

By that agreement, as a reason for the giving up of any portion of the land, it was stated that in return the Indians were to have certain cattle, tools, and other property to the value of many thousands of dollars as the main inducement for their parting with any of their land, and this agreement was a "hardly wrung one" from them, as they were especially averse to parting with any of the land, even upon these terms, while under the present order should the land be opened they get nothing, but are compelled to stand and see their property taken from them, and some of them compelled to quit their homes without any benefit accruing to them; nay more, a positive loss of years of hard labor being wrenched from them under the operation of the order. We are told, on the other hand, "that some of these settlers are to lose all they have if they are not permitted to enter on the lands of the Indian and are compelled to leave the reservation; that they have expended money in getting there, and that it is unjust, when these men have come in good faith, made their claim, &c., commenced the erection of a home, &c.," and other talk of a similar nature. Were the cases of each one of the so-called "settlers" investigated, I think that a large proportion of the cases would be found to consist of those who from the surrounding country have "squatted" not for the purpose of actual settlement but for the purpose of "turning an honest penny" at a future time in the "selling out" of any claim they may have upon the land in question. Two years since the same plan was tried on information "that the agreement was a law, and the reservation was open for settlement;" in less than twenty-four hours after the news came "claim" or other "shanties" to the number of from seventy-five to eighty were put up on this same land, and when they were ordered to tear them down and quit the reservation there was no voice raised deploring the hardships of the squatter, for the simple reason that the hardship was not to be seen; and I venture the assertion that to-day the cases are parallel, and the hardship complained of is more in the imagination than the reality.

Be that as it may, to my mind the simple question at issue is, what is right in the premises, and not a question of sympathy at all with the intruder on lands that are not his. As to the question of ownership of the lands, a higher authority than mine has passed upon that matter, but to my mind the title of the Indian to the land in question is as clear as the sun in heaven at mid-day.

Another consideration to me equally clear is this: From the day that the first shanty was erected in the vicinity there has been an itching desire on the part of certain individuals to gain possession of the lower part of the reservation (if not all), and for the patent reason that the location is a far better one in all respects than the city of Chamberlain occupies (they are divided by a creek merely), as the land not only is better adapted for building purposes, with the additional advantage that the lots in the city are held at almost fabulous prices, while land on the other side of the creek might be had for little or nothing in case that the reservation was to be open. Add to this the further feeling, "that the Indian has no rights that the white man is bound to respect," and that in the mind of the average settler he must be gotten rid of, "peaceably if we can, forcibly if we must," and we have the "animus" of the whole question.

While "I have no ax to grind," from what I personally know of the whole matter my convictions are on the side of the Indian, he being the weaker, less able to protect himself, but still having law, justice, and equity on his side, having been driven back, still back, and now trying to do his best, and show his manhood by his works, I think it ill becomes the United States, his guardian and protector, in this his hour of trial to turn him

over to the tender mercies of the frontiersman, who of all men has the most cause to wish his utter annihilation.

While I wish to pay a just tribute to those who by their energy have added to the area of available land of the United States, I think at the same time that a field for all their labors and legitimate operations exists of ample scope and verge, without adding land the property of others, who, because of their different color, are not supposed to be able to maintain their rights with the ability that the white man is known to possess.

If it be desired to acquire a portion of the land let it be purchased and paid for in the same manner that would obtain if the holder was of a lighter hue; but do not, because the owner is an Indian, despoil him of a foot of his inheritance without first giving him a chance to be heard in the matter.

Let an agreement (according to law) be made with the Indian for any land that may be desired, and that he may choose to sell, and, as his guardian and trustee give him the money as it may be thought best, and in a manner that will be for his permanent and lasting good, and not in gewgaws, trinkets, but schools, tools, and such articles as will raise him from a beggar to the dignity of a true manhood. The whole subject has so many bearings that in a few words it is impossible to convey what is meant; but the patent fact remains that the Indian, if the order is permitted to be operative as at the first intended, will be compelled to start again anew, and that with the prospect that by the time he has fairly commenced again he will be compelled again to move at the dictation of some one who wishes the land that he may be then occupying.

Having no personal interest in the matter to the value of a penny, and wishing that justice to the Indian may be done is my only excuse for thus speaking in his behalf, and also the fact that no one probably knows better the exact state of the question than myself, and with the desire that others may know and see as I do what they are, is the apology that I make for thus bringing the matter to your notice.

With a sincere desire that in this matter the right may prevail, and that if the land or any portion of it be taken it will be equitably paid for, and that the Indian be not robbed of what is undeniably his, I have the honor to remain,

Very respectfully, your obedient servant,

W. H. PARKHURST,

Ex-United States Indian Agent, Crow Creek and Lower Brulé Agency.

HON. SECRETARY OF THE INTERIOR,
Washington, D. C.

No. 60.

YORK, NEBR., June 7, 1885.

GROVER CLEVELAND,

President of the United States:

I hope you will remain firm and not change nor revoke your order in regard to the settlers vacating the Winnebago Reservation in Dakota.

Land sharks will move heaven and earth, if possible, to accomplish their purpose.

Your order was and is right; let it remain, and you will merit and receive the thanks and support of all who love mercy and justice.

Yours truly,

W. M. CRANE.

I am an humble citizen of Harmony, Edmunds County, Dakota. Post-office, Ipswich. I fear the suspension of an order so just as this would be the beginning of evils the end of which no man knoweth.

[Indorsement.]

EXECUTIVE MANSION.

The within communication is respectfully referred to the Secretary of the Interior.

By direction of the President.

DANIEL S. LAMONT,
Private Secretary.

No. 61.

DEPARTMENT OF THE INTERIOR,
Washington, June 8, 1885.

SIR: I have the honor to acknowledge the receipt of your letter of the 28th ultimo, requesting to be furnished with certain papers in the matter of the Old Winnebago and Crow Creek Reservations in Dakota, and also copies of such communications, if any, re-

ceived by the Department since the adjournment of the Senate on the subject of the leasing of the Crow Indian lands in Montana, together with maps of the Indian reservations in the Northwest.

In reply I have the honor to transmit herewith a report from the Commissioner of Indian Affairs, 6th instant, inclosing the maps requested and copies of certain correspondence on the leasing of the Crow Indian lands.

The papers, reports, and correspondence in the matter of the Old Winnebago and Crow Creek Reservations in Dakota are quite voluminous. Some are the repetition of the contents of others, and many of them contain no facts or matters necessary to an understanding of the case.

I have had them carefully examined with the view of selecting such as present all the facts in the case, and I inclose herewith for your information the following copies of papers on the subject:

- (1) Report of Commissioner of Indian Affairs of April 12, 1881.
- (2) Report of Commissioner of Indian Affairs of May 6, 1881.
- (3) Report of Commissioner of Indian Affairs of June 16, 1881.
- (4) Report of Agent Dougherty of May 30, 1881.
- (5) Report of Agent Dougherty of June 6, 1881.
- (6) Report of Commissioner of Indian Affairs of July 12, 1881.
- (7) Report of Agent Dougherty of June 20, 1881.
- (8) Brief of L. A. Luce, clerk, office of Assistant Attorney-General for Department of the Interior, dated July 13, 1881.
- (9) Letter by Secretary Kirkwood to the Commissioner of Indian Affairs, dated July 20, 1881.
- (10) Letter to General Sherman from the Indian Office, dated January 15, 1881.
- (11) General Sherman's reply, dated January 17, 1881.
- (12) Extract from journal of proceedings of the Indian Peace Commissioner who negotiated the Sioux treaty of 1868.
- (13) General Sherman's order of August 10, 1868.
- (14) Letter by Hon. A. J. Edgerton of September 27, 1884.
- (15) Synopsis of argument of General Farnsworth.
- (16) Brief prepared by the chief of the Division of Indian Affairs in the office of the Secretary of the Interior, dated January, 1885.
- (17) Brief prepared in office of Assistant Attorney-General for Department of the Interior, dated February, 1885.
- (18) Pamphlet of Executive orders establishing and defining Indian reservations. (See pages 19-23 for Old Winnebago and Crow Creek Reservations.)
- (19) Copy of Executive order of February 27, 1885.
- (20) Statement and argument by Henry L. Pancost, chairman law committee Indian Rights' Association, urging suspension of Executive order of February 27, 1885, until its validity could be passed upon by the proper authorities.
- (21) Letter of this Department of March 17, 1885, submitting the matter to the honorable Attorney-General for his opinion.
- (22) Opinion of the honorable Attorney-General, dated March 30, 1885.
- (23) Copy of letter from Agent Gasmann, dated March 9, 1885.
- (24) Copy of letter from Agent Gasmann, dated March 30, 1885.
- (25) Proclamation issued by the President, April 17, 1885, setting aside the Executive order of February 27, 1885.

Very respectfully,

H. L. MULDROW,
Acting Secretary.

Hon. BENJ. HARRISON,
Indianapolis, Ind.

(NOTE.—Copies of these inclosures will be found with the papers transmitted with the Secretary's report replying to the Senate resolution.)

No. 62.

(This paper is a duplicate of No. 65, which see.)

No. 63.

DEPARTMENT OF THE INTERIOR, *June 26, 1885.*

SIR: On the 28th of May last Hon. Benjamin Harrison of the Senate Committee on Indian Affairs, addressed a letter to this Department requesting to be furnished with

copies of certain papers in the matter of the old Winnebago and Crow Creek Reservation in Dakota, and of certain papers relating to the leasing of the Crow Indian lands in Montana.

His request was complied with by Department letter of June 8, 1885, inclosing therewith copies of the papers designated and described therein.

I now have the honor to inclose herewith for your information a copy of the reply made to Senator Harrison, together with copies of all the papers sent to him therewith. (See No. 61.)

Very respectfully,

L. Q. C. LAMAR,
Secretary.

Hon. JOHN T. MORGAN, U. S. S.,
Of Senate Committee on Indian Affairs,
No. 113 First street N. E. Washington, D. C.

(NOTE.—The inclosures noted in foregoing letter will be found with the accompanying papers herewith.)

No. 64.

YPSILANTI, June 16, 1885.

SIR: I have the honor to state that at the last meeting of the Ypsilanti Woman's Indian Association, auxiliary to the Woman's National Indian Association of Philadelphia, Pa., it was unanimously resolved, that the most grateful thanks of the association be sent to the President of the United States for his prompt and most efficient justice in making right the wrong of the Crow Creek and Winnebago affairs.

With respect, I have the honor to be, your most obedient servant,

I. M. BACON,
Secretary of Woman's Indian Association, Ypsilanti, Mich.

[Indorsement.]

EXECUTIVE MANSION.

The within communication is respectfully referred to the Secretary of the Interior.

By direction of the President:

DANIEL S. LAMONT,
Private Secretary

No. 65.

INDIAN RIGHTS ASSOCIATION,
OFFICE NO. 1316 FILBERT STREET,
Philadelphia, Pa., June 23, 1885.

SIR: In view of the urgent representations made to us by settlers upon Crow Creek and Old Winnebago Reservations, to the effect that great injury will be done them when they are obliged to leave the lands where they have settled, we, the undersigned members of the Indian Rights Association, beg leave respectfully to lay before you the following suggestions: It has been proposed that an additional section be inserted in Senate bill No. 1775 (which already provides for the reduction both of the Sioux Reservation on the west bank of the Missouri River, and also Crow Creek and Old Winnebago Reservations on the east bank of said river), whereby every settler who can, within a required time, show by affidavit before the local land office, or in such manner as may be thought advisable, that he entered upon one hundred and sixty acres of these lands in good faith, with the intention of taking up a homestead for himself, between the dates of President Arthur's proclamation (February 27) and President Cleveland's proclamation (April 17), shall, when these lands are lawfully thrown open under the provisions of Senate bill No. 1755 (known as the Sioux Bill), have the first right to claim that quarter section which he originally entered, provided that such quarter section shall prove to be upon land opened to settlement by said Sioux bill. By this plan these settlers who entered the reservation in good faith will be, so far as possible, protected from loss, while at the same time the United States will fulfill its obligations entered into with the Sioux Indians under the treaty of 1868. It is not intended that the proposed additional section to the Sioux bill should in any way interfere with the execution of the President's executive order of April 17. In our judgment, however, it seems to be a matter of the highest importance not only carefully to guard the rights of the Indians in this instance, as in all others, but also to shield such settlers as have en-

tered the reservation in good faith from pecuniary loss. By the plan thus indicated, and which we have purposely presented in a broad and unelaborate form, we believe this desirable object may be obtained.

The accompanying maps show the land thrown open to white settlement by President Arthur's executive order and by Senate bill No. 1755, respectively. We have reason to believe that this measure will have the support of those interested in the Sioux bill in the Senate.

Trusting that this suggestion may meet your approval, we remain,

Your obedient servants,

WAYNE MACVEAGH, *President.*
 JAMES E. RHOADS, *Vice-President.*
 HERBERT WELSH, *Cor. Sec'y I. R. A.*
 CHARLES E. PANCOAST, *Rec'd'g Sec'y I. R. A.*
 HENRY S. PANCOAST, *Chairman Law Committee.*
 ROBERT FRAZIER.
 CLEMENT M. BIDDLE.
 J. TOPLIFFE JOHNSON.
 J. RODMAN PAUL.
 THOMAS STEWARDSON.
 H. W. FRAZIER, Jr.
 C. STUART PATTERSON, *Treasurer.*

The PRESIDENT.

[Indorsement.]

EXECUTIVE MANSION.

The within communication is respectfully referred to the Secretary of the Interior.
 By direction of the President:

DANIEL S. LAMONT,
Private Secretary.

No. 66.

LANARK, ILL., June 25, 1885.

DEAR SIR: I inclose clipping from Chicago Tribune of yesterday. It as the mouth-piece of the extreme radical branch of the Republican party is making every effort to break down any movement in opposition to the old Indian ring, and would very much enjoy seeing you back down from the position you have taken in relation to the *squatters* on the Crow Creek Reservation, but I assure you, sir, that you are on the right track and your course is being eagerly watched by a large class of people irrespective of party who believe that the Indians are the wards of the nation, and that with proper treatment they may yet be redeemed from the degrading position many of them now occupy by just such a class of *squatters* as have recently located *claims* on the Crow Creek Reservation, and I sincerely trust that you will go ahead and prove to the American people that you have a mind of your own and a will to carry it out. But don't never take this question into the courts. If you do all your good resolutions will be lost, for the Indian will never get fair treatment in the so-called courts of justice. But go ahead, Mr. President, and if you would call in the services for consultation of a few such men as Bishop Whipple of Minnesota and General Miles of the Army you would surely succeed in bettering the condition of a race of men who are deserving of a better fate, and who under proper influences would soon become self-supporting.

Wishing you every success in this undertaking, I remain,

Yours, respectfully,

J. QUINCY WALKER,
 3362 *Prairie Avenue, Chicago.*

Hon. GROVER CLEVELAND,
Washington, D. C.

[Copy of article from Chicago Tribune inclosed.]

Later reports from Washington state that the President is disposed to exercise a little more moderation in his treatment of the Crow Creek settlers. The first announcement was that if any of them were found on their farms after June 17 force would be used to remove them. They are all there yet, and no troops have been ordered out. Indeed it

is now said that the Administration thinks of removing one settler only, in order to make a test case and get the matter before the courts. The settlers can hardly object to this, and ought to be pleased to see Mr. Cleveland and Mr. Lamar getting down from the very high horses they started to ride a short time ago. The courts will settle this matter very thoroughly and speedily.

No. 67.

CHAMBERLAIN, *June 28, 1885.*

DEAR SIR: I feel the necessity of writing a few lines to you, asking you for the privilege of taking the crop off this fall that we have put out on the Crow Creek and Winnebago Reservation, as crops are very poor in this section of country on account of the drought.

We shall need all we have raised to keep us from suffering next winter; in fact, many will have to suffer if they have to move off, if they can't get help some way. Three persons have lost their lives on account of exposure. Old men and women sixty years old don't know where to go.

I am not the only man who worked all night the 28th of February last to erect a shanty to get my family in, to hold my claim, fully expecting to get it.

Respectfully yours,

A. M. HAVILAND,
Chamberlain, Dak.

I will add that we feel as though we are not trespassers; that we came upon this land by proper authority from the Government; and for the Government to put us off and give our breakings and wells that we have dug to a class of people whom the toiling thousands have to help to support—who work just when they please, and lay idle the rest of the time—without any compensation to us, don't suit very well.

While we are on friendly terms with the Indians here, as they pass my house every five days, I could only say now that we are still living here, hoping, through the mercies of God and your majesty's power, there will something turn up to our relief yet.

ACTUAL SETTLER.

[Indorsement.]

EXECUTIVE MANSION.

The within communication is respectfully referred to the Secretary of the Interior.
By direction of the President:

DANIEL S. LAMONT,
Private Secretary.

No. 68.

DEPARTMENT OF THE INTERIOR,
Washington, July 2, 1885.

SIR: Referring to letter of this Department of 26th ultimo, furnishing for your information certain papers in relation to the Old Winnebago and Crow Creek Reservations in Dakota, I now have the honor to transmit a further communication lately received by this Department from the Indian Rights' Association of Philadelphia, Pa., dated June 23, 1885, upon the same subject.

Very respectfully,

H. L. MULDROW,
Acting Secretary.

Same to Hon. Benjamin Harrison, U. S. S., Indianapolis, Ind.
(For inclosure see No. 65.)

Hon. JOHN T. MORGAN, U. S. S.,
Of Senate Committee on Indian Affairs, Washington, D. C.

No. 69.

CHAMBERLAIN, DAK., *July 11, 1885.*

DEAR SIR: My letter of inquiry to Mr. S. D. Hinman, who the settlers on Crow Creek sent to represent their case at Washington, has been returned undelivered, and I write you as we are anxious to know the results officially.

We suppose Messrs. H. & Lawler presented affidavits of settlement from settlers, improvements, &c.; also letters on the subject from the commissioners of the treaty of 1868 and other proofs, to your honor.

Please let me know if they are left on file now in your office.

We also wish to know at once (now that the case has been presented to yourself and Mr. Cleveland, as we suppose) the settlers are to be put off or the matter allowed to rest until Congress can adjust it.

Some with *tears*, others with *curse*s, have left their homes, hoping to be allowed to return before they are destroyed and lumber stolen, as is apt to be the case with buildings left alone out in the country.

Others are living on their claims and farming, and say they *can't* go and have no place to go to or means to go with; others will contend to the last for their rights.

That is the situation here. Hoping to hear from you by return mail that there is great mercy and justice to be looked for under these trying circumstances,

I am, your servant,

GEO. R. OWEN,

Secretary Settlers' Union, Chamberlain, Dak.

Hon. Secretary LAMAR.

I inclose statement of our case, just printed. Please read and preserve.

Why the Crow Creek settlers should be allowed to remain, and what should be done with the Sioux Reservation.

All this land was ceded to the Government by the Yankton Indians in 1858 up as far as Medicine Knoll Creek. (See book of Revised Treaties, page 855.)

The title to this land was conceded to be in the Yankton Indians. (See action of Congress in accepting it in 1858 and paying for it, and also Indian powwow of Sioux at Fort Laramie in 1851, page 1048, same book; also page 856 in Treaty of 1858.)

The Government ceded the Old Winnebago Reservation to the Indians in 1863 and took it back in 1865. (See page 1814.) Congress accepted it back and made it Government land, giving the Winnebagoes land near the Omaha Reservation in Nebraska, and in 1865 the Winnebagoes settled there.

The Government moved the Santees to Crow Creek in 1863 from Minnesota, by Mr. Thompson, John P. Williamson accompanying them as missionary; and then, without confirming the land to them either by act of Congress or Executive order, moved them away, or rather the Indians refused to stay in 1866, and neither by act of Congress, Executive order, or Department letter set apart either the Crow Creek or Winnebago Reservation, now so called, either whole or in part, for these or any other Indians or designated it as Indian lands or as a part of the great Sioux Reservation, and it remained as public lands until 1875. A portion of it was surveyed in 1870. (See records of Land Office.)

The present Indians came there in 1869, drifting down from Standing Rock, without direct authority from the Government, no Indians living there in 1868. (See statement of Missionary John P. Williamson, who was all over these lands in 1868.) Agent Hansen compelled or authorized a few of the Two Kettles to get their rations there in 1868, but none of them lived or habited there that year.

That White Ghost and his band, who now claim the land, drew rations at Standing Rock and other agencies in 1868, as shown by the records, and came on these lands in 1869 with no authority, except that they have since been suffered to remain.

That the records show the land was withdrawn from market by Executive order in 1876, and restored in 1885 by the same authority. (If by treaty of '68" it was Indian land, why did it need to be withdrawn from settlement?)

That the records show a portion of this land was surveyed in 1868-'9, after the treaty, and plats filed in the Springfield land office for settlement in 1870, and remained until withdrawn in 1875, a part having been surveyed in 1854. If Indian land by treaty of '68," why was this done?

The interpreter, Hinman, Commissioners Sanborn and Terry, all say that no one intended to make this a portion of the Great Sioux Reservation. See their statements on file in the Secretary of the Interior's office.

The words, "Existing reservations on the east bank of the Missouri River," was simply put there to please some person or Indian, or written in by a clerk without any definite certain thing, only to cover all questions about the Yankton lands, Devil's Lake lands, or Sisseton or Wahpeton, or any other existing reservation, if any. One commis-

sioner, or agent, says it is a mistake, and should be "side" instead of "bank" of the Missouri River. To claim that this land was made a reservation by the treaty of 1868, and brought into existence by that treaty when it used the words "existing reservations," is a singular construction of the English language.

That in 1868 there was nothing on record showing the present boundaries of these two reservations. They were never fully given, and the only way the present boundaries were fixed was after Grant had taken all these and other lands out of the market in 1875. The Executive, at different times, simply opened all but this and left this land unopened, and Arthur only followed his predecessor's precedents and open some of it.

Arthur opened a lot of these same lands in 1883 that Grant had withdrawn at the same time. Why don't Cleveland restore these? There were some half a dozen tracts above and about Fort Sully.

Captain Daugherty in 1880, in company with J. H. King, called the attention of the Secretary of the Interior to the fact that these Indians had no title to these lands, and Carl Schurz at that time agreed to appoint a commission to negotiate with them and to give them title to a part and let a part be opened to settlement, but the Commissioner of Indian Affairs opposed it, and it was not done. Senator Kirkwood recommended this course and asked the appointment of J. H. King as commissioner; and when Kirkwood was Secretary of the Interior it was thought he would carry out his own recommendation, but he again ran across the Indian Department, who opposed it and claimed the land, and he referred the matter to the Commissioner of Indian Affairs, and he refused to act.

Carl Schurz admitted that it was right and ought to be done, but refused to act. Kirkwood admitted the Indians had no title, and recommended a commission, and then refused to act.

When Teller was appointed the matter was more fully and carefully briefed up and argued in all its phases, and he more thoroughly and clearly than any saw the justice of it; but the commission to treat with the Sioux having been appointed he thought it best to wait.

When the Sioux treaty bill of 1882 failed he would have opened it but for the earnest opposition of Price.

At the pow-wow with the Sioux commission in 1882, at Crow Creek, the Sioux commission went over the whole ground with these Indians in regard to their title, and not an Indian nor commissioner claimed or took any other position but that they had no certain title, and Rev. Burth insisted and urged the Indians to sign on this account, and but for this fact they would have followed the example of the Lower Brulés, and never signed the treaty at all. They understand they have no title, and wanted to get title to sufficient lands for their own use.

The Sioux commission expressly told these Indians that they had no title to these lands, thereby not recognizing Indian right to the land, but treating for it with that across the river, for convenience, believing it was the easiest and quickest way to get possession of it, but not the only way.

The missionary at Yankton Agency, Rev. John P. Williamson, who thoroughly understands the situation, says these Indians have no right or title to these lands by virtue of any treaty whatever. Mr. Williamson is more familiar with the actual facts than any other living man, being the longest in the missionary service of any Indian missionary on the Missouri River, and an honest man if there is any in the United States.

The settlers have been perfectly peaceable, built good houses, and want only what legally belongs to them.

The rapid settlement of the reservation so called does not argue, as stated, that it was a speculative scheme. The facts are these:

It has been known East and West for years that these lands were at any time liable to be opened for settlement, and hundreds of people moved here from Eastern, Western, and Southern States and settled in towns along the Chicago, Milwaukee and Saint Paul Railroad, which skirts the very edge of said lands, so as to be sure of a farm and home of their own when the "promised land" did open. They have lived here, some of them one year, many of them more, their little capital daily diminishing, as business has been dull, and must be with only half of the country developed. These people, by authority of the Government, of course made a grand rush for free homes with what little they had left, and many of them are now in financial distress. If it is argued that many of the settlers have left the reservation it must be remembered that it is by order of the nation's highest executive, and shows them to be loyal citizens. Also that many women and children brought up in Eastern homes cannot be kept out in the country on land surrounded by Indians, with reports weekly being circulated that the troops are coming to put them off and burn their homes, followed by reports that the Indians, though now peaceable, are coming soon, &c., especially when the men, scared out of putting in suffi-

cient crops for fear they will not be left to harvest, have to be away earning bread for the family.

While this is the case with many, there are still brave ones who still stay by their claims and till the soil, not believing that this great Christian nation will drive them from the homes they have taken under its invitation and at the expense of their all.

There are some empty houses on the reservation built by men who have gone East for their families, and, while preparing to move them here, learned that this great nation could not be relied on and had countermanded its order. They are still in the East awaiting results. Many in towns here, fearing to have their families on the lands, or unable to support them there without right to till the soil with surety of title, are anxiously waiting, while others still living there look in each other's faces in anxiety and inquire of every passer-by, "What's the news?" Shall these be turned off and all improvements, amounting to hundreds of dollars with some, the little all with others, be lost until some great Sioux bill can be passed, and then return to find them stolen or useless?

The President, the highest authority in the land, invited these people to come here and build homes. Now the President, the highest authority in the land, says get out and leave them. Did you ever see a wicked boy call a hungry dog to him, hold out a piece of bread, and, just as the dog with happy wag of the tail was about to take it, a heavy kick sent him howling away, hungry and suffering. That is just what this great Government is doing with her children. Many a man has his all in his improvements—only a few hundred dollars, to be sure—but what is to become of it if he leaves it? You Eastern philanthropists, who live in homes built upon grounds whereon rested the wigwam of the Mohawk and Oneidas, the Wyomings and the Susquehannas, and many others who were driven across the Alleghenies by the bullet and the strong hand of civilization, without recompense and without reward—what would you say if Congress now undertook to right the imaginary wrongs perpetrated in the long ago by New England, the Middle States, and the Southern States, and say get out of your homes until a bill is passed settling their rights.

Us Western people say in the first section of our prospected bill, "no Indian shall leave the home of his choice." We come with the olive branch of peace, civilization, and education and propose that the Indian shall have all the land he can use of the choicest and the best, and notwithstanding we have for years poured into the lot of the Sioux millions upon millions, until we are lost in dollars and cents, and fed, clothed him from youth to old age, yet now we propose to buy what he cannot use and pay him millions on millions for it, and more, we propose to settle by him and be his neighbor and let the law be fixed so that he can buy and get from the white man, take title from him, but no white man can take what the Indian has or take title from him, and we propose as fast as he can read, write, and speak the English language to give him the elective franchise; and yet you will not. We ask to meet you in Chicago for conference and counsel, and yet you refuse and declare you will have tribal patents and a landed aristocracy without taxation that in number of acres and extent exceeds any of the individual landed aristocrats in all the world. All Dakota asks for is what the Indians cannot use. The white soldier with his family, under the laws of the United States, cannot take but 160 acres for a homestead; no married woman, no child can take an acre, but here we propose that the Sioux, the hero of New Ulm and Custer massacre shall first take 160 for himself, then 80 more for his wife, and 80 for every child, and let him have the proceeds of millions reserve, and yet you will not. The soldier must go and starve; you will not even let him dig in the vacant soil. In all this fuss about the Indian not one Indian home has been invaded, removed, or spoiled, or proposed, to be on Crow Creek.

But the Dawes bill, to please Major Gasmann and the haughty chief Big Main, proposes to remove a whole tribe. This we oppose. There should be no reservation lines. The Indian severalty bill should be the law, and the world will some time see it, whether the Indian Right Association does or not.

No. 70.

PUKWANA, July 27, 1885.

HONORABLE AND DEAR SIR: I am an old Buffalo mason and resident for forty years. I voted for you four times and I voted for the party for forty years, and I am well known there, and I am now writing to you from the Crow Creek Reservation.

I have got seven boys, three of age and the rest under; one born on election day, and I named him after you. My boys have been brought up on a little farm outside of Buffalo, which we sold and came out here when we heard the land was given out. We brought a car-load with us, horses, cattle, and all farming tools we need here, and when we got here the land was all taken up. Lots of men on the old reservation that have got

claims came and stuck up shanties thinking they could file on them and sell them to the poor settlers when they came in. They never lived on them and all they did was to stick up a shanty, and when you issued your proclamation they thought the Democrats were going to give out the [land] for homesteads, and then they have no right here. I got onto four claims, one for each boy that is of age, and one for myself. I have built a horse-stable and a place to live in for each, and broke twenty acres and dug two wells. I heard of the gentlemen in Chamberlain after they were gone. I would have been there if I had known it in time. I suppose they meant the actual settlers that were living on the reservation, but there were none of them went off; they were like myself; they had no place to go. I have been through for miles and I find a lot of hard working, industrious class of people. If the shanty-builders are let come back again there is no chance for me and others around me. If I thought there was I would commence building my cellar to get my house built before the cold weather comes, but I hear so many tales I don't know what to believe. If I only could get some good news. I pray God's blessing to rest on you.

I remain, your servant,

President GROVER CLEVELAND.

PAUL ASHLEY,
Pukwana, Brulé County, Dakota.

[Indorsement.]

EXECUTIVE MANSION.

The within communication is respectfully referred to the Secretary of the Interior.
By direction of the President.

DANIEL S. LAMONT,
Private Secretary.

No. 71.

DEPARTMENT OF THE INTERIOR,
Washington, August 27, 1885.

SIR: I have the honor to inclose herewith copy of a report from the Commissioner of Indian Affairs of the 26th instant, with its inclosure, on the subject of cattle belonging to the Government, which have been driven under cover of darkness from the Old Winnebago and Crow Creek Reservations in Dakota, and are held for damages by parties off the reservations, who refuse to deliver them up until they are settled with.

The Commissioner recommends that the proper United States attorney be instructed to replevy the cattle belonging to the Government and now held by the persons referred to, and adds that the United States Indian agent will be instructed to furnish the United States attorney with the names of the parties to these transactions and of witnesses to the facts.

I concur in the Commissioner's recommendation, and respectfully request that matter may have early attention by your Department.

I have the honor to be, very respectfully, your obedient servant,

L. Q. C. LAMAR,
Secretary.

Hon. ATTORNEY-GENERAL.

(NOTE.—The inclosures mentioned in the foregoing letter were duplicates of those forwarded to the honorable Secretary of War with Department letter of 27th August, 1885, and reference is made thereto.)

DEPARTMENT OF JUSTICE,
Washington, August 29, 1885.

SIR: I am in receipt of your letter of 27th instant, with inclosures therein noted, relative to the driving of cattle belonging to the Government from the Old Winnebago and Crow Creek Reservations in Dakota.

The case has been referred to the United States attorney for Dakota, with instructions in accordance with recommendations of the Indian Commissioner.

Very respectfully,

JOHN GOODE,
Acting Attorney-General.

The SECRETARY OF THE INTERIOR.

No. 72.

DEPARTMENT OF THE INTERIOR,
Washington, August 27, 1885.

SIR: I have the honor to inclose herewith a copy of a report of the 26th instant, with its inclosure, from the Commissioner of Indian Affairs, on the subject of removal of alleged settlers and other unauthorized persons from the Old Winnebago and Crow Creek Reservations in Dakota Territory, who have failed to comply with the President's proclamation of April 17, 1885, requiring them to vacate and remove therefrom.

As requested by the Commissioner, he has this day been authorized to instruct the agent in charge of the Crow Creek Indian Agency to remove the alleged settlers and all other unauthorized persons from the reservations, and if he shall find it necessary to accomplish this purpose to call upon the commanding officer of the nearest military post for such force as may be necessary to assist in effecting the removal.

I have the honor to request that you will, as recommended by the Commissioner, cause the necessary instructions to be issued to the proper military officer to furnish such assistance as the agent may require and call for to aid him in carrying out his orders on the subject.

I have the honor to be, very respectfully, your obedient servant,

L. Q. C. LAMAR,

Secretary.

HON. SECRETARY OF WAR.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, August 26, 1885.

SIR: Referring to the proclamation of the President, dated April 17, 1885, canceling and declaring void the Executive order of February 27, 1885, restoring to the public domain a portion of the Old Winnebago Reservation and the Sioux or Crow Creek Reservation, on the east bank of the Missouri River, in the Territory of Dakota, and warning and admonishing all persons "now in the occupation of said lands under color of Executive order, and all such person or persons as are intending or preparing to enter and settle upon the same thereunder, that they will neither be permitted to remain nor enter upon said lands, and such persons as are already there are hereby required to vacate and remove therefrom, with their effects, within sixty (60) days from the date hereof; and, in case a due regard for and voluntary obedience to the laws and treaties of the United States and this admonition and warning be not sufficient to effect the purpose and intentions as herein declared, all the power of the Government will be employed to carry into proper execution the treaties and laws of the United States herein referred to," I have the honor herewith to inclose a copy of a letter, dated the 17th instant, from Agent Gasmann, in charge of the Crow Creek Agency, in which he says that owing to the presence of settlers on that portion of the reserve known as the Big Bend, the only place where the agency beef-herd can be held and wintered, his chief herder reports that he is experiencing great difficulty in holding his cattle there, and that at the present time a large number has been driven out during the night and are now being held for damages by parties off the reservation, who have refused to deliver them until he, the agent, has made settlement with them.

This brings up the question of removing all settlers from the reservation under the President's proclamation, the time thereby limited within which settlers were required to remove having expired on the 15th of June, 1885.

I have no late information as to the number of settlers on the reservation, but those that are there are there in violation of the President's proclamation, the terms of which are plain, clear, emphatic, and easily understood, and, in my opinion, there is no excuse for any longer delay in the matter.

These settlers have had ample time and opportunity to remove from the reservation, but they seem to defy the Government, and are committing such overt acts that no further delay in their removal should be tolerated. I therefore have the honor to recommend that authority be granted the agent in charge to remove all settlers and all other unauthorized persons from the reservation, and that if he is unable to do so without the aid of the military, that he call upon the commanding officer of the nearest post for such aid as will effect the desired end.

I further recommend that a copy of this report be forwarded to the Hon. Secretary of War, accompanied with a request that he cause the necessary instruction to be issued to the proper office to furnish the necessary force to effect the removal upon the call of the agent in charge.

That portion of Agent Gasmann's letter which relates to the removal by settlers from the reservation and holding of Government cattle for damages by parties outside the reservation will form the subject of another communication.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

Hon. SECRETARY OF THE INTERIOR.

UNITED STATES INDIAN SERVICE,
Crow Creek Agency, Dakota, August 17, 1885.

SIR: I have the honor to inform you that owing to the presence of white settlers on that portion of this reserve known as the Big Bend, the only place where the agency beef-herd can be held and wintered, my chief herder reports that he is experiencing great difficulty in holding his cattle there, and that at the present time a large number has been driven out during the night and are now being held for damages by parties off the reservation who have refused to deliver them up until I have made settlement with them.

I have informed them as to the law governing claims against the Government and requested them to turn the cattle over to the agency herder and to present their claims to the Department through me for adjustment.

I have also, in case they should refuse to comply, requested the United States commissioner and marshal to take possession of them for me.

I fear that all of these parties may refuse to comply with my request, as one of them, who is holding a portion of the cattle and who has already refused to deliver them, and demanded the pay of me, is a deputy marshal.

I fear that these troubles will be a frequent occurrence unless steps are at once taken to remove the settlers from the Big Bend.

There are but a few of them, not more than a dozen in all, but others are going in, taking with them herds of cattle, occupying the watering places, cutting large quantities of hay, and acting as if they intended to make it their permanent homes, utterly disregarding the order of the President, and threatening hostilities in case I should send out the Indian police against them.

To avoid any collision between Indians and the white neighbors, and to prevent the loss of Government property, I would suggest that a small force of troops may be sent from Fort Sully (distant from this part of the reserve about forty miles) for the purpose of removing all settlers from the bend and upper end of the reserve.

If in the wisdom of the Department such action shall be deemed advisable, I beg that it may be carried out at the earliest practicable date, as delay will greatly add to the difficulty of removing them. If they are not removed, great loss must accrue to the Government, as there is no other fit place on this reserve for holding cattle without feeding during the winter.

Very respectfully, your obedient servant,

JOHN G. GASMAN,
United States Indian Agent.

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

No. 73.

DEPARTMENT OF THE INTERIOR,
Washington, August 27, 1885.

SIR: I have considered your report of the 26th instant, referring to the President's proclamation of April 17, 1885, declaring inoperative and of no effect the Executive order of February 27, 1885, which sought to restore to the public domain a portion of the Old Winnebago and Crow Creek Reservations in Dakota, said proclamation requiring all persons upon said lands under color of said Executive order to remove therefrom within sixty days, which period has already expired.

It is now reported by Agent Gasman, in charge of the Crow Creek Agency, that by reason of the presence of the intruders—alleged settlers—upon those lands he is having great difficulty in holding the beef-herd of cattle on the reservation.

In view of this fact, and in compliance with your recommendation, you are hereby authorized to instruct the proper Indian agent to remove all alleged settlers and other

unauthorized persons from the reservation, and, if it should be necessary to accomplish this purpose, to call upon the commanding officer of the nearest military post for such aid as may be required.

The honorable Secretary of War has this day been requested to cause the necessary instructions to be issued to the proper military officers to furnish, upon call of the agent, such force as may be required to effect the removal of the persons referred to from the reservation.

Very respectfully,

L. Q. C. LAMAR,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

No. 74.

CHAMBERLAIN, DAK., November 10, 1885.

MR. PRESIDENT: We are one family of the ex-settlers "of Crow Creek." I wish you would please read this letter, that your attention and through you Congress, may be drawn to a subject hitherto unnoticed.

For eighteen years my husband has been a prominent dealer in agricultural implements in Dubuque Iowa. At times well off—at all times able to support his family in comfort and keep our boys [four, oldest 15, youngest 4] in school.

On the opening of the "reservation" he concluded to start immediately and secure a home in this new country, farm it awhile, as our boys needed the physical development to be derived from outdoor work, never doubting we would be able to place them in school winters.

Three weeks after he left Dubuque I gathered together our possessions, a car-load of stock, and the boys, and joined him, he having built on a "160" near "Crow Creek." Soon after I arrived rumors of "illegality of President Arthur's act" reached us and we decided it was best to do something toward a livelihood elsewhere until the question was acted upon. He crossed the line, rented an improved quarter-section, and made haste to put in nearly 120 acres of wheat, oats, and corn, not omitting a fine garden. On the 17th of June we moved our buildings, put them up on this place, and were thankful we were so comfortable. Our crops looked the finest in the vicinity. On the 24th of July a hail storm destroyed every green leaf on the place—lost everything except a few acres of wheat which was cut and shocked.

And now, *here we are*, in the midst of a "Dakota blizzard, without wood, a small stock of groceries, and *just one silver dollar left*; no outside business to be done to earn support, and, *worst of all*, boys out of school.

Now it seems but just as we came here under legal sanction that Congress should reimburse (settlers from abroad particularly) the money expended, or at least enough to enable them to leave and go where there is something to do. If that cannot be done, call us red, name us Indians, and care for us.

If this has reached you, and you have read it patiently I *thank you*, and as I have no wish for newspaper notoriety,

I sign, confidentially,

MRS. J. O. CONRICK,
Ex-"Crow Creek" settler.

For reference, I think Senator Allison will know of us.

No. 75.

[Extract from the annual report of the Secretary of the Interior for the fiscal year ending June 30, 1885.]

The Old Winnebago and Crow Creek Indian Reservations in Dakota Territory.

I had scarcely entered upon the duties of this office when I was confronted with grave difficulties and embarrassments, growing out of an order issued by President Arthur on February 27, 1885, restoring to the public domain the greater portion of the lands comprised within the boundaries of the Old Winnebago and Crow Creek Reservations. Complaints were made at once by the agent for the Indians occupying those lands, and by various individuals and associations of individuals throughout the country, that the rights

of the Indians, guaranteed to them by treaties, had been invaded and violated by the issuance of said Executive order. Attention was called especially to the fact that this order, throwing open these lands to settlement, was to take effect, not prospectively, at some future day, as is usual with such orders, but instantly, upon the date of the order.

I gave the matter careful consideration, having first directed that the land offices should allow no filings or declarations to be made with reference to lands within the limits of said reservations.

These two reservations contained an aggregate area of about 620,312 acres. The former was occupied by the Winnebagoes until the treaty with these Indians, proclaimed March 28, 1866 (14 Stat., 671), ceded their right, title, and interest therein to the United States. The Crow Creek Reservation was occupied by certain bands of Sioux Indians named in the law of March 3, 1863 (12 Stat., 819) for whom that tract of land was selected in pursuance of the provisions of that law. These Sioux Indians remained upon the latter tract until 1866, when they were removed to another, selected for them as better adapted to their wants, on the Niobrara River, in Nebraska Territory. Other Indians of the Sioux tribe moved upon and occupied portions of the two old reservations thus vacated, and the lands remained in their occupancy until the treaty of April 29, 1868, with the Sioux Nation of Indians (15 Stat., 635).

In article 2 of that treaty provision is made for a reservation for the Sioux Indians. After describing the boundaries of said reservation west of the Missouri River, that article contains the following words:

"And in addition thereto, all existing reservations on the east bank of said river shall be, and the same is set apart for the absolute and undisturbed use and occupancy of the Indians herein named," &c.

Under this clause of the treaty it was held by this Department that the Old Winnebago and Crow Creek Reservations on the east side of the Missouri River were made a part of the great Sioux Reservation provided for in that treaty, and they were so treated by the laws of Congress, by other treaties with Indians, and by the administrative action of the Department, until February 27, 1885, when President Arthur issued the order above referred to.

On March 17, 1885, I submitted for the consideration of the Attorney-General and for his opinion thereon the two questions:

First. Whether the lands comprising the two tracts, or either of them, were at the date of the treaty of April 29, 1868, with the Sioux Indians in a state of reservation and "existing reservations" within the meaning and intent of article 2 of said treaty?

Second. Whether it was in the power and authority of the Executive to restore to the public domain those portions of the land in question thus sought to be affected by the Executive order of February 27, 1885?

The honorable Attorney-General held, in opinion given March 30, 1885, that "the lands in question are covered by the treaty of April 29, 1868, and consequently that the Executive order of February 27, 1885, is inoperative."

After consideration of the subject by the President, he determined that "the lands so proposed to be restored to the public domain by said Executive order of February 27, 1885, are included as existing Indian reservations on the east bank of the Missouri River by the terms of the second article of the treaty with the Sioux Indians, concluded April 29, 1868, and that consequently, being treaty reservations, the Executive was without lawful power to restore them to the public domain by said Executive order, which is therefore deemed and considered to be wholly inoperative and void."

This decision was announced by the issuance of a proclamation by the President on April 17, 1885, warning and admonishing all persons in the occupation of said lands under color of said Executive order, as well as those who may be intending or preparing to enter and settle upon the same thereunder, that they will neither be permitted to remain or enter upon said lands, and requiring those persons already there to vacate and remove therefrom with their effects within sixty days from the date thereof.

The governor of Dakota, in his reports, states that this order has been almost universally obeyed, and that these lands are practically free from settlers. The exceptions, if any exist, are cases in which a removal would cause suffering. Many of the settlers, I am told, went there in good faith under what they supposed was proper authority.

The case requires legislation.