

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING,

In response to resolution of February 14, 1891, information relative to instructions touching allotments of land on the Pottawatomie Reservation.

FEBRUARY 27, 1891.—Referred to the Committee on Appropriations and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, February 26, 1891.

SIR: I have the honor to acknowledge the receipt of the following resolution of the Senate, dated 14th instant:

Resolved, That the Secretary of the Interior be, and is hereby, directed to communicate to the Senate the instructions, if any, which have been given touching allotments of lands on the Pottawatomie Reservation, in the Indian Territory, and the proceedings which have been had thereunder, together with the reasons for such instructions, which may relate to the rights of the Indians of said tribe to select lands upon said reservation according to their own view as to the desirability of location.

In response thereto I have the honor to transmit herewith copy of a communication of 25th instant and its inclosures from the Commissioner of Indian Affairs.

This correspondence, it is believed, furnishes the information desired by the Senate.

Very respectfully,

JOHN W. NOBLE,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 25, 1891.

SIR: I have the honor to acknowledge the receipt, by Department reference for report, of the following resolution of the Senate, adopted February 16, 1891:

Resolved, That the Secretary of the Interior be, and is hereby, directed to communicate to the Senate the instructions, if any, which have been given touching allotments of lands on the Pottawatomie Reservation, in the Indian Territory, and the proceedings which have been had thereunder, together with the reasons for such instructions, which may relate to the rights of the Indians of said tribe to select lands upon said reservation according to their own view as to desirability of location."

In compliance with said resolution I have the honor to transmit herewith copies of all general instructions given Special Agent Porter for his guidance in making allot-

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ments of lands on said reservation, and also copies of correspondence between this office and the Department relating to allotments on said reservation, and especially to the matter of a dividing line between said Indians and the Absentee Shawnees, which correspondence will doubtless sufficiently show the reasons for the instructions relating "to the rights of the Indians of said tribe to select lands upon said reservation according to their own view as to the desirability of location."

Very respectfully, your obedient servant,

R. V. BELT,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, May 17, 1887.

The SECRETARY OF THE INTERIOR:

SIR: The act of May 23, 1872 (17 Stats., 159), authorized and directed the Secretary of the Interior to issue certificates by which allotments of land lying within the 30 miles square tract theretofore selected for the Pottawatomie Indians, and lying next west of the Seminole Reservation, in the Indian Territory, should be made to each member of the Pottawatomie band, known as the Pottawatomie Citizen band, as follows:

To each head of a family, and to each other member 21 years of age, not more than one-quarter section, and to each minor of the tribe not more than 80 acres.

It is also provided that certificates of such allotment should be made in severalty, specifying the names of individuals to whom they had been assigned, and that said tracts were set apart for the exclusive and perpetual use and benefit of such assignees, and their heirs.

"Provided, That such allotments shall be made to such of the above-described persons as have resided or shall hereafter reside 3 years continuously on such reservation, and that the cost of such lands to the United States shall be paid from any fund now held, or which may be hereafter held, by the United States for the benefit of such Indians, and charged as a part of their distributive share, or shall be paid for by said Indians before such certificates are issued."

These Indians had all been previously made citizens of the United States, and by a provision in the act they could neither acquire nor exercise under the laws of the United States any rights and privileges in the Indian Territory other than those enjoyed by members of the Indian tribes residing therein. They were also permitted to enforce the laws and usages theretofore enforced among them as an Indian tribe for the protection of rights of persons and property among them.

The second section of the same act provided as follows:

"When it shall be shown to the satisfaction of the Secretary of the Interior that any Indian of pure or mixed blood of the Absentee Shawnees, being a head of a family or a person over twenty-one years of age, has resided continuously for the term of three years within the thirty mile square tract, lying west of the Seminole reservation in the Indian Territory, and has made substantial improvements thereon, it shall be the duty of the Secretary of the Interior to issue to said Indian a certificate of allotment for eighty acres of land, to include, as far as may be practicable, his or her improvements, together with an addition of twenty acres for each child under twenty-one years of age belonging to the family of said Indian."

Under the provisions of this act 131 allotments were made to members of the Citizen band of Pottawatomies in 1875, and the schedule of the same, approved by the Secretary of the Interior, November 23, 1875.

Three hundred and twenty-seven allotments (including children) were also made to the Absentee Shawnees and approved on the same date, (November 23, 1875).

June 2, 1882, this office recommended that certificates of allotment be issued to the Absentee Shawnees for the lands allotted in 1875, the position being taken that the Shawnees were not required to pay for their lands.

June 14, 1882, this recommendation was approved by the Department.

Upon a further examination of the schedule, with a view to the issuance of certificates, it was found impossible to issue the same, on account of the defective classification by families.

Under date of January 20, 1883, E. B. Townsend, then special agent, was instructed to proceed to the reservation for the purpose of making a corrected list of the allotments, and of making allotments to those who had become entitled thereto since 1875.

April 30, 1883, Special Agent Townsend reported that the Absentee Shawnees refused to take their lands in severalty.

This action resulted from the influence of the chiefs and the superstition of some of the non-progressive Indians.

Since that time various efforts have been made by the agents to induce the Shawnees to take allotments, and October 28, 1885, late Agent Taylor forwarded a corrected and classified list of the allotments made in 1875.

It being reported, however, that the surveys were in such condition that it was impossible to locate the tracts correctly, and the Indians having petitioned that no action be taken in the matter until a dividing line had been established between them and the Pottawatomies, no further action was had.

January 19, 1884, nine certificates of allotments were issued to members of the Citizen band of Pottawatomies, the cost of the land (\$131.60) having been reimbursed to the United States, and April 27, 1885, two more were issued, the cost of the land (\$72) having been reimbursed.

Among the principal causes which have led the Shawnees to oppose a division of their lands in severalty has been the location of the Citizen Pottawatomies upon the same reservation.

In order that a clear understanding of the matter may be had, it is necessary to refer, somewhat at length, to the history of the reservation.

By the treaty of November 15, 1861, with the Pottawatomies (12 Stats., 1191) provision was made whereby members of that tribe could become citizens of the United States, receive patents in fee for their lands, and be paid their proportion of the cash value of the credits of the tribe.

By the treaty of March 29, 1866 (14 Stats., 763), the beneficial provisions of the treaty of 1861 in behalf of the prudent and intelligent members of the tribe were extended to all adult members of the tribe.

February 27, 1867, another treaty was concluded with these Indians (15 Stats., 531), the first article of which contemplated their location, if satisfactory to them and approved by the Secretary of the Interior, upon a tract of land "not exceeding 30 miles square," which "shall be set apart as a reservation for the exclusive use and occupancy of that tribe; and upon the survey of its lines and boundaries and ascertaining of its area, and payment to the United States for the same, as hereinafter mentioned and set forth, the said tract shall be patented to the Pottawatomie Nation."

This provision was apparently intended for the benefit of those members of the Pottawatomie Nation who should elect to retain their tribal relations, but under the several treaties every member of the Pottawatomie Nation (except the Prairie Band separately provided for) became a citizen of the United States.

Notwithstanding this fact, in December, 1869, a committee of the Citizen Pottawatomies visited the Indian Territory, and selected a tract of land immediately west of the Seminole Nation, containing 900 square miles, which tract was already occupied by the Absentee Shawnees.

This selection was reported to the Secretary of the Interior November 3, 1870, and approved by him November 9, 1870.

March 16, 1872, the Secretary of the Interior decided that the land selected by the Pottawatomies under the treaty of 1867 could not be conveyed by patent to the Nation, for the reason that as all the members of the tribe had become citizens the nation had become extinct.

For this reason the cost of the lands to the Government was not withheld from the proceeds of the sales of land, as provided in the treaty.

On account of this decision legislation was invoked, which resulted in the passage of the act of May 23, 1872.

The Absentee Shawnees separated from the main body of the Shawnee Nation about the year 1840, removed to the Indian Territory, and settled on their present location.

In his annual report for 1871 John Hadley, then United States Indian agent for the Sac and Fox Agency, states that there were then located on the 30-mile-square tract 650 Absent Shawnees. He says:

"It will be remembered that these people located on the lands which they now occupy more than 30 years ago, and with little or no aid from the Government made themselves homes, and were living quite comfortably at the outbreak of the rebellion. Most of them were cultivating more or less land and numbers had more or less stock. But as they remained loyal they had to abandon their homes and seek shelter in the North." (Annual Report for 1871, page 494.)

A feeling of uneasiness and insecurity has existed among these people since the settlement of the Pottawatomies upon the lands exclusively occupied by the former for more than 30 years.

The two tribes have not assimilated, and do not agree well together.

The Shawnees have repeatedly requested that the Pottawatomies be confined to the south side of Little River, which divides the reservation from east to west into two nearly equal parts, the Shawnees to be confined to the north side of said river. The allotments made in 1875 conformed to this division.

The Commissioner of Indian Affairs in his report for 1872 (page 39) says:

"Although the act of May 23, 1872, provides for individual allotments of lands indiscriminately to Pottawatomies and Absentee Shawnees within the 30-mile-square

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tract, yet it is intended in making such allotments that they shall be so far as practicable for the former out of lands lying south of Little River and for the latter out of lands lying north of it."

Recommendations have been made to Congress for legislation establishing a dividing line in this reservation, but without result.

In this report upon the Sae and Fox Agency, dated April 23, 1887, Inspector Gardner says that lands should be allotted in severalty to each of the tribes, they being well advanced in civilization and self-supporting.

In considering the matter of allotments to these Indians two questions arise beside that of a dividing line.

The act of 1872 gives to the Pottawatomies the following quantities of land:

To each head of a family, and to each other member, 21 years of age, not more than 160 acres, and to each minor of the tribe not more than 80 acres, the cost of the same to be reimbursed to the United States before certificates are issued. Three years' continuous residence upon the reservation is also required.

Under this provision, married women over 21 are entitled to not more than 160 acres, while under the allotment act of February 8, 1887, they are entitled to no land. Minors are also entitled to not more than 80 acres, while under the act of February 8, 1887, minors under 18, not orphans, are entitled to 40 acres.

As they were required to pay for their lands under the act of 1872, however, I am of the opinion that said act can in no way govern the quantity of land to be allotted under the later act.

Nor do I think that these Indians are now required to pay for their land, it being the manifest intention of the act of 1887 to give each of the classes of Indians therein named the quantity of land specified, without cost to the Indians.

I am therefore of opinion that allotments should be made to the citizen Pottawatomies, under the act of 1887, without reference to the act of 1872.

The second section of the latter act provides for allotments to such of the Absentee Shawnees as have resided continuously on the reservation for 3 years and have made substantial improvements thereon. They were not required to pay for the land.

Each head of a family, or person over 21 years of age, is entitled to 80 acres, with an addition of 20 acres for each child under 21 years belonging to the family of said Indian.

Under the construction placed upon this section by this office each head of a family and each person over 21 years of age, whether married or single, was entitled to 80 acres, and each head of a family to 20 acres additional for each child belonging to his family. Single persons under 21 not being entitled to an allotment.

The basis of this division of lands is entirely different from that established in the act of 1887, and the attempt to follow both would result in endless confusion.

While under the first act the quantity of land allotted to the head of a family might be larger than under the act of 1887, and the wife would also be entitled to 80 acres, yet the aggregate quantity allotted to the whole family would not be as large as under the latter act.

For instance, under the act of 1872, the head of a family, having a wife and 4 children, would be entitled to 160 acres (80 in his own right and 20 for each of the 4 children), the wife to 80 acres and the children to none, an aggregate of 240 acres. Under the act of 1887, the head of the family would be entitled to 160 acres and each of the children to 40 acres, an aggregate of 320 acres.

Certain conditions, as before noted, are also required under the act of 1872 to entitle members of the tribe to allotments.

For these reasons I am of the opinion that allotments should be made to the Absentee Shawnees in quantity as specified in the act of 1887.

As to the question of the dividing line between the two tribes, I am of the opinion that while there is no authority of law for the establishment of such a line, the members of each tribe may be required to select their allotments from a certain designated portion of the reservation.

The entire reservation of 575,877 acres was not granted to these tribes by the act of 1872, but a sufficient quantity of land to permit each member to select the specified number of acres.

As before stated, it was the declared intention of this office as early as 1872 to confine the allotments to each tribe, to separate and distinct portions of the reservation, and this policy, I believe, to be for the best interests and happiness of each tribe.

If any Indian has made substantial improvements upon the part of the reservation assigned to the tribe of which he is not a member, he may be allowed to retain them and have the land allotted to him, but with this exception, I think allotments to the Pottawatomies should be made on the south side of Little River, and to the Absentee Shawnees on the north side of said river.

The Absentee Shawnees are estimated to number 775 and the Pottawatomies are reported to number 306.

It is estimated that there are 120,000 acres of tillable land in the reservation.

The entire reservation has been surveyed and subdivided, but the agent reports under date of April 14, 1887, that the corners established by the surveyors were wood stakes and small earth mounds, which have long since disappeared, and that a resurvey of the entire reservation will have to be made before the lands allotted can be located.

If a special agent be appointed who is a competent civil engineer it is thought that the lines may be retraced by him and the corners re-marked contemporaneously with the allotment of the lands, and the Indians thus get a better knowledge of the location of their several tracts.

The expenses incident to re-marking the corners can be paid for out of the appropriation for surveys and resurveys made by the ninth section of the act of February 8, 1887.

I have the honor to recommend that the President be asked to direct that allotments be made to the Absentee Shawnees and citizen Pottawatomies in accordance with the views hereinbefore expressed and to appoint a special agent for that purpose, who shall also be competent to execute the necessary resurveys.

Very respectfully, your obedient servant,

D. L. HAWKINS,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, May 23, 1887.

The President:

I have the honor to submit herewith a letter of 17th instant from the Commissioner of Indian Affairs upon the subject of the allotment of lands in severalty to members of the citizen band of Pottawatomies and the Absentee Shawnee Indians, located upon the 30-mile square tract selected for the Pottawatomie Indians, lying west of the Seminole Indian Reservation in the Indian Territory, and under the jurisdiction of the Sac and Fox Indian Agency.

Provision for the allotment of land and the issuing of certificates therefor to these citizen Pottawatomie and Absentee Shawnee Indians is made in the act of May 23, 1872 (17 Stats., 159).

The entire reservation in question which contains 575,877 acres, was not granted to these bands by the act of 1872, but only a sufficient portion or quantity thereof to permit each member to select a specified number of acres, and it is estimated that there are 125,000 acres of tillable land in the reservation; the number of Indians thereon being reported as 1,081—366 of which are citizen Pottawatomies, 775 Absentee Shawnees.

The commissioner reports that the entire reservation has been surveyed and subdivided, but that the agent reports that the corners established by the surveyors were wooden stakes and small earth mounds which have long since disappeared, and that a resurvey of the entire reservation will have to be made before the lands to be allotted can be located.

In relation to these allotments he states that the act of 1872 gives to the Pottawatomies the following quantities of land:

"To each head of a family, and to each other member twenty-one years of age, not more than 160 acres, and to each minor of the tribe not more than eighty acres, the cost of the same to be reimbursed to the United States before certificates are issued. Three years' continuous residence upon the reservation is also required."

Under this provision married women over 21 are "entitled to not more than 80 acres, while under the allotment act of February 8, 1887, they are entitled to no land. Minors are also entitled to not more than 80 acres, while under the act of February 8, 1887, minors under 18 not orphans are entitled to 40 acres," and "as they were required to pay for their land under the act of 1872," he is of the opinion "that said act can in no way govern the quantity of land to be allotted under the latter act."

He does not think that these Indians are required to pay for their land, it being the manifest intention of the act of 1887 to give each of the classes of Indians therein named the quantity of land specified without cost to the Indians, and he is therefore of the opinion "that allotments should be made to the Citizen Pottawatomies under the act of 1887 without reference to the act of 1872."

Concerning the provisions in the second section of the act of May 23, 1872, for the allotment of lands to the Absentee Shawnee Indians, the Commissioner reports:

"The basis of this division of lands is entirely different from that established in the act of 1887, and the attempt to follow both would result in endless confusion."

"While under the first act the quantity of land allotted to the head of a family might be larger than under the act of 1887, and the wife would also be entitled to 80 acres, yet the aggregate quantity allotted to the whole family would not be as

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large as under the later act;” and for these (and other) reasons, he is of opinion that the allotments “should be made to the Absentee Shawnees in quantity as specified in the act of 1887.”

Concurring in the views of the Commissioner, I have the honor to respectfully request that your direction may be given for the allotment of lands to the Indians indicated under the act of February 8, 1887, and that direction may also be given for such resurveys upon said reservation as may be found necessary in making such allotments.

I have the honor to be, very respectfully, your obedient servant,

L. Q. C. LAMAR,
Secretary.

[Indorsement.]

Approved.

EXECUTIVE MANSION, May 24, 1887.

GROVER CLEVELAND.

DEPARTMENT OF THE INTERIOR,
Washington, May 26, 1887.

The COMMISSIONER OF INDIAN AFFAIRS:

SIR: I inclose herewith executive direction of 24th instant, indorsed upon a letter of May 23, 1887, addressed to the President upon the subject, for the allotments of lands in severalty to the Citizen Pottawatomie and Absentee Shawnee Indians located upon the 30-mile square tract in Indian Territory, and the necessary resurveys therefor under the act of February 8, 1887, as recommended in your letter of 17th instant.

Very respectfully,

H. L. MULDOON,
Acting Secretary.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, August 10, 1887.

N. S. PORTER, Esq.,

United States Special Agent to make allotments of lands in severalty to Indians:

SIR: Under date of May 24, 1887, the President granted authority for making allotments of lands in severalty, under the provisions of the act of February 8, 1887, to the Citizen Pottawatomie and Absentee Shawnee Indians located upon the 30-mile square tract lying west of the Seminole Reservation in the Indian Territory.

Under this authority you will proceed to the Sac and Fox Reservation and said 30-mile-square tract for the purpose of making such allotments, in conjunction with Agent Moses Neal.

The first section of the act of May 23, 1872 (17 Stats., 159), authorized and directed the Secretary of the Interior to issue certificates by which allotments of lands lying within said 30-mile square tract should be made to each member of the Pottawatomie band, known as the Pottawatomie Citizen band, as follows:

To each head of a family, and to each other member 21 years of age, not more than one-quarter section, and to each minor of the tribe not more than 80 acres.

It is also provided that certificates of such allotments should be made in severalty, specifying the names of the individuals to whom they have been assigned, and that said tracts were set apart for the exclusive and perpetual use and benefit of such assignees and their heirs.

“*Provided*, That such allotments shall be made to such of the above-described persons as have resided or shall reside three years continuously on such reservation, and that the cost of such lands to the United States shall be paid from any fund now held, or which may hereafter be held, by the United States for the benefit of such Indians and charged as a part of their distributive shares, or shall be paid for by said Indians before such certificates are issued.”

Under the provisions of said section 131 allotments were made to members of the Citizen Band of Pottawatomies in 1875, and the schedule of the same was approved by the Secretary of the Interior November 23, 1875.

The Secretary of the Interior having decided that, as the nation had become extinct by reason of all its members being made citizens, the land could not be patented to the nation, no certificates of allotment have been issued, except in eleven cases, schedule inclosed, in which the cost of the lands to the United States was refunded by the allottees.

The second section of said act of May 23, 1872, provided as follows:

"When it shall be shown to the satisfaction of the Secretary of the Interior that any Indian of pure or mixed blood of the Absentee Shawnees, being a head of a family, has resided continuously for the term of three years, within the thirty-mile-square tract, lying west of the Seminole reservation in the Indian Territory, and has made substantial improvements thereon, it shall be the duty of the Secretary of the Interior to issue the said Indian a certificate of allotment for eighty acres of land, to include as far as may be practicable his or her improvements, together with an addition of twenty acres for each child under twenty-one years of age belonging to the family of said Indian."

Under the provisions of said second section 327 allotments (including children) were made to the Absentee Shawnees, and approved November 23, 1875.

No certificates were issued for these allotments for various reasons.

October 28, 1885, late Agent Taylor forwarded a corrected and classified list of these allotments, but at the request of the Indians no action has been taken thereon.

The list is inclosed for your information. (Copies of the approved schedules are on file at the agency.)

As certain conditions were imposed by the act of 1872, and it being the evident intention of the act of 1887 to give each Indian a separate allotment of land without cost and without conditions as to cultivation, etc., the Secretary has decided that allotments shall be made both to Pottawatomies and Absentee Shawnees in quantity as provided in the general allotment act, viz:

To each head of a family, 160 acres;

To each single person over 18 years of age, 80 acres;

To each orphan child under 18 years of age, 80 acres; and to each other single person under 18 years of age, born prior to the order of the President directing the allotments, 40 acres.

The joint occupation of this reservation by the two tribes or bands of Indians has long been a source of vexation to each, particularly to the Absentee Shawnees, who have repeatedly requested that a dividing line between them be established.

The line suggested is the Little River, the Pottawatomies to be confined to the south side of said river and the Shawnees to the north side, and the allotments heretofore made have been upon that basis.

In making the allotments you will confine the choice of the Shawnees to the north side of said river and the Pottawatomies to the south side, except that if any Indian has made substantial improvements upon the part of the reservation assigned to the tribe of which he is not a member he may be allowed to retain them and have the land allotted to him. He may also select land for his own minor children upon the side on which he is located.

(1) Subject to the above qualification you will allow the Indians to select their lands, heads of families selecting for themselves, and their minor children.

(2) Selections for orphans will be made by yourself and Agent Neal.

(3) Allotments should be made with reference to the best interests of the Indians, the choice portions of the reservation to be given them, and care taken to see that they have every possible advantage which the reservation affords.

(4) Every allotment should be distinctly marked with permanent monuments, and each allottee (of sufficient age) should be personally shown the boundaries of the allotment selected by him, so that he will understand exactly where the land lies, and every possible means should be used to familiarize them with the boundary lines.

(5) The tracts given to each allottee should be contiguous, if possible; but an allottee may be allowed to select a detached tract of timber land, if it be impracticable to include such land in a tract contiguous to the selection of farming land, or for the purpose of securing an equitable division of water privileges so that it may not be monopolized.

(6) Each Indian should be allowed to select his land so as to retain improvements already made. Where land heretofore allotted is in possession of and improved by a person other than the original allottee you will allow such person to select said land.

Where land heretofore allotted is not in the possession of any one, you will treat it as vacant, allowing the original allottee the preference right to select it if he so desires, and where a former allottee desires to select land other than that heretofore allotted him you will allow him to do so and regard the new selection as a surrender of his original allotment.

Where the improvements of two or more Indians have been made on the same legal subdivision of land, a provisional line should be run dividing the land between them, as provided in section 2 of the act, unless an arrangement can be made between them by which the tract can be given to one of them. This arrangement, however, must be satisfactory to all the parties.

(7) Indian women married to white men should be regarded as heads of families. The white husbands can not take allotments.

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In all cases where Indian women have been married to Indian husbands and have children born of such marriage but have been divorced from such husbands after the Indian custom, the mother should receive an allotment as the head of the family, and should be allowed to select land for her children not under the charge of the father at the date of these instructions, if competent to do so.

(8) Where an Indian has a plurality of wives, the first wife should be regarded as the legal one, and the others allowed to take allotments as single persons.

Orphans are children who have lost both parents.

Should any question arise regarding the eleven allottees who have received their certificates, it will be considered hereafter.

You will prepare a separate schedule of the allotments made to each tribe, each family being grouped by itself, and the relationship of each member to the head shown in the column of remarks.

For the purpose of identification, the age as well as sex of each allottee should be given if possible.

Both English and Indian names should be entered upon the schedules, and great pains taken to write the latter especially distinctly.

It will save much trouble in posting the allotments in the tract books if you can arrange them by sections and townships.

The law requires the schedules to be in duplicate.

They should be posted in the agency tract books before transmission, or copies retained for that purpose.

The duplicate schedules should be certified to by you and Agent Neal as being correct and that each allottee is entitled to the lands allotted to him.

Your attention is called to the provisions of the act with reference to religious societies or organizations.

A supplemental schedule will be prepared and submitted by you for the action of the Secretary of the Interior, under the provisions of the general allotment act, showing the lands, not exceeding 160 acres in any one tract, occupied upon the reservation at the date (February 8, 1887) of the passage of the law by any religious society or other organization for religious or educational work among the Indians.

You will also note on the schedule all tracts occupied for agency and school purposes.

In this connection your attention is called to the inclosed letter from Agent Neal, in which he requests that certain tracts be reserved for the use of the Absentee Shawnee school in lieu of certain tracts heretofore reserved for that purpose.

You will confer with Agent Neal upon this matter, and endeavor to induce the parties who may be in possession of the land, if such there be, to take their selections elsewhere, so that the desired tracts may be reserved for the use of the school.

You will do such retracing of lines and re-establish such monuments as may be found requisite, employing a surveyor and the necessary assistants, who should be Indians in all cases where practicable.

For such persons you will furnish proper vouchers and subvouchers and report the employes upon a list of "irregular employes"

Such expenditure without further authority must be limited to \$900.

It is expected that you will exercise great care in the work, to see that the lands are divided as equitably as possible and to the satisfaction and welfare of the Indians.

While making the allotments both you and Agent Neal will make every possible effort to induce the allottees to locate permanently upon their selections.

The land is given the Indians for the purpose of cultivation and self-support, and they are expected to make use of it for this purpose. No opportunity to impress this fact upon them should be lost.

Very respectfully,

A. B. UPSHAW,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, August 11, 1887.

The COMMISSIONER OF INDIAN AFFAIRS:

SIR: The instructions prepared in your office for the information and guidance of the special agent appointed under the provisions of the act of February 8, 1887, and the agent in charge of the Sac and Fox Agency, Ind. T. to make allotments in severalty to the Citizen Pottawatomie and the Absentee Shawnee Indians, located upon the 30-mile-square tract lying west of the Seminole Reservation in said Territory, received with your letter of 10th instant upon the subject, having the approval of the Department, are herewith returned.

The agent of the Sac and Fox Agency, Ind. T., should be informed of the appointment of Mr. N. S. Porter under the third section of the general allotment act of Feb-

ruary 8, 1887, to coöperate with him in making allotments to the Indians on the reservation under his charge, and that full instructions have been given in the matter in a letter addressed to the special agent, for their guidance in executing the provisions of the law.

Very respectfully,

H. L. MULDROW,
Acting Secretary.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, September 24, 1887.

N. S. PORTER, Esq.,

United States Special Agent, Sac and Fox Agency, Ind., T. :

SIR: Referring to your communication, dated September 13, 1887, in which your request to be instructed to allot lands to the Pottawatomies south of Little River, and to the Absentee Shawnees north of said river, if not inconsistent with the policy of the Department, I have to call your attention to the following paragraph on page 4 of your instructions, dated August 10, 1887:

"In making the allotments you will confine the choice of the Shawnees to the north side of said river, and the Pottawatomies to the south side, except that if any Indian has made substantial improvements upon the part of the reservation assigned to the tribe of which he is not a member, he may be allowed to retain them and have the land allotted to him. He may also select land for his minor children upon the side on which he is located."

It is therefore the policy of the Department to confine the Pottawatomies to the south side of Little River as far as practicable.

It is not regarded as practicable to compel an Indian who has made substantial improvements to abandon them without compensation and remove to a new location.

I am not advised as to the number of Pottawatomies who have made such improvements north of Little River, but it is thought that the number is not so great as to interfere seriously with the Shawnees.

Of course, if any Shawnee is willing to purchase the improvements of any Pottawatomie, and a price satisfactory to the latter can be agreed upon, the transaction may be allowed; but if a Pottawatomie with substantial improvements is unwilling or unable to dispose of them, he should not be required to relinquish them.

Very respectfully,

J. D. C. ATKINS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 28, 1887.

THE SECRETARY OF THE INTERIOR:

SIR: I have the honor to acknowledge the receipt, by Department reference for consideration and report, of a communication from A. F. Navarre, "agent Citizens Band of Pottawatomie Indians," dated November 28, 1887, in which, referring to the clause in the instructions given Special Agent Porter for his guidance in making allotments requiring the Citizen Pottawatomies to select their lands south of Little River, he says:

"The third clause, act of Congress February 8, 1887, confirms the act of May 23, 1872, to the Pottawatomie Citizens' Band an allotment of lands as follows, to wit:

"To each head of a family and to each other member 21 years of age not more than one-quarter section; and to each minor of the tribe not more than 80 acres; and to select allotments of lands in severalty anywhere within the 30-mile-square tract in the Indian Territory.

"While the act of the 23d of May, 1872, requires that the Shawnees must have substantial improvements in the reservation to entitle them to a home there, it will be noticed the law makes no conditions of that kind as regard the Citizens' Band of the Pottawatomie Indians.

"The Pottawatomie Citizens' Band are citizens of the United States; hence the law of February, 1887, is not applicable to that band, but only to Indians in 'tribal relations' and other Indians not citizens of the United States.

"Therefore, in behalf of my people I appeal earnestly for your decision at once upon the question as to the quantity of acres of land we are entitled to, and as to the right to select anywhere within the said tract the allotments of our lands."

I have also received a report from Special Agent Parsons, dated November 10, 1887, upon this subject. He contrasts the character and condition of the Shawnees and Pottawatomies, the contrast being favorable to the latter, and says that it will be advantageous to the former to have the latter mixed with them.

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He also states that the land north of Little River is far superior to that south of the river, and that very few of the Kansas Citizen Pottawatomies will go to the Territory unless they are allowed to select their lands north of Little River.

He therefore, "at the request of the Citizen Pottawatomies of Kansas, over 1,000 in number, and as result of my own conviction of what is best for all parties," recommends that they may be allowed to select their lands regardless of any dividing line.

In a communication addressed to the President, November 26, 1887, A. B. Peltier, Battin Pambays, Stephen Nehahonquot, members, and Joseph Moose, secretary, of the business committee, complain that the married women of the tribe are excluded from taking allotments, and claim that through treaty stipulations members of the Citizen Band have the right to select their land within the 30-mile-square tract.

They ask that they be given the right accorded by the treaty.

In a report dated December 10, 1887, Special Agent Porter, after stating the progress of the work, says that the instructions governing the same were, in his opinion, well chosen, and will result in the greatest good to the greatest number.

The questions raised in the foregoing communication were thoroughly discussed in office report of May 17, 1887, and decided by you May 24, 1887.

The act of May 23, 1872 (17 Stats., 159), authorized allotments to be made to members of the band who had resided or who should reside 3 years continuously within the 30-mile-square tract, but before any title could be conferred the allottees were required to pay for the land.

Under a liberal construction of the act of February 8, 1887 (24 Stats., 388), it was held that the requirements of the act of 1872 as to residence and payment might be waived and allotments given to the Pottawatomies without cost to them.

If they are citizens, as claimed by Mr. Navarre, and not within the provisions of the act of 1887, they can get no land without paying for it.

This may be correct under a strict construction of the act, but I believe the act should be liberally construed for the benefit of the Indians, whether they are quasi citizens or not.

If the Pottawatomies accept the benefits of the act of 1887, they must accept them in quantity and manner as provided in that act.

If married women desire to take allotments and will tender the cost of the land, as required by the act of 1872, I presume that the certificates of allotments as provided for in that act may be issued to them.

I do not see that these Indians have any cause for complaint.

They were allotted lands in Kansas, made citizens of the United States, and paid their pro rata share of the funds of the tribe.

After they had sold their allotted lands and wasted their substance in riotous living they were allowed to select a tract of land in the Indian Territory, upon which other Indians had been living prosperously and contentedly for more than 30 years. Within this tract they were allowed the privileges of purchasing from the Government a certain quantity of land each at the cost price of the same.

In 15 years but eleven members have availed themselves of this privilege.

When they were given this tract they were informed by this office that it was expected that they would confine themselves to the south side of the Little River.

They have now been informed that each member of the band, including those living in Kansas who have never been upon the reservation (except married women) could have a certain quantity of land without expense, for which patents would be issued subject to two conditions, first: That they must select their lands within a certain portion of the reservation containing at least half of its area; and, second, that the quantity of land in some cases would be smaller than the quantity which they had the right to purchase.

I do not believe that the circumstances require any modification of the instructions given Special Agent Porter.

I transmit the papers and request the return of such as belong to the files of this office.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, January 4, 1888.

The COMMISSIONER OF INDIAN AFFAIRS:

SIR: I return herewith the inclosures which accompanied your report of 28th ultimo, relative to a communication addressed to this Department by Mr. A. F. Navarre, signed by him as "Agent Citizen Band of Pottawatomie Indians," who requests that the instructions issued under date of August 11, 1887, to Special Agent Porter and the agent

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in charge of the Indians upon the 30-mile-square tract in Indian Territory, for their guidance in making allotments of land in severalty to Indians upon said tract, under the provisions of the act of February 8, 1887, may be modified as to the quantity of acres of land they (the Pottawatomies) are entitled to; and, further, so as to permit them to select lands anywhere within the said tract.

This Department concurs in the opinion expressed in your report adverse to the modification of the instructions issued to the agent and special agent above referred to, and your office is hereby instructed to so inform the parties complainant.

Very respectfully,

H. L. MULDROW,
Acting Secretary.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, April 23, 1889:

N. S. PORTER, Esq.,
United States Special Agent, Ponca, Nebr.:

SIR: In accordance with the directions of the Secretary of the Interior, you are hereby instructed to proceed at once to the completion of the allotment of lands on the Pottawatomie and Absentee Shawnee Reservation in Indian Territory, in accordance with the instructions given you under date of August 10, 1887.

You will push this work to ultimate completion with all possible dispatch consistent with a proper performance of the duty assigned you.

The schedule of allotments made by you under previous instructions will be forwarded to you at the Sac and Fox Agency, that you may make any corrections or revision that may be found necessary.

I transmit to the agency 25 blank township plats for your use, also 50 blank allotment sheets.

Authority has been requested for you to employ a surveyor or surveyors, and the necessary assistants, who should be Indians in all cases where practicable, for the purpose of retracing lines and reestablishing such monuments as may be found requisite, such expenditure without further authority to be limited to \$1,500.

Very respectfully,

R. V. BELT,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, June 13, 1889.

N. S. PORTER, Esq.,
United States Special Agent, Sac and Fox Agency, Ind. T.:

SIR: I am in receipt of your communication, dated June 4, 1889, in which you state that there are a number of Indians now living on the Pottawatomie and Absentee Shawnee Reservation who have made application for allotments for their wives, members of one of those tribes, the husbands belonging to other tribes, and ask for instructions in regard to such cases.

In reply, I quote from the instructions given for the guidance of the special agent in making allotments on the several reservations attached to the Quapaw Agency, where there were known to be a number of such instances:

"In cases where the husband and wife are members of different tribes, and the family resides upon the reservation of the tribe to which the husband belongs, allotments should be made to him as the head of the family, as usual; but if such family resides upon the reservation of the tribe to which the wife belongs, she should be regarded as the head of the family; or, if the parties so desire, the husband may take 80 acres in the reservation to which he belongs and the wife 80 acres in the reservation of her tribe. The children may have their allotments in either reservation, but not in both."

These instructions will apply to the Pottawatomie and Shawnee Reservation.

Very respectfully,

R. V. BELT,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, July 8, 1889.

The SECRETARY OF THE INTERIOR:

SIR: I am in receipt of a communication from Special Agent Porter, now engaged in making allotments to the Absentee Shawnees and Citizen Pottawatomies, dated

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June 4, 1889, in which he requests that his instructions be so amended as to permit him to give to each single person over 18 years of age at the date of his orders to resume work 80 acres, and to each person under 18 years of age born prior to said orders 40 acres.

Under his present instructions he is required to take the ages of the allottees as of the date of the President's order directing allotments (May 24, 1887), their age at that date determining the quantity of land to which single persons are entitled.

Children born since that date are not entitled to allotments.

These instructions were based upon a clause in the first section of the act of February 8, 1887 (24 Stats., 388), which provides for allotments "to each other single person under 18 years now living, or who may be born prior to the date of the order of the President directing an allotment of lands embraced in any reservation."

So far as allotments to children born since the 24th of May, 1887, are concerned the only way in which they can now be given allotments is by cancellation of the said order and the issuance of a new one authorizing allotments to be made on the said Pottawatomie and Absentee Shawnee reservation; but the instructions requiring the ages of the allottees to be taken as of the date of said order may be modified with the approval of the Department.

Such modification, however, would accomplish but a part of the object desired, and would not appear to be in harmony with the clause of the act above quoted.

The allotments made in the field in 1887 and 1888 have not been approved. They can therefore be recertified by the allotting agents under a new order. I therefore can see no technical objection to the cancellation of the former order and the issuance of a new one.

As considerable delay has resulted, and will result, in the execution of the act upon this reservation, it is recommended that the President be requested to cancel the order of May 24, 1887, and to issue a new order authorizing allotments thereon. In case such course is adopted the allotments heretofore made should be revised so as to conform to the new order.

I inclose Special Agent Porter's letter, and the executive order of May 24, 1887.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, July 10, 1889.

The PRESIDENT:

I have the honor to present for your consideration a communication of the 8th instant, from the Commissioner of Indian Affairs, in relation to allotments of land to the Absentee Shawnees and Citizen Pottawatomies, located on the Pottawatomie Reservation, Ind. T., and recommending, in view of the delay in the execution of the act on this reservation, that the order of the President of May 24, 1887, be canceled, and a new order issued authorizing allotments thereon, so that children born since May 24, 1887, may receive allotments, and that those who, since the date of the President's order above referred to have passed the age of 18 years, or who have married, may receive the quantity of land allowed them by the provisions of the act.

I concur in the recommendation of the Commissioner, and respectfully recommend that the executive authority of May 24, 1887, to make allotments to the Absentee Shawnees and Citizen Pottawatomies be canceled, and that new authority therefor be now granted and indorsed hereon.

The original of the previous authority accompanies this letter for your information.

I have the honor to be, very respectfully, your obedient servant,

JOHN W. NOBLE,
Secretary.

EXECUTIVE MANSION, *July 12, 1889.*

Approved:

BENJ. HARRISON.

DEPARTMENT OF THE INTERIOR,
Washington, July 13, 1889.

The COMMISSIONER OF INDIAN AFFAIRS:

SIR: I transmit herewith, the authority of the President of 12th instant, for the allotment of lands to the Absentee Shawnees and Citizen Pottawatomies, located on the Pottawatomie Reservation, Indian Territory, under the provisions of the act of

February 8, 1887, and revoking the action of the executive thereon of May 24, 1887, as requested in your letter of 8th instant, the inclosures of which are herewith returned.

Very respectfully,

GEO. CHANDLER,
Acting Secretary.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, July 22, 1889.

N. S. PORTER, esq.,
United States Special Agent, Sac and Fox Agency, Ind. T.:

SIR: Referring to your communication, dated June 4, 1889, requesting certain modification of your instructions, so as to permit the ages of allottees to be computed from the date of the order directing the resumption of the work, you are advised that under date of July 12, 1889, the President revoked the order of May 24, 1887, directing the allotment of lands to the Absentee Shawnees and Citizen Pottawatomies and issued a new order for the same purpose.

You will therefore take the ages of the allottees, as of date July, 12, 1889, and their ages on that date will control the quantity of land to which they are entitled. All children born before that date are entitled to allotments.

The allotments heretofore made by you should be revised so as to conform to the new order, that the allottees may have the benefit of increased age.

Very respectfully,

T. J. MORGAN,
Commissioner.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, December 5, 1889:

The SECRETARY OF THE INTERIOR:

SIR: Referring to office report, dated December 28, 1887, relative to the dividing line between the Absentee Shawnees and Citizen Pottawatomies and to the decision of the Department, of date January 4, 1888, adverse to any modification of the instructions given Special Agent Porter August 11, 1887, establishing Little River as a dividing line, I have the honor to state that several communications having been received from J. B. Quintard and others complaining of the injustice of this dividing line, I directed Special Agent Porter under date of July 30, 1889, to report whether the opposition of the Absentee Shawnees to allowing the Pottawatomies to take allotments north of Little River was as strong as theretofore, and whether there was any probability that they would agree to let the latter take allotments north of said river after they (the Shawnees) had made their own selections. He was also directed to report as to the character and quality of the lands in each section.

August 26, 1889, he replied to the effect that the opposition of the Absentee Shawnees to allowing the Pottawatomies allotments north of Little River was as strong as ever, but that they would consent to have a division line made defining their possessions.

October 17, 1889, he submitted a further report, accompanied by a diagram of the reservation, suggesting that the Pottawatomies be allowed to make selections within a tract in the northwest corner of the reservation, containing nearly four townships, and extending 9½ miles in the valley of the North Fork. (The proposed tract is bounded on the map with blue lines.)

As to the character of the lands in the reservation, he states that the valleys south of Little River are first class, upland rolling, generally second rate; timber of good quality and in abundance. North of Little River, with the exception of the valley of the North Fork, the lands are about the same, timber and springs being much more abundant south of the river.

Under date of October 21, 1889, White Turkey, chief of the Absentee Shawnees (lower band), and J. C. King state that they concur in the proposed boundary if it can be so recorded and enforced by the Indian agent.

In a communication dated October 18, 1889, the business committee of the citizen Pottawatomies claim that they are entitled to allotments in quantity as provided in the act of May 23, 1872 (17 Stats., 159), and have the right to select them anywhere within the reservation. These points have been fully covered in previous reports and decided by the Department. (See decision of January 4, 1888, before referred to.)

The committee also make serious charges against Special Agent Porter, some of them being incident to his carrying out the instructions of the Department and others involving his official integrity.

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In a communication addressed to Agent Patrick November 11, 1899, Special Agent Porter complains that there is an increasing determination on the part of the Pottawatomies, without improvements on any land, to disregard his instructions, and that they are daily annoying him by demanding land on North Fork, and stating that they propose to take it wherever they desire, regardless of instructions or law.

He states that these demands by reason of their not having received any check or rebuke have increased not only in numbers but in insolence, and that any reference to the orders and instructions of the Indian Office meets only with contempt and the assurance that they propose to defy all such laws and instructions.

He requests the agent to take such measures as may be proper to protect the work of allotment, uphold the law, enforce the instructions of the Department, and relieve him of a daily increasing trouble and annoyance.

With the present information at hand I am disposed to recommend the modification of previous instructions so as to permit the Citizen Pottawatomies to make selections within the tract designated on the diagram, as well as south of Little River; but before final determination, in view of the persistency with which the Pottawatomies press their claims and the charges made against Special Agent Porter, I believe a thorough investigation should be made, and I have the honor to recommend that an inspector of the Department be sent to the Sac and Fox Agency, Indian Territory, for that purpose.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, March 4, 1890.

THE SECRETARY OF THE INTERIOR :

SIR: I have the honor to acknowledge the receipt, by Department reference for report, of two communications from D. A. McKnight, esq., dated February 7, 1890, one transmitting the application of John Anderson, a member of the Citizen Band of Pottawatomies, for allotments of lands for himself and family under the act of May 23, 1872 (17 Stats., 159), the other transmitting a similar application from Peter Anderson, also a member of said band.

Each applicant states that he has resided on the Pottawatomie Reservation for more than 3 years, that the tracts selected include the improvements of himself and family, so far as practicable, and that he is ready to pay the cost price of said lands.

With the application of Peter Anderson, Mr. McKnight files a duplicate contract between the applicant and himself for the employment of the latter by the former to properly present and prosecute his application, at a compensation of \$200, contingent upon success.

A similar contract with John Anderson was filed in this office by Mr. McKnight October 26, 1889.

I also have the honor to acknowledge the receipt, by Department reference for report, of a communication from Peter Anderson, by D. A. McKnight, attorney, dated February 20, 1890, in which he applies for the issuance of a certificate in the name of Julia Anderson, his wife (understood to be deceased), for the land allotted her in 1875.

The act of May 23, 1872, authorized and directed the Secretary of the Interior to issue certificates by which allotments of land lying within the 30-mile square tract theretofore selected for the Pottawatomie Indians, and lying next west of the Seminole Reservation, in the Indian Territory, should be made to each member of the Pottawatomie band, known as the Pottawatomie Citizen Band, as follows:

To each head of a family, and to each other member 21 years of age, not more than one-quarter section, and to each minor of the tribe not more than 80 acres.

It also provided that certificates of such allotments should be made in severalty, specifying the names of individuals to whom they had been assigned, and that said tracts were set apart for the exclusive and perpetual use and benefit of such assignees and their heirs.

"Provided, That such allotments shall be made to such of the above-described persons as have resided or shall hereafter reside 3 years continuously on such reservation, and that the cost of such lands to the United States shall be paid from any fund now held, or which may hereafter be held, by the United States for the benefit of such Indians, and charged as a part of their distributive share, or shall be paid for by said Indians before such certificates are issued."

Under the provisions of this act 131 allotments, including 12 to John Anderson, Peter Anderson, and their families, were made to members of the Citizen band of Pottawatomies, in 1875, and the schedule of the same was approved by the Secretary of the Interior, November 23, 1875.

January 19, 1884, nine certificates of allotment were issued, the cost of the land having been reimbursed to the United States, and on April 27, 1885, two more were issued, the cost of the land having been also reimbursed.

May 17, 1887, report was made to the Department, upon the status of the Citizen Pottawatomies, with reference to the act of February 8, 1887 (24 Stats., 388), in which it was held that allotments should be made to these Indians under the latter act, without reference to the provisions of the former act; the Department concurred therein, and on May 24, 1887, the President granted the requisite authority for making the allotments under the said act of 1887.

This action appears to have been based upon the fact that the act of 1887 was intended to give every Indian (except married women) an allotment of land without cost to him and that therefore the Citizen Pottawatomies were entitled to the benefits of that act, according to its provisions, but that, as under the act of 1872, payment was required, they could not avail themselves of the provisions of the latter act as to quantity or otherwise.

The question of the right of these Indians to take lands under both of these acts, or even to elect whether they would take them under the act of 1872, does not appear to have been considered at that time, probably because during the 15 years in which the act of 1872 had been in force, only 11 persons had taken advantage of its provisions.

In a communication dated July 18, 1889, John Anderson claimed:

1. That he was entitled under the act of 1887 to the quantity of land specified in the act of 1872 without payment to the United States for any part of said land.

2. (If it should be held otherwise) that he was entitled to allotments under both acts, on the ground that both were still in force.

3. If both the foregoing claims were disallowed that the act of 1872 was still in force and that he was entitled thereunder to the quantity of land specified in the act, under payment therefor.

Mr. McKnight filed a brief in support of Mr. Anderson's claims and was informed September 4, 1889, that the Citizen Pottawatomies must elect to take lands, either under the act of 1872 or under that of 1887, as construed by the Department, but that they could not take under both acts.

It seems clear that the act of 1872 is still in force. In the act of 1887 there is no clause repealing former acts, and repeals by implication are never allowed, unless there is an irreconcilable conflict between the two acts. (*Supervisors vs. Lackawanna Iron Co.*, 93 U. S., 624.)

"If it be possible to administer both statutes the courts will do so. Only when the two are so repugnant that both can not stand, or where the intention of the legislature clearly was to provide the later enactment as a complete substitute for the earlier, will the earlier be treated as repealed by implication, and even then the doctrine will be applied only so far as the repugnancy of the statutes extends." (See *Abbott's Nat. Digest*, vol. 4, p. 337, and authorities there cited.)

"It is not sufficient to establish the repeal of a statute by implication to show that subsequent law covers some or even all of the cases for which it provides, for it may be merely affirmative, or cumulative, or auxiliary." (*Ibid.*)

This question of repeal is discussed at length by Assistant Attorney-General Shields, in the case of the La Pointe Indians (see decisions relating to public lands, vol. 9, p. 393), in which he held that the treaty of September 30, 1854 (10 Stats., 1109), providing for allotments to said Indians, was not repealed, changed, or modified by the act of February 8, 1887.

I am unable to see that the general act of 1887 is inconsistent with the special act of 1872.

Under the latter act the Pottawatomies are allowed to purchase certain lands at their cost price, while under the former act provision is made for allotments on all Indian reservations. Such Pottawatomies as are able, and so desire, may avail themselves of the privilege of the act of 1872, while under the liberal policy approved by the Department the others may take advantage of the act of 1887.

The lands selected by the applicants for themselves and their families (except in the case of Julia Anderson) are not those allotted them in 1875, the allotment of which was approved by the Department November 23, 1875.

The right of an allottee to change his selection, for good and sufficient reasons, at any time prior to the issuance of the evidence of title, has, however, been generally recognized.

The lands selected by Peter Anderson were purchased from the Seminole Nation. Those selected by John Anderson were purchased from the Creek Nation. The Seminole lands were ceded by the treaty of March 21, 1866 (14 Stats., 756), "In compliance with the desire of the United States to locate other Indians and freedmen thereon," the price being 15 cents per acre.

The Creek lands were ceded by the treaty of June 14, 1866 (14 Stats., 796), in compliance with the same desire, the price being 30 cents per acre.

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By an agreement concluded with the Creek Nation, January 19, 1889, ratified by Congress March 1, 1889 (25 Stats., 757), said nation absolutely ceded and granted to the United States, without reservation or condition, full and complete title to the lands conditionally ceded by the treaty of 1866, in compliance with the desire of the United States "that all of said ceded lands may be entirely freed from any limitation in respect to the use and enjoyment thereof."

The price paid was \$2,280,857.10, but neither the area nor price per acre is stated in the agreement or act. It is understood that the price was \$1.25 per acre.

By section 12 of the act of March 2, 1889 (25 Stats., 1004), an appropriation of \$1,912,942.02 was appropriated to pay in full the Seminole Nation for "all the right, title, interest, and claim which said nation of Indians may have in and to certain lands ceded" by the treaty of 1866, found by survey to contain 2,037,414.62 acres. This amounts to about 94 cents per acre.

The lands upon which the Pottawatomies and other Indians had been located were included in the two cessions, and each nation was paid the additional price per acre. This transaction, however, was entirely voluntary on the part of the United States, so far as the lands which had been devoted to the purposes of the original cession were concerned. Full payment had previously been made and no obligation for further payment existed.

It is presumed that the additional price was paid in order that the Government might be free to negotiate with the Indian occupants for the relinquishment of their rights, and, as a matter of fact, provision was made in the act of March 2, 1889, for negotiations with the Pottawatomies and other Indians.

It is believed that the act of May 23, 1872, contemplated the payment of the cost of the lands to the United States under the treaties of 1866. This cost was well known at the time, and it is hardly probable that Congress contemplated that such cost might be increased thereafter by the payment of additional sums. Such increase in price would be unjust to the Indians, who are in no way benefited by the higher title obtained by the United States.

The case of the United States *vs.* Gilmore (8 Wall., 330) is somewhat in point. An act of Congress passed in 1816 allowed all officers for each private servant actually kept in service the pay, rations, and clothing of a private soldier, or money in lieu thereof. Regarding this the Supreme Court says:

"At the time of the passage of the last act, the pay of a private was \$5 a month, with rations and clothing of certain money value in addition. The effect of the act was precisely the same as if the money value of the whole had been ascertained and the amount had been inserted as the allowance or emolument to be paid to the officer in addition to his own regular pay.

"There is nothing in the act which expresses any intention on the part of Congress that, whenever the pay of the private should be thereafter increased, the emolument of the officer should be proportionately augmented, without further legislation."

I am of the opinion that John and Peter Anderson are entitled to have the lands selected allotted them under the act of May 23, 1872 (provided there are no valid anterior claims to the land), and to certificates of allotment for such land upon the payment of 30 and 15 cents per acre respectively, and that a certificate should issue in the name of Julia Anderson, for the lands allotted her in 1875, upon a similar payment of 15 cents per acre.

In case you concur in these recommendations the agent in charge of the Sac and Fox Agency will be called upon for information as to the status of the lands, and upon his favorable report the applicants will be advised as to the amount required to be paid.

The contracts presented appear to be in due form. The amount of compensation named (\$200 each, contingent upon success) seems reasonable.

I am somewhat in doubt as to whether these contracts require approval under section 2103 of the Revised Statutes, but I do not see that any harm can arise from such approval.

They are transmitted, with my approval, for your action.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, May 17, 1890.

THE SECRETARY OF THE INTERIOR:

SIR: I have the honor to acknowledge the return of office report of December 5, 1889, relative to a dividing line between the Citizen Pottawatomies and the Absentee Shawnees, in the Indian Territory, with an indorsement of the First Assistant Secretary inviting attention to the report of Inspector Miller, dated April 15, 1890.

Inspector Miller, in view of all the facts, recommends that no modification of Special Agent Porter's orders be made, except that indicated in his letter of October 17, 1889, in which he incloses map showing lines of three and one-half to four townships in the north west corner of the reservation, which White Turkey and others of the Shawnees are willing to have set aside for the Pottawatomes.

I accordingly have the honor to recommend that Special Agent Porter's instructions be so modified as to permit the Citizen Pottawatomes to make selections within the tract so designated on the diagram (which accompanied office report of December 5, 1889), as well as south of Little River.

Inspector Miller recommends that Special Agent Porter's instructions be so modified as to permit single women to select allotments where they reside.

I have the honor to recommend that Special Agent Porter be instructed to permit single women (having no improvements) belonging to families the head of which is entitled to select land north of Little River, to make selections where they reside.

Inspector Miller also refers to the matter of certain Pottawatomes claiming allotments under the act of May 23, 1872 (17 Stats., 159), and says that the question should be settled as speedily as possible, as the allotment work will remain in an unsettled condition so long as it is undecided.

This matter was reported to the Department March 4, 1890.

An early decision in the matters herein referred to is respectfully requested.

The cases of Joseph Meloche and Mary L. Moore, referred to by Inspector Miller, will be separately considered.

Very respectfully,

T. J. MORGAN,
Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, June 11, 1890.

THE SECRETARY OF THE INTERIOR :

SIR: I have the honor to acknowledge the receipt, by reference of Assistant Secretary Bussey, on March 31, of a communication from the Commissioner of Indian Affairs relative to the applications of two members of the Citizens' band of Pottawatomie Indians for allotments of land under the provision of the act of May 23, 1872 (17 Stats., 159). By said reference my opinion is asked "as to the price per acre to be paid by the within-named Indians for the lands to be allotted to them."

Said act of 1872, entitled "An act to provide homes for the Pottawatomie and Absentee Shawnee Indians in the Indian Territory," provides for allotments of lands to each member of the Pottawatomie Citizen band within the limits of the 30-mile square tract selected for the Pottawatomie Indians in the Indian Territory west of the Seminole Reservation:

"To each head of a family and to each other member twenty-one years of age not more than one-quarter section, and to each minor of the tribe not more than eighty acres, and such allotments shall be made to include, as far as possible, for each family, the improvements which they have made."

Provision was made in said act for the issuance of certificates to the allottees, and that the land allotted shall be exempt from taxation, and "shall be alienable in fee or leased, or otherwise disposed of only to the United States, or to persons of Indian blood, lawfully residing within said Territory, with permission of the President, and under such regulations as the Secretary of the Interior shall prescribe."

It was further provided:

"That such allotments shall be made to such of the above persons described as have resided, or shall hereafter reside, three years continuously on such reservation, and that the cost of such lands to the United States shall be paid from any fund now held, or which may hereafter be held, by the United States for the benefit of such Indians, and charged as a part of their distributive share, or shall be paid by said Indians before such certificates are issued."

It appears that, under the provisions of said act, twelve allotments were made in 1875 to John Anderson and Peter Anderson, and members of their families, and a schedule of the same was approved by Secretary Chandler on November 23, 1875.

On May 23, 1887 (Ind. Div. 350, p. 358), the Department, in a letter to the President, concurred in the opinion expressed by the Indian Office that the Citizen Pottawatomie Indians are entitled to allotments under the act of February 8, 1887 (24 Stats., 388), if they so desired. The President, on May 24, same year, approved the recommendation of the Department, and duly authorized it to allow allotments to said Indians under the said act of 1887.

On July 10, 1889, the Department transmitted to the President for his action the recommendation of the Indian Office, in which the Department concurred, that said "order of the President of May 24, 1887, be cancelled, and a new order issued, author-

izing allotments thereon so that children born since May 24, 1887, may receive allotments, but that those who, since the date of the President's order above referred to, have passed the age of 18 years, or who have married, may receive the quantity of land allowed them by the provisions of the act."

This recommendation was approved by the President on July 12, 1889, and by Department letter of July 13, same year, was transmitted to the Indian Office, with the statement that said authority of the President was "for the allotment of lands to the Absentee Shawnee and Citizen Pottawatomies located on the Pottawatomie Reservation, Indian Territory, under the provisions of the act of February 8, 1887."*

It further appears that one of the applicants, namely, John Anderson, on July 18, 1889, claimed the right to have allotted to him under the said act of 1887 the quantity of land allowed to allottees under the act of 1872, free of payment to the United States for any part thereof; that if this was not so, then he had the right to allotments under both acts, as both were still in force; and that if wrong in both of said claims he should be allowed the quantity of land named in the act of 1872, upon payment of the price as therein required. The Indian Office advised the attorney of said Anderson, on September 4, 1889, that his clients must elect to take their allotments under one or the other of said acts, and that they would not be allowed to take under both. The honorable Commissioner expresses the opinion that said Indians are entitled to allotments under said act of 1872; that, although the lands selected by said applicants for themselves and families, except the allotment in the name of Julia Anderson, are not those approved by Secretary Chandler as aforesaid, yet, since the Department has generally allowed allottees to change their selections upon sufficient showing, at any time prior to the "issuance of the evidence of title," said applicants should be allowed allotments for lands selected by them under said act of 1872, if there are no prior valid claims thereto, upon the payment of 30 and 15 cents per acre, respectively, and that certificate shall issue in the name of Julia Anderson upon the allotment made in her name in 1875, upon a like payment of 15 cents per acre.

The lands applied for by John Anderson are part of the lands of the Creek Nation of Indians ceded to the United States for homes for such other civilized Indians as the United States may choose to settle thereon, under the provisions of the treaty of June 14, 1886 (14 Stats., 785), to the United States in consideration of the sum of 30 cents per acre. (See article III, *id.* p. 786). On March 1, 1889 (25 Stats., 757), Congress ratified and confirmed the agreement made with said Indians on January 19, 1889, by Secretary Vilas, whereby the Indians made an absolute cession of said land in consideration of a sum estimated to amount to \$1.25 per acre. By the treaty of March 21, 1866 (14 Stats., 755), the Seminoles ceded to the United States their lands "to locate other Indians and freedmen thereon," the consideration being 15 cents per acre, and by section 12 of the act approved March 2, 1889 (25 Stats., 1004), an additional sum of money was appropriated "to pay in full the Seminole Nation of Indians for all their right, title, interest, and claim, which said nation of Indians may have in and to certain lands ceded" by said treaty of 1866, which is estimated to amount to 94 cents per acre.

The question submitted is whether said applicants shall be required to pay the amount originally allowed to said Creek and Seminole Indians, respectively, namely, 30 and 15 cents per acre, or full amount paid by the United States for the complete Indian title and claim.

The answer to said inquiry involves the further question whether said applicants can have allotments under said act of 1872, or can be allowed to have allotments under act of 1887 at their election. If said executive action, as above recited, is to remain unrevoked and unchanged, then it would seem that the applicants would be required to take allotments under said act of 1887.

Said letter to the President transmitted the communication of the Commissioner of Indian Affairs "upon the subject of the allotment of lands in severalty to members of the Citizen band of Pottawatomies and the Absentee Shawnee Indians," located upon the reservation as aforesaid. It quotes from the report of the Commissioner relative to the amount of land allowed to each allottee as follows:

"To each head of a family and to each other member 21 years of age not more than 160 acres, and to each minor of the tribe not more than 80 acres, the cost of the same to be reimbursed to the United States before certificates are issued. Three years continuous residence upon the reservation is also required.

"Under this provision married women over 21 are entitled to not more than 80 acres, while under the allotment act of February 8, 1887, they are entitled to no land. Minors are also entitled to not more than 80 acres, while under the act of February 8, 1887, minors under 18, not orphans, are entitled to 40 acres."

And, "as the Indians were required to pay for their land under the act of 1872," the Commissioner expresses the opinion, "that said act can in no way govern the quantity of land to be allotted under the latter act."

*Item, vol. 60, pp. 385 and 406.

The statement of the Commissioner relative to the limitation of the quantity of land to be allotted to the married women of the Pottawatomies is erroneous, as the act of 1872 provides that each Indian over 21 years of age may have not more than 160 acres.

The President was required to give direction "for the allotment of lands to the Indians indicated under the act of February 8, 1887," which he did on May 24, 1887.

The subsequent executive action did not change the direction as to the act under which allotments to said Indians were to be made. This direction of the President is binding upon this Department until changed or modified by the proper executive action. Until authority is given by the President to allow said applicants to receive allotments under said act of 1872, in my judgment, they can not be allowed to take allotments thereunder.

The question "as to the proper form in which patents should be issued for lands allotted, and to be allotted, to the Lac de Flambeau band of Chippewa Indians, in Wisconsin," was submitted for my opinion by Acting Secretary Chandler. In my said opinion, dated September 18, 1889, it was held (1) that the treaty of September 30, 1854 (10 Stats., 1109), was not repealed, changed or modified by said act of 1887; (2) that the right of allotment was conferred by said treaty of 1854, and that patents for allotments thereunder should be in accordance with the terms of said treaty, whether the selections and allotments were made or the approvals signed before or after the passage of the act of 1887. This opinion was concurred in by you on September 23, 1889, and transmitted to the Commissioner of Indian Affairs for his information (9 L. D., 392). It may be observed that the precise question submitted was: "What kind of patents should issue where allotments were made under the treaty of 1854, and subsequent to the act of 1887;" and the answer was made that they should issue under the provisions of said treaty. There are expressions in said opinion which possibly convey the impression that all allotments provided for by acts or treaties prior to said act of 1887 must necessarily be made under the terms of the prior act or treaty, but the language of the whole opinion shows that it was not the intention so to hold. It must be remembered that section one of the act of 1887 expressly provides:

"That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands, in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act."

Since under act of 1872 a larger amount of land may be taken than under the act of 1887, the applicants should be allowed allotments under the former act. It is true that under said act of 1872 the lands allotted must be paid for by the allottees; but that fact alone does not deprive the Indians of the right to take under said act if they so elect; as to the price, it would seem but just that the Indians be permitted to pay the amount originally given by the United States for the land, because they would have been so entitled at the time the allotments were made, prior to the acts of 1889 (*supra*), and as they relinquish these lands for the new allotments desired, it is practically an exchange of lands, and I therefore concur in the opinion of the Commissioner that the Indians, if allowed allotments under the act of 1872, should be required to pay for the land allotted the price designated in said treaties under which they were ceded to the United States. But I am clearly of the opinion that no allotments should be allowed under said act of 1872, until said executive action be revoked or modified. I see no objection, if authority be given by the President, to allowing said Indians to elect under which of said acts they will take allotments; but until the President so directs I am of the opinion that said applicants can take new allotments only under the act of 1887, and should not be required to pay any price for the lands selected by them.

The papers submitted are herewith returned.

Very respectfully,

GEO. H. SHIELDS,
Assistant Attorney-General.

DEPARTMENT OF THE INTERIOR,
Washington, July 10, 1890

The PRESIDENT:

Referring to executive order of May 24, 1887, and July 12, 1889, authorizing the citizen Pottawatomie Indians to take allotments under the act of February 8, 1887 (24 Stat., 388), if they so desired, I have the honor to submit herewith a communication of March 4, 1890, from the Commissioner of Indian Affairs, transmitting the applications of John and Peter Anderson, Citizen Pottawatomies, for allotments for themselves and families under the act of May 23, 1872 (17 Stats., 159), and an opinion thereon

20 ALLOTMENTS OF LAND ON POTTAWATOMIE RESERVATION.

of 11th ultimo of Hon. George H. Shields, Assistant Attorney-General for the Department of the Interior to whom the matter was referred for his views as to the price per acre to be paid by the Indians for the lands, if allotted as requested.

The opinion of the Assistant Attorney-General sets out fully the case, refers to the provisions of the acts of 1872 and 1887 relative thereto, and holds that the direction of the President of May 24, 1887, is binding upon the Department until changed or modified by the proper executive action, and that "until authority is given by the President to allow said applicants to receive allotments under said act of 1872, in my judgment, they can not be allowed to take allotments thereunder."

In view of this opinion I have the honor respectfully to request that authority be granted the Citizen Pottawatomie Indians to elect whether they will take allotments under the act of 1872 or 1887, and that said authority may be indorsed hereon.

I have the honor to be, very respectfully, your obedient servant,

JOHN W. NOBLE,
Secretary.

EXECUTIVE MANSION, July 11, 1890.

Approved.

BENJ. HARRISON.

DEPARTMENT OF THE INTERIOR,
Washington, July 14, 1890.

THE COMMISSIONER OF INDIAN AFFAIRS:

SIR: I acknowledge the receipt of your communication of March 4, 1890, relative to allotments of land to John and Peter Anderson, members of the Citizen band of Pottawatomie Indians.

I concur in your opinion that these Indians are entitled to have the lands selected allotted to them under the act of May 23, 1872, and certificates of allotment for such land upon the payment of 30 and 15 cents per acre respectively, if they so elect to take allotments under said act, and that certificates should issue in the name of Julia Anderson for the lands allotted to her in 1875, upon similar payment of 15 cents per acre.

I transmit herewith an opinion of the honorable Assistant Attorney-General for the Department of the Interior in relation to the matter, and an order of the President, modifying executive orders of May 24, 1887, and July 12, 1889, and granting authority to the Citizen Pottawatomie Indians to elect whether they will take allotments under the act of 1872 or 1887.

I have approved the contracts between John and Peter Anderson and D. H. McKnight, attorney at law, of this city, in accordance with your recommendation.

The papers accompanying your communication are herewith returned.

Very respectfully,

JOHN W. NOBLE,
Secretary.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, October 28, 1890.

N. S. PORTER, Esq.,
United States Special Agent, Burnett, Okla.:

SIR: I am in receipt of your communication, dated October 18, 1890, in which you ask certain questions relative to the rights of the Citizen Pottawatomies, as follows:

"(1) Do the 131 allotments under the act of 1872, made and approved in 1875, include all who are entitled under that act?"

"(2) Can a Pottawatomie, who under your instructions is confined to the south side of Little River take his land north of Little River, under the act of 1872?"

"(3) Will the same general instructions governing allotments to Shawnees and Pottawatomies under the severalty act govern the allotments under second section of the severalty act? That is, allotments made by agents after the expiration of the 4 years."

"(4) Can persons who took an allotment under the act of 1872, but who have since died, receive an allotment now?"

In reply I have to say:

(1) Under the act of 1872, all members of the Citizen band of Pottawatomies who "have resided or shall hereafter reside 3 years continuously" on the reservation, are entitled to allotments and to certificates therefor upon payment of the cost of such lands. The 131 allotments heretofore made do not, therefore, include all who are entitled under the act.

(2) In my opinion, a recognized member of the Citizen band of Pottawatomies, who has resided continuously for 3 years within the reservation has a right, under the act of 1872, to select for allotment under said act any vacant, unimproved land anywhere within the reservation. Of course he can not be given land which has been previously claimed and awarded to other persons, unless they have undoubtedly abandoned the same. The rule confining the Pottawatomies to the south side of Little River was made on the ground that, as the lands were given to them without cost, under the act of 1887, the Department has the right to impose conditions. Under the act of 1872, however, there is no restriction as to the portion of the reservation in which they shall take their allotments.

The Shawnees have had over 3 years in which to make their selections north of Little River, and if all have not made their selections it is their own fault. It may now be an inducement to those who are refusing to take their allotments to withdraw their opposition, if they are informed that the Pottawatomies have the right to buy lands north of the Little River.

(3) The same general instructions will govern allotments to the Shawnees and Pottawatomies when they come to be made by the agent after the expiration of the 4 years, as provided in the second section of the allotment act.

(4) Where a person took an allotment under the act of 1872, and has since died, a certificate will issue for the land allotted in 1875 upon payment of the cost thereof, but no selection can now be made for such deceased person.

Very respectfully,

R. V. BELT,
Acting Commissioner.