

# Calendar Nos. 1136 and 1137.

52D CONGRESS, }  
1st Session. }

SENATE.

{ REPORT  
{ No. 1108.

IN THE SENATE OF THE UNITED STATES.

AUGUST 2, 1892.—Ordered to be printed.

Mr. JONES, of Arkansas, from the Committee on Indian Affairs, submitted the following

## REPORT:

[To accompany H. R. 3594 and S. 2977.]

The Committee on Indian Affairs, to whom was referred the bill (S. 2977) for the relief of the Stockbridge tribe of Indians in the State of Wisconsin and the bill (H. R. 3594) for the relief of the Stockbridge and Munsee tribe of Indians in the State of Wisconsin, have considered the same and report them back to the Senate with the recommendation that the House bill be passed and the Senate bill be indefinitely postponed.

The Indian appropriation bill approved March 3, 1855, page 699, (10 Stat. at Large) contains the following provision:

For the purpose of enabling the President to treat with and arrange the difficulties existing among the Stockbridge and Munsee Indians of Lake Winnebago, in the State of Wisconsin, arising out of the acts of Congress of third of March, eighteen hundred and forty-three, and August sixth, eighteen hundred and forty-six, and the treaty of twenty-fourth of November, eighteen hundred and forty-eight, in such manner as may be just to the Indians and with their assent and not inconsistent with the legal rights of white persons who may reside on the Stockbridge reserve of the claim of the United States under the treaty of eighteen hundred and forty-eight, the sum of fifteen hundred dollars.

There was at the time this act was passed, and there had been for several years before, "difficulties existing among the Stockbridge and Munsee tribes of Indians \* \* \* arising out of the acts of Congress" mentioned in this act. Whatever these difficulties were, it was the evident intention of Congress to "arrange" them, with the manifest purpose that they should no longer exist. The committee believe that the treaty of 1856 was intended to arrange all these difficulties, and that it did so, effectively, until a mistake in the act of 1871 or a misconstruction of said act revived them. The first section of said treaty of 1856 recites that it is made by the "Stockbridge and Munsee tribes, who were included in the treaty of September 3, 1839" (a date prior to origin of any of the difficulties named), and all the individual members of said tribes.

A large majority of all these Indians, all branches of the tribe, gave their assent to this treaty, which provided for a new home for them all "of sufficient extent to provide for each head of a family and others lots of land of eighty and forty acres," and most of them promptly

removed to the new reservation, had lands assigned to them under the provisions of the treaty, and have held them continuously now for about thirty-six years.

A small minority of these people objected to the treaty and did not move to the new reservation until about 1859. This minority now, while denouncing the treaty of 1856, are demanding that these other Indians, or many of them, who had land regularly assigned to them by the Government and who have held it continuously through all these years, shall be removed from this reservation and their homes given to them. No Indian holds a foot of land in this reservation except by virtue of this treaty of 1856, yet that class of Indians who insist that the treaty was a fraud also insist that they shall reap all the benefits resulting from it and that those who formed the treaty shall be sent out naked.

All of the facts bearing upon this matter are clearly set out in official communications from the Indian Bureau and Interior Department and are herewith presented.

Senate bill 2977 is a proposition to sell a part of this reservation and does not meet the approval of the Secretary of the Interior or the Indian Bureau, and this committee do not believe that any of these lands should be sold at this time; hence their recommendation above, that this bill be indefinitely postponed.

The following is the official correspondence referred to:

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DEPARTMENT OF THE INTERIOR,

*Washington, March 3, 1892.*

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

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

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

Very respectfully,

JOHN W. NOBLE,  
*Secretary.*

Hon. THOMAS LYNCH,  
*House of Representatives.*

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DEPARTMENT OF THE INTERIOR,

*Washington, March 1, 1892.*

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

Very respectfully,

GEO. CHANDLER,  
*Acting Secretary.*

Hon. THOMAS LYNCH,  
*House of Representatives.*

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

Respectfully,

THOS. LYNCH, M. C.

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

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

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

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

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

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

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

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

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

The objects of the amendments proposed to the bill are:

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

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

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

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

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

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

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

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

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

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

Very respectfully, your obedient servant,

T. J. MORGAN,  
*Commissioner.*

The SECRETARY OF THE INTERIOR.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"That the said report and map shall be filed with the secretary of the said Territory and in the clerk's office of said county, and shall also be transmitted to the President, on or before the first day of January, eighteen hundred and forty-four, and, after the same shall have been filed and transmitted to the President as aforesaid, the said Stockbridge tribe of Indians, and each and every of them, shall then be deemed to be, and from that time forth are hereby declared to be, citizens of the United States, to all intents and purposes, and shall be entitled to all the rights, privileges, and immunities of such citizens, and shall, in all respects, be subject to the laws of the United States and of the Territory of Wisconsin in the same manner as other citizens of said Territory; and the jurisdiction of the United States and of said Territory shall be extended over the said township or reservation now held by them, in the same manner as over other parts of said Territory, and their rights as a tribe or nation, and their power of making or executing their own laws, usages, or customs as such tribe shall cease and determine: *Provided, however,* That nothing in this respect contained shall be so construed as to deprive them of the right to any annuity now due them from the State of New York or the United States, but they shall be entitled to receive any such annuity in the same manner as though this act had not been passed."

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

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

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

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

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

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

The act of 1846 provided that in the event that any members of the Stockbridge tribe should elect to become citizens of the United States in accordance with the provisions thereof, the reservation upon which the tribe was located should be divided between those so electing to become citizens of the United States and those remaining Indians. As none elected to become citizens of the United States there was no basis for a division of the reservation between the parties, and it became impracticable to execute the law according to its intent. The object of this law, therefore, which appears to have been the settlement of the existing differences between the two parties of Stockbridge Indians, was not attained. A treaty was then entered into on November 24, 1848 (9 Stats., 955), with the so-called Indian party, the so-called citizen party being excluded from any discussion of or participation in the treaty.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

The rolls provided for in this act were prepared in accordance therewith by H. R. Wells, who was appointed a special commissioner for the purpose. The Citizen roll contained 135 names, while the Indian roll contained 112 names. There were about 140 of the Stockbridges and Munsees who were interested in the treaty of 1856, who were excluded from enrollment on either of said rolls, in accordance with the provisions of the law. Of this number it seems that Stephen Gardner, in whose behalf the affidavits and brief, herewith, are submitted, was one.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very respectfully,

G. J. MORGAN,  
*Commissioner.*

The SECRETARY OF THE INTERIOR.

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

#### PETITION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) That the said Stockbridge tribe of Indians was restored to their ancient form of government with all powers, rights, and privileges held and exercised by them under their customs and usages as fully and completely as though the above act (1843) had not been passed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) That about 400 removed under the appropriation of the second article of the treaty to their new homes, and the guaranty of the third article of the treaty, to hold the same in trust for such persons, securing their possessions and ultimate title to the land, has not been carried out.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### TREATIES.

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

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

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

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

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

#### LAW.

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

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

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

#### PROPERTY.

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

#### RIGHTS.

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

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

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

#### TITLE.

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

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

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

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

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

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

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

J. C. ADAMS,

*In behalf of the Stockbridge and Munsee tribe of Indians.*

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

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

Very respectfully,

CHAS. S. KELSEY,  
*United States Indian Agent.*

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

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

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

MARTIN AARON.

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

[SEAL.]

AUGUST G. SCHMIDT,  
*Notary Public.*

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

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

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



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

JOHN (his x mark) YOCCUM:

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

[SEAL.]

AUGUST G. SCHMIDT,  
Notary Public.

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

Witness to mark,

MARTIN AARON.

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

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

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

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

S. Rep. 1108—2

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

GEORGE T. BENNETT.

Sworn before me this 16 day of Dec., 1891.

[SEAL.]

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

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

Witness:

F. SEYMEN.

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

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

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

STEPHEN GARDNER.

Sworn before me this 16 day of December, 1891.

[SEAL.]

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

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

Witness:

F. SEYMEN.

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

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

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

[SEAL.]

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

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

JOSEPH GANTHIER.

KESHENA, WIS., Dec. 21, 1891.

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

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

DEC. 21ST, 1891.

STATE OF WISCONSIN, Langlade County, ss:

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

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

J. C. ADAMS.

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

[SEAL.]

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

STATE OF WISCONSIN, County of Langlade, ss:

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

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

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

[SEAL.]

T. H. WARD,

*Clerk of Circuit Court in and for Langlade County, Wisconsin.*

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

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

## VIEWS OF THE MINORITY.

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The subcommittee on Indian Affairs, having had under consideration the bill (H. R. 3594) entitled "A bill for the relief of the Stockbridge and Munsee tribe of Indians, in the State of Wisconsin," I submit the following minority report:

To enact this bill into a law would, in effect, repeal the act of 1871, entitled "An act for the relief of the Stockbridge and Munsee tribe of Indians, in the State of Wisconsin" (Stats., vol. 16, p. 404). The provisions and requirements of this latter act have been carried into effect. Three-fourths of the Stockbridge and Munsee Reservation, as it existed when the act passed, have been sold and the proceeds distributed as required by the law. Who constituted the Indian party and who constituted the Citizen party was determined by the Indian Bureau, in pursuance of its terms. The Indian party, as thus legally determined, is the owner and in possession of the present little reservation, consisting of eighteen sections of land. The money resulting from the sale of the balance (fifty-four sections, or three-fourths of two townships), in addition to \$6,000 trust funds mentioned in the fourth section of the act of 1871, was distributed as follows: The pro rata share of those designated as the "Citizen party" was duly paid over to them individually, and the balance, which would be due the "Indian party," was paid into the Treasury of the United States and has since constituted the trust fund on which an annuity has been paid to the said Indian party.

This law was enacted twenty-one years ago, and was seasonably carried out. The Indian party has been in possession of the reservation of eighteen sections, and there has been paid to them the small annuity above mentioned since that time. The enactment of the 1871 law seems to have had the aid and sanction of the Representatives in Congress from Wisconsin, and was prayed for by the Indians themselves. The condition of things resulting from that act having now existed for upward of twenty years, should not be disturbed.

But the bill under consideration proposes to wipe out, so far as it may be done, whatever has been effected by the law of 1871.

It proposes to declare persons members of the Stockbridge tribe, and have them share in the reservation and tribal funds, whom the officials of the Indian Bureau, acting under the plain terms of the law of 1871, found not to be members of the tribe and not entitled to share with the Indian party in either the reservation or the funds. The bill not only proposes thus, but further proposes to make the alleged claim of these other persons retroactive in such way as to entitle them to a pro rata share of all annuities paid the tribe since 1871. It is evident that this would work a great wrong. It would disturb rights of long standing which have been based upon a solemn statute.

I am satisfied from the proofs laid before the committee that the persons whom the bill thus proposes to have declared members of the present tribe had, previous to 1871, separated themselves from the tribe, declined to be members of it, declared themselves opposed to maintaining further tribal relations, and received their full share of the tribal property. To restore them now, as proposed, would require either to deplete and pay over to these persons the annuity fund of the present tribe, or require a large appropriation from the Government Treasury. The claim is not based upon equity and should not be allowed. If there are Indians who were formerly members of the Stockbridge tribe, and who previous to 1871 went out from the tribe and took their share of the tribal property with them, and who are now in destitution, the United States or the State of Wisconsin should provide for them in some proper way, but can not rightfully take the money and lands belonging to the present tribe and use it to that end.

The whole question is fully discussed by the Commissioner of Indian Affairs in House Mis. Doc. No. 14, Forty-sixth Congress, third session, which I print herewith as Appendix A. The position taken by the present tribe is also set out at length by the protest of its delegate, A. Miller (Senate Mis. Doc. No. 119, Forty-eighth Congress, first session), which is made Appendix B.

F. B. STOCKBRIDGE,  
*Minority of Subcommittee.*

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#### APPENDIX A.

[House Mis. Doc. No. 14, Forty-sixth Congress, third session.]

**LETTER FROM THE ACTING COMMISSIONER OF INDIAN AFFAIRS TO THE CHAIRMAN OF THE COMMITTEE ON INDIAN AFFAIRS OF THE HOUSE OF REPRESENTATIVES, IN RELATION TO THE BILL OF THE HOUSE OF REPRESENTATIVES FOR THE RELIEF OF THE STOCKBRIDGE AND MUNSEE TRIBE OF INDIANS, IN THE STATE OF WISCONSIN.**

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, February 21, 1881.*

SIR: I am in receipt of a letter from A. H. Gallaway, clerk to the House Committee on Indian Affairs, dated the 18th ultimo, transmitting, by your direction, bill H. R. 3678, Forty-sixth Congress, second session, "For the relief of the Stockbridge and Munsee tribe of Indians, in the State of Wisconsin," and requesting an expression of opinion from this office thereon.

The preamble of the bill recites that a treaty was entered into on February 5, 1856, between the Government and the Stockbridge and Munsee Indians, in which the said Indians ceded certain lands to the United States, and accepted, in consideration thereof, certain lands as a reservation, to which said Indians removed, and upon which they have ever since resided. It also recites that by the interpretation placed by Government officials on the act of February 6, 1871, an act for the relief of said Indians, a large part of said Indians (and their descendants) who signed said treaty of 1856, and have continued with said tribe from the making of said treaty to the present time, are excluded from participating in tribal funds and the right to occupy said reservation.

The bill then proceeds to enact that all persons who joined in the execution of the said treaty of February 5, 1856, and the descendants of such persons, and all persons who, being members of said tribe, did not join in the said treaty, but have since the making of the treaty come in under it and resided with said tribe upon its reservation, who did not in and by said treaty, and have not since its

execution, separated from said tribe, are hereby declared members of said Stockbridge and Munsee tribe of Indians, and entitled to share in tribal funds and the occupancy of tribal lands.

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

I have the honor to report thereon as follows:

By Senate amendment to the treaty with the Menomonees of February 8, 1831 (7 Stat., 347), two townships of land on the east side of Winnebago Lake, Territory of Wisconsin, were set aside for the use of the Stockbridge and Munsee tribes of Indians, all formerly of the State of New York, but a part of whom had then already removed to Wisconsin.

The Indians took possession of these lands, but internal dissensions afterwards led to the treaty of September 3, 1839 (7 Stat., 580), by which the east half of said two townships, containing 23,040 acres of land, was retroceded to the United States, and in conformity to which a part of the Stockbridges and Munsees emigrated west of the Mississippi.

Dissensions still continuing to exist amongst them, an act of Congress, purporting to be an act for their relief, was passed March 3, 1843 (5 Stat., 645), by which provision was made for a division of the lands in their reservation amongst them in severalty, and for their becoming citizens.

It appears by the records of this office that this law was in fact accepted by all the Indians in the exercise of some of the privileges conferred by it, particularly that of selling and conveying lands, and had been fully carried out except as to the issuing of patents to the allottees.

By an act of August 6, 1846 (9 Stat., 55), the act of 1843 was repealed, and the Stockbridges were restored to their position and customs as Indians, except such as preferred remaining citizens, and who should come forward and register their names with the subagent within three months. The reservation was then to be divided between the parties in proportion to numbers, one part to be called the citizen and the other the Indian district, and the lands in the former to be allotted in severalty, as under the first law. The citizen party refused to come forward and enroll their names, alleging that they were already invested with citizenship and all its privileges, of which Congress had no power to deprive them, and they were unwilling to do anything that would lead to the assignment which had been made of the lands being disturbed, many of them having been sold to innocent purchasers for a valuable consideration. Thus there was no basis for a division of the reservation between the parties, and it became impracticable to proceed further in the execution of the law according to its intent.

To remedy these difficulties another treaty was entered into with the Stockbridge Indians November 24, 1848 (9 Stat., 955), whereby nearly half of the lots of land in the township were recommended to be patented to Indians of the citizen party and white men named in a schedule, and the remainder of the township was sold to the Government to be brought into market at the appraised value, and the Stockbridges belonging to the tribal organization stipulated to remove west of the Mississippi.

This treaty was amended by the Senate, giving the Indian party seventy-two sections of land west of the Mississippi and \$25,000 for old claims which the Stockbridges and Munsees had for some time past been urging upon the Government, and was carried out as to the payments due under said treaty at the time, but the removal of the Indians was delayed by the Government not succeeding, until 1852, in purchasing lands from the Sioux.

When the lands in Minnesota were put at their disposal the Stockbridges set up a claim against the Government for not removing them sooner, refused to remove, and applied for the township of Stockbridge to be ceded to them, which proposition was rejected, but a location offered to them in Wisconsin, near the Menomonee and Oneida reservation, if they should prefer it to the location in Minnesota. In the mean time the Stockbridges, parties to the treaty of 1848, had squandered the moneys paid to them under that treaty and by the State of New York, and the others had sold almost all their lots of land and were poor and destitute. A white population of nearly three times the number of Indians was living interspersed with them on lands bought from the Indians or on lands sold in 1848 to the Government, and many of the latter, after buying out the Indians' right of temporary occupancy, had settled on the improved lots, expecting to buy them when brought into market. The township was governed by

supervisors, justices of the peace, and other township officers, while the Indian organization had a sachem and councillors, and the Indians contended, whenever to their interest, that the courts and other authorities of the State had no jurisdiction over them. Tax titles accrued on many lots, even on those held by the Government, for taxes levied under the authority of the Territory, and the confused state of affairs then existing was believed to be without a parallel anywhere.

By the general Indian appropriation bill of March 3, 1855 (10 Stat., 699), Congress appropriated the sum of \$1,500 to enable the President to treat with and arrange the difficulties among the Stockbridge and Munsee Indians arising out of the said acts of Congress of March 3, 1843, and August 6, 1846, and the treaty of November 24, 1848, in such way as to do justice to the Indians, the settlers on the reserve, and the Government, and thus relieve the questions from the complications and embarrassments by which they were surrounded.

By direction of the Secretary of the Interior, the then Commissioner of the General Land Office, John Wilson, esq., was instructed to proceed to Lake Winnebago and confer with the Superintendent of Indian Affairs at Lake Winnebago, in order to a settlement of the various and delicate questions involved. Thereupon a settlement treaty was made with the Indians on the 1st of June, 1855, which was transmitted to this office by the superintendent, with a notification that, in his opinion, it ought not to be submitted to the Senate. In the report of Mr. Wilson, afterwards received, the same opinion was expressed, and by the honorable Secretary's direction the subject was referred back to the superintendent and the Indians. Subsequent negotiations between that officer (Mr. F. Huebschmann) and the Stockbridge and Munsee tribe of Indians assembled in general council, and such of the Munees who were included in the treaty of September 3, 1839, but were yet residing in the State of New York, represented by duly authorized delegates, resulted in the concluding of the treaty of February 5, 1856 (11 Stat., p. 663).

This treaty, after reciting the several treaties and acts of Congress theretofore had and passed, in relation to the Stockbridge and Munsee tribes of Indians, the constant dissensions then and for years past existing among them, and its avowed object and intention of relieving them from complicated difficulties by which they were surrounded, and establishing comfortably together all such Stockbridges and Munees, wherever located—in Wisconsin, in the State of New York, or west of the Mississippi—as were included in the treaty of September 3, 1839, and desired to remain, for the present, under the paternal care of the United States Government, and for the purpose of enabling such individuals of said tribes as were then qualified and desirous of managing their own affairs to exercise the right and to perform the duties of the citizen, provides as follows:

“ARTICLE I. The Stockbridge and Munsee tribes, who were included in the treaty of September third, one thousand eight hundred and thirty-nine, and all the individual members of said tribes, hereby jointly and severally cede and relinquish to the United States all their remaining right and title in the lands in the town of Stockbridge, State of Wisconsin, the seventy-two sections of land in Minnesota set aside for them by the amendment of the treaty of November twenty-fourth, one thousand eight hundred and forty-eight, the twenty thousand dollars stipulated to be paid to them by the said amendment, the sixteen thousand five hundred dollars invested by the United States in stocks for the benefit of the Stockbridge tribe in conformity to Article IX of the said treaty, and all claims set up by and for the Stockbridge and Munsee tribes, or by and for the Munees separately, or by and for any individuals of the Stockbridge tribe who claim to have been deprived of annuities since the year one thousand eight hundred and forty-three, and all such and other claims set up by or for them or any of them are hereby abrogated, and the United States released and discharged therefrom.

“ART. II. In consideration of such cession and relinquishment of said Stockbridges and Munees, the United States agrees to select, as soon as practicable, and to give them a tract of land in the State of Wisconsin, near the southern boundary of the Menomonee reservation, of sufficient extent to provide for each head of a family, and other lots of land of eighty and forty acres, as hereinafter provided; every such lot to contain at least one-half of arable land, and to pay, to be expended for improvements for the said Stockbridges and Munees, as provided in Article IV, the sum of forty-one thousand one hundred dollars, and a further sum of twenty thousand five hundred and fifty dollars to enable them to remove, and (amendment) the further sum of eighteen thousand dollars (twelve thousand for the Stockbridges and six thousand for the Munees), to be ex-



pended, at such time and in such manner as may be prescribed by the Secretary of the Interior, in the purchase of stock and necessities, the discharge of the national or tribal debts, and to enable them to settle their affairs."

Article III provides for the survey of such tract and allotment thereof in manner therein provided, for immediate possession thereafter by the allottees, for the issue of nonassignable certificates, and for the issue of patents in the usual form to the holder of such certificates after the expiration of ten years with necessary provisions in case of the death of the persons entitled.

Article IV provides for the manner in which the moneys set aside for improvements by the second article shall be expended, viz, one-fourth to the building of roads, the erection of a schoolhouse, and other public improvements, and the residue for improvements to be made by and for the different members and families comprising said tribes according to a system to be adopted by said council, under the direction of the superintendent, approved by the Commissioner of Indian Affairs.

Article V provides—

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

Article VI provides—

"In case the United States desire to locate on the tract of land to be selected as herein provided, the Stockbridges and Munsees emigrated to the west of the Mississippi in conformity to the treaty of September third, one thousand eight hundred and thirty-nine, the Stockbridges and Munsees, parties to this treaty, agree to receive them as brethren; provided that none of the said Stockbridges and Munsees, whether now residing at Stockbridge, in the State of Wisconsin, in the State of New York, or west of the Mississippi, shall be entitled to any of these lands or the money stipulated to be expended by these articles, unless they remove to the new location within two years from the ratification hereof."

Article VII provides for the setting apart by the Stockbridges and Munsees for educational purposes exclusively of their portion of the annuities under the treaties of November 11, 1794, August 11, 1827, and September 3, 1839. \* \* \*

Article XI reads as follows:

"The object of this instrument being to advance the welfare and improvement of said Indians, it is agreed, if it prove insufficient, from causes which can not now be foreseen, to effect these ends, that the President of the United States may, by and with the consent of the Senate, adopt such policy in the management of their affairs as in his judgment may be most beneficial to them; or *Congress may, hereafter, make such provision by law as experience shall prove to be necessary.*"

\* \* \* \* \*

Article XIII empowered the Secretary of the Interior, at his discretion, to examine into the sales of allotments under the act of March 3, 1843, and for the setting aside or confirmation of such sales. The Secretary of the Interior was also authorized to cause patents to issue to such lots of land to such persons as should be found entitled to the same.

Articles XIV and XV provide for the sale of the lots of land, the equitable title to which had not passed by valid sales from the Stockbridge Indians to purchasers, and such lots as had by the treaty of November 24, 1848, been ceded to the United States; and for payment of the appraised value of improvements on the lands ceded by the treaty under recital.

Article XVI provides for the issue of patents to certain Stockbridge Indians for the lots of land described and set opposite their names in the schedule immediately following, in full of all claims and demands whatsoever to which they then were, or might thereafter be, entitled in the lands, moneys, or annuities of the Stockbridge tribe of Indians. Here follows a schedule of twenty-one persons, with description of the lots to be patented to them, respectively; also of lots, the privilege of entering which on the same terms of payment as prescribed for actual settlers in Article XIV is granted. (See treaty, p. 667.)

By amendment (p. 676) the name of John W. Abrams was added to said schedule.

Mary Hendrick, Levy Konkapot, and (by said amendment) John W. Abrams (severally mentioned in said schedule) were to have the privilege of again joining the Stockbridges and Munsees in their new location.

This treaty was signed by about four-fifths of the Stockbridge and Munsee tribe of Indians, and was believed to be generally acceptable to all parties interested. About one-fifth of the Indians, headed by one Austin E. Quinney, and mostly consisting of members of the Quinney family who had always exercised great power over the tribe, refused to sign the treaty, but without giving any sensible reason. The real objection, however, on the part of the Quinneys to the reorganization of the Stockbridges and Munsees appears to have been the threatened termination to their rule over the tribe by the ratification of the treaty. (See Superintendent Huebschmann's letter to Commissioner Manypenny, of February 23, 1856, appended to the treaty.)

The treaty was ratified by the Senate, with certain amendments, the substance of which has already been stated, April 18, 1856, and approved by the President September 8, 1856.

By treaty of the 11th of February, 1856 (11 Stat., 679), the Menomonee Indians ceded to the United States a tract of land, not exceeding two townships in extent, to be selected in the western part of their reservation on its south line, for the purpose of locating thereon the Stockbridge and Munsee Indians, and such other of the New York Indians as the United States might desire to remove to the said location within two years from the date thereof.

At first the Stockbridges and Munsees manifested some dissatisfaction with the lands assigned to them by the treaty of 1856, because, as they alleged, of their unfitness for agricultural purposes, and a portion of the tribe refused to remove, in consequence of which the Department did not feel justified in paying over their removal and improvement funds, not considering them entitled thereto unless they all united in complying with the obligations of the treaty.

Though not satisfied that their objections to their new country were well founded, the Department was willing to gratify them in a desire which they expressed, to be located with the Oneidas on their reservation, if the arrangement could be made upon reasonable terms. The Oneidas, however, demanded so exorbitant a price for the lands necessary for the purpose that the project had to be abandoned, after which all of the Stockbridges and Munsees assented to the treaty, expressed their willingness to accept of its provisions, and removed to the location assigned them by said treaty and purchased from the Menomonees.

From the period of their removal to this reservation down to the year 1871, the Stockbridges and Munsees appear to have been afflicted with the same chronic troubles and divisions. Indeed, the entire history of this tribe seems to have been marred by petty squabbles for place and power. The treaty made in 1856, and the census accompanying it, presented an aggregate population of both bodies, numbering 409 souls. A removal and improvement fund was provided them, upon receipt of which the greater portion left the tribe, expended their money elsewhere, and in 1866 the number upon the reservation was reduced to 152. At the date of the annual report for 1867 those remaining upon the reservation numbered 147, the remainder having adopted the habits and customs of the whites and expressed a desire to become citizens.

In February of that year a treaty was entered into by which they agreed to cede their reservation, the Government undertaking to provide those who wished to retain their tribal character with another, allotting land to them in severalty without power of alienation unless with sanction of the Interior Department, and to do various things for their benefit, whilst, with regard to those who wished to become citizens, it agreed to pay them their proportionate share of the estimated value of the ceded land and of public improvements thereon, and of moneys invested and held in trust for them, they relinquishing all claim to be thereafter considered as members of the tribe, or to share in the benefits of any treaty stipulations. This treaty, however, was not ratified by the Senate.

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

This act (being the act referred to in the preamble of the bill now under consideration) provided for the appraisement, under the direction of the Secretary of the Interior, in 80-acre lots, according to the public survey, of the two townships of land situated in the county of Shawano, and State of Wisconsin, set apart for the use of the Stockbridge and Munsee tribes of Indians—such appraisement to include the value of the timber growing on each lot—estimating the pine timber at not less than \$1 per thousand and the value of all improvements, if any, made thereon, with the name of the owner of such improvements, as certified by the sachem and councilors of said tribe.

Section 2 of said act provided for the manner in which said lands should be

advertised and sold, with a proviso authorizing the Secretary of the Interior to reserve from sale a quantity of said lands not exceeding eighteen contiguous sections, embracing such as were then actually occupied and improved and best adapted to agricultural purposes, subject to allotment to members of the Indian party of said tribe as thereafter provided.

Section 3 provided for payment, out of the first proceeds of the sale of said lands, of the expenses of appraisal and sale, the amount due to individuals for improvements, as returned by the appraisers, and the amount of the debts contracted by the sachem and councilors for the benefit of said tribes, amounting to the sum of \$11,000, according to a schedule to be certified by them and returned to the Commissioner of Indian Affairs.

Section 4 provided that immediately after the return to the General Land Office of the last public sale, a statement should be made up, under direction of the Secretary of the Interior, exhibiting the gross amount of moneys realized from the sale of the said two townships of land, after deducting therefrom the sums appropriated by the preceding sections, to which amount should be added the value of the land remaining unsold of said two townships, estimating the same at 60 cents per acre; also the sum of \$6,000 held in trust by the Government of the United States for the use of the Stockbridge and Munsee tribes of Indians, under the treaty of 1839; and that the total amount thereof should constitute the entire sum of money due from the Government of the United States to the said Stockbridge and Munsee tribes of Indians, to be paid and appropriated for their benefit as thereafter directed.

Section 5 of said act provides as follows:

"That the sum of money thus found due to the said tribes shall be divided between the citizens and Indian parties of said tribes in proportion to the number of each, respectively, according to the rolls thereof made and returned in conformity with the provisions of this act to the Commissioner of Indian Affairs: That portion of said sum belonging to the citizen party shall be equally divided among them per capita, and paid to the heads of families and adult members of said party; that portion of said sum belonging to the Indian party shall be placed to their credit on the books of the Treasurer of the United States, and bear interest at the rate of five per centum per annum, payable semiannually, and said interest shall be applied to the support of schools, the purchase of agricultural implements, or paid in such other manner as the President may direct: Provided, however, that a part of said sum due the Indian party, not exceeding thirty thousand dollars, may, on the request of the sachem and councilors of said tribe, be expended in securing a new location for said tribe, and in removing and aiding them to establish themselves in their new home, and in case of their procuring, and removal to such new location at any time, the said eighteen sections of land reserved for their use by the second section of this act shall be sold in the manner therein provided, and the proceeds thereof be placed to their credit as aforesaid."

Section 6 provides—

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

manner interested in any provision heretofore or hereafter to be made by any treaty or law of the United States for the benefit of said tribes, and they and their descendants shall thenceforth be admitted to all the rights and privileges of citizens of the United States."

Section 7 provides—

"That after the said roll shall have been made and returned the said Indian party shall thenceforth be known as the Stockbridge tribe of Indians, and may be located upon lands reserved by the second section of this act, or such other reservation as may be procured for them, with the assent of the council of said tribe, and their adoption among them of any individual, not of Indian descent, shall be null and void."

The remaining sections of the act are devoted to provisions for allotments of the lands reserved in the second section or of such other suitable and permanent reservation as shall be obtained, and accepted by said tribe, among the individuals and families composing said tribe, in quantities specified; the land so allotted to be held inalienable, and in case of death to be inheritable by decedent's heirs, if members of said tribe; and in default of heirs capable of inheriting to revert to the tribe in common. An appropriation is also made of a lot not exceeding 40 acres, to be held as common property, on which to erect a church, parsonage, schoolhouse, and other improvements necessary for the accommodation of the tribe, with a proviso that if any female shall marry out of said tribe she shall thereby forfeit all right to hold any of said lands as if deceased. It is further provided that the allotments shall be made and certified to the Commissioner of Indian Affairs within one year after the reservation shall have been made and accepted by the tribe: and thereafter the title of the lands described therein shall be held by the United States in trust for individuals and their heirs to whom the same were allotted. The surplus lands embraced in such reservation after making such allotments to be held in like manner by the United States, subject to allotment to individuals of said tribe who may not have received any portion of said reservation, or to be disposed of for the common benefit of said tribe, provided that no change or addition shall be made in the allotment returned to the Commissioner of Indian Affairs, unless the same shall be approved by the Secretary of the Interior.

In pursuance of this act W. T. Richardson, esq., then agent for the Stockbridge and Munsee Indians, was, on the 30th of August, 1871, designated by this office to make the enrollment contemplated by the sixth section; but owing to the factious opposition manifested by the officers of the tribe, in unreasonable demands for the enrollment of certain persons who were excluded by the terms of the act, and the refusal of such officers to sign the rolls unless prepared in accordance with their views, the efforts of the Department to carry out the law were so embarrassed that it became necessary to suspend them from office and order a new election. In the mean time the enrollment was temporarily discontinued.

Afterwards, on the 24th of March, 1874, upon a representation of the circumstances, and application of this office to the then honorable Secretary of the Interior for the appointment of a special commissioner to complete the enrollment provided for by the act, H. R. Wells, esq., of New Jersey, was appointed by Mr. Secretary Delano as such commissioner. Mr. Wells was duly notified of his appointment, and fully instructed as to his duties.

On the 8th of April, 1874, Commissioner Wells made his report, accompanied by two rolls, duly signed and certified in manner prescribed by the act; one, containing the names of those of the Stockbridge and Munsee Indians who had elected to become citizens of the United States; and the other, of those who had elected to retain their tribal relations. The report and accompanying rolls were duly submitted to the honorable Secretary, and returned by him to this office, approved, on the 3d of June following. (See copies report of commissioner, A, and rolls, B, herewith.)

Complaint having been made that in the appraisement of the lands certain individual improvements had, upon certificates of the sachem and councillors of the tribe, been reported as belonging to the tribe, whereas the act provided that all such improvements should be reported in the name of the owner thereof, as certified by the sachem and councillors, this office, in order to prevent the commission of any act of injustice, recommended to the honorable Secretary that Mr. Wells be reappointed a special commissioner to present the matter to the sachem and councillors of the tribe in order to afford them an opportunity to amend their certificates, if they had committed any error as to the ownership of such improvements.

Mr. Wells was accordingly reappointed such special commissioner by Mr. Secretary Delano on the 4th of June, 1874, and was furnished by this office with the necessary instructions. A copy of a petition of Osceola W. Quinney and others, claiming to be entitled to enrollment under the act, was also forwarded to Mr. Wells, and he was directed to submit the same to the officers of the tribe, and report whether any changes should be made in the enrollment lists already approved by the honorable Secretary.

On the 30th of June, 1874, Commissioner Wells made a full report upon the subject of appraisal of the improvements, with names of individuals entitled to be paid therefor, as certified by the sachem and councillors. (See copy report herewith, marked C.)

On the same date Commissioner Wells also made a supplemental report upon the enrollment question, together with a supplemental roll, entitled "Addition to the citizen roll," duly signed and certified as prescribed by the act, which supplemental report and roll was also submitted to the honorable Secretary, and returned by him to this office, approved on the 29th of the same month. (See copy supplemental report and roll herewith, Inclosure D.)

The rolls prepared and submitted by Commissioner Wells contained the names of 139 Stockbridge and Munsee Indians, who had elected to become citizens, and of 112 who had elected to retain their tribal relations.

The records of this office disclose the following facts and figures in relation to the amount received and disbursed under the provisions of the act, viz:

Proceeds of sale of lands, as provided in section 3 of the act .....	\$179, 272. 46
Amount appropriated by act of June 22, 1874, as estimated value of 18 sections of land remaining unsold, 11,803 acres, at 60 cents per acre .....	7, 081. 80
Making a total of .....	186, 354. 26
From which were deducted, as per section 3 of said act, the following items:	
Expenses of appraisal and sale of said lands due the United States .....	\$4, 592. 42
Amount due, in dividends, for improvements, as re- turned by the appraisers .....	8, 420. 00
Amount of tribal indebtedness paid by the United States .....	10, 988. 00
	<hr/>
	\$24, 000. 12
Leaving a net amount of .....	162, 354. 14
To which was added, as per section 4 of said act, pro- ceeds of sale of \$6,000 United States bonds (funded loan of 1881) .....	6, 750. 00
Trust-fund interest due the tribe up to August 1, 1874 .....	779. 08
	<hr/>
	7, 529. 08
Making a total of .....	169, 883. 22

Subject to division between the citizen and Indian class, which, ratably proportioned between the two classes (139 of the citizen and 112 of the Indian), gave the former \$94,379.57, less \$200 retained to meet expenses, etc., of a special commissioner to assist in making payment, leaving a net amount of \$94,179.57 divisible among said citizen class.

The name of Edward Bowman was to be added to the citizen roll if, on investigation, he should be found to be entitled, thus making 140 persons on said roll, between whom said last-mentioned amount was to be divided in equal shares.

To this amount was added the sum of \$8,420, to be paid to certain individuals in full for improvements made by them on said reservation, making a grand total of \$102,599.57, for which amount a requisition was issued and transmitted with full letter of instructions as to payment, accompanied by a copy of citizens' roll as submitted by Commissioner Wells, and tabulated statement giving the names of heads of families and the children or members of such in full, and names of those to whom the shares should be paid; a so copy of the appraisal of improvements to United States Indian Agent J. C. Bridgman, then recently appointed to the Green Bay Agency, on the 10th of October, 1874.

That portion of the fund applicable to the Indian party, amounting to the sum of \$75,804.46, was duly transferred to their credit on the books of the Treasury of the United States, in pursuance of the provisions of section 5 of said act, and

bears interest at the rate of 5 per cent per annum, which is annually distributed among them per capita.

The returns of Agent Bridgman, on file in this office, show that, assisted by Hon. T. C. Jones, of Delaware, Ohio, who had been appointed by the honorable Secretary special commissioner to aid in a proper distribution of the funds, he paid to 138 persons, whose names appeared on the citizen roll; their pro rata share, amounting in each case to \$675.38, making a total of \$93,202.44, exclusive of the sum of \$8,420 paid for individual improvements. All these payments were duly vouched for on rolls bearing the signature of the several recipients, and which are now on file in this office.

The citizen roll, as prepared by Commissioner Wells, contained the names of 139 Stockbridge and Munsee Indians, all of whom received their proportion except Sophia Doxtater, erroneously enrolled as a daughter of Moses Doxtater, but who, upon investigation, proved to be a son's wife not legally married to him, and having two other husbands living. Payment to her was therefore withheld, thus reducing the number to 138, as reported by Agent Bridgman.

The claim of Edward Bowman, before referred to, was not substantiated, and he was therefore not admitted to enrollment.

After the provisions of the act of 1871 had thus far been carried out, and the eighteen sections of land reserved by the act had been practically prepared for the sole occupation of the Indian party, a number of persons belonging to the citizen party, as designated on the citizen roll, and also to what was known as the "old citizen party," refused to remove from the reservation, the latter claiming that they occupied land secured to them by treaty; that the provisions of the act of 1871 had not been legally carried out; that fraud and injustice had been practiced by the enrolling officer; and that they could not be rightfully dispossessed.

Thereupon, on the 25th of January, 1875, the honorable Secretary issued an order declaring all such persons trespassers, and directing the agent to remove them from the reservation.

From this time forward up to the summer of 1877 repeated efforts were made by the Department to remove the citizen party (old and new), but for various causes they proved ineffectual. Amongst them may be classed the want of physical force at the disposal of the agent to accomplish the removal; the protest of the authorities of Shawano County against having a lot of paupers foisted upon them; the intervention of the House Committee on Indian Affairs in April, 1876, in their behalf until an investigation could be had, and the aversion of the Department to resort to extreme measures against an impoverished people.

In August, 1877, Inspector Kemble having been directed to proceed to the Green Bay Agency for the purpose of investigating the Indian service there, his attention was specially called to the contest over the expulsion of the citizen Stockbridges, which it was reported was paralyzing the industries of the tribe, and demoralizing the whole community, and he was directed to examine into the matter and report fully thereon.

On the 12th of November, 1877, Inspector Kemble submitted a detailed report to this office, in which, after reviewing the history of the Stockbridge and Munsee Indians from the year 1843, the various treaties and acts of Congress in connection therewith, and the several arguments presented by the contending parties at a council of the said Indians held on the 24th of October, 1877, and at which he presided, he recommended that a new enrollment of the Stockbridge and Munsee Indians should be had, an appraisement had and sale made of the land and improvements within the remaining 18 sections then and now constituting the Stockbridge Reserve; that provision should be made for retention of their homes by any member of the tribe so desiring (the value of the same to be deducted from the amount to be finally paid such person); that the proceeds of sale, together with all moneys then on deposit in the United States Treasury to the credit of the tribe, should be justly divided amongst the members thereof, as finally determined by such new enrollment; that such as desired to remain Indian should be allowed to connect themselves with any of the tribes in the Indian Territory with whom satisfactory arrangements could be made, such removal to be at the expense of the United States; that the remainder of the tribe be declared citizens; and that before the division of the moneys arising from sale of the lands, a sum sufficient to indemnify the citizen party for the expenses incurred in prosecuting their claims during the three previous years, as should appear after a proper audit, should be set aside and paid over to them in such way as to secure an equitable distribution of the money.

With the views of Inspector Kemble this office was unable to agree, and so

reported to the honorable Secretary under date of July 8, 1878, renewing previous recommendations for the removal from the reservation of all persons known as the citizen class, and all other persons found thereon without authority of law. Such recommendation was approved by the Department, and the necessary order addressed to the agent July 3, 1879.

In the execution of this order, the agent reported that he only found one person whose name appeared on the citizens' roll upon the reservation whom he had removed therefrom. He further reported that he had found other persons living on the reservation whose names did not appear on either roll, who again claimed that they were brought and placed there by the Government some twenty-five years back (presumably under the treaty of 1856), and who insisted upon their right to remain.

It is in the interest of these parties (calling themselves the "old citizen party of 1843," and but few in number), as opposed to the Indian party, that the passage of the present bill is sought.

From the voluminous mass of papers on file in this office the relative positions of the respective parties, as claimed by themselves, appear to be about as follows:

The "citizen party" claim—

1. That in 1843 the whole tribe was living upon their reservation, occupying lots which they had selected.

2. That in that year an act was passed making the whole tribe citizens, and leaving untouched their rights to annuities and claims, allotting them each a certain lot or tract of land.

3. That in 1846 the "Quinney" party obtained an act of Congress repealing the act making them citizens, and making it obligatory upon those who became citizens to surrender all their claims and annuities; that the citizen party refused to comply with this act and become citizens, except under the act of 1843; that to become citizens they were required to sign a roll which was deposited and recorded at certain offices, which rolls they never signed, and thus never became citizens, and are now Indians and not citizens.

4. That in 1848 the "Quinney" party, by misrepresenting affairs to the Government, procured a treaty giving them the annuities and claims of the whole tribe, they then receding to the United States the lands which they would have received under the allotment had it been carried out, at the same time wrongfully receding 1,600 acres of land which had been allotted to members of the citizen party and receiving pay for those lands, and that they did all this without the consent of the citizen party, who were not parties to the treaty and surrendered no rights.

5. That in 1856 Government determined to make a new treaty with the whole tribe, and invited the citizen party, the Indian or "Quinney" party, and all others to join in the same, which they did.

6. That patents had never issued to the citizen party for the lands allotted in 1843, thirteen years before, and that they had refused to sign the roll and become citizens, and supposed that the allotments amounted to nothing or were merely rights to the occupancy of certain parties of their reservation to prevent misunderstanding as to where each Indian should live and what land he should use: That in 1856 they at once left those lots in the old reservation and joined with their brethren and went to the new reservation and drew their lots there, and have lived upon them ever since, and consider them their homes; that when they left their old lots in 1856 and took up the new ones, the country had become settled with white inhabitants who told them that these old lots were now coming into market as Government land, and that they, as friends of the tribe, wanted to get the first chance to buy or preëempt them, and wished the citizen party to assign to them their rights in the old allotments; that as the citizen party had never received any patents, they supposed that the old allotments of fifteen years before were worthless, and that they were relinquishing them all under the treaty of 1856 for the lots in the new reservation; so they signed any and all papers which the white men wanted them to sign, which were in some instances deeds of the allotted lands and for which they received no consideration or a mere nothing compared with the real value of said lots, and that they so signed in ignorance that they were signing away any rights.

7. That several years afterwards, when the citizen party were living upon the new reservation upon their new lots, the same white settlers managed to have patents issued for the lots under the old allotment made nineteen years before, and which was void, as the so-called "citizen party" never became citizens, nor assigned the citizen roll, nor accepted the allotted lands, and that the whites

thus made their title good by these patents, the citizen party deriving no benefit therefrom.

8. That the act of 1871 was procured at the instigation of the "Quinney" party, and that under the restricting clauses thereof the old "citizen party" were arbitrarily denied the privilege of enrollment, whereas they claim that members of the Indian party who had participated in the receipt of allotments under the previous acts of Congress and treaty mentioned in said act of 1871, to fully as great an extent as the citizen party, were admitted to enrollment. In short, that discrimination was made against certain members of the so-called "citizen party" in favor of the "Indian party."

On the other hand the "Indian party" claim—

1. That by the act of 1843 the citizen party separated from the tribe and received all the land they were entitled to in Calumet County, Wis., and that they so separated with the full intention of becoming citizens of the United States, and acted in all respects conformably to said act, making private sales and giving warranty deeds of the lands allotted to them under said act to other citizens, or white men, who have ever since held the same by an unquestioned title.

2. That the Indian party remained true to their intention of preserving their tribal organization when the repealing act of 1846 was passed.

3. That it being found impracticable to carry out the provisions of the act of 1846, the treaty of 1848 was concluded, by which the Indian party sold and relinquished to the United States the lands then owned and held by them in severalty under the act of 1843, with the improvements thereon, for the various considerations mentioned in said treaty, to which was added, by amendment, the seventy-two sections of land in Minnesota, and the further sum of \$25,000 to liquidate old claims.

4. That the citizen party refused to join in said treaty, but adhered to their purpose of becoming citizens under the act of 1843, and declined to relinquish the lands allotted to them under that act; consequently a schedule of such last-mentioned lands was appended to said treaty, and provision made for the issue of patents to the individual owners thereof composing the citizen party, in conformity to which patents were subsequently issued. A roll or census of the Stockbridge tribe was also annexed to the treaty, in which the citizen party was not included, having made no such relinquishment as did the Indian party.

5. The Indian party then allege the failure of the Government to locate the seventy-two sections of land in Minnesota, from 1848 to 1856, during which time they continued to occupy many of the allotments of land relinquished by them to the United States by the treaty of 1848.

6. They further allege that by such failure of the Government to fulfill the stipulations of the last-mentioned treaty, by means of which the best localities were taken up by white settlers, the tribe was compelled to enter into the treaty of 1856, by which a home was provided for them in the State of Wisconsin; that the commissioner sent to treat with the tribe, on failing to carry certain points with the tribe, resolved to open the way to allow the citizen party to sign the treaty, and thus gain a majority of names, and so entered the entire citizen party, although they had once received their whole portion of the tribal property, and had no more right to be consulted in the matter than so many white people; that the Indian party remonstrated, but to no purpose, for the treaty was ratified, and both parties removed to the reservation; that the Indian party felt that they had been grossly defrauded, and that from year to year they laid their grievances before the Government until the winter of 1870, when they sent delegates to Washington, the result of which was the framing and passage of the act of 1871.

7. The Indian party admit that in having this law framed they desired to guard against the enrollment of the citizen party, and for that reason the clauses in the act were introduced prohibiting the enrollment of any persons who might have theretofore separated from the tribe and received allotment of lands under the acts of Congress of March 3, 1843, and August 6, 1846, or under the treaty of February 5, 1856, or who should not be of Stockbridge or Munsee descent.

Such, stated as briefly as possible, are the relative positions claimed by the opposing factions. It will readily be seen that the whole case is hampered with difficulties. So far back as 1847 the War Department, then having control of Indian affairs, recognized serious complications in the matter, and subsequent legislation has not improved the condition of affairs. The same feuds exist now as then, intensified only by time and consequent development of bad feeling.

Precisely what weight is to be given to the various charges and counter-charges made by both parties it is impossible at this lapse of time to determine;



but it is manifest from the records of this office that the citizens party generally, and some few of the Indian party, had, between the years 1843 and 1847, parted with their allotments, under the act of 1843, to citizens of the United States and to one another for valuable and at that time deemed adequate considerations, in the shape of money, horses, and goods, and for payment of debts previously contracted, and had given warranty deeds to the purchasers of the lands. (See list of such sales in Report of Commissioner of Indian Affairs for 1847, p. 804.)

It is equally clear that many of these Indians who had sold their allotments of land were parties, rightfully or otherwise, to the treaty of 1856, and thus appeared in the attitude of surrenderers of property which they no longer possessed, and that subsequently to the conclusion of that treaty, viz, in the year 1860, patents to the lands covered by such allotments, where sale in good faith and for consideration was found, were issued by the Department under authority conferred by the thirteenth article of the treaty of 1856.

It also appears that such patents generally issued to the original allottees, although the only authority for the issue of a patent was conditioned upon proof of a proper and sufficient sale. It would seem that the sale could hardly have been approved according to the condition of the thirteenth article referred to, without determining the party in whom the right to the land had vested, and that the title should have been given accordingly.

Moreover, it appears that on the report of the agent for this tribe, and the recommendation of the Commissioner of Indian Affairs at the time, patents were issued in the same year, 1860, to others of the allottees, under the act of 1848, concurrently with the issue of patents under the sixteenth article of the treaty of 1856.

It is true that these patents were not issued until after the treaty of 1856, but as has already been shown, the citizen party had long since before disposed of their title to the lands acquired under the act of 1843, for adequate considerations, and it is idle for them to assert otherwise, or that they acted in ignorance of their rights. The Stockbridge Indians have always been reported as a people of exceptional intelligence, and their history for years back abundantly evidences their ability to look after their own interests.

The citizen party claim that the treaty of 1848 was a fraud upon them. *Per contra*, the Indian party charge that the treaty of 1856 was in violation of their rights. Now, the citizen party allege that the act of 1871 was conceived in fraud and executed in iniquity; and in this manner the strife has been going on, crimination and recrimination, for the past forty years. To use the language of one of the Indian inspectors who had listened to some of their complaints, "They (the Stockbridges and Munsees) were each right when they talked of their own rights, and all wrong when they talked of their fellow Stockbridges."

So far as I have been able to discover, there is no evidence in this office to sustain any of the charges of fraud so boldly and unsparingly made by both sides.

The treaty of 1856 purported to be a settlement of all difficulties, and was satisfactory to the then Commissioner of Indian Affairs, Col. Manypenny. It unquestionably gave those of the tribe enumerated in the schedule certain rights in the lands and moneys to be apportioned thereunder (whether the relative equities of the persons interested were properly taken into consideration does not appear), but it also invested Congress with the power to make such future provisions by law as experience should prove to be necessary.

Then came the act of 1871, and the enrollment under that act, the present bone of contention. How and by what means that act was passed does not clearly appear; it is sufficient to say that it was passed. It will be remembered that the act discriminates against the enrollment of certain persons, viz., those who had theretofore separated from the tribes and received allotment of lands under the act of March 3, 1843, and amendment of August 6, 1846, or under the treaty of February 5, 1856, or who should not be of Stockbridge or Munsee descent.

This act was purely mandatory in its provisions as regarded enrollment, and this Department had no power but to execute the law as it found it. The commissioner appointed in 1874 for that purpose appears to have executed the duties assigned to him under adverse circumstances, but with an honest desire to do so faithfully and well. Charges have been made against him by the citizen party of refusing to enroll certain of their members, but under the terms of the act he could not do otherwise than exclude them. The rolls were evidently prepared with great care, conformably to the act, and signed by the sachem and councilors of the tribe, and in all cases where there was any doubt existing as to the

rights of certain persons to be placed thereon testimony was taken and full explanations submitted. Errors may have crept into the rolls, but a careful comparison of them with schedules of the excepted parties, as disclosed by the records of this office, fails to disclose more than two or three names about whom there is any question, and it is quite possible that these are susceptible of explanation.

It is also proper to add that some of the so-called "old-citizen party," who are interested in the passage of this bill, received pay for their improvements under the third section of the act of 1871.

With all due deference, I can not help thinking that this unfortunate tribe of Indians has been overlegislated for, and that the constant discord and dissensions existing amongst them for the past forty years are mainly attributable thereto. It has been urged that whatever may have been the equities between the members of the tribe in regard to the lands occupied by it prior to the treaty of 1856, that treaty must be regarded as a settlement of all differences prior thereto, and that in virtue thereof every member of the tribe signing that treaty obtained an equal interest with every other member in the lands acquired by it, and that the Government is bound to carry out in good faith the object sought to be accomplished by it.

But assuming such a course to be desirable, this Department has no power to disregard subsequent legislation in order to fulfill a previous treaty. Whether such legislation be ill-advised or not, I submit that it must be taken to be a repeal of the treaty on the part of the United States so far as it conflicts with the same.

It is quite possible that the citizen party, mainly interested in the passage of this bill, may have outstanding equities, but I am unwilling to recommend that the peace and welfare of the many, to whom the present reservation is assigned, should be destroyed to subservise the purposes or to gratify the wishes of the few, or that the legislation of 1871 should be in any manner disturbed. I should rather be disposed to favor some special enactment for the relief of the "old-citizen party," who have been excluded from enrollment, upon another basis, such as Congress in its wisdom may decide.

The bill (H. R. 3678) is herewith respectfully returned.

Very respectfully,

THOS. M. NICHOL,  
*Acting Commissioner.*

Hon. A. M. SCALES,  
*Chairman Committee on Indian Affairs,  
House of Representatives.*

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A.

REPORT OF COMMISSIONER WELLS, APRIL 8, 1874

Hon. E. P. SMITH,  
*Commissioner of Indian Affairs:*

MY DEAR SIR: In making the enrollment of the Stockbridge and Munsee Indians, pursuant to your instructions, and in conformity with the act of Congress of February 6, 1871, your commissioner desires to present therewith the following history and statement, intending thereby to briefly detail the reasons which controlled the sachem and councilors and your commissioner in placing upon or leaving off from the rolls the names of certain Indians, in regard to the enrollment of whom, or their nonenrollment, there may appear to be some question.

The act of Congress of February 6, 1871, provides: "Nor shall any person, or his or her descendants, be entered upon either of said rolls who may have heretofore separated from said tribe and received allotment of lands under the act of Congress for the relief of the Stockbridge tribe of Indians of March 3, 1843, and amendment of August 6, 1846, or under the treaty of February 5, 1856, or who shall not be of Stockbridge or Munsee descent."

Peter D. Littleman (enrolled).—Had two lots patented to him, which he had sold previous to the treaty of 1848. Under the allotment of 1843, he had, in addition to these two lots, 19 acres in lot No. 127, and lots No. 237, section 20, and 334, section 17, valued under the appraisalment of the treaty of 1848 at \$395, which amount was paid into the tribal fund, and in consideration for which the tribe,

in general council assembled, received said Littleman into the nation. In view of the action of the tribe at that time, and of the equitable right which said Peter D. Littleman holds in the tribal property, your commissioner has placed his name upon the rolls on the request of the sachem and councilors.

Diana Littleman (enrolled).—Received patent for lands under the sixteenth section of the treaty of 1856 as one of the heirs of Daniel Davids, thereby voluntarily surrendering any rights she may have had subsequent to said treaty as one of the heirs of Daniel Davids. She, however, still retained her share in the tribal property which she had acquired under the act of 1843, and which was placed by her in the tribal fund under the treaty of 1848.

John P. Quinney (enrolled).—This is a case similar to that of Peter D. Littleman. He contributed 35½ acres of land in lot No. 84 and lots L and P, appraised at \$176.25.

John Gocum (enrolled).—Same as Peter D. Littleman's case. He contributed lot No. 347, section 21, appraised at \$150.

Jonas Thompson (enrolled).—Same as Peter D. Littleman's case. He contributed lots No. 246, section 19, and 345, section 21, appraised at \$300.

Nicholas Palmer (enrolled).—Same as Peter D. Littleman's case. He contributed lot No. 176, section 7, appraised at \$150.

Dennis T. Turkey (enrolled).—He is the descendant of Aaron Turkey, whose case is like that of Peter D. Littleman. He contributed lots 66 (east end), 147, 148, 214, 285, and 343, appraised at \$1,137.50.

Benjamin Duxtater (enrolled).—This case is that of a minor under the act of 1843, who had allotted to him one lot, which he pawned to a Mr. Whitney, at that time Indian trader at Stockbridge; he joined the Indian party under the treaty of 1848, and came into the Stockbridge tribe to share their future rights by invitation and agreement with the tribe in council assembled, same as did Peter D. Littleman.

Adelaide Davids, Rebecca Gardner, Jemima Davids, Amelia Wanby, Carolina Chicks, Celinda Delany, Josephine Taylor, Jeannette Howe, Alice R. Moon, Hannah Moon, Mary E. C. Howe, Charlotte Moore, Almira P. Dick, Algerina Jourdan, Elizabeth Gardner (all enrolled).—The above-named women married out of the tribe. By so doing they gave up and relinquished all share or claim they had in or to the property of the Stockbridge Indians. This is now, and has been for many years, the law of this tribe of Indians, and, so far as your commissioner has been able to discover, the same law prevails among the different Indian nations. In consideration, however, of the fact that had they remained with the tribe they would have been enrolled without question, and that they possessed an equitable right to share in the division of the property of this tribe, your commissioner, by and with the advice and consent of the sachem and councilors, has placed their names on the enrollment, but left off therefrom the names of their children.

John P. Hendricks (not enrolled).—Under the treaty of 1839, made with the Stockbridge Indians, a portion of the tribe selected to move to Missouri, and lived on lands of the Delaware Indians there until they could make arrangements to locate upon lands known as the "New York Indian tract," in which tract the Stockbridge Indians had a right in common with the Six Nations. These Indians, under the treaty of 1839, received full pay for their interest in the Stockbridge lands in Wisconsin, and pay for all their improvements. In consideration of said payments they, by the express terms of the treaty, relinquished all claim to the said Stockbridge lands in Wisconsin. John P. Hendricks was one of those who so went to Missouri. He was not known as a member of the tribe under either of the acts of 1843 or 1846, or under the treaty of 1848. His first participation with the tribe as a member after his removal to Missouri was under the treaty of 1856, to which he was a signer. Your commissioner is of the opinion that said John P. Hendricks has no equitable right to a share in the division of the Stockbridge property, and in this view is supported by the sachem and councilors.

In addition to the above it is proper to state that said Hendricks has removed from the tribe, and is now living with the Oneida tribe of Indians upon their reservation in the State of Wisconsin.

Abigail Hendricks (not enrolled).—Wife of John P. Hendricks. Drew a lot under the act of 1843, which was afterwards patented to her.

Hannah Peters, Mary Miller, Sophrona Sophia Thompson, Sophia Pye, Harriet Turkey, Sarah Slingerland, white woman (not enrolled).—In connection with the foregoing-named persons, your commissioner would say that they are wives of the members of the Indian party. Their laws and customs make them members of the tribe, but the act of 1871 prevented their enrollment, for the reason they

"were not of Stockbridge or Munsee descent," or had "received allotment of lands." Your commissioner desires to recommend that their names be placed upon the rolls, and that they hereafter be known as members of the Stockbridge tribe of Indians, to share alike with the other women of the nation in the division of moneys or supplies, and in the allotment of lands under the eighth section of the act of 1871, but not to be counted in the division of property provided to be made by the fifth section of the act of 1871. If this recommendation can be carried into effect it will give great satisfaction to the Indians, and the judgment of your commissioner is that it will put at rest a question which may come up at some future day to annoy the Department, and which will be a difficult matter for the Indian agent to deal with in his future relations with the tribe.

Your commissioner recommended that the sachem and councilors formally adopt into the tribe these women after the completion of the enrollment. The appended letter, marked Exhibit A, shows that such action has been taken.

Jacob Jacobs (enrolled).—In regard to the enrollment of Jacob Jacobs and his family of three children, your commissioner desires to refer to the appended agreement, marked Exhibit B. A thorough search of the records in the General Land Office fails to discover that Jacob Jacobs, or anyone for him, has received allotment or patent for land.

Moses Doxtater (enrolled).—Moses Doxtater and family were placed upon the Indian roll by your commissioner and the sachem and councilors; after this was done some questions arose as to which roll he desired to go on, and it was mutually agreed between the sachem and councilors and your commissioner that no change should be made, unless Mr. Doxtater, on being notified upon which roll he had been placed, should indicate a wish to have his name on the citizen roll. The letter of his attorney is herewith appended (Exhibit H). In accordance with the wish there expressed, his name and those of his family have been placed on the citizen roll.

Appended hereto, and marked Exhibits K, L, and M, are the affidavits of certain persons whose names were placed upon the citizen roll without their being present. Parties representing them were told it would be necessary for the affidavits of these persons to be forwarded to your commissioner.

Upon the subject of the complaint made, that certain improvements have been erroneously appraised to parties other than those to whom they rightfully belong, your commissioner would report that the appraisers, acting under the first section of the act of 1871, in performing the duties therein imposed, placed the value of the improvements to the credit of such only as were members of the tribe, as provided by the act of 1871. The improvements made by those not recognized as members of the Stockbridge and Munsee Indians under the terms of the act were placed to the credit of the nation. Your commissioner is clearly of the opinion that this is wrong, and that the individuals who made the improvements, and to whom they justly belong, should receive the pay therefor. The sachem and councilors admit this view of the matter to be proper and right, and agreed with your commissioner that the payment of the appraised value of said improvements should be made to the individuals. This matter will have to be arranged with the sachem and councilors when the improvement money is paid.

The appraisement of improvements made to the heirs of John N. Chicks, in regard to which Elizabeth Bowman, formerly Elizabeth Chicks, asks a hearing before final action is taken (see Exhibits C and D), involves the ascertainment of who are the legal heirs of John N. Chicks, and can readily be determined by the officer making the payments. Mr. Bowman was the wife of John N. Chicks, and has a legal right to her share in the disposition of his property.

As to the claim made by the heirs of Austin E. Quinney for the improvement money said to be wrongfully appraised to Darius Charles (see Exhibit E), the affidavit of Mr. Charles is herewith submitted (Exhibit F). Your commissioner is of opinion that the statements therein made are true, as similar statements were made to him personally by parties who were acquainted with the facts of the case.

The affidavit of Benjamin Doxtater (Exhibit C) is also herewith inclosed. Your commissioner could learn but little about the case. Directions were given to all the interested parties that papers should be prepared and in readiness for the inspection of the officer making the payments, which would more fully explain the case.

In submitting the foregoing and the accompanying papers, I have the honor to be, with respect, your obedient servant,

HENRY R. WELLS,  
*Special Commissioner.*

## TESTIMONY ACCOMPANYING COMMISSIONER WELLS'S REPORT.

## EXHIBIT A.

H. R. WELLS, Esq. :

DEAR SIR: The undersigned drop you this to let you know that the women who married into the tribe on the side of the Indian party, and who were rejected from the rolls, have been adopted, and are received as members of the tribe according to the agreement had between us while making the said rolls.

Red Spring, Shawano County, Wis., April 15, 1874.

Respectfully yours, etc.

DARIUS CHARLES, *Sachem*.  
 ZIBA T. PETERS,  
 SAMUEL A. MILLER,  
 ALBERT W. MILLER,  
 JEREMIAH SLINGERLAND,  
 CORNELIUS AARON,  
*Councilors.*

## EXHIBIT B.

RED SPRING, SHAWANO COUNTY, WIS., April 8, 1874.

It is hereby mutually agreed by and between the sachem and councilors of the Stockbridge and Munsee tribe of Indians and Henry R. Wells, United States special commissioner, that in the case of Jacob Jacobs and his children, the said Jacobs's name being now upon the enrollment made under the sixth section of the act of February 6, 1871, that the said commissioner is to investigate the maps and records on file in the Department of the Interior at Washington, and if it shall appear therefrom or from any other evidence that said Jacobs, or anybody for him, has received his full share of the division or allotment of lands under the act of 1843 to which he was justly entitled, then and in that case the said Jacobs's name and that of his children shall be erased from said enrollment; and if it shall appear upon such investigation or other evidence that said Jacobs, or any one for him, has not received the said full share to which he was justly entitled, then in that event the name of said Jacobs and his children shall remain as now upon the enrollment.

DARIUS CHARLES, *Sachem*.  
 ZIBA T. PETERS,  
 JEREMIAH SLINGERLAND,  
 ALBERT MILLER,  
 SAMUEL A. MILLER,  
 CORNELIUS S. AARON,  
*Councilors.*

HENRY R. WELLS,  
*United States Special Commissioner.*

APRIL 8, 1874.

## EXHIBIT C.

STATE OF WISCONSIN, *Calumet County*, ss:

Elizabeth Bowman, being duly sworn, deposes and says that she is a member of the Stockbridge tribe of Indians; that in the year 1856 the west half of the southeast quarter of section 36, township 28, range 14, in Shawano County, in the State of Wisconsin, was allotted to her; that she resided on said land from the year 1856 until 1860, and made all the improvements that are now on said land; that under the law of 1871 the improvements aforesaid were wrongfully set to the heirs of one John N. Chicks; that this affiant petitions the Hon. William T. Richardson, Indian agent, to allow her a hearing in the case before final action is taken.

her  
 ELIZABETH + BOWMAN.  
 mark.

Subscribed and sworn to before me this 19th day of December, A. D. 1873.

CLARK P. SKIDMORE,  
*Justice of the Peace.*

## EXHIBIT D.

STATE OF WISCONSIN, *Calumet County*, ss:

Elizabeth Chicks, being duly sworn, deposes and says that the west half of the southeast quarter of section 36, township 28, range 14, Red Spring Reservation, Keshena, Wis., belongs to her; that she took up the same in the year 1857 and used the money she drew to make the improvements that are now on the place; that the said land and improvements are set to the heirs of John Chicks in the list made in 1871; that the said heirs have no rights in the premises; that it belongs to her and no one else.

The agent, Mr. T. Richardson, is hereby authorized and requested to correct the same on the list.

ELIZABETH <sup>her</sup> + CHICKS.  
mark.

Sworn and subscribed to before me this 13th day of August, 1872.

CLARK P. SKIDMORE,  
*Justice of the Peace.*

STATE OF WISCONSIN, *Calumet County*, ss:

Bartholomew Bowman and Job Bowman, being duly sworn, depose and say that they are the sons of Elizabeth Chicks, and that they know of their own knowledge that the foregoing statement made by her is just and true.

BARTHOLOMEW <sup>his</sup> + BOWMAN.  
mark.

JOB BOWMAN.

Sworn and subscribed to before me this 19th day of August, 1872.

CLARK P. SKIDMORE,  
*Justice of the Peace.*

## EXHIBIT E.

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

Personally appeared before me, the undersigned, justice of the peace in and for the said county of Calumet and State of Wisconsin, Jane A. Quinney, Washington Quinney, and Joseph M. Quinney, who being duly sworn, depose and say:

That the above-named Jane A. Quinney is the widow of the late Austin E. Quinney, who bought the improvements of Paul W. Quinney in the Stockbridge and Munsee Reservation, in Shawano County, in the State of Wisconsin, appraised by the commissioners appointed by the Secretary of the Interior in 1871, improvements on the west half of northeast quarter of section 26, township 28, range 14, valued at \$450; total, \$550.

That the said Jane E. Quinney is the rightful owner of the land and improvements of the above-described tract instead of Darius Charles, who is wrongfully certified to be the owner in the list of the said appraisers.

JANE A. <sup>her</sup> + QUINNEY.  
mark.

WASHINGTON QUINNEY.  
JOSEPH M. QUINNEY.

Sworn and subscribed to before me this 22d day of April, 1872.

CLARK P. SKIDMORE,  
*Justice of the Peace.*

## EXHIBIT F.

H. R. WELLS, Esq.,  
*Special Commissioner.*

SIR: In reply to the affidavit made by Jane Quinney, Washington Quinney, and Joseph M. Quinney, respecting the improvement upon lot on northeast quarter of section 26, township 28, range 14, in which they affirm that said improvements rightfully belong to Jane A. Quinney instead of the undersigned, please admit the following statement.

Austin E. Quinney, the husband of said Jane A. Quinney, did purchase the improvements of Paul Quinney for about \$60, which improvements were a log house and about 2 acres of land clear of logs and brush, while there were about 2 acres more chopped down, but not logged. After the said Mr. Austin E. Quinney had remained a short time on the reserve with his family, his wife and children left and removed back to Calumet County, and left the old man alone, when he told me to move into his house and occupy the property. I did so at once, and had the said Mr. Quinney living and boarding with me for about six months. After he had remained with me this long, he told me that as his family had removed away and would not in all probability ever return to live on the reserve again, I could continue to occupy the improvements, and make as much more as I chose, and if the tribe should ever make a treaty to sell out I might pay him back the \$60 he paid for the original improvements and the rest whatever I had made, or whatever was over and above, I could claim and have the same paid to me. This was about fourteen years ago, during which time I have not only occupied the said improvements, but have chopped away and logged eleven acres, built two log barns, and an addition to the original house. Now, as the appraisers of the improvements found me occupying them, and had been so long upon the place, they deemed me to be the proper person to receive their value, and accordingly assigned the said valuation to me. In having the appraisalment attached to my name it is by no means my design to wrong Mrs. Quinney out the said \$60 that Mr. Quinney originally paid, but will refund that amount and settle the matter with her just as I agreed with the old man before his departure from this reserve, and just as soon as the money comes into my hands.

Respectfully yours, etc.,

DARIUS CHARLES.

APRIL 3, 1874.

STATE OF WISCONSIN, ss:

Sworn to and subscribed before me this 4th day of April, 1874.

M. L. MARTIN,  
Notary Public.

EXHIBIT G.

Hon. S. R. WELLS,

*United States Commissioner:*

STR: According to your directions I herewith submit the following statement in relation to the improvements set to me under the law of 1871, which are now claimed by Jesse M. Jourdan as having made all of said improvements.

I have to say that I have purchased from said Jourdan all of the improvements he had made, some time in the year of 1864 or 1865: he had some 4 acres of cleared land and a small log house on the lot at the time I bought it, and I have paid him the sum of \$24 for the improvements he had made, and all of the additional improvements thereto have been made by myself and at my expense. I have had possession and have lived in the house for the past fourteen years, and have kept what improved land Jourdan had made from going to ruin since that time, but which I claim I have purchased from him.

In consideration of these facts the said improvements have been set to me by the appraisers in 1871, as certified by the sachem and councillors. The said improvements being on the west half of the southeast quarter of section 24, township 28, range 14 east, and not on section 25, as described by Jesse M. Jourdan.

Very respectfully,

BENJAMIN DOXTATOR.

RED SPRINGS, SHAWANO COUNTY, WIS., April 6, 1874.

STATE OF WISCONSIN,

*Shawano County, ss:*

I, Benjamin Doxtator, do swear that the foregoing statement of facts made by me are true, according to the best of my knowledge and belief.

BENJAMIN DOXTATOR.

Subscribed and sworn to before me this 7th day of April, A. D. 1874.

H. KLOSTERMAN,  
County Judge.

## EXHIBIT H.

WASHINGTON, D. C., April 21, 1874.

SIR: I am informed that my name, and that of Elizabeth, my wife, and those of my children, Cornelius L., Peter, Austin, Moses, Anderson, Phebe, Lucretia, Martha, Hannah, Sophia, Precillia, and Electa, were at the time the enrollment was made by you placed upon the Indian roll. If this is so, you will greatly oblige me by transferring my name and the names of my family, as above given, upon the citizen roll, as I desire to separate from the tribe.

Yours truly,

MOSES DOXTATER,  
By M. H. MCCORD,  
*His Attorney in Fact.*

H. R. WELLS, Esq.,  
*Special Commissioner, Washington, D. C.*

## EXHIBIT K.

STATE OF WISCONSIN,  
*Rock County, Town of Rock, ss:*

Peter Bennett, sr., Abbagail Bennett, his wife, and Mary Bennett, the daughter of said Peter and Abbagail Bennett, being each for himself and herself and sworn, upon oath depose and say that they and each of them belong to the Stockbridge tribe of Indians, and have an interest in the reservation belonging to said tribe situate in the State of Wisconsin; that as they and each of them are informed they are now enrolled upon the Indian enrollment, and are classed as part of the said tribe of Stockbridge Indians; that it is their desire and wish and the desire and wish of each of said deponents, that their name, and the name of each of them, be taken from said enrollment as Indians of said tribe, and that they and each of them be enrolled as citizens; that they and each of them desire to sever their connection with said tribe of Stockbridge Indians in all tribal relations, and they and each of them desire that all the annuities and sums due them, or to become due them, from the United States Government, may be paid at once.

his  
PETER + BENNETT.  
mark.

her  
ABBAGAIL + BENNETT.  
mark.

Miss MARY BENNETT.

Subscribed and sworn to before me this 9th day of April, 1874.

PHILIP PALMER,  
*Justice Peace.*

## EXHIBIT L.

STATE OF WISCONSIN,  
*Fond du Lac County, ss:*

Susan Adams, being duly sworn, says she is the identical Susan Adams, widow of Eleazer Adams, of the Stockbridge Nation, and daughter of Henry Hendricks, of the Stockbridge Nation. Deponent further says that she has been informed that her name has been placed upon the citizen roll of the enrollment, under act of Congress, by John Adams, and that this affidavit is to testify that she approves and ratifies such action, and that she desires her name to remain upon such roll.

SUSAN ADAMS.

Sworn and subscribed to before me this 9th day of April, 1874, after being read to deponent by me.

[SEAL.]

GEO. W. CARTER,  
*Notary Public.*



EXHIBIT M.

STATE OF WISCONSIN,  
County of Brown, ss :

On this 8th day of April, 1874, before me, a notary public in and for said county of Brown, appeared personally Elizabeth Antone and Mary E. C. Howe, depose and say that they belong to the tribe of the Stockbridge Indians, and further that Tunis Howe has made on the 1st day of April, 1874, on the reservation of the Stockbridge Indian tribe, to the Commissioner of the Indian Affairs, the proposition that the above-named Elizabeth Antone and Mary E. C. Howe may be put on the roll (citizen) of the Stockbridge Indian tribe, and on account that they above named, Elizabeth Antone and Mary E. C. Howe, could not be present to give their consent to such proposition, therefore the said Elizabeth Antony and Mary E. C. Howe say further that the said Tunis Howe was authorized be us to do so.

her  
ELIZABETH + ANTONE.  
mark.  
MARY E. C. HOW.

Witness for Elizabeth Antone.  
L. SCHEURING.

Subscribed and sworn to before me this 8th day of April, 1874.  
[SEAL.]

LOUIS SCHEURING,  
Notary Public.

B.

CITIZEN AND INDIAN ROLL ACCOMPANYING COMMISSIONER WELLS'S REPORT.

Enrollment of the Stockbridge and Munsee tribe of Indians, made in pursuance of the sixth section of the act of February 6, 1871, entitled "An act for the relief of the Stockbridge and Munsee tribe of Indians in the State of Wisconsin," by Henry B. Wells, United States special commissioner.

CITIZEN ROLL.

(Embracing the names of all such persons of full age and their families who have signified their desire to separate their relations with said tribe and to become citizens of the United States.)

Adams, John C	Charles, Eleanor	Jacobs, Jacob
Adams, Susan	Candy, Electa W	Jacobs
Adams, Augusta W	Chicks, Caroline	Jacobs
Adams, Ida Mary	Davids, Adelaide	Jacobs
Antone, Darius	Davids, Jemima	Jourdan, Algerina
Antone, Elizabeth	Delaney, Celinda	Konkapot, Elias
Bennett, Peter C	Dick, Almira P	Konkapot, Hannah
Bennett, Mary	Doxtater, Moses	Littleman, Peter D.
Bennett, Abagail	Doxtater, Elizabeth	Littleman, Diana
Bennett, Peter, jr	Doxatater, Cornelia	Littleman Henry
Bennett, Mary	Doxtater, Samuel L	Littleman, John
Bennett, William	Doxtater, Peter	Littleman, Andrew
Bennett, Earnest	Doxtater, Austin [son	Littleman, Jonas
Bennett, Delita	Doxtater, Moses Ander-	Metoxen, Daniel P
Bennett, Marion	Doxtater, Phebe	Metoxen, Mary Jane
Bennett, Lester	Doxtater, Lucretia	Metoxen, John
Bennett, Polly	Doxtater, Martha	Metoxen, Peter
Bennett, Sarah A	Doxtater, Hanner	Miller, John S
Bennett, Jeremiah	Doxtater, Sophia	Mohawk, John
Bennett, Elizabeth	Doxtater, Prescilla	Mohawk, Aaron
Bennett, Catharine	Doxtater, Electa	Mohawk, Titus
Bennett, Jasper	Gardner, Elizabeth	Mohawk, John
Bennett, Henry W	Gardner, Rebecca	Mohawk, Emily
Bennett, Richard	Howe, Jeanette	Mohawk, Isaac
Bennett, Robert	Howe, Mary E C	Moon, Alice R

Moon, Hannah	Quinney, Mary E	Taylor, Josephine
Moore, Charlotte	Quinney, John P	Wilber, Jedediah
Palmer, Nicholas	Quinney, Washington	Wilbur, Samuel
Palmer, Julia	Quinney, Olive	Wilbur, Annetta
Palmer, Sophia	Quinney, Alvin	Wilbur, Walter Weed
Putnam, Barsheba	Quinney, Esther	Wilber, Alexander
Pye, David	Quinney, Charity	Wilber
Pye, Lather	Quinney, Rosa	Wilson, Joshua
Pye, Myra	Quinney, Henrietta	Wilson, Lucy
Pye, Rosalie	Quinney, Alice	Wilson, Elizabeth
Quinney, Jane	Quinney, Edwin	Wilson, Orletta
Quinney, Joseph	Quinney, John W	Wilson, Romona
Quinney, Harriett	Quinney, Amos L	Wybro, Jesse
Quinney, Henrietta	Quinney, Emory N	Wybro
Quinney, Absalom N [phus	Quinney, Rachel M	Wybro
Quinney, Flavius Jose-	Quinney, Gilbert M	Darins, Charles, <i>Sachem.</i>
Quinney, Cynthia	Quinney, William A	Liba T. Peters,
Quinney, Olive P	Quinney, Joseph	Jeremiah Slingerland,
Quinney, Simeon	Slingerland, Mary E	Albert Miller.
Quinney, Adelaide	Stevens, Samuel	Samuel A. Miller,
Quinney, Mary Jane	Sheets, Rosella	Cornelius S. Aaron,
Quinney, Josephine	Sheets, Lestina Matilda	<i>Councilors.</i>
Quinney, Emerson	Sheets, Josiah	

HENRY R. WELLS,  
*United States Special Commissioner.*

RED SPRING, SHAWANO COUNTY, WIS., April 8, 1874.

INDIAN ROLL.

(Embracing the names of such as desire to retain their tribal character, and continue under the care and guardianship of the United States.)

Aaron, Cornelius,	Konkopot, Aaron	Peters, Francis Henry
Aaron, Martin D	Konkopot, Prudence	Peter, Theodore Fre-
Aaron, Iroy M	Lewis, Jackson	linghuznen
Aaron, Lorin	Littleman, Oliver	Peters, Lucy
Aaron, Gutting Marsh	Metoxen, Simon S.	Peters, Livingston
Aaron, Vincent	Metoxen, Elizabeth	Pye, Paul
Aaron, Elizabeth	Metoxen, Andrew	Pye, Abram
Aaron, Betsey T	Miller, Alfred	Pye, William
Anthony, Ruth	Miller, Lucius	Pye, Adeline
Anthony, Ebenezer	Miller, Georgia	Pye, Elijah
Branch, Thomas	Miller, Priscilla	Pye, Lucy
Charles, Darius	Miller, Albert	Pye, Catharine
Charles Ida	Miller, Charles Avery	Pye, Maria
Charles Marion	Miller, Orpha Jane [ence	Pye, Eugene
Charles, Bethena	Miller, Theresa Flor-	Pye, Virginia
Charles, Levina	Miller, Edwin	Pye, Benjamin, 3d
Charles, Timothy	Miller, Minerva	Pye, Hannah
Charles, Isabella	Miller, Zachariah	Pye, Benjamin, 4th
Doxtater, Dolly	Miller, Hendrick	Pye, Silas
Doxtater, Hymenius	Miller, William R	Pye, Ella
Doxtater, Ambrosine	Miller, Webb	Pye, Sarah A
Doxtater, Inez	Miller, Miriam	Pye, Betsey
Doxtater, Nancy	Miller, Samuel	Quinney, Osceola
Doxtater, Benjamin	Miller, Warren	Quinney, Lucinda
Doxtater, Unice	Miller, Harriett	Quinney, Wallace
Doxtater, Mina	Nathan, Cecilia	Quinney, Jamison
Doxtater, Elvira	Nathan, Emma	Skickett, Phebe
Doxtater, Daniel	Nathan William	Slingerland, Jeremiah
Doxtater, Alvin	Palmer, Sherman	Spragg, Clarissa
Doxtater, Isabella	Palmer, Elizabeth	Spragg, Henry
Konkopot, Robert	Palmer, Cornelia	Spragg, Jessie
Konkopot, Franklin	Palmer, James	Spragg, Edward
Konkopot, Rose Ann	Peters, Ziba T	Thompson, Jonas
Konkopot, Rachel	Peters, Sterling	Turkey, Dennis T

Williams, Eli T	Yocum, Lillie	Liba T. Peters,
Williams, Andrew	Yocum, Clarissa	Jeremiah Slingerland,
Williams, Austin	Yocum, Addison	Albert Miller,
Yocum, Johiacum	Yocum, Benjamin	Samuel A. Miller,
Yocum, Emma	Yocum, Hannah	Cornelius S. Aaron,
Yocum, John	Darius, Charles, <i>Sachem.</i>	<i>Councilors.</i>

HENRY R. WELLS,  
*United States Special Commissioner.*

RED SPRING, SHAWANO COUNTY, WIS., *April 8, 1874.*

C.

REPORT OF COMMISSIONER WELLS ON APPRAISEMENT OF IMPROVEMENTS ON  
STOCKBRIDGE AND MUNSEE RESERVATION, JUNE 30, 1874.

SHAWANO, WIS., *June 30, 1874.*

DEAR SIR: I have the honor to submit herewith my report upon the appraisement of improvements of the Stockbridge and Munsee Indians, made under the first section of the act of February 6, 1871; this report being in the nature of a change from the appraisement made by Messrs. Wing, Martin, and McCord, United States special commissioners. There is no change in the amount appraised for improvements, but this indicates the names of the individuals to whom should be paid the several amounts, as certified by the Sachem and councilors.

The improvements appraised as tribal property occupied by the heirs of J. N. Chicks should be paid as follows: To Elizabeth Chicks, wife of J. N. Chicks, one-third of \$269, \$89.66; to Martha Antone, formerly Martha Chicks, daughter of J. N. Chicks, one-third of \$269, \$89.67; to Mary Miller, formerly Mary Chicks, one-third of \$269, \$89.67.

The improvements appraised as tribal property under the head of the National Meeting House, at the sum of \$500, should be paid to Albert Miller.

The improvements appraised as tribal property occupied by John Gocum, to the amount of \$102, should be paid to him.

The improvements appraised as tribal property occupied by John Hendricks, to the amount of \$230, should be paid to him.

The improvements appraised as tribal property occupied by William Gardner, to the amount of \$394, should be paid to him.

The improvements appraised as tribal property occupied by Benjamin Gocum, to the amount of \$160, should be paid to him.

The improvements appraised as tribal property occupied by the heirs of Jacob Davids, to the amount of \$137, should be paid as follows: One-fifth thereof, \$27.40, to Hannah Smith, daughter of Jacob Davids; one-fifth, \$27.40, to Margaret Boliu, daughter; one-fifth, \$27.40; to Adams Davids, son; one-fifth, \$27.40, to Solomon Davids, son; one-fifth, \$27.40, to Jonas Davids, son.

The improvements appraised as tribal property occupied by Jacob Jacobs, to the amount of \$278, should be paid to him.

The improvements appraised as tribal property occupied by Stephen Gardner, to the amount of \$600, should be paid to him.

The improvements appraised as tribal property occupied by Timothy Jourdan, to the amount of \$252, should be paid as follows: To Joseph Duxtator, son of Margaret Jourdan, deceased wife of Timothy Jourdan, the sum of \$28, being his one-third share of the one-third interest held by his mother in the property of Timothy Jourdan; to Benjamin Duxtator, also son as aforesaid, \$28; the balance, amounting to \$196, should be paid to Timothy Jourdan.

The above and foregoing embrace all the improvements appraised to the nation as tribal property, and which the Sachem and councilors desire to certify should be paid to individuals owing the same.

The following list includes all disputed cases, and also such cases on the original appraisement as indicated that payment should be made "to the heirs" of persons; this report giving the names of the heirs and the amount due to each.

The improvement appraised to Darius Charles, to the amount of \$450, and claimed in part by the heirs of Austin E. Quinney, should be paid, as follows: To the heirs of Austin E. Quinney, namely, Jane Quinney, wife of Austin E. Quinney, \$20; Washington Quinney, son, \$8; Simeon Quinney, son, \$8; Martha Moore, daughter, \$8; Harriet Quinney, daughter, \$8; Joseph Quinney, son, \$8. The amount assigned to the Quinneys being the division of \$60, found to be the

amount of a claim against the improvements appraised to Darius Charles, said sum appearing, upon investigation made by the Sachem and councilors and your special commissioner, to be the entire amount of any claim held against said Charles by the heirs of Austin E. Quinney. The balance, \$390, should be paid to Darius Charles.

The improvement appraised to the heirs of Polly Konkapot, amounting to \$115, should be paid, as follows: Eli T. Williams, son, \$38.33; Aaron Konkapot, son, \$38.33; Hymenus Doxtater, grandson, \$6.39; Daniel Doxtater, grandson, \$6.39; Mince Doxtater, granddaughter, \$6.39; Mina Doxtater, granddaughter, \$6.39; Elvira Doxtater, granddaughter, \$6.39; and to Rosella Cheats, granddaughter, \$6.39. The six last named being the children of Elizabeth Doxtater, daughter of Polly Konkapot.

The improvement appraised to Benjamin Doxtater, to the amount of \$213, and to which Jesse Jourdan lays claim, should be paid, as follows; Benjamin Doxtater, \$106.50; Jesse Jourdan, \$106.50. The original improvements in this case were made by Jesse Jourdan, but at the time the appraisement was made the premises were occupied by Mr. Doxtater, who had made additional improvements that were taken into consideration by the appraisers. The evidence given by the two claimants contradicted each other, and as the outside evidence indicated that neither could be believed upon oath, the Sachem and councilors deemed the best thing to do was to divide the improvement equally between them; this was also the judgment of your commissioner.

The improvement appraised to Livingston Peters, to the amount of \$223, should be paid as follows: To Hannah Peters, wife of Livingston Peters, \$74.33; Ziba T. Peters, father of Livingston Peters, \$148.67. The said Livingston Peters having died since the appraisal was made, the heirs to his estate are as above given.

The improvements appraised to Elijah Pye, to the amount of \$335, should be paid as follows: To Serepta Johnson, for improvements made prior to Pye's coming in possession of the property, the sum of \$35; to Elijah Pye, present owner of the rest of the improvements, the balance, \$300.

The improvement appraised to Peter Bennett, jr., to the amount of \$233, but which was claimed in part by Darius Charles, should be paid as follows: To Darius Charles, \$33; the balance, \$200, to Peter Bennett, jr. The nature of the claim of Mr. Charles was for improvements made by himself and father upon the land, and in satisfaction of a probable right to the land and improvements. Mr. Bennett is opposed to such settlement; but the matter was investigated by the councilors, who recommend such settlement. The judgment of your commissioner is that the above should give full satisfaction to Mr. Bennett, as he was unable to show that he possessed any right to the improvements appraised to him.

In regard to the other improvements appraised to individuals of the Stockbridge and Munsee Indians, the Sachem and councilors desire to certify they should be paid to the names as upon the original appraisement. As a matter of convenience in making the payments your commissioner has prepared and affixed hereto a list containing the names of all entitled to improvement money, and the amount coming to each.

HENRY R. WELLS,  
*United States Special Commissioner.*

Hon. E. P. SMITH,

*Commissioner of Indian Affairs, Washington, D. C.*

We, the Sachem and councilors of the Stockbridge and Munsee Indians, do hereby certify that we have heard read to us this and the foregoing eleven pages, and that the charges herein made from the first appraisal of the Stockbridge and Munsee improvements, as provided by the first section of the act of February 6, 1871, are made in compliance with our wishes, and according to what we believe to be just and right.

DARIUS CHARLES, *Sachem.*  
ZIBA T. PETERS,  
ALBERT MILLER,  
JEREMIAH SLINGERLAND,  
SAMUEL A. MILLER,  
CORNELIUS S. AARON,

*Councilors.*

HENRY R. WELLS,  
*United States Special Commissioner.*

Appraisal of improvements on lands of Stockbridge and Munsee Indians in accordance with the first section of the act of February 6, 1871.

Name.	First appraisal.	As changed.	Total.
Benjamin Pye, 4th.....	\$158.00	\$158.00	\$158.00
Abram Pye.....	274.00	274.00	274.00
Benjamin Pye, 3d.....	317.00	317.00	317.00
Elias Konkapot.....	40.00	40.00	40.00
Eli T. Williams.....	127.00	127.00	127.00
Peter Bennett, jr.....	233.00	200.00	
Darius Charles.....		33.00	
			233.00
Peter Bennett, sr.....	62.00	62.00	62.00
Samuel Miller.....	525.00	525.00	525.00
John Yocum.....	102.00	102.00	102.00
Albert Miller, Nat. Meeting House.....	500.00	500.00	500.00
Heirs of Polly Konkapot.....	115.00		
Eli T. Williams.....		38.33	
Aron Konkapot.....		38.33	
Hymencous Doxtater.....		6.39	
Daniel Doxtater.....		6.39	
Unice Doxtater.....		6.39	
Mina Doxtater.....		6.39	
Elvira Doxtater.....		6.39	
Rosella Cheats.....		6.39	
			115.00
Elijah Pye.....	335.00		
Serepta Johnson.....			
Lucinda Quinny.....	104.00	104.00	104.00
Samuel Miller.....	203.00	203.00	203.00
J. P. Hendricks.....	230.00	230.00	230.00
Benjamin Doxtater.....	213.00	106.50	
Jesse Jourdan.....		106.50	
			213.00
Aaron Konkapot.....	134.00	134.00	134.00
Lucinda Quinny.....	224.00	224.00	224.00
Timothy Jourdan.....	252.00	196.00	
Joseph Doxtater.....		28.00	
Benjamin Doxtater.....		28.00	
			252.00
Benjamin Yocum.....	160.00	160.00	160.00
Simon S. Metoxen.....	158.00	158.00	158.00
Heirs of Jacob Davids.....	137.00		
Hannah Smith.....		27.40	
Margaret Bollew.....		27.40	
Alan Davids.....		27.40	
Solomon Davids.....		27.40	
Jonas Davids.....		27.40	
			137.00
Dennis T. Turkey.....	165.00	165.00	165.00
William Gardner.....	394.00	394.00	394.00
J. N. Chicks, heirs of.....	269.00		
Elizabeth Chicks.....		89.66	
Martha Antone.....		89.67	
Mary Miller.....		89.67	
			269.00
Jacob Jacobs.....	278.00	278.00	278.00
Stephen Gardner.....	600.00	600.00	600.00
Sterling Peters.....	270.00	270.00	270.00
Jeremiah Slingerland.....	963.00	963.00	963.00
Darius Charles.....	450.00	390.00	
Jane Quinny.....		20.00	
Washington Quinny.....		8.00	
Simeon Quincy.....		8.00	
Matha Moore.....		8.00	
Harriet Quinny.....		8.00	
Joseph Quinny.....		8.00	
			450.00
Ziba T. Peters.....	165.00	165.00	165.00
Livingston Peters.....	223.00		
Hannah Peters.....		74.33	
Ziba T. Peters.....		148.67	
			223.00
Louisa Peters.....	40.00	40.00	40.00

## D.

*Supplemental enrollment of the Stockbridge and Munsee Indians, made in accordance with instructions of Hon. E. P. Smith, Commissioner of Indian Affairs, and in pursuance of the sixth section of the act of February 6, 1871, by Henry R. Wells, United States special commissioner.*

For full explanation of this supplemental roll see report of Commissioner Wells sent herewith.

## ADDITION TO CITIZEN ROLL.

Israel, Abram.  
Peters, Louise.  
Waubu, Amelia.  
Darius Charles, *Sachem*.  
Ziba T. Peters,

Samuel A. Miller,  
Albert Miller,  
Jeremiah Slingerland,  
Cornelius S. Aaron,

*Councilors.*

HENRY R. WELLS,  
*United States Special Commissioner.*

RED SPRING, SHAWANO COUNTY, WIS., *May 30, 1874.*

Hon. E. P. SMITH,

*Commissioner of Indian Affairs, Washington, D. C.:*

DEAR SIR: Referring to instructions given me in your letters of June 5 and 19, the first directing me to submit the petition of Osceola L. Quinney and others to the sachem and councilors of the Stockbridge Indians, with a view to make any needed change which might be proper in the rolls, the second instructing me to make detailed report as to the right of the persons named in the said petition to be enrolled as members of the Stockbridge and Munsee Indians, I have the honor very respectfully to report.

To the first, third, and thirteenth allegations in the affidavit of Osceola N. Quinney *et al.*, I would say that Amelia Wauby, Louise Peters, and Abram Israel are entitled to be enrolled. In the case of the two first, their names were on the original rolls as prepared, but in copying the same they were overlooked, and were not upon the rolls signed by the sachem and the councilors and the commissioner. The case of Abram Israel is that of a person who should have been enrolled. There exists no reason why his name should not be placed upon the citizen roll.

Sent herewith you will find a "Supplementary roll of the Stockbridge and Munsee Indians," signed by the sachem and councilors and the commissioner appointed to make the enrollment. This supplemental roll does not change the rolls already approved by the honorable Secretary other than to add three names to the citizen roll.

To the second allegation in said affidavit, the reply is that Agnes Breed and Singleton Fiddler are the children of Amelia Wauby, the last named being one of the women who married out of the tribe. The names of the women who so married out of the tribe were placed upon the rolls, but their children were not enrolled. The reasons which governed the sachem and councilors and the commissioners in not enrolling the children of the women who married out of the tribe are given in the last report made by Commissioner Wells. After giving the names of some fifteen women, he says:

"The above-named women married out of the tribe. By so doing they gave up and relinquished all share or claim they had in or to the property of the Stockbridge Indians. This is now and has been for many years the law of this tribe of Indians, and so far as your commissioner has been able to discover the same law prevails among the different Indian nations. In consideration, however, of the fact that had they remained with the tribe they would have been enrolled without question, and that they possessed an equitable right to share in the division of the property of this tribe, your commissioner, by and with the advice and consent of the sachem and councilors, has placed their names on the enrollment, but left off therefrom the names of their children."

Fourth. To the affidavit claiming that John P. Hendricks should be enrolled, your commissioner would say that, under the treaty 1839 made with the Stockbridge Indians, a portion of the tribe selected to remove to Missouri, and lived on lands of the Delaware Indians there until they could make arrangements to locate upon lands known as the "New York Indian Tract," to which tract the Stockbridge Indians had a right in common with the Six Nations. These In-

dians, under the treaty of 1839, received full pay for their interest in the Stockbridge lands in Wisconsin, and pay for all their improvements. In consideration of said payments, and by the express terms of the treaty, they relinquish all claims to the said Stockbridge lands in Wisconsin.

John P. Hendricks was one of those who so went to Missouri. He has not been known as a member of the Stockbridge Nation under either of the acts of 1843 or 1846, or under the treaty of 1848. His first participation with the tribe as a member after his removal to Missouri was under the treaty of 1856, to which he was a signer. Your commissioner is of opinion that said John P. Hendricks has no equitable right to share in the division of the Stockbridge property. In this view he is supported by the sachem and the councilors.

In addition to the foregoing it is proper to state that said Hendricks has removed from the tribe and is now living with the Oneida Indians upon their reservation in the State of Wisconsin.

Fifth. Samuel Hendricks's right to be enrolled could only come through his father's right.

Sixth. The case of Catherine Moore is similar to that of the case of the children of Amelia Wauby. Charlotte Moore, mother of Catherine Moore, married out of the tribe. She was enrolled, but her children were not. In this connection your commissioner would say that if the children of women who married out of the tribe should be enrolled it would increase the present rolls some thirty names. Nearly all of these women have moved away from the reservation. Some of them are married to white citizens of the United States, whose children would be citizens. Others have married members of the various Indian tribes in Wisconsin, and their children are counted as a portion of the tribe into which the women married.

Seventh. John Lewis, in the month of February, 1856, murdered one William Thompson, a son of James Thompson, a Stockbridge Indian. From such evidence as your commissioner has been able to gather the murder seems to have been a coldblooded and deliberate act. Said Lewis was arrested, thrown into prison, but by some means escaped therefrom and fled the country. The laws of the Stockbridge and Munsee Nation demand his life as penalty for the crime, and confiscate his property. He has never lived with the tribe since the murder; he fled to Canada, where he now lives. When the murder was committed he had no individual right to any property of the nation, all being owned in common. The sachem and councilors refused to permit his name to be enrolled. Your commissioner did not press his case for the reason that he believed their action was proper under the circumstances.

Eighth. Sophrona Thompson was not enrolled because she was not of Stockbridge or Munsee descent. Your commissioner recommended to the Department in his report upon the enrollment the recognition of said Sophrona Thompson as a member of the Indian portion of the Stockbridge Nation. The recommendation was made for her and four other women similarly situated. Said women had married members of the Indian portion of the Stockbridge Nation, but could not be enrolled under the law of 1871.

Ninth. Edwin Miller is upon the Indian roll.

Tenth. Minerva Miller is upon the Indian roll.

Eleventh. Zachariah Miller is upon the Indian roll.

Twelfth. Hendricks Miller is upon the Indian roll.

To the representations made in the affidavit of Osceola N. Quinney *et al.*, that certain persons have been erroneously enrolled, your commissioner would report:

First. The case of Moses Duxtater and his family. Attached hereto, and marked Exhibits A and B, are affidavits and copy of family records, showing the names and ages of his children. Your commissioner has been unable to discover any possible reason which should prevent his enrollment and that of his family. He is of Stockbridge descent, never separated from the tribe, and has not received patents for lands under any of the acts or treaties mentioned in the act of 1871.

Second. Diana Littleman's case was reported upon, and the reasons given why she was enrolled in the report made by Commissioner Wells upon the enrollment of the Stockbridge and Munsee Indians. The facts in her case are as follows: Under the act of 1843 Daniel Davids became the owner of certain lots of land at Stockbridge, Calumet County, Wis. By the same act Diana Davids, his daughter, afterwards Diana Moore, afterwards Diana Wilbur, now Diana Littleman, also became entitled to a lot of land at the same place. When the treaty of 1848 was made Daniel Davids chose to have his lots patented to him and to separate from the tribe. His daughter selected to place her lot in the common

property of the tribe and to remain with the nation. Daniel Davids died before any lots were patented to him. When the treaty of 1856 was entered into, the heirs of Daniel Davids made application to have the lots due him patented to them. Diana Davids came in for her share as one of the heirs of Daniel Davids. Your commissioner is of the opinion that her right to be enrolled was in no degree affected by the fact that she was the heir of Daniel Davids, and as such heir received her share of his property.

Third. Samuel Stevens is now sixty-four years old. Some seventy years ago a number of Delaware Indians entered into a bargain with the Stockbridge Indians, at that time located at Stockbridge, New York State, to furnish a certain amount of money to be used in the purchase of the land upon which the Stockbridge Indians afterwards lived in the State of Wisconsin. In consideration of the sum paid the said Delaware Indians were adopted into the Stockbridge Nation, and they and their children have ever since been treated and considered as Stockbridge Indians. He was born after his mother had been so adopted. He was recognized as a member of the tribe under the treaty of 1839, by the acts of Congress of 1843 and 1846, by the treaty of 1848, and by the treaty of 1856. When by the treaty of 1848 the lands of the Stockbridge Indians in Stockbridge, Wis., were sold to the Government or assigned to individuals, he owned lots Nos. 9, 95, 127, 21, and 22, appraised by the Government appraisers at \$1,078.50. This amount was placed in the tribal fund by him and became a part of the common property of those who at that time chose to remain Indians and be known as the Stockbridge Nation. Your commissioner's judgment is that by every just and fair construction of the act of 1871, and certainly by the equities involved, he is entitled to be enrolled.

Fourth. Samuel Miller's case in its history does not differ essentially from that of Samuel Stevens. He is 63 years old; was born in the tribe. Has always lived with them, and is now living on their present reservation. For twenty years he has been one of the councilors of the nation. At the time of the treaty of 1848 he contributed to the tribal fund lots Nos. 122, 123, 124, 200, 212, 243, 304, and 337, valued at \$1,662.50. While late Agent Richardson was endeavoring to make the enrollment, a very full and detailed history of the case of Mr. Miller, Mr. Stevens, and others was prepared and sent to the honorable Secretary of the Interior by the sachem and councilors. Afterwards Agent Richardson was directed by the Department to place the names of these persons upon the rolls he was preparing. The history referred to should now be on file in Washington.

In submitting the foregoing detailed statement in regard to the various allegations set forth in the affidavits of Osceola N. Quinney, John C. Adams, and Abram Israel, I have the honor to be, very respectfully,

Your obedient servant,

HENRY W. WELLS,  
*Special Commissioner.*

EXHIBIT A.

OUTAGAMIE COUNTY,  
*Town of Seymour, ss:*

Moses Doxtater, being examined by me, a justice of the peace in and for said county, on oath, says that he is the rightful parent of the following-named children, to wit:

- Cornelius Doxtater, aged 21, born February 13, 1853.
- Samuel Louis Doxtater, born September 14, 1854.
- Lucretia Jane Doxtater, born December 15, 1856.
- Phebe Ann Doxtater, born December 17, 1858.
- Peter Doxtater, born October 9, 1862.
- Austin Doxtater, born August 12, 1865.
- Martha Doxtater, born August 5, 1867.
- Hannah Doxtater, born August 6, 1870.
- Moses Anderson Doxtater, born October 12, 1872.
- Electa Doxtater, born April 4, 1873.
- Priscilla Doxtater, daughter of Lucretia Doxtater (illegitimate), born October 14, 1872.

This deponent further states that Sophia Doxtater is the wife of Samuel Louis Doxtater, his minor child.

his  
MOSES + DOXTATER,  
mark.

Witness:  
JOHN P. HENDRICKS.



Subscribed and sworn to before me this 28th day of April, A. D. 1874, and I hereby certify that the above list of Mr. Doxtater's children, together with their ages, is a correct copy of his family record as put in his family Bible, which I have carefully examined and compared with the above list and found to be correct.

CYRUS CORNING,  
*Justice of the Peace.*

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EXHIBIT B.

STATE OF WISCONSIN,  
*Shawano County:*

John P. Hendricks, being by me first duly sworn, deposes and says that he is personally acquainted with Moses Doxtater, a Stockbridge Indian; that he has heard read the affidavit of Moses Doxtater, which is hereunto attached, and that he knows that said affidavit is true to his own knowledge, except as to the age and birth of the said Doxtater's children, and as to that he verily believes the facts to be as stated by Moses Doxtater in his affidavit of April 28, 1873, which is hereunto attached.

JOHN P. HENDRICKS.

Subscribed and sworn to before me this 29th day of June, A. D. 1874.

H. M. LOOMER,  
*Justice of the Peace.*

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APPENDIX B.

[Senate Mis. Doc. No. 119, Forty-eighth Congress, first session.]

**PROTEST OF A. MILLER, DELEGATE OF THE STOCKBRIDGE  
NATION OF INDIANS AGAINST THE PASSAGE OF BILL H. R.  
2889.**

*To the Congress of the United States:*

The House Committee on Indian Affairs, misled by misrepresentation of facts, having reported favorably the above numbered bill, the undersigned delegate of said nation presents, to the end that there may be a correct understanding of the matters involved, the following statement of facts, and asks that the same be received as a memorial on behalf of and as a protest against said bill by said nation.

In 1821-'22 the Stockbridge-Munsee Nation of New York Indians, desiring to remove to the West, they and others, Oneidas and Brothertons, purchased of the Menomonees the right to occupy in common with them their country, situated in what is now the State of Wisconsin.

Subsequently dissensions arose between the Stockbridges and Menomonees. The United States intervened, and in order to effect a peaceable settlement negotiated with the Menomonees the treaty of February 8, 1831, and by Senate amendment thereto (7 Stat., pp., 342 and 406) two townships of land on the east side of Lake Winnebago, Territory of Wisconsin, were secured by the United States for the use of the Stockbridge-Munsee tribe, and they took possession of them.

By September 3, 1839, a party grew up in the nation, the members of which were desirous of removing West of the Mississippi River. To enable them to do this the Stockbridge Nation ceded to the United States by treaty of that day (7 Stat., 580) the east half of said two townships, which sold, and the proceeds delivered to the members of said party, they departed, save a few individuals subsequently readopted into the tribe, and having had the good taste to stay so, there is no further concern about them.

Between the departure of these and March 3, 1843, another party arose who desired allotment of land in severalty and United States citizenship, and Congress, at the instance of these, a minority, on said March 3, 1843, passed an act (5 Stat., 645) providing for an allotment in severalty of the west half of said two town-

ships among the members of said Stockbridge tribe, or among such of them as by the laws and customs and regulations of said tribe were entitled to the same.

The allotment was to be made by a board of commissioners composed of five of the principal or head men of said tribe, and to be elected by the Indians. This board was to report, with a map; and the seventh section recited that, after the report and map—

"Shall have been filed and transmitted to the President as aforesaid, the said Stockbridge tribe of Indians, and each and every of them, shall then be deemed to be and from that time forth are hereby declared to be citizens of the United States, to all intents and purposes, and shall be entitled to all the rights, privileges, and immunities of such citizens, and shall, in all respects, be subject to the laws of the United States and of the Territory of Wisconsin, in the same manner as other citizens of said Territory; and the jurisdiction of the United States and of said Territory shall be extended over the said township or reservation now held by them in the same manner as over other parts of said Territory; and their rights as a tribe or nation, and their power of making or executing their own laws, usages, or customs, as such tribe shall cease and determine."

An election was held. The candidates of the minority were declared elected. Allotments in severalty were designated, and a report and map transmitted to the President. This done, those desiring United States citizenship, and known as the "Citizens party," took their allotments and exercised the rights, etc., and bore the burdens of citizens of the United States and of the Territory of Wisconsin. The others, who desired neither lands in severalty nor United States citizenship, and were known as the "Indian party," appealed to Congress against the act, and it, satisfied that they were entitled to relief (House Report, No. 447, Twenty-ninth Congress, first section, p. 3), passed its act thereof of August 6, 1846 (9 Stat., 55).

The first section of this act expressly repealed the act of 1843 *in toto*, so far as mere words could do it. It then continued:

"And the said Stockbridge tribe or nation of Indians is restored to their ancient form of government, with all powers, rights, and privileges held and exercised by them under their customs and usages, as fully and completely as though the above-recited act had never passed."

Congress then, supposing it had, as it intended, restored by this first section the Indian status to all as it was prior to the 1843 act, went on to provide by section 2 for an enrollment of those who "shall desire to become and remain citizens of the United States."

It, by the same section provided, for a division of the township (mark, the whole township, it being the W.  $\frac{1}{2}$  of the two gotten from the Menomonees) into two districts after the expiration of the three months given for making the enrollment; these to be called respectively, "Indian district," "Citizen district." The land in the "Indian district" was to remain and be held in common by the members of the "Indian party." That in the "Citizen district" to be divided among the members of the "Citizen party," the subagent to assign his ratable proportion of land to each Indian "who becomes a citizen" by and through the enrollment.

The act was, under the existing facts, impractical, and was quickly found to be so when it was attempted to carry it into effect. For a statement of these facts see Report Commissioner Indian Affairs, 1847, p. 742.

But what is to be particularly noted is the position taken by the members of the citizen party in respect to it. They refused to come forward and enroll their names, alleging that they were already invested with United States citizenship and all its privileges under the 1843 act, and that Congress had not the power to deprive them of it by this 1846 act; that they were unwilling to do anything that would lead to the assignment which has been made of the lands being disturbed. (Report Commissioner, 1847, pp. 741, 772; House Mis. Doc. No. 14, Forty-sixth Congress, third session, p. 2.)

The complicated condition of affairs prevented the act of 1846 being carried out. It was seen that something had to be done, and consequently the treaty of November 24, 1848 (9 Stat., Treaties, p. 136), was negotiated.

In consequence of the contention and conflicting opinions in respect to the citizenship question under the 1843 act, the members of the citizen party holding that they were United States citizens under that act, and repudiating that of 1846, whilst the members of the Indian party, standing upon the 1846 act and repudiating that of 1843, it was imperatively necessary to have determined at the outset who constituted the Stockbridge tribe or nation to make a treaty.

This was recognized, and consequently the second article of the proposed treaty expressly recited—

"That no misunderstanding may exist, now or hereafter, in determining who compose said tribe and are parties hereto, it is agreed that a roll or census shall be taken and appended to this agreement, and in like manner taken annually hereafter, and returned to the Secretary of the War Department of the United States, containing the names of all such as are parties hereto, and to be known and recognized as the Stockbridge tribe of Indians, who, etc."

By the third article this Stockbridge tribe ceded to the United States the Lake Winnebago township; the fifth expressing the consideration, \$16,500, to be paid.

Article 4 provided that the township so purchased should be surveyed into lots, in conformity with the plan adopted by the commissioners elected under the 1843 act, and then went on to recite:

"And such of said lands as were allotted by said commissioners to members of said tribe who have become citizens of the United States (a schedule of which is hereunto annexed) are hereby confirmed to such individuals, respectively, and patents therefor shall be issued by the United States."

Article 7 provided for a removal of the "said Stockbridge tribe" to the west of the Mississippi River, and article 6 for the payment of \$14,504.85 to the members of said tribe for their improvements. There were other money provisions.

The Senate attached an amendment providing, among other things, that the President, within two years after the ratification of the treaty, should procure for the use of said Stockbridge Indians not less than seventy-two sections of land west of the Mississippi River, the Indians to be consulted in the selection of them.

In making this treaty the United States most manifestly endeavored to comply with the wishes of both parties, "citizen" and "Indian." It was satisfactory to and accepted by both parties. Certain it is a careful examination of the Commissioner's reports fails to show that at the time of its making, and at any near time afterwards, was any objection made or protest presented against it by either party.

For the "citizens party" there was recognition of their United States citizenship under the 1843 act, and confirmation of the allotments designated to them under that act. The treaty manifestly proceeded upon the idea that the members of this party, having renounced their Indian citizenship, and taken their share of the common country and abandoned the nation, they, for this reason, and in consideration of their rights and advantages under their acquired United States citizenship, had surrendered all right and interest to and in the property and affairs of the Stockbridge Nation.

For the "Indian party" there was conservation of their Indian nationality and holding in common of their share of the country sold and of the seventy-two sections to be selected under the amendment, and a recognition that they constituted the Stockbridge Nation.

The failure of the members of the "citizen party" to come forward and be enrolled made most manifest their desire and intent not to be regarded as belonging to the nation.

The treaty was carried out promptly by the United States as to the payments due under it at the time, and there only remained to be accomplished the selection of the seventy-two sections west of the Mississippi, the removal of the tribe thither, and the payment of the ten annual installments of \$2,000 each, to be paid under the amendment after the removal.

The members of the tribe manifested a commendable zeal for the removal. (Report, 1849-'50, p. 12; Rep., 1852, p. 5.)

The first trouble that arose was the failure of the Government officials and the Indians to agree upon the selection, and matters dragged along most disadvantageously for the Indians till 1855, when Congress, by act of March 3 of that year (10 Stat., 699) appropriated \$1,500 to enable the President to treat with and arrange the difficulties existing among the Stockbridge and Munsee Indians of Lake Winnebago, in the State of Wisconsin, arising out of the acts of Congress of March 3, 1843, and August 6, 1846, and the treaty of November 24, 1848, "in such manner as may be just to the Indians, and with their assent, and not inconsistent with the legal rights of white persons who may reside on the Stockbridge reserve, of the claim of the United States under the treaty (1848)."

This was the situation at that time. Those who had become citizens of the United States and taken their share in severalty had squandered it and were paupers. A large number of whites had settled upon lands bought in 1848 from the tribe, whilst those disappointed and dissatisfied with the failure of the Gov-

ernment to locate the seventy-two sections west of the Mississippi in conformity with their selection had become desirous of remaining at and having again the township on Lake Winnebago.

The superintendent at that time was one Francis Huebschmann, an unmitigated scoundrel, as was subsequently proven in suits in Wisconsin brought against him by the Government, in which judgments were rendered against him.

It was determined to work up a new treaty as a means for saddling back upon the tribe the pauper United States citizens, and this conscienceless man, Huebschmann, was selected as the commissioner on the part of the United States for the work.

On May 3, 1855, the Commissioner of Indian Affairs wrote the Secretary of the Interior "that, for the purpose of bringing about a result so desirable as that of restoring to these people (Stockbridges) the township of land at Lake Winnebago," if practicable, the Commissioner of the General Land Office should be authorized to be present at the council to be held by Huebschmann with the Indians in order that his experience in the land system of the Government might be made available in the adjustment of some points that in his mind were not free from difficulty.

On June 1, 1855, a treaty was made with the tribe, the Commissioner of the General Land Office being present. It was satisfactory to the Indians, as it restored to them the Lake Winnebago township, and was signed by them almost unanimously. But when Huebschmann transmitted it to the Department he sent with it a notification that, in his opinion, it ought not to be submitted to the Senate. It consequently was not submitted, and the matter was relegated to Huebschmann for further proceedings.

In January or February, 1856, just after the tribe had held its annual election for headmen or councilors (at that time the tribe was living under a written constitution and written laws of their own enactment) Huebschmann came to them and gave notice at a council called at his request that the Government wanted to make another and different treaty, and, instead of restoring the township on Lake Winnebago or giving lands west of the Mississippi, to give land on Wolf River among the Menomonees.

The council knowing full well that the land there was poor, much more so than that on Lake Winnebago, and incapable of supporting a people who depended upon agriculture for subsistence, refused to entertain this and other propositions submitted by Huebschmann.

He finding that the legally constituted sachem and council would not accede to his propositions, proceeded to harangue the people, and saying that he was authorized and instructed to depose the sachem and councilors in case of their refusing to accept his propositions, declared he did depose them, and thereupon ordered an election to fill their places. An election under his auspices was held. At it persons who never belonged to the Stockbridge tribe, as were those who had formerly become citizens of the United States, taken their share of the common country, and abandoned the tribe, were permitted to vote. Only those were elected who were known to favor Huebschmann's plans and propositions.

The draft of what is known as the treaty of February 5, 1856, between the United States and Stockbridge and Munsee tribes (11 Stat., 663) was presented to the so-elected sachem and council and approved by them.

It was then submitted for signatures. Men, women, and boys were induced to sign it. Most of the men who signed it were not members of the tribe and some were beastly drunk at the time of doing so. A number of women signed against the wishes of their husbands. False statements and false promises were made in order to secure signatures, and bribery and forgery were resorted to by Huebschmann.

The annuities due for three or four years previous to this had been withheld. Huebschmann brought this money with him, and used it as a bribe to attract and persuade the doubting. He promised \$10 to each one who would come forward to take it and attach his signature. The ignorant had no suspicion this was their own money, but supposed it was a generous gift from their Great Father, and that it was so much in addition to what the so-called treaty promised. Others, poor and destitute, were impelled to sign by the idea that if they did not do so they would not get their annuity money. Huebschmann most explicitly promised \$50 per head to those who would remove, to be paid before they left their homes, and before the ratification of the treaty if they so desired. He promised them they should have homes upon the lands lying directly south

of Lake Shawano. This was the principal inducement offered, as the Indians knew those lands were of good quality.

There is the clearest demonstration that, notwithstanding the outrage and frauds perpetrated by Huebschmann, not one-half of those who constituted the Stockbridge tribe pursuant to the 1848 treaty signed the 1856 infamy. To see this, one has but to compare the roll or census taken and appended to the 1848 treaty under its second article with the signatures to the 1856 treaty, to see that of the 56 persons named, who in 1848 represented 177 souls, only 25 of them representing 76 souls in 1848 signed the 1856 treaty.

Immediately after the signing of the paper Huebschmann proceeded with a delegation to explore the country that the signers supposed had been promised them. Arrived there he told them they could not look at that land with the expectation of getting it, but that they must make such explorations as he directed. When told by the delegates what was their understanding of the treaty, he replied he was sorry they did not understand it when they signed it, that they had to go where he told them. Then, for the first time, the Indians saw that they had been deceived and a gross fraud practiced upon them. Many became disheartened and regretted they had ever seen Huebschmann and his treaty. The delegation readily discovered that the country it was intended they should take was vastly inferior as a farming country to that on Lake Winnebago, and could by no means come up to the treaty promised of being one-half arable.

The treaty so obtained was rushed to Washington City, and ratified by the Senate April 18, 1856, before those whose rights had been so flagrantly violated and were opposed to the treaty were able to prepare and present their statement of the facts and objections to the treaty.

The land selected by Heubschmann—two townships—was obtained from the Menomonees by treaty of February 11, 1856 (11 Stat., 679).

To appreciate how great and utterly indefensible was the outrage perpetrated upon the tribe by Huebschmann in supplanting the constitutional authorities of the tribe through the form of an election with the voters thereat who were citizens of the United States and not possessed of the slightest right to a voice in the affairs of the tribe, one has but to read the admirable report of that superb lawyer, then Senator Matt. H. Carpenter, on the status of Indians under the fourteenth constitutional amendment. (S. Report 268, Forty-first Congress, third session.)

Great as was that wrong it was aggravated by the cruelty that was manifested in the miserable country selected for the Indians' new home.

As to this there is the most ample testimony. The soil of the two townships is mostly yellow sand with little clay, bearing in the main groves of hemlock and pine, principally the latter. There are swamps with cedar and tamarack interspersed with ridges of hard-timber land. The north half of the east and the entire west township were valuable only for the timber.

Agent Bonsteel said in 1858 (Report Commissioner, 1858, pp. 29, 30), speaking of the complaints of the Indians, one of which was—

"That the land allotted to them was unsuitable for farming purposes, and by no means such as they had a right to expect, both from the terms of the treaty and the promises of Superintendent Huebschmann. Without any disposition to censure the action of that officer, I consider it my duty to say that some portion of their complaints is founded in truth.

"The country given to them is cold, by no means well fitted for farming purposes, and altogether inferior to the land conveyed by the Indians to the United States."

He said in 1859 (Report 1859, p. 40):

"The land, in point of fertility, not being at all what it was represented to be."

Agent Davis said in 1862 (Report, p. 328):

"The country occupied by the Stockbridge Indians would very justly be considered a hard country for white people to live in. It is mostly heavy timbered with hemlock, beech, birch, poplar, pine, tamarack, cedar, sugar maple, bass, etc. Pine is the principal timber of any value.

"There is no disguising the fact that the condition, location, and future prospects of this tribe are unfortunate."

The agent said in 1866 (Report, p. 287):

"If their location had been selected in a fertile region instead of the cold and barren sand hills of their present home, their advancement in agriculture and the arts of civilized life would have been more satisfactory and far more beneficial to them.

\* \* \* But the forbidding character of their country, not enabling them to realize from it a meager subsistence without occasional supplies from the Government."

In 1870 the agent said (Report, p. 312) that the superintendent who located the tribe "selected a poor sand barren and obliged them to live on it."

Notwithstanding their disappointment as to the character of the country promised, those who had become citizens of the United States went at once to the new reservation bought from the Menomonees, they having in fact no other home to go to. They were accompanied thither by the major portion of those of the tribe (we speak of the tribe constituted under and recognized by the '48 treaty) who had signed the '56 treaty.

The remainder and major portion of the tribe, refusing to participate in or assent to the '56 treaty, remained at the old or Lake Winnebago Reservation. They presented their appeals to Department and to Congress, and endeavored among other things to effect a purchase of a portion of the country of the Oneidas. (Report 1859, pp. 39, 40.)

The attempted purchase came to nought. Their appeals failed to bring them relief. There was constant jarring, with collisions with the white settlers as to their respective rights to the possession and occupancy of the lands, and the Government officers withheld their improvement and removal funds.

Forced by these and other causes to succumb, they, in the fall of 1859, unwillingly gave up their old homes and went to the new reservation.

Speaking of this removal, the agent said (Report 1859, p. 40):

"It is apprehended that the removal of these Indians to the new reserve will not by any means cure the growing discontent as to the situation and location of this tribe; their main object seems to be to effect a removal to some more genial climate and fertile lands; their desire and wish has been to effect the purchase of the Oneida lands."

That the agent spoke not without reason, let after reports testify.

The agent in 1862 said (Report 1862, p. 329):

"This tribe are very anxious to treat with the Government for the purpose of locating on better farming lands, but, in accordance with your instructions, I have informed them that, in the present disturbed state of the country, the Government could hardly be expected to treat with them."

In 1866 (Report 1866, p. 287) he said:

"There are in the tribe men of intelligence, good farmers, and skillful mechanics. But the forbidding character of their country not enabling them to realize from it a meager subsistence without occasional supplies from the Government has bred discontent among them, and they therefore earnestly desire a remodeling of their treaty stipulations, believing that any change must be an improvement upon their present condition \* \* \* and they seem to regard themselves as mere sojourners; looking with anxiety to the future that awaits them."

In 1870 (Report 1870, p. 312) he said:

"The tribe is disgusted with their home and discouraged with farming."

As shown above, the Stockbridge tribe—the anti 1856 treaty party—did not go to the new reservation gotten from the Menomonees till the fall of 1859, and it is gross error to say "the treaty (of 1856) was satisfactory to the tribe, and all the members accepted it as a settlement of former difficulties," etc. The official reports quoted from disprove it.

Immediately after these went in 1859 to the new reservation, the improvement and removal funds that had been withheld from them all—those members of the tribe and those not members but citizens of the United States (Report 1859, p. 10)—were paid over.

The reports of the commissioner and agent for 1860, being so very meager, assist us not at all in this inquiry, but when we come to that of 1861, p. 193, we find the agent reporting that he found not one Munsee on the reservation, and about one-half the Stockbridges gone.

In 1862 (Report 1862, p. 329) he reported:

"In enumerating the members of this tribe I found 195 persons on the reservation and 214 off, principally scattered in the northeast counties in the State. The number of families on the reservation is thirty-six. Their dwellings are constructed of logs, and are substantially made. There is but one frame house, 25 by 40 feet, which is used for a church and also for a schoolhouse. The barns, ten in number, are also constructed of logs. I found twenty deserted houses, the proprietors of which could hardly be induced to return and occupy them. Indeed, nothing brings them back except they hear that subsistence or funds are to be distributed."

In his report of 1866, p. 287, the agent says:

"The treaty made in that year (1856) with the Stockbridge and Munsee tribes,

and the census accompanying it, present an aggregate population of both parties numbering 409 souls. A removal and improvement fund was provided them, upon the receipt of which the greater portion left the tribe, expended their money elsewhere, and their number now is reduced to about 152."

What is to be particularly noted in this connection is that, with five or six exceptions, it was those who had become citizens of the United States under the '43 act that so left the new reservation upon receipt of their portion of the removal and improvement fund.

It is these whose only concern about the tribe is, and has been distribution of funds or subsistence and whom only that brings to the reservation.

Those who remained upon this new reservation, with the exceptions noted, were of the "Indian party"—the "Stockbridge tribe," under the '48 treaty; those who went there unwillingly in 1859—those who, year after year, voiced their wrongs to Congress and earnestly besought redress.

The 1856 treaty substantially provided for a new formation of the Stockbridge tribe by making its component members to be, not alone those individuals who constituted it under the 1848 treaty, but these, together with those who had become citizens of the United States under the act of 1843 and all others of that blood, and Munsees, wherever living, whether in Wisconsin, New York, or west of the Mississippi River.

In other words, it contemplated bringing back as members of the tribe all who had taken their share of the common country owned at the time of the passage of the act of 1843 and abandoned the tribe, leaving it to its fate in order to have and receive a further share from what was left to, and preserved by, the others, and thereby have them receive an undue share of what was the common property.

The treaty (article 5) provided for a roll or census of—

"The persons to be included in the apportionment of the land and money to be divided and expended under the provisions of this agreement," they to "be such only as are actual members of the said Stockbridge and Munsee tribes, their heirs, and legal representatives."

A roll or census was taken and appended to the treaty. It enumerated 58 Munsees in New York, and 351 Stockbridges in Wisconsin; total, 409 souls.

The treaty of 1848 gave the "Indian party," the "Stockbridge tribe" of 177 souls, the two townships to be located for them under the amendment of the 1848 treaty. It also provided, amendment and article 9, for a payment of \$20,000 to them by ten annual installments, after their removal from the Lake Winnebago Reservation, and an investment of \$16,500 "for the purpose of making provision for the rising generation of said tribe;" total, \$36,500.

The 1856 treaty, article 1, called for a cession and relinquishment of these \$36,500 to the United States, who gave in lieu thereof—by article 2—one improvement and removal fund of \$61,650 for 409 souls, viz, the 58 Munsees in New York and the 351 Stockbridges in Wisconsin; and, by the amendment, another fund of \$12,000 for said 351 Stockbridges and a fund of \$6,000 for the 58 Munsees.

The 177 souls of the tribe under the 1848 treaty and their descendants could not and did not receive as much money under the 1856 treaty as the 1848 treaty secured to them. The figures given will aid in demonstrating this.

By the 1856 treaty, articles 3 and 5, the two townships instead of belonging to the representatives of said 177 souls was to belong to 409 souls, the 58 Munsees and 351 Stockbridges, *supra*. It is easy to see how much less land the 1856 treaty gave to the representatives of the 177 souls than the 1848 treaty gave those 177.

Now, taking into consideration the outrages perpetrated upon the tribe by the deposition of their constitutional officers—by the imposition upon them of pauper citizens of the United States and by the carrying of an election against them by the votes of these forcibly imposed paupers—the worthlessness of the two townships selected under the 1856 treaty, article 2, in comparison with the lands on Lake Winnebago sold to the United States under the 1848 treaty—the enforcement, or rather contemplated enforcement, of a division of these two townships among 409 souls instead of among the representatives of the 177 souls, and the further fact that the 1856 treaty did not give to said 177 representatives as much money as the 1848 treaty gave the 177; now, as we say, taking these things into consideration, it is impossible to see how the 1856 treaty was in any way a benefit to the representatives of the 177 souls, the "Stockbridge tribe," as recognized by the 1848 treaty. It is impossible not to see that it was a monstrous wrong, a most positive injury in every way to them.

Under such circumstances they had the right to appeal to Congress against it.

It is not to be wondered at or they to be condemned for having persistently voiced their great wrongs to Congress.

Article 3 of the 1856 treaty provided for an allotment among the 409 persons of the two townships to be selected under article 2, it to be made "under the direction of the superintendent of Indian affairs for the northern superintendency."

The House committee, led into error by misrepresentation, has incorrectly reported (Report 1054, Forty-eighth Congress, first session) that the two townships were so allotted to the Indians immediately after their removal to their new home, and such allotments have ever since been occupied by the families to whom they were so assigned.

Such was not the case. The abolition of the office of superintendent, northern superintendency, prevented the allotment being made, and none has ever been made pursuant to the treaty. We have already seen how individuals left the reservation.

In 1871 Congress, giving ear to the appeals of those so wronged by the 1856 treaty, passed its act of February 6 of that year, Chap. XXXVIII (16 Stat., 404), for the relief of the Stockbridge and Munsee tribe of Indians, etc.

This act—sections 1 and 2—provided for an examination and appraisal of the whole, and a sale of three-fourths of the two townships bought from the Menomonees under the 1856 treaty, and a reservation of the other one-fourth (18 sections) to and for and "subject to allotment to members of the Indian party of said tribe;" that is to say, to and for such of those and the heirs of those 177 souls who constituted and were recognized as the Stockbridge tribe under the treaty of 1848, and those adopted and recognized by them as members of said tribe as were in said year (1871) desirous of continuing their Indian nationality and the holding of their land in common.

N. B.—At this time a large number of those who had constituted the "Indian party," the "Stockbridge tribe," under and after the treaty of 1848, had become desirous of taking their interests in severalty from the tribe and acquiring United States citizenship. These were designated and known as the "New Citizens party" in contradistinction to the old "Citizens party," whose members had acquired United States citizenship and taken their share of the common country under the act of 1843.

It was to gratify the desires of the members of this "New Citizens party" that the sale was provided by said act of 1871.

It is not necessary for this consideration that we notice in detail each of the nine sections of this act of 1871.

It is sufficient to say that Congress, not attempting by this act to take back from the members of the old "Citizens party," or have them in any wise repay any part of the money received by them under the 1856 treaty, took into consideration these facts, namely, that the members of the old "Citizens party" had taken their share of the common country owned by the tribe in 1843, and disposed of it for their exclusive use and benefit; that they had acquired United States citizenship under the act of 1843, and had abandoned the tribe, leaving it to its fate; that the tribe, being a nation under treaty relations with the United States, had the right to hold, and had held, these as having no longer any interest in the property or affairs of the tribe; that these gave not the least consideration to the tribe for a right to share with its members the lands of the two townships bought from the Menomonees; that the United States had not the least right to impose upon the tribe by the 1856 treaty, without its free consent and upon just consideration, its pauper citizens of Indian birth—not one whit more right to impose these as citizens than to impose as such citizens a like number of its pauper white citizens; that those it then thereby attempted to enforce upon the tribe as citizens, upon getting their share of the money paid under the 1856 treaty, at once left the new reservation, and a second time abandoned the tribe to its fate, and intended, so far as these United States citizens were concerned, a repeal of the 1856 treaty in so far as it enabled them to share in the proceeds of the sale of the three-fourths of the two townships directed by the first and second sections of this act, or in the 18 sections of land reserved from said sale by the proviso to the second section. This intent was made manifest by the exclusion of them from the rolls provided for by section 6.

The act of 1871 was carried into effect. A sale of the three-fourths of the two townships was made. Two rolls were prepared pursuant to section 6, showing 138 souls to the "New Citizens party" and 112 to the "Indian party," those desiring to retain their tribal relations. The proceeds of said sale were divided, and \$75,804.46 being transferred to the credit of the Indian party on the books



of the United States Treasurer (section 5), the balance, \$94,179.57, due this "New Citizens party," 138 in number, was paid to them pro rata.

The reserved one-fourth (18 sections) was practically prepared for the sole occupation of the members of the Indian party and such members of the new and old citizens parties as were in occupation of portions of these eighteen sections were, upon refusal to comply with notice to leave, declared trespassers by order of January 25, 1875, and the agent directed to remove them. (See H. Mis. Doc. 14, Forty-sixth Congress, third session, pp. 9-12).

The members of the old "Citizens' party" some families of whom are on the reserved eighteen sections, the order for their removal upon one pretext or another not having been enforced, are clamorous for participation in the \$75,-804.46 in the Treasury to the credit of the 112 members of the "Indian party," and it is in the interest of these calling themselves the "old Citizen party of 1843," as opposed to the "Indian party," that the passage of said House bill 2989 is sought, to operate as a repeal of the act of 1871 only as to the 112 members of the "Indian party."

These offer the following considerations in support of their opposition to said bill 2989:

It was competent for Congress to tender by the act of 1843 United States citizenship and allotment of land in severalty to members of the Stockbridge tribe of Indians.

All such Indians as have ceased their tribal relations and been declared citizens of the United States by treaties or acts of Congress are citizens of the United States. (Wilson v. Waul, 6 Wall., 83.)

Our attention has been called to several treaties by which Indians were made citizens, and to the act passed in relation to Texas. All this was done under the war and treaty-making powers of the Constitution and those which authorized the National Government to regulate the territory and other property of the United States and to admit new States into the Union. (United States v. Rhodes, 16 Am. L. R., 233; Am. Ins. Co. v. Canter, 1 Pet., 511; Cross v. Harrison, 16 How., 164.)

Naturalization is the removal of disabilities of alienage. The making of one not a citizen to be a citizen. (The State v. Manuel, 2 Dev. & Beatt., 25; The State v. Newcomb, 5 Iredell, 253.)

Indians not being of domestic birth are under the disability of alienage. (Scott v. Sanford, 19 How., 417.)

The power to naturalize is vested exclusively in Congress. (United States v. Rhodes.)

It is quite certain those individuals who accepted the tender made by the act of 1843 and took land in severalty and terminated their tribal relations and acted and were recognized by all parties as United States citizens, did become such *pleno vigore*.

Congress could not by subsequent act make them not to be citizens. Neither could this be done by treaty with them.

We have no law to decitizenize a citizen who has become such either by the natural process or the legal process of adoption. (Atty. Gen. Bates on citizenship, 10 Op., 382.)

Can Congress by act make an Indian nation, *i. e.*, all the members thereof, citizens of the United States, they not desiring or accepting the same? Can it do so, for example, to the Cherokee Nation? We opine not. If it can not be done to all, they not desiring it, does it not necessarily follow that it can be done only to those who desire and accept it?

Those Stockbridges who became United States citizens under the act of 1843 are such citizens to this day.

The Stockbridge tribe, a nation, and so recognized by the United States, had the plenary right in the exercise of the power to regulate its domestic affairs, to treat those individuals who had accepted United States citizenship, taken their share of the common country in severalty, and dissevered their tribal relations, as having thereafter no interest in the property and affairs of the tribe.

Senator Carpenter's report, *supra*. Such surely would be the law of the United States to one or more of its citizens.

The treaty of 1856 was an illegal interference by the United States in the interest of some of its pauper citizens with the possessions of the Stockbridge tribe.

The protection of the Indians in their possessions is a political question over which Congress has jurisdiction. (Cherokee Nation v. Georgia, 5 Pet., 20.)

Congress can by act repeal a treaty. (Cherokee Tobacco Case 11 Wall., 619.) Consequently Congress, in 1871, could, if then satisfied that a wrong was done the Stockbridge tribe of Indians in respect to their possessions by the treaty of 1856, in the interest of some pauper citizens of the United States, rectify that wrong in the exercise of its constitutional power to protect the Indians in their possessions.

We have shown conclusively that great wrong was done by the treaty of 1856. Congress realized this, and sought to remedy it by its act of 1871, and that act should be allowed to stand, and Congress will do well to give heed to the recommendation in respect to its pauper citizens herein referred to, submitted by the Commissioner of Indian Affairs (H. of R. Mis. Doc. 14, Forty-sixth Congress, third session, p. 16), and be generous to them at its own expense.

All which is respectfully submitted.

A. MILLER,  
*Delegate Stockbridge Nation.*

WASHINGTON, D. C., *June 30, 1884.*