

IN THE DISTRICT COURT OF OTTAWA COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)

Plaintiff,)

-vs.-)

WINSTON WHITECROW BRESTER,)

Defendant.)

No. CF-2020-129

FILED
DISTRICT COURT
OTTAWA CO. OKLA.

JAN 29 2021

CASSIE KEY COURT CLERK

BY bf

BRIEF BY AMICUS CURIAE THE PEORIA TRIBE OF INDIANS OF OKLAHOMA IN
SUPPORT OF DEFENDANT'S SECOND AMENDED MOTION TO DISMISS FOR
LACK OF JURISDICTION

Respectfully submitted,

D. Michael McBride III, OBA #15431
Gregory T. Buzzard, OBA #33477

-Of the Firm-

CROWE & DUNLEVY
A Professional Corporation
500 Kennedy Building
321 South Boston Avenue
Tulsa, Oklahoma 74103-3313
(918) 592-9830
(918) 599-6397 (Facsimile)
mike.mcbride@crowedunlevy.com
greg.buzzard@crowedunlevy.com

ATTORNEYS FOR AMICUS CURIAE

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION & INTEREST OF AMICUS	1
BACKGROUND ON PEORIA HISTORY	1
ARGUMENT	6
I. McGirt Supplies The Controlling Law For This Court's Disestablishment Analysis.....	6
II. The Omnibus Treaty Established The Peoria Reservation.....	7
III. The Peoria Reservation Survived Allotment	9
IV. Termination Did Not Disestablish The Peoria Reservation	9
A. The Peoria Termination Act Contains No Explicit Disestablishment Language	10
B. Termination Did Not Revoke The Tribe's Treaty Rights, Including Its Reservation	11
C. The Peoria Reservation Is Not Dependent On Federal Superintendence	13
D. If Termination Impacted The Peoria Reservation, Whatever Was Lost Was Reinstated By The Restoration Act	16
CONCLUSION	19

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Alaska v. Native Vill. of Venetie Tribal Gov't</i> , 522 U.S. 520 (1998)	15
<i>McGirt v. Oklahoma</i> , 591 U.S. ____, 140 S. Ct. 2452 (2020)	1, 6, 7, 8, 9, 10, 11, 13, 14, 16, 19
<i>Menominee Tribe of Indians v. United States</i> , 391 U.S. 404 (1968)	11, 12
<i>Nebraska v. Parker</i> , 136 S. Ct. 1072 (2016)	10
<i>Oneida Nation v. Vill. of Hobart</i> , 968 F.3d 664 (7th Cir. 2020)	6, 9
<i>Or. Dep't. of Fish & Wildlife v. Klamath Indian Tribe</i> , 473 U.S. 753 (1985)	11
<i>South Carolina v. Catawba Indian Tribe, Inc.</i> , 476 U.S. 498 (1986)	12
<i>St. Cloud v. United States</i> , 702 F. Supp. 1456 (D.S.D. 1988)	13
<i>State of Minn. v. Hitchcock</i> , 185 U.S. 373 (1902)	8
<i>State v. Perales</i> , F-2018-383 (Okla. Crim. App. Aug. 24, 2020)	6
<i>State v. Terry</i> CF-2012-242 (Ottawa Co.)	10
<i>State v. Webster</i> , 338 N.W.2d 474 (Wis. 1983)	17, 18
<i>Terry v. State</i> , PC-2018-1076 (Okla. Crim. App. Oct. 14, 2020)	6, 13
<i>United States v. Antelope</i> , 430 U.S. 641 (1977)	12

<i>United States v. Felter</i> , 752 F.2d 1505 (10th Cir. 1985)	11
<i>United States v. Heath</i> , 509 F.2d 16 (9th Cir. 1974)	12
<i>United States v. John</i> , 437 U.S. 634 (1978)	14
<i>United States v. Long</i> , 324 F.3d 475 (7th Cir. 2003)	17

Statutes

18 U.S.C. § 1151	15
18 U.S.C. § 1153	1, 13, 14
25 U.S.C. § 5201.	3
Act of Aug. 2, 1956, Pub. L. No. 84-921, 70 Stat. 937	4, 5, 9, 10, 11, 12, 16, 17, 18
Act of Dec. 22, 1973, Pub. L. No. 93-197, 87 Stat. 770.....	17
Act of May 15, 1978, Pub. L. No. 95-281, 92 Stat. 246.....	5, 10, 16, 17, 18
Dawes Act of 1887, Pub. L. No. 49-105, § 8, 24 Stat. 388, 391	3, 9
Peoria Allotment Act, Pub. L. No. 50-422, 25 Stat. 1013 (1889)	3, 8, 9

Treaties

Omnibus Treaty, Feb. 23, 1867, 15 Stat. 513.....	2, 7, 13
Treaty with the Kaskaskias, Aug. 13, 1803, 7 Stat. 78.....	2
Treaty with the Kaskaskia and Peoria, Oct. 27, 1832, 7 Stat. 403	2
Treaty with the Peoria, Kaskaskia, Mitchigami, Cahokia and Tamarois tribes of the Illinois Nation of Indians, Sept. 25, 1818, 7 Stat. 181.....	2
Treaty with the Kaskaskia, Peoria, Piankeshaw and Wea, art. 1, May 30, 1854, 10 Stat. 1082	2
Treaty with the Piankeshaws, Aug. 27, 1804, 7 Stat. 83	2
Treaty with the Piankeshaws, Dec. 30, 1805, 7 Stat. 100	2
Treaty with the Piankeshaws and Weas, Oct. 29, 1832, 7 Stat. 410	2

Treaty with the Weas and Kickapoos, June 4, 1816, 7 Stat. 145	2
Treaty with the Weas, Oct. 2, 1818, 7 Stat. 186	2
Treaty with the Weas, Aug. 11, 1820, 7 Stat. 209	2

Other Authorities

H.R. Exec. Doc. No. 1, Part 5, vol. 1 (2d Sess. 1879)	3
Barbara A. Warner, 2011 Okla. Indian Nations Pocket Pictorial Directory (2011) https://digitalprairie.ok.gov/digital/collection/stgovpub/id/20794	5
Cohen's Federal Indian Law (Nell Jessup Newton ed., 2017)	10, 15
Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 85 Fed. Reg. 5462, 5464 (Jan. 30, 2020)	1
Message from the President of the United States, S. Doc. No. 32 (2d Sess. 1878)	3, 8

INTRODUCTION & INTEREST OF AMICUS

Amicus curiae the Peoria Tribe of Indians of Oklahoma (“Peoria Tribe” or “Tribe”), a federally recognized Indian tribe,¹ respectfully submits this brief to address the status of its reservation in Ottawa County, Oklahoma, under *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020). Defendant Winston Brester asserts the State of Oklahoma lacks jurisdiction under the federal Major Crimes Act, 18 U.S.C. § 1153, to prosecute him because he is a citizen of the Seneca-Cayuga Nation and his alleged offenses occurred within the Peoria reservation. The State concedes that the location of the alleged offense, 2204 A Street N.E. in Miami, Oklahoma, is within the historical boundaries of the reservation established by treaty for the Peoria Tribe. State’s Resp. at 15.

The Peoria Tribe takes no position on Defendant’s Indian status or on any matter pertaining to his alleged offenses.² The Tribe instead appears in this case to show its reservation continues to exist. The Tribe has substantial expertise in the history of its relationship with the United States government which will prove helpful to this Court in resolving Defendant’s jurisdictional challenge. The Tribe further has a paramount interest in the existence of its reservation.

BACKGROUND ON PEORIA HISTORY

The Peoria Tribe is a confederation of the Kaskaskia, Piankeshaw, Wea and Peoria peoples, each of whom are indigenous to lands in the Midwest and Great Lakes regions. These

¹Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 85 Fed. Reg. 5462, 5464 (Jan. 30, 2020).

²The Tribe appears only in the case numbered CF-2020-129. The parties appear to agree that Defendant’s other pending criminal matters occurred within the historical reservation of the Ottawa Tribe. Def. 2d Am. Mot. to Dismiss at 1; State’s Resp. at 2.

tribes each entered into treaties with the United States prior to their confederation.³ In 1854, a treaty recognized the tribes' confederation. Treaty with the Kaskaskia, Peoria, Piankeshaw and Wea, art. 1, May 30, 1854, 10 Stat. 1082. The 1854 treaty reserved to the united Peoria Tribe a tract of land in modern-day Kansas "to be held as the common property of the said tribe[.]" *Id.* at art. 2.

After the Civil War, the Peoria and a host of other tribes entered into a treaty designed to remove them to the Indian Territory, commonly referred to as the "Omnibus Treaty." Ex. 1, Omnibus Treaty, Feb. 23, 1867, 15 Stat. 513. The Quapaw and Seneca agreed to cede portions of their reservations in the northeast corner of Indian Territory--later to become Ottawa County--to the United States. *Id.* at arts. II & IV. The United States then "granted and sold" the former Quapaw and Seneca reservation land to the Peoria. *Id.* at art. XXII. The Peoria paid for the land out of the proceeds of the sale of their Kansas reservation. *Id.* at arts. XXI-XXII. The Tribe further agreed that the Miami Tribe "may be confederated with them upon their *new reservation*, and own an undivided right in *said reservation* in proportion to the sum paid" *Id.* at art. XXVI (emphasis added). The section of the Treaty pertaining to the Miami states individual tribal members could "elect to remove to *the new reservation* herein provided . . . to the Peorias[.]"⁴ *Id.* at art. XXIX (emphasis added).

³See, e.g., Treaty with the Piankeshaws and Weas, Oct. 29, 1832, 7 Stat. 410; Treaty with the Kaskaskia and Peoria, Oct. 27, 1832, 7 Stat. 403; Treaty with the Weas, Aug. 11, 1820, 7 Stat. 209; Treaty with the Weas, Oct. 2, 1818, 7 Stat. 186; Treaty with the Peoria, Kaskaskia, Mitchigami, Cahokia and Tamarois tribes of the Illinois Nation of Indians, Sept. 25, 1818, 7 Stat. 181; Treaty with the Weas and Kickapoos, June 4, 1816, 7 Stat. 145; Treaty with the Piankeshaws, Dec. 30, 1805, 7 Stat. 100; Treaty with the Piankeshaws, Aug. 27, 1804, 7 Stat. 83; Treaty with the Kaskaskias, Aug. 13, 1803, 7 Stat. 78.

⁴The articles of the Omnibus Treaty pertaining to the Miami were later stricken from the Treaty by the Senate during its ratification process and did not become law. Ex. 1, 15 Stat. at 527. However, the quoted language further shows that the parties to the Omnibus Treaty intended to establish a reservation for the Peoria.

As shown in an 1879 map of the reservations served by the Quapaw Agency, the Omnibus Treaty created a Peoria reservation bounded by Kansas and the Quapaw reservation to the north, Missouri to the east, the Neosho River to the west, and the Ottawa, Shawnee and Modoc reservations to the south.⁵ Ex. 2, H.R. Exec. Doc. No. 1, Part 5, vol. 1, at 180 (2d Sess. 1879) (1879 Quapaw Agency map). In 1878, President Rutherford B. Hayes reported to the Senate that the Peoria reservation encompassed 50,301 acres. Ex. 3, Message from the President of the United States, S. Doc. No. 32 at 2 (2d Sess. 1878).

Allotment came to the Peoria in 1889. In that year, Congress extended the provisions of the Dawes Act to the Peoria and Western Miami Tribes.⁶ Ex. 4, Peoria Allotment Act, Pub. L. No. 50-422, 25 Stat. 1013 (1889). The law states: “[The Dawes Act is] hereby declared to extend to and [is] made applicable to the [Peoria Tribe], and the Western Miami tribe of Indians, now located in the northeastern part of the Indian Territory and to *their reservation*[.]” *Id.*, 25 Stat. at 1014 (emphasis added). Each member of the two Tribes was entitled to an allotment “not to exceed two hundred acres, out of their *common reserve*[.]” *Id.* (emphasis added). The allotted lands were deemed inalienable and exempt from taxation for a period of 25 years. *Id.* Any remaining unallotted land was to be “held in common under present title” by the tribes. *Id.* at 1015.

Turning away from allotment as a policy, Congress enacted the Oklahoma Indian Welfare Act (“OIWA”) in 1936. 25 U.S.C. § 5201 *et seq.* The OIWA permitted Oklahoma

⁵The location of Defendant’s alleged offense falls within the reservation established by the Omnibus Treaty.

⁶The Dawes Act of 1887 provided generally for allotment of all reservations throughout the country, but specifically exempted certain tribes, including the Peoria. Pub. L. No. 49-105, § 8, 24 Stat. 388, 391.

tribal nations to reorganize as political groups. *Id.* at § 5203. The Peoria Tribe and the Miami Tribe adopted separate OIWA constitutions--and thus created separate governments--in 1939.

Congress' next major shift in federal Indian policy was termination. Congress sought to end the United States' political relationship with tribal nations as a method of spurring assimilation. The Peoria Tribe was terminated in 1956. Ex. 5, Act of Aug. 2, 1956, Pub. L. No. 84-921, 70 Stat. 937. The Termination Act's purpose was "to provide for the termination of Federal supervision over the affairs of the Peoria Tribe of Indians located in northeastern Oklahoma and the individual members thereof[.]" *Id.* at § 1. The Act:

- Removed all Peoria land from trust or restriction and "pass[ed] the titles in fee simple[.]" *Id.* at § 2.
- "[T]erminate[d]" "[t]he Federal trust relationship to the affairs of the Peoria Tribe and its members[.]" *Id.* at § 3(a). Peoria citizens were no longer "entitled to any of the services performed by the United States for Indians because of their status as Indians[.]" specifically including the OIWA and the Indian Reorganization Act. *Id.* "[A]ll statutes of the United States which affect Indians because of their status as Indians" were deemed inapplicable to "the members of the tribe" and the "laws of the several States" were applied "to the tribe and its members in the same manner as they apply to other citizens or persons[.]" *Id.*
- Revoked the "corporate charter" issued to the Tribe after its incorporation pursuant to the OIWA. *Id.* at § 4(a).
- Forbade federal officials from taking, reviewing or approving any action under the Peoria Constitution. *Id.* at § 4(b).

- Terminated any power conferred on the Tribe by its constitution “inconsistent” with the Termination Act. *Id.* Any “power of the [T]ribe to take any action under its constitution and bylaws . . . consistent” with the Termination Act was expressly left unaffected. *Id.*

However, the Act did not reference the Tribe’s reservation.

The harms termination inflicted on the Peoria and other terminated tribes quickly became apparent. In the 1970s, the federal government changed course and began to prioritize self-determination for tribal nations, a policy that endures today. As a part of that shift, Congress restored the Peoria Tribe to federal recognition in 1978. Ex. 6, Act of May 15, 1978, Pub. L. No. 95-281, 92 Stat. 246. The Restoration Act expressly repealed the Termination Act. *Id.* at § 1(b)(2). Congress “reinstated *all* rights and privileges of” the Peoria Tribe “which may have been diminished or lost pursuant” to the Termination Act. *Id.* at § 1(c) (emphasis added). However, the Restoration Act did not “alter any property rights or obligations, any contractual rights or obligations, including existing fishing rights, or any obligation for taxes already levied.” *Id.* at § 1(d). The Restoration Act did not otherwise mention Peoria lands and did not comment on a Peoria reservation.

Today, the Peoria Tribe numbers 3,573 citizens, many of whom reside on its reservation in Ottawa County. The Tribe employs approximately 300 residents of Ottawa County and the surrounding area in its government and in its commercial enterprises in the agricultural, hospitality, gaming, food & beverage and fishery industries. In 2011, the Oklahoma Indian Affairs Commission estimated the Tribe had an in-state cumulative economic impact of \$60 million. Barbara A. Warner, 2011 Okla. Indian Nations Pocket Pictorial Directory (2011).⁷ The

⁷Available at <https://digitalprairie.ok.gov/digital/collection/stgovpub/id/20794> (last accessed Jan. 20, 2021).

Tribe provides housing, educational, cultural, governmental and health services to its citizens as well as other Native Americans, both through its own efforts and in cooperation with neighboring tribal nations. Today, the Tribe estimates its direct expenditures at \$38 million in wages and government services. Despite a challenging history, the Peoria Tribe has built a robust government and now punches above its weight in supporting northeastern Oklahoma's economy.

ARGUMENT

I. **McGirt Supplies The Controlling Law For This Court's Disestablishment Analysis**

The Supreme Court's seminal decision in *McGirt v. Oklahoma*, 591 U.S. ____, 140 S. Ct. 2452 (2020), sets forth the law governing whether the Peoria reservation has been disestablished. The State and Defendant agree on this point. *See* Def. 2d Am. Mot. to Dismiss at 1-2; State's Resp. at 4-5. In multiple remand orders, the Oklahoma Court of Criminal Appeals has directed district courts to evaluate Indian country jurisdictional challenges under *McGirt's* framework. *See, e.g., State v. Perales*, F-2018-383 at 3-4 (Okla. Crim. App. Aug. 24, 2020) (directing district court "to follow the analysis set out in *McGirt*" to determine whether Congress established a Cherokee Nation reservation and whether the reservation was disestablished); *Terry v. State*, PC-2018-1076 at 2-3 (Okla. Crim. App. Oct. 14, 2020) (same with respect to Ottawa reservation within Ottawa County). This Court should resolve Defendant's jurisdictional challenge using *McGirt's* analysis.⁸

McGirt laid out a simple rule to guide courts in resolving questions over reservation boundaries--"[t]o determine whether a tribe continues to hold a reservation, there is only one

⁸The Peoria Tribe is aware that one federal appellate court used pre-*McGirt* case law to resolve a disestablishment dispute after *McGirt* was handed down. *See Oneida Nation v. Vill. of Hobart*, 968 F.3d 664, 674-75 (7th Cir. 2020). But even the *Oneida Nation* Court acknowledged that *McGirt* had "adjusted" previous law. *Id.* at 685.

place [courts] may look: the Acts of Congress.” 140 S. Ct. at 2462. “Only Congress can divest a reservation of its land and diminish its boundaries.” *Id.* (internal quotation omitted). Congress must “clearly express its intent” to diminish or disestablish a reservation, “commonly with an explicit reference to cession or other language evidencing the present and total surrender of all tribal interests.” *Id.* at 2463 (internal quotations and alterations omitted). In ascertaining Congress’ intent, courts must remember “disestablishment may not be lightly inferred and treaty rights are to be construed in favor, not against, tribal rights.” *Id.* at 2470.

If a relevant statute contains “an ambiguous . . . term or phrase[,]” courts may “consult contemporaneous usages, customs, and practices to the extent they shed light on the meaning of the language in question at the time of enactment.” *Id.* at 2468. But “[t]here is no need to consult extratextual sources when the meaning of a statute’s term is clear. Nor may extratextual sources overcome those terms. The only role such materials can properly play is to help clear up[,] not create[,] ambiguity about a statute’s original meaning.” *Id.* at 2469 (internal quotations omitted). In short, “[i]f Congress wishes to break the promise of a reservation, it must say so.” *Id.* at 2462. “[C]ourts have no proper role in the adjustment of reservation borders.” *Id.*

II. The Omnibus Treaty Established The Peoria Reservation

The initial question is whether the Peoria Tribe had a reservation in Ottawa County. *See McGirt*, 140 S. Ct. at 2460 (asking whether “Congress established a reservation for the Creeks.”). The State concedes the Omnibus Treaty established the Peoria reservation. State’s Resp. at 15. The Tribe writes briefly on this question only to provide the Court with a complete *McGirt* analysis.

The Supreme Court does not “insist[] on any particular form of words . . . when it comes to establishing” a reservation. *Id.* at 2475.

[I]n order to create a reservation, it is not necessary that there should be a formal cession or a formal act setting apart a particular tract. It is enough that from what has been done there results a certain defined tract appropriated to certain purposes. Here the Indian occupation was confined by the treaty to a certain specified tract. That became, in effect, an Indian reservation.

State of Minn. v. Hitchcock, 185 U.S. 373, 390 (1902). Land granted in fee to a tribe is not “inherently incompatible with reservation status.” *McGirt*, 140 S. Ct. at 2475.

Under these standards, the Omnibus Treaty clearly created a reservation for the Peoria Tribe. As in *Hitchcock*, the Treaty “confined” the Tribe “to a certain specified tract[.]” 185 U.S. at 390, i.e., land in “the Indian country[.]” Ex. 1, Omnibus Treaty at art. XXIII. The Treaty referred to the lands “granted and sold” to the Peoria as their “new homes[.]” *Id.* at arts. XXII & XXIII. Although the articles of the Treaty discussing the land sale did not explicitly refer to the sold tract as a reservation, that descriptor was found in other articles. *Id.* at art. XXVI (describing sold tract as the Tribe’s “new reservation”).

Federal documents and legislation recognized the lands granted to the Peoria by the Omnibus Treaty as a reservation. In 1878, the Department of the Interior reported on its survey of the “Peoria, &c., reservation[.]” Ex. 3, Message from the President of the United States, S. Doc. No. 32 at 2 (2d Sess. 1878). The Peoria Allotment Act of 1889 also named Peoria lands as a reservation. Ex. 4, Peoria Allotment Act, 25 Stat. at 1014 (allotting the “reservation” or “common reserve” of the Peoria and Western Miami Tribes, “located in the northeastern part of the Indian Territory[.]”). In considering whether Congress established a reservation for the Creek, *McGirt* looked to “other federal laws” which “expressly referred to the Creek Reservation[.]” as the 1878 Interior report and Peoria Allotment Act do here. 140 S. Ct. at 2461.

There is no basis now to question that the Omnibus Treaty established a Peoria reservation in the Indian Territory, later to become Ottawa County.

III. The Peoria Reservation Survived Allotment

McGirt made it quite clear that allotment, standing alone, is insufficient to disestablish a reservation. 140 S. Ct. at 2463-65 ("Congress does not disestablish a reservation simply by allowing the transfer of individual plots[.]"); *see also Oneida Nation v. Vill. of Hobart*, 968 F.3d 664, 676-77 (noting the Dawes Act "lack[s] hallmark language of diminishment."). But some allotment acts do contain explicit disestablishment provisions. *McGirt*, 140 S. Ct. at 2465 (pointing to 1904 Ponca and Otoe allotment as example of disestablishment provisions in allotment acts).

Here, however, the Peoria Allotment Act did not disestablish the Peoria reservation. The Act only transferred title to reservation land to individual tribal members. Ex. 4, Peoria Allotment Act, 25 Stat. at 1014. It does not mention the status of the Peoria reservation, much less contain the express language needed for disestablishment. Moreover, the Act allowed the Peoria to retain surplus unallotted land "in common under *present title*"--that is, as it was held on the reservation. *Id.* at 1015 (emphasis added). Permitting the Tribe to retain some land in common would be incongruous if Congress' intent in enacting the Act were to disestablish the Peoria reservation.

"Missing in" the Peoria Allotment Act is language "evinced anything like the present and total surrender of all tribal interests" in the Peoria reservation. *McGirt*, 140 S. Ct. at 2464 (internal quotation omitted). As with the Creek Nation, the Peoria reservation "survived allotment." *Id.*

IV. Termination Did Not Disestablish The Peoria Reservation

The State's sole argument in favor of disestablishment rests on the Peoria Termination Act. According to the State, Congress disestablished the Peoria reservation when it terminated

the federal relationship with the Peoria Tribe. State's Resp. at 16. Relying on the Termination Act--which says nothing about the Peoria reservation--ignores *McGirt*'s rule that Congress must "clearly express its intent" to disestablish a reservation. 140 S. Ct. at 2643. The State's argument is also inconsistent with Supreme Court precedent holding tribal treaty rights--which in this case would include the Peoria reservation, granted by the Omnibus Treaty--survive termination. To the extent the State argues, as it did in the similar *State v. Terry*, CF-2012-242 (Ottawa Co.), litigation, that reservation status is necessarily dependent on federal superintendence, that contention lacks support and contradicts established federal law. Finally, even if termination did affect the Peoria reservation, whatever "may have been diminished or lost" through termination was "reinstated" when Congress restored the Tribe to federal recognition in 1978. Ex 6, Peoria Restoration Act, Pub. L. No. 95-281, § 1(c). The failed termination experiment forced on the Peoria did not disestablish its reservation.

A. The Peoria Termination Act Contains No Explicit Disestablishment Language

The Termination Act does not mention the Peoria reservation. In fact, the word "reservation" is found nowhere in the Act. Only one portion of the Act, § 2, concerns land status. Section 2 lifted "[a]ll restrictions on the sale or encumbrance" of Peoria trust land and transferred title to tribal members in fee simple. Ex. 5, Peoria Termination Act, Pub. L. No. 84-921, § 2. Like other termination legislation, § 2 was intended to "end[] federal trusteeship over tribal and individual landholdings[.]" Cohen's Handbook of Federal Indian Law § 1.06 (Nell Jessup Newton ed., 2017).

The Supreme Court has typically found diminishment or disestablishment where the applicable statute "provid[ed] for the total surrender of tribal claims in exchange for a fixed payment" or "restor[ed] portions of a reservation to the public domain[.]" *Nebraska v. Parker*,

136 S. Ct. 1072, 1079 (2016) (internal quotations omitted). While Congress need not use “any particular form of words” to disestablish a reservation, *McGirt*, 140 S. Ct. at 2463 (internal quotation omitted), tinkering with the trust status of reservation land is insufficient textual evidence to prove congressional intent to disestablish. “Congress does not disestablish a reservation simply by allowing the transfer of individual plots, whether to Native Americans or others.” *Id.* at 2464.

The Termination Act merely transferred title to land within the reservation from the federal government to individual Peoria citizens. The Tribe did not agree to cede any land, nor was any land restored to the public domain. Like the allotment era acts, § 2 only “parcel[ed] out individual tracts, while saving the ultimate fate of the land’s reservation status for another day.” *McGirt*, 140 S. Ct. at 2465. It falls far short of the “language expressly ending reservation status” required under federal law to accomplish disestablishment. *Id.*

B. Termination Did Not Revoke The Tribe’s Treaty Rights, Including Its Reservation

Nothing in the Termination Act purports to strip the Peoria Tribe of rights secured by treaty. The Act, like other termination legislation, focuses on severing the federal relationship with the Tribe, ending the application of federal Indian statutes to the Tribe and subjecting the Tribe to state jurisdiction. Ex. 5, Peoria Termination Act, Pub. L. No. 84-921, § 3(a). In evaluating termination cases, the Supreme Court has carefully drawn a distinction between federal trusteeship and statutory rights--both ended by termination--and treaty rights, which it has held are unaffected by termination absent explicit congressional intent to abrogate the treaty. *See Or. Dep’t. of Fish & Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 765-66 (1985); *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 412-13 (1968); *see also United States v. Felter*, 752 F.2d 1505 (10th Cir. 1985). Because the Peoria reservation was created by

treaty, the State must show express congressional intent to show it was disestablished by termination. It cannot meet this burden.

Menominee Tribe of Indians illustrates the distinction. There, the Supreme Court considered whether a termination statute extinguished the Menominee Tribe's hunting and fishing treaty rights. *Menominee Tribe of Indians*, 391 U.S. at 410. Like the Peoria Termination Act, the termination statute at issue in *Menominee Tribe of Indians* ended the applicability of federal Indian statutes to the Menominee. *Id.* at 412. Focusing on the "use of the word 'statutes[,]'" calling it "potent evidence that no treaty was in mind[,]," the Court refused to apply the termination statute to treaty rights. *Id.* It "decline[d] to construe the Termination Act as a backhanded way of abrogating the hunting and fishing rights" of the Menominee, noting that "the intention to abrogate or modify a treaty is not to be lightly imputed to the Congress." *Id.* at 412-413 (internal quotation omitted). In other words, the Court found simple termination statutory language could not work any abrogation of a treaty right.

In contrast, federal courts have applied termination in cases involving statutory rights. In 1986, the Supreme Court enforced a state civil statute of limitations against a terminated tribe, noting that "Termination Acts subject members of the terminated tribe to the full sweep of state laws and state taxation." *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 508-09 (1986) (internal quotation omitted). Federal courts have also recognized that termination ends statutory federal criminal jurisdiction over affected tribal members. In *United States v. Heath*, the Ninth Circuit held the Klamath Termination Act ended a tribal defendant's "unique status vis-a-vis the Federal Government[.]" 509 F.2d 16, 19 (9th Cir. 1974). The defendant there could thus not be prosecuted under statutes extending federal criminal jurisdiction over tribal offenders. *Id.* The Supreme Court agreed on this point, albeit in dicta. *United States v.*

Antelope, 430 U.S. 641, 646 n.7 (1977) (“[M]embers of tribes whose official status has been terminated by congressional enactment are no longer subject, by virtue of their status, to federal criminal jurisdiction under the Major Crimes Act.”); *see also St. Cloud v. United States*, 702 F. Supp. 1456 (D.S.D. 1988) (overturning federal conviction for member of terminated Ponca tribe).

When evaluating whether a tribal right survived termination, one key inquiry is thus whether the right is guaranteed by treaty. If so, only explicit statutory language or other unmistakable sign of congressional intent can abrogate or modify it. Here, the Peoria reservation was created by the Omnibus Treaty. The Termination Act does not expressly abrogate the Omnibus Treaty or otherwise display any intent to disestablish the Peoria reservation. Without that intent, the reservation survives.

C. The Peoria Reservation Is Not Dependent On Federal Superintendence

In the *Terry* litigation--which raised a *McGirt* issue concerning the reservation of the Ottawa Tribe--the State argued termination disestablished the Ottawa reservation because it ended federal superintendence over the Ottawa Tribe. In the State's view there, federal superintendence is a necessary component of reservation status. The authorities the State cited for this proposition--a Supreme Court case and the federal statute defining Indian country--only support the uncontroversial rule that the federal government can only use its Indian country jurisdiction to prosecute members of federally recognized tribes, *i.e.* tribes under federal superintendence. The State's theory sheds no light on the status of the Peoria reservation. In fact, holding that the Peoria reservation was disestablished when the federal government unilaterally severed its relationship with the Tribe would abrogate the Omnibus Treaty and contravene *McGirt*. Congress has shown no intent to achieve those outcomes.

The State first cited *United States v. John*, 437 U.S. 634 (1978), a criminal case. There, the Supreme Court considered whether the Major Crimes Act gave the federal government jurisdiction over the Mississippi Choctaw reservation. The reservation was comprised of land purchased in fee simple for individual tribal members during the early 20th century. *John*, 437 U.S. at 644-45. In 1939, the United States took this land into trust and declared the combined lands to be a reservation in 1944. *Id.* at 646. Mississippi argued that this unusual method of reservation formation was beyond the power of Congress and did not remove the Choctaw from state criminal jurisdiction. *Id.* at 649-53. The Supreme Court disagreed. It held there was “no apparent reason” why the Choctaw land did not become a reservation when it was taken into trust in 1939. *Id.* at 649. The trust land “had been validly set apart for the use of the Indians as such, under the superintendence of the Government.” *Id.* (quoting *United States v. Pelican*, 232 U.S. 442, 449 (1914)). The land status was further “completely clarified by the proclamation in 1944 of a reservation[.]” *Id.*

John speaks only on the questions of how a reservation may be formed and under what circumstances the federal government may exercise criminal jurisdiction over a reservation. Under *John*, it is clear--and is confirmed by other case law, *see supra* Section IV.B--that federal superintendence is a necessary prerequisite to prosecuting Indians when jurisdiction is predicated on their tribal status. If the Peoria Tribe were still terminated, it would be likewise clear that no Peoria citizen could be federally prosecuted under the Major Crimes Act. But *John* simply says nothing about the disestablishment of a reservation. It does not so much as intimate that a reservation automatically dissolves if federal superintendence is withdrawn. This is not the clear expression of congressional intent required to disestablish a reservation under *McGirt*.

The federal Indian country definition provides even less support to the State. Under the statute, “all land within the limits of any Indian reservation under the jurisdiction of the United States Government” is Indian country, implying the existence of reservations *not* under federal jurisdiction. 18 U.S.C. § 1151(a). Relying on this definition, the State posited that only land under federal jurisdiction may be a reservation. But the leading treatise on Indian law explains that the federal jurisdictional qualifier “was likely added to exclude from the scope of the statute Indian reservations governed by certain states and thus not under federal protection.” Cohen’s Handbook of Federal Indian Law § 3.04[2][c][ii] (Nell Jessup Newton ed., 2017). This interpretation dovetails with “the general proposition of federal Indian law” that only federally recognized tribes “are entitled to exercise powers of self-governance . . . and to participate in the range of federal programs and services provided to Indian people because of their status as Indians.” *Id.* at § 3.02[9]. The federal jurisdictional qualifier thus has nothing at all to do with the status of the Peoria reservation, a creature of federal law.

Finally, the State’s theory confuses different categories of Indian country. As stated above, all reservation land is Indian country. 18 U.S.C. § 1151(a). Federal law also names “dependent Indian communities” as Indian country. *Id.* at § 1151(b). Land qualifies as a dependent Indian community if it has been “set aside by the Federal government for the use of the Indians as Indian land” and if it is “under federal superintendence.” *Alaska v. Native Vill. of Venetie Tribal Gov’t*, 522 U.S. 520, 527 (1998). If, as the State argues, a necessary component of reservation status is federal superintendence, virtually all dependent Indian communities would qualify as reservations. The categories of reservation and dependent Indian community would collapse into one, frustrating Congress’ intent to separate them in § 1151. That cannot be the correct outcome.

Ultimately, the State's unsupported theory that a reservation established by treaty ceases to exist in the absence of federal superintendence fails to show disestablishment of the Peoria reservation for an even more basic reason. Nowhere in the Termination Act, the statute defining Indian country, or in any federal statute did "Congress clearly express its intent" to disestablish the reservation. *McGirt*, 140 S. Ct. at 2463. The State's claim of disestablishment by implication "is thin gruel to set against treaty promises enshrined in statutes." *Id.* at 2473 n.14.

D. If Termination Impacted The Peoria Reservation, Whatever Was Lost Was Reinstated By The Restoration Act

Even accepting the dubious argument that termination affected the Peoria reservation in some way, Congress later made crystal clear that it intended to fully reverse its termination policy. In 1978, Congress repealed the Peoria Termination Act and "reinstated all rights and privileges . . . under Federal treaty, statute, or otherwise which may have been diminished or lost" through termination. Ex 6, Peoria Restoration Act, Pub. L. No. 95-281, §§ 1(b)(2), (c). The Restoration Act placed the Peoria Tribe in the same position it occupied before termination: the owner of a reservation in Ottawa County.

The text of the Restoration Act is markedly expansive and evinces Congress' concern for reinstating even potentially unknown rights. The Act begins by reinstating "*all* rights and privileges . . . under Federal treaty, statute, *or otherwise*["]" signifying the breadth of its approach. *Id.* at § 1(c) (emphasis added). The reinstated rights are further described as any "which *may have been* diminished or lost["]" *Id.* (emphasis added). In other words, a right need not have been conclusively understood to be affected by termination in order to be reinstated. Congress also chose to restore any right that was infringed but not totally extinguished by use of the phrase "diminished *or* lost"--again showing a wide-ranging approach to undoing termination. *Id.* (emphasis added).

If termination diminished or disestablished the Peoria reservation, the Restoration Act repaired the damage. The Tribe's right to its reservation was established by the Omnibus Treaty. As a "right[] . . . under Federal treaty which[,] in the State's view, "may have been diminished or lost" through termination, the Peoria reservation was expressly "reinstated" in the Restoration Act. *Id.* The Act is not difficult to parse: a plain reading leads to the obvious conclusion that the Peoria reservation, if indeed termination harmed it, was revived by restoration.

The leading federal case on the impact of a restoration statute confirms the Tribe's interpretation. In *United States v. Long*, 324 F.3d 475 (7th Cir. 2003), the Seventh Circuit interpreted the Menominee Restoration Act to determine the scope of the Menominee Tribe's post-restoration criminal jurisdiction. It concluded:

The most reasonable reading of the Restoration Act is as an effort by Congress to place the Menominee back in the position they held before the Termination Act. Any other result would place the Menominee on different footing than those tribes newly recognized by Congress, as well as those tribes that by chance were spared the termination experiment. . . . We see no sense to such a distinction.

Id. at 482. "The text of the Menominee Restoration Act shows that the later Congress was exercising its legislative prerogative to undo the effects of the earlier Termination Act."⁹ *Id.* at 483.

The Wisconsin Supreme Court has taken the same approach. In *State v. Webster*, 338 N.W.2d 474 (Wis. 1983), the state court concluded it lacked jurisdiction to enforce its traffic laws against a Menominee tribal member driving on the restored Menominee reservation. It noted the Menominee termination statute contained "no explicit language" showing intent

⁹The Menominee Restoration Act's operative language is virtually identical to that used in the Peoria Restoration Act. See Act of Dec. 22, 1973, Pub. L. No. 93-197, 87 Stat. 770 ("[T]here are hereby reinstated all rights and privileges of the tribe or its members under Federal treaty, statute or otherwise which may have been diminished or lost" through termination.).

“permanently to remove the roads from the Reservation.” *Webster*, 338 N.W.2d at 430. The court found:

[T]he Menominee's property interest in the land could not have been extinguished absent the explicit consent of Congress or clear intent shown by the enactment of the Menominee Termination Act. . . . We find neither an explicit congressional statement nor evidence of congressional intent to extinguish through the Termination Plan the Menominee's property interest in the right-of-way.

Id. at 431. And even if termination had worked some change to the Menominee reservation, the court concluded “Congress intended to restore the Menominee’s rights to that land when it enacted the Menominee Restoration Act.” *Id.* “[T]he provisions of the Restoration Act reinstating any rights and privileges which might have been diminished or lost” assuaged “[a]ny doubts as to the effect” of termination on the Menominee reservation. *Id.*

The State acknowledges the broad language of the Restoration Act. State’s Resp. at 16. However, it points to the explicit reference to reservation status in other restoration acts as evidence that Congress did not intend to restore the Peoria reservation. *Id.* at 16-17. But this argument piles inference upon inference in an attempt to achieve disestablishment. First, the State implies disestablishment from a Termination Act that says nothing at all about the Peoria reservation. The State then attempts to imply Congress’ refusal to restore the Peoria reservation in the face of explicit statutory language reinstating “all rights and privileges . . . under Federal treaty” lost to termination. Ex 6, Peoria Restoration Act, Pub. L. No. 95-281, § 1(c) (emphasis added). The State does not explain how the Peoria reservation does not constitute a right under the Omnibus Treaty, nor can it. The State’s argument cannot be reconciled with *McGirt*’s requirement that Congress speak clearly if it intends to disestablish a reservation.

It may be that Congress did not address the Peoria reservation in either the Termination or Restoration Acts because it believed the reservation had already been abolished. Even if so, the Supreme Court emphatically rejected the practice of “substituting stories for statutes” in

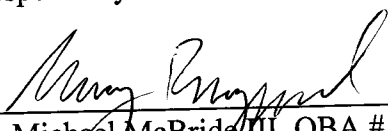
McGirt. 140 S. Ct. at 2470. The Court was unconvinced by arguments that the federal government and the Creek Nation viewed the Creek reservation as defunct throughout the late 19th and 20th centuries. *Id.* at 2470-74. Post-*McGirt*, historical assumptions about reservation status are no longer relevant in a disestablishment analysis. "When interpreting Congress's work in this arena, no less than any other, our charge is usually to ascertain and follow the original meaning of the law before us. . . . That is the only 'step' proper for a court of law." *Id.* at 2468. Here, the State has not and cannot produce any statutory text disestablishing the Peoria reservation.

CONCLUSION

After long years of retreating to accommodate American settlers, the Peoria Tribe secured a reservation in modern-day Ottawa County in the Omnibus Treaty. That reservation survived allotment, Oklahoma statehood, and the vagaries of the termination and restoration eras. In the 154 years since the Omnibus Treaty was signed in 1867, Congress has never expressly and affirmatively disestablished the Peoria reservation. The reservation exists today.

The Tribe asks this Court to find the location at which Defendant's alleged offenses took place is within the exterior boundaries of the Peoria reservation.

Respectfully submitted,



D. Michael McBride III, OBA #15431
Gregory T. Buzzard, OBA #33477

-Of the Firm-

CROWE & DUNLEVY
A Professional Corporation
500 Kennedy Building
321 South Boston Avenue
Tulsa, Oklahoma 74103-3313
(918) 592-9830
(918) 599-6397 (Facsimile)
mike.mcbride@crowedunlevy.com
greg.buzzard@crowedunlevy.com

ATTORNEYS FOR AMICUS CURIAE

CERTIFICATE OF SERVICE

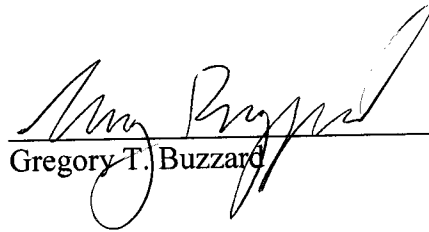
This is to certify that on the 28th day of January, 2021, a true and correct copy of the foregoing was sent via U.S. Mail and email to the following:

Andrew Meloy
The Hartley Law Firm, PLLC
103 E. Central Ave., Ste. 600
Miami, OK 74354
Drew@hartleylawfirm.com

Attorney for Defendant

Kenny Wright, District Attorney
Ottawa County District Attorney's Office
102 E. Central Ave., Ste. 201
Miami, OK 74354
Kenny.Wright@dac.state.ok.us

Attorney for the State of Oklahoma



Gregory T. Buzzard

3646540.6



DATE DOWNLOADED: Thu Sep 17 12:27:44 2020
SOURCE: Content Downloaded from HeinOnline

Citations:

Bluebook 21st ed.

Treaty between the United States of America and the Senecas, Mixed Senecas and Shawnees, Quapaws, Confederated Peorias, Kaskaskias, Weas, and Piankeshaws, Miamies, Ottawas of Blanchard's Fork and Roche de Boeuf, and certain Wyandottes, . 15 Stat. 513 (1867).

ALWD 6th ed.

Treaty between the United States of America and the Senecas, Mixed Senecas and Shawnees, Quapaws, Confederated Peorias, Kaskaskias, Weas, and Piankeshaws, Miamies, Ottawas of Blanchard's Fork and Roche de Boeuf, and certain Wyandottes, . 15 Stat. 513 (1867).

APA 7th ed.

Treaty between the United States of America and the Senecas, Mixed Senecas and Shawnees, Quapaws, Confederated Peorias, Kaskaskias, Weas, and Piankeshaws, Miamies, Ottawas of Blanchard's Fork and Roche de Boeuf, and certain Wyandottes, 15 Stat. 513 (1867).

Chicago 7th ed.

"Wyandottes: Treaty between the United States of America and the Senecas, Mixed Senecas and Shawnees, Quapaws, Confederated Peorias, Kaskaskias, Weas, and Piankeshaws, Miamies, Ottawas of Blanchard's Fork and Roche de Boeuf, and certain Wyandottes," U.S. Statutes at Large 15, no. Main Section (1867): 513-531

McGill Guide 9th ed.

Treaty between the United States of America and the Senecas, Mixed Senecas and Shawnees, Quapaws, Confederated Peorias, Kaskaskias, Weas, and Piankeshaws, Miamies, Ottawas of Blanchard's Fork and Roche de Boeuf, and certain Wyandottes, . 15 Stat. 513 (1867).

MLA 8th ed.

Treaty between the United States of America and the Senecas, Mixed Senecas and Shawnees, Quapaws, Confederated Peorias, Kaskaskias, Weas, and Piankeshaws, Miamies, Ottawas of Blanchard's Fork and Roche de Boeuf, and certain Wyandottes, . 15 Stat. 513 (1867). HeinOnline.

OSCOLA 4th ed.

Treaty between the United States of America and the Senecas, Mixed Senecas and Shawnees, Quapaws, Confederated Peorias, Kaskaskias, Weas, and Piankeshaws, Miamies, Ottawas of Blanchard's Fork and Roche de Boeuf, and certain Wyandottes, . 15 Stat. 513 (1867).

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <https://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your license, please use: Copyright Information

EXHIBIT

1

Treaty between the United States of America and the Senecas, Mixed Senecas and Shawnees, Quapaws, Confederated Peorias, Kaskaskias, Weas; and Piankeshaws, Ottawas of Blanchard's Fork and Roche de Bœuf, and certain Wyandottes; Concluded February 23, 1867; Ratification advised, with Amendments, June 18, 1868; Amendments accepted September 1, 7, 8, and 15, 1868; Proclaimed October 14, 1868.

ANDREW JOHNSON,

PRESIDENT OF THE UNITED STATES OF AMERICA,

Feb. 23, 1867.

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING :

WHEREAS a treaty was made and concluded at the city of Washington, in the District of Columbia, on the twenty-third day of February, in the year of our Lord one thousand eight hundred and sixty-seven, by and between Lewis V. Bogy, William H. Watson, Thomas Murphy, George C. Snow, and G. A. Colton, commissioners, on the part of the United States, and certain chiefs, delegates, and headmen of the Senecas, mixed Senecas and Shawnees, Quapaws, confederated Peorias, Kaskaskias, Weas, and Piankeshaws, Miamies, Ottawas of Blanchard's Fork and Roche de Bœuf, and certain Wyandottes, on the part of said Indians, and duly authorized thereto by them, which treaty is in the words and figures following, to wit:—

Preamble.

Contracting parties

Articles of agreement, concluded at Washington, D. C., the twenty-third day of February, one thousand eight hundred and sixty-seven, between the United States, represented by Lewis V. Bogy, Commissioner of Indian Affairs, W. H. Watson, Special Commissioner, Thomas Murphy, Superintendent of Indian Affairs, George C. Snow, and G. A. Colton, U. S. Indian agents, duly authorized, and the Senecas, represented by George Spicer and John Mush; the mixed Senecas and Shawnees, by John Whitetree, John Young, and Lewis Davis; the Quapaws, by S. G. Vallier and Ka-zhe-cah; the confederated Peorias, Kaskaskias, Weas, and Piankeshaws, by Baptiste Peoria, John Mitchell, and Edward Black; the Miamies, by Thomas Metosenyah and Thomas Richardville, and the Ottawas of Blanchard's Fork and Roche de Bœuf, by John White and J. T. Jones, and including certain Wyandott[e]s, represented by Tauromee, or John Hat, and John Karaho.

Whereas it is desirable that arrangements should be made by which portions of certain tribes, parties hereto, now residing in Kansas, should be enabled to remove to other lands in the Indian country south of that State, while other portions of said tribes desire to dissolve their tribal relations and become citizens; and whereas it is necessary to provide certain tribes, parties hereto, now residing in the Indian country, with means of rebuilding their houses, reopening their farms, and supporting their families, they having been driven from their reservations early in the late war, and suffered greatly for several years, and being willing to sell a portion of their lands to procure such relief; and whereas a portion of the Wyandottes, parties to the treaty of one thousand eight hundred and fifty-five, although taking lands in severalty, have sold said lands and are still poor, and have not been compelled to become citizens, but have remained with-

Preamble.

Vol. x p. 1159

out clearly recognized organization, while others who did become citizens are unfitted for the responsibilities of citizenship; and whereas the Wyandottes, treated with in eighteen hundred and fifty-five, have just claims against the government, which will enable the portion of their people herein referred to to begin anew a tribal existence: Therefore it is agreed:

Cession of
land to the
United States by
the Senecas, &c.

ARTICLE I. The Senecas cede to the United States a strip of land on the north side of their present reservation in the Indian country; the land so ceded to be bounded on the east by the State of Missouri, on the north by the north line of the reservation, on the west by the Neosho river, and running south for the necessary distance, to contain twenty thousand acres; for which the government is to pay twenty thousand dollars upon the ratification of this treaty; the south line of said tract to be ascertained by survey, at the cost of the United States.

Further ces-
sion.

ARTICLE II. The Senecas now confederated with the Shawnees, and owning an undivided half of a reservation in the Indian country immediately north of the Seneca reservation mentioned in the preceding article, cede to the United States one half of said Seneca and Shawnee reserve, which it is mutually agreed shall be the north half, bounded on the east by the State of Missouri, north by the Quapaw reserve, west by the Neosho river, and south by an east and west line bisecting the present Seneca and Shawnee reserve into equal parts, the said line to be determined by survey, at the expense of the United States; for which tract of land, estimated to contain about thirty thousand acres, the United States will pay the sum of twenty-four thousand dollars.

Cession of
lands to the
United States by
the Shawnees,

ARTICLE III. The Shawnees, heretofore confederated with the Senecas, cede to the United States that portion of their remaining lands, bounded as follows, beginning at a point where Spring river crosses the south line of the tract in the second article ceded to the United States, thence down said river to the south line of the Shawnee reserve, thence west to the Neosho river, thence up said river to the south line of the tract ceded in the second article, and thence east to the place of beginning; supposed to contain about twelve thousand acres, the area to be ascertained by survey, at the expense of the United States; the United States to pay for the same at the rate of one dollar per acre, as soon as the area shall be ascertained.

by the Qua-
paws.

Amended
Post, p. 526.

ARTICLE IV. The Quapaws cede to the United States that portion of their land lying in the State of Kansas, being a strip of land on the north line of their reservation, about one half-mile in width, and containing about twelve sections in all, excepting therefrom one half section to be patented to Samuel G. Valher, including his improvements. Also the further tract within their present reserve, bounded as follows: Beginning at a point in the Neosho river where the south line of the Quapaw reserve strikes that stream, thence east three miles, thence north to the Kansas boundary line, thence west on said line to the Neosho river, thence down said river to the place of beginning; and the United States will pay to the Quapaws for the half-mile strip lying in Kansas at the rate of one dollar and twenty-five cents per acre, whenever the area of the same shall be ascertained; and for the other tract described in this article at the rate of one dollar and fifteen cents per acre, whenever the area of the same shall be ascertained by survey, said survey to be made at the cost of the tribe to which said tract is herein provided to be sold; and the land in Kansas herein ceded shall be open to entry and settlement, the same as other public lands, within sixty days after the completion of the survey thereof.

PROVISIONS RELATING TO THE SENECA.

Senecas to

ARTICLE V. The Senecas now confederated with the Shawnees, the said Shawnees thereto consenting, agree to dissolve their connection with

the said Shawnees, and to unite with the Senecas, parties to the treaty of February twenty-eighth, one thousand eight hundred and thirty-one, upon their reservation described in article second of said treaty; and the several bands of Senecas will unite their funds into one common fund for the benefit of the whole tribe; and an equitable division shall be made of all funds or annuities now held in common by the Senecas and Shawnees.

separate from
the Shawnees.
Vol. vii. p. 349.

ARTICLE VI. Of the sum of twenty-four thousand dollars to be paid to the Senecas, as provided in the second article, the sum of four thousand dollars shall be paid to them immediately after the ratification of this treaty, to enable them to re-establish their homes and provide themselves with agricultural implements, seed, and provisions for themselves and their families; and the balance of the said first-mentioned sum, being twenty thousand dollars, shall be consolidated with the twenty thousand dollars in the first article provided to be paid, and invested for the tribe of Senecas, as constituted by this treaty, at five per cent interest, to be paid per capita semi-annually; and their annuity of five hundred dollars in specie, provided by article four of the treaty of September twenty-ninth, one thousand eight hundred and seventeen, shall likewise become the property of the tribe.

Payments to
the Senecas.

Vol. vii. p. 161.

ARTICLE VII. The amount annually due the Senecas under the provisions of article four of the treaty of February twenty-eighth, one thousand eight hundred and thirty-one, for blacksmith, after their separation from the Shawnees, shall be annually paid to them as a national fund, to enable them to purchase such articles for their wants and improvements in agriculture as the chiefs, with the consent of their agent, may designate; and this provision shall apply also to the fund for support of a miller belonging to the Senecas heretofore occupying the southernmost reserve referred to in this treaty; and there shall be added to the said fund whatever amount belonging to either band of the Senecas shall be found due and unpaid upon an examination of their accounts with the government, and particularly the amount of bonds and stocks invested in their name; and the interest thereon shall be annually paid to the said Senecas for the purposes mentioned in this article.

Payments for
improvements
in agriculture

PROVISIONS RELATING TO THE SHAWNEES.

ARTICLE VIII. Of the amount in the third article provided to be paid to the Shawnees by the United States for the lands therein ceded, the sum of two thousand dollars shall be advanced to them to be used in establishing their homes, and the balance of the said amount shall be invested for the said tribe, under the name of Eastern Shawnees, and five per cent be paid semi-annually thereon; and the amount due and unpaid upon the bonds or stocks invested in their name shall be paid to them, as well as the interest thereon hereafter to become due, to be used under the direction of the chiefs, with the consent of the agent, for the purchase of agricultural implements or other articles necessary for the general welfare of the people; and the one half of the blacksmith fund remaining after the division to be made with the Senecas provided for in article five shall remain devoted to the same purpose, and the government will add thereto the sum of five hundred dollars annually for five years.

Payments to
the Shawnees.

PROVISIONS RELATING TO THE QUAPAWS

ARTICLE IX. Of the amount to be paid to the Quapaws for the lands ceded by them in the fourth article of this treaty, the sum of five thousand dollars shall be paid to them upon the ratification of this treaty, to assist them in re-establishing themselves at their homes upon their remaining reservation; and the balance of said amount shall be invested as a permanent fund at five per cent interest, payable per capita semi-annually.

Payments to
the Quapaws

School fund. ARTICLE X. If the Osage mission school should be closed, so that the school fund of the Quapaws cannot be used for them to advantage at that institution, the said fund shall remain in the treasury of the United States until such time as it can, under the direction of the Secretary of the Interior, with the consent of the chiefs, be used to advantage in establishing a school upon their reservation.

Aid in agriculture
Vol. VII. p. 425. ARTICLE XI. The amount now due and unpaid for a farmer, under the provisions of the third article of their treaty of May thirteen one thousand eight hundred and thirty-eight [three], may be used by the chiefs and council for the purchase of provisions, farming implements, seed, and otherwise for the purpose of assisting the people in agriculture; and their annual income now paid for farmer shall hereafter be set apart for the purposes of assistance and improvement in agriculture.

CLAIMS FOR LOSSES BY THE WAR.

Claims for losses by the war. ARTICLE XII. Whereas the aforesaid Senecas, mixed Senecas and Shawnees, and Quapaws were driven from their homes during the late war, and their property destroyed, the government being under obligations to protect them, but for the time unable to do so, it is agreed that a commission of not to exceed two persons shall be appointed by the Secretary of the Interior, who shall proceed to their country and make careful investigation of their claims for losses, and make full report of the same to the department; and the Secretary of the Interior shall, upon such report, make such awards as he may deem equitable and just; and upon such award the United States will pay the claimants the amounts declared to be due: *Provided*, That the sums so paid shall not exceed thirty-five thousand dollars for the Senecas, twenty-five thousand dollars for the Shawnees, and thirty thousand dollars for the Quapaws; and if the awards shall exceed such amounts in either case, the claimants shall be paid pro rata from the amount appropriated.

Commission to investigate claims.

Award of damages.

Proviso

Amended.
Post, p. 526.

PROVISIONS IN RELATION TO THE WYANDOTTES.

Wyandottes. ARTICLE XIII. The United States will set apart for the Wyandottes, for their future home, the land ceded by the Senecas in the first article hereof, and described in said article, to be owned by the said Wyandottes in common; and in order to reorganize and provide for the said Wyandottes, many of whom have been in a disorganized and unfortunate condition since their treaty of one thousand eight hundred and fifty-five, it is provided that there shall be recognized as due and paid to the Wyandottes of all classes the sum of eighty-three thousand eight hundred and fourteen dollars and forty cents, as more particularly stated and described in the schedule annexed to this treaty, marked "A." A register of the whole people, resident in Kansas and elsewhere, shall be taken by the agent of the Delawares, under the direction of the Secretary of the Interior, on or before the first of July, one thousand eight hundred and sixty-seven, which shall show the names of all who declare their desire to be and remain Indians, and in a tribal condition, together with incompetents and orphans, as described in the treaty of one thousand eight hundred and fifty-five; and all such persons, and those only, shall hereafter constitute the tribe: *Provided*, That no one who has heretofore consented to become a citizen, nor the wife or children of any such person, shall be allowed to become members of the tribe, except by the free consent of the tribe after its new organization, and unless the agent shall certify that such party is, through poverty or incapacity, unfit to continue in the exercise of the responsibilities of citizenship of the United States, and likely to become a public charge.

Land set apart for the Wyandottes.

Vol.-x. p. 1159.

Payment.

Register to be taken.

Who to constitute the tribe.
Proviso.

Amended.
Post, p. 526.

Upon completion of register, ARTICLE XIV. Whenever the register in the next preceding article shall have been completed and returned to the Commissioner of Indian

TREATY WITH THE WYANDOTTES AND OTTAWAS. FEB. 23, 1867. 517

Affairs, the amount of money in said article acknowledged to be due to the Wyandott[e]s shall be divided, and that portion equitably due to the citizens of said people shall be paid to them, or their heirs, under the direction of the Secretary of the Interior; and the balance, after deducting the cost of the land purchased from the Senecas by the first article hereof, and the sum of five thousand dollars to enable the Wyandott[e]s to establish themselves in their new homes, shall be paid to the Wyandott[e] tribe per capita; and the United States further agree to pay to the said Wyandott[e]s the sum of eleven thousand seven hundred and twenty-seven dollars and seventy-four cents, being the amount of taxes levied under the authority of the State of Kansas, contrary to the terms of the treaty of one thousand eight hundred and fifty-five, previous to the organization of the State government and for five years thereafter; in consideration of which the said Wyandott[e]s, receiving their portion of the said sum, shall in each case relinquish in writing by themselves, or through the Delaware agent as their guardian, all further claim against the United States as to matters relating to the said taxes.

amount to be divided.

Remainder, how to be applied.

Amended. Post, p. 627.

Vol. x. p. 1159.

ARTICLE XV. All restrictions upon the sale of lands assigned and patented to "incompetent" Wyandott[e]s under the fourth article of the treaty of one thousand eight hundred and fifty-five, shall be removed after the ratification of this treaty, but no sale of lands heretofore assigned to orphans or incompetents shall be made, under decree of any court, or otherwise, for or on account of any claim, judgment, execution or order, or for taxes, until voluntarily sold by the patentee or his or her heirs, with the approval of the Secretary of the Interior; and whereas many sales of land belonging to this class have heretofore been made, contrary to the spirit and intent of the treaty of one thousand eight hundred and fifty-five, it is agreed that a thorough examination and report shall be made, under direction of the Secretary of the Interior, in order to ascertain the facts relating to all such cases, and upon a full examination of such report, and hearing of the parties interested, the said Secretary may confirm the said sales, or require an additional amount to be paid, or declare such sales entirely void, as the very right of the several cases may require.

Certain restrictions upon sales of lands removed.

Vol. x. p. 1161.

PROVISIONS RELATING TO THE OTTAWAS.

Ottawas.

ARTICLE XVI. The west part of the Shawnee reservation, ceded to the United States by the third article, is hereby sold to the Ottawas at one dollar per acre; and for the purpose of paying for said reservation the United States shall take the necessary amount, whenever the area of such land shall be found by actual survey, from the funds in the hands of the government arising from the sale of the Ottawa trust lands, as provided in the ninth article of the treaty of one thousand eight hundred and sixty-two, and the balance of said fund, after the payment of accounts provided for in article five of the treaty of one thousand eight hundred and sixty-two, shall be paid to the tribe per capita.

Sale of land to the Ottawas.

Payment.

Vol. xii p. 1240.

ARTICLE XVII. The provisions of the Ottawa treaty of one thousand eight hundred and sixty-two, under which all the tribe were to become citizens upon the sixteenth of July, one thousand eight hundred and sixty-seven, are hereby extended for two years, or until July sixteenth, one thousand eight hundred and sixty-nine; but at any time previous to that date any member of the tribe may appear before the United States district court for Kansas, and declare his intention to become a citizen, when he shall receive a certificate of citizenship, which shall include his family, and thereafter be disconnected with the tribe, and shall be entitled to his proportion of the tribal fund; and all who shall not have made such declaration previous to the last-mentioned date shall be still considered members of the tribe. In order to enable the tribe to dispose of their property in Kansas, and remove to their new homes and establish themselves thereon, patents in fee-simple shall be given to the heads of families, and to all who

Provisions of former treaty as to members of the tribe becoming citizens extended.

Vol. xii. p. 1287.

have come of age among the allottees under the treaties of one thousand eight hundred and sixty-two, so that they may sell their lands without restriction, but the said lands shall remain exempt from taxation so long as they may be retained by members of the tribe, down to the said sixteenth July, one thousand eight hundred and sixty-nine; and the chiefs and council of the said tribe shall decide in the case of disputed heirship to real estate, taking as a rule the laws of inheritance of the State of Kansas.

Payment to
individuals for
losses.

Amended
Post, p 527.

Education and
schools.

Vol. XII. p. 1238.

Sale of lands
to Ottawa uni-
versity.

Peorias, &c.

Purchases of
land from the
Peorias, &c. to
receive patents

ARTICLE XVIII. The United States agree to pay such amount, not exceeding ten thousand dollars, as may be found justly due to the individual Ottawas, for depredations and damages upon their property during the late war, the proof of such losses to be furnished to the Secretary of the Interior, and such amount shall be paid as may be adjudged by him to be equitably due; and the claim of J. T. Jones, for which a bill of appropriation has passed one of the branches of Congress, but which has been withdrawn from before Congress, being for destruction by fire of his dwelling and other property by whites in one thousand eight hundred and fifty-six, shall be allowed and paid to him, amounting to six thousand seven hundred dollars.

ARTICLE XIX. The sixth article of the treaty of one thousand eight hundred and sixty-two shall remain unchanged, except as provided in this article. The children of the tribe between the ages of six and eighteen (6 and 18) shall be entitled to be received at said institution, and to be subsisted, clothed, educated, and attended in sickness, where the sickness is of such a nature that the patient promises a return to study within a reasonable period; the children to be taught and practised in industrial pursuits, suitable to their age and sex, and both sexes in such branches of learning, and to receive such advantages as the means of the institution will permit; these rights and privileges to continue so long as any children of the tribe shall present themselves for their exercise. And the Secretary of the Interior and the senior corresponding secretary of the American Baptist Home Mission Society shall be members ex officio of the board of trustees, with power to vote in person or by proxy, it being the special intention of this provision to furnish additional supervision of the institution, so that the provisions of this article may be carried into effect in their full spirit and intent.

ARTICLE XX. It is further agreed that the remaining unsold portion of trust lands of the Ottawas, amounting to seven thousand two hundred and twenty-one and twenty one-hundredths acres, shall be sold to the trustees of Ottawa University, to be disposed of for the benefit of said institution at the appraised value thereof, and that the said trustees shall have until July sixteenth, one thousand eight hundred and sixty-nine, to dispose of the same and pay to the government the value of said lands: *Provided*, That the said trustees shall furnish, within thirty days after the ratification of this treaty, to the Secretary of the Interior, a satisfactory bond for the fulfilment of their obligations.

PROVISIONS RELATING TO THE PEORIAS, KASKASKIAS, WEAS, AND PIANKESHAWES.

ARTICLE XXI. Whereas certain arrangements have been made by the chiefs of the confederated tribes of Peorias, Kaskaskias, Weas, and Piankeshaws, for the sale to actual settlers of the lands held by them in common, being nine and one-half sections, for a reasonable consideration, according to the terms of a certain petition of the said tribe, with schedule annexed, (which schedule is annexed to this treaty and marked "B,") dated December twenty-sixth, one thousand eight hundred and sixty-six, filed in the office of the Commissioner of Indian Affairs, it is agreed that the said arrangements shall be carried into full effect, and the purchasers thereunder shall receive patents from the United States for the lands so purchased, upon making full payment for the same to the Secretary of

the Interior, and the amount already paid by said purchasers, as appears from said schedule, and in the hands of the chiefs, shall be paid to the Secretary of the Interior, and the whole amount of the purchase-money shall also be paid to the said Secretary on or before the first day of June, one thousand eight hundred and sixty-seven, and shall be held by him for the benefit of the tribe, subject to the provisions of this treaty.

ARTICLE XXII. The land in the second and fourth articles of this treaty proposed to be purchased from the Senecas and Quapaws, and lying south of Kansas, is hereby granted and sold to the Peorias, &c. and shall be paid for at the rate paid for the same by the government, out of the proceeds of the nine and a half sections referred to in the last preceding article, adding thereto whatever may be necessary out of other moneys in the hands of the United States belonging to the said Peorias, &c.

Lands sold to the Peorias, &c.

ARTICLE XXIII. The said Indians agree to dispose of their allotments in Kansas and remove to their new homes in the Indian country within two years from the ratification of this treaty; and to that end the Secretary of the Interior is authorized to remove altogether the restrictions upon the sales of their lands, provided under authority of the third article of the treaty of May thirtieth, one thousand eight hundred and fifty-four, in such manner that adult Indians may sell their own lands, and that the lands of minors and incompetents may be sold by the chiefs, with the consent of the agent, certified to the Secretary of the Interior and approved by him. And if there should be any allotments for which no owner or heir thereof survives, the chiefs may convey the same by deed, the purchase-money thereof to be applied, under the direction of the Secretary, to the benefit of the tribe; and the guardianship of orphan children shall remain in the hands of the chiefs of the tribe, and the said chiefs shall have the exclusive right to determine who are members of the tribe, and entitled to be placed upon the pay-rolls.

Indians to remove to new homes within, &c.

Vol. x. p. 1082.

ARTICLE XXIV. An examination shall be made of the books of the Indian office, and an account current prepared, stating the condition of their funds, and the representations of the Indians for overcharges for sales of their lands in one thousand eight hundred and fifty-seven and one thousand eight hundred and fifty-eight shall be examined, and if any amount is found to be due, such balance, together with the interest of their invested funds, shall be paid to them upon the first of July, one thousand eight hundred and sixty-seven; and in order further to assist them in preparing for removal and in paying their debts, the further amount of twenty-five thousand dollars shall be at the same time paid to them per capita from the sum of one hundred and sixty-nine thousand six hundred and eighty-six dollars and seventy-five cents, invested for said Indians, under act of Congress of July twelfth, one thousand eight hundred and sixty-two; and the balance of said sum of one hundred and sixty-nine thousand six hundred and eighty-six dollars and seventy-five cents, together with the sum of ninety-eight thousand dollars now invested on behalf of the said Indians, in State stocks of southern States, and the sum of three thousand seven hundred dollars being the balance of interest, at five per cent per annum, on thirty-nine thousand nine hundred and fifty dollars held by the United States from July, one thousand eight hundred and fifty-seven, till vested in Kansas bonds in December, one thousand eight hundred and sixty-one, after crediting five thousand dollars thereon heretofore receipted for by the chiefs of said Indians, shall be and remain as the permanent fund of the said tribe, and five per cent be paid semi-annually thereon, per capita, to the tribe; and the interest due upon the sum of twenty-eight thousand five hundred dollars in Kansas bonds, and upon sixteen thousand two hundred dollars in United States stocks, now held for their benefit, shall be paid to the tribe semi-annually in two equal payments as a permanent school fund income: *Provided*, That there shall be taken from the said invested fund and paid to the said tribe,

Amounts due the Indians to be paid them.

Further allowances.

1862, ch. 156
Vol. xii. p. 539.
Amended.
Post, p. 527.

Proviso.

per capita, on the first of July, one thousand eight hundred and sixty-eight, the sum of thirty thousand dollars to assist them in establishing themselves upon their new homes; and at any time thereafter, when the chiefs shall represent to the satisfaction of the Secretary of the Interior that an additional sum is necessary, such sum may be taken from their invested fund: *And provided also*, That the said invested fund shall be subject to such division and diminution as may be found necessary in order to pay those who may become citizens their share of the funds of the tribe.

Certain taxes
to be refunded.

ARTICLE XXV. Whereas taxes have been levied by the authority of the State of Kansas upon lands allotted to members of the tribe, the right and justice of which taxation is not acknowledged by the Indians, and on which account they have suffered great vexation and expense, and which is now a matter in question in the Supreme Court of the United States, it is agreed that, in case that court shall decide such taxes unlawful, the government will take measures to secure the refunding of said taxes to such of the Indians as have paid them; and if such taxes are decided to be lawful, then the government will redeem the said lands from all taxes down to the date of any deeds approved by the Secretary of the Interior; in consideration of which relief to the Indians they here by relinquish all right to payment from the government of any claims for damages to, and depredations upon, their property, made by parties who claim under such tax titles; and also all claim for damages on account of unfairness of the sales of their lands in one thousand eight hundred and fifty-seven.

Amended.
Post, p. 527.

Miamies may
be united with
the Peorias, &c.

ARTICLE XXVI. The Peorias, Kaskaskias, Weas, and Piankeshaws agree that the Miamies may be confederated with them upon their new reservation, and own an undivided right in said reservation in proportion to the sum paid, upon the payment by the said Miamies of an amount which, in proportion to the number of the Miamies who shall join them, will be equal to their share of the purchase-money in this treaty provided to be paid for the land, and also upon the payment into the common fund of such amount as shall make them equal in annuities to the said Peorias, &c., the said privilege to remain open to the Miamies two years from the ratification of this treaty.

Blacksmith,
iron and steel.

ARTICLE XXVII. The United States agree to pay the said Indians the sum of one thousand five hundred dollars per year for six years for their blacksmith, and for necessary iron and steel and tools; in consideration of which payment the said tribe hereby relinquish all claims for damages and losses during the late war, and, at the end of the said six years, any tools or materials remaining shall be the property of the tribe.

Register to be
taken.

ARTICLE XXVIII. Inasmuch as there may be those among them who may desire to remain in Kansas and become citizens of the United States, it is hereby provided that, within six months after the ratification of this treaty, a register shall be taken by the agent, which shall show the names separately of all who voluntarily desire to remove, and all who desire to remain and become citizens; and those who shall elect to remain may appear before the judge of the United States district court for Kansas and make declaration of their intention to become citizens, and take the oath to support the Constitution of the United States; and upon filing of a certificate of such declaration and oath in the office of the Commissioner of Indian Affairs they shall be entitled to receive the proportionate share of themselves and their children in the invested funds and other common property of the tribe; and therefrom they and their children shall become citizens, and have no further rights in the tribe; and all the females who are heads of families and single women of full age shall have the right to make such declaration and become disconnected from the tribe.

Those wishing
to remain, may
become citizens.

PROVISIONS RELATING TO THE MIAMIES

ARTICLE XXIX. It is agreed that such of the Miamies now occupying lands in Kansas, under their treaty of *August four* [June five], one thousand eight hundred and fifty-four, as desire to remain in that State and become citizens, may have the privilege of doing so; and that those who shall elect to remove to the new reservation herein provided to be purchased from the Senecas and Shawnees and sold to the Peorias, &c. may do so, and upon such removal shall become confederated with the said Peorias, and own an undivided right in said reservation in proportion to their numbers on paying to the United States, for the benefit of said Peorias, a proportionate share of the purchase-money and of the capital of their annuities as provided in article twenty-six; and upon such payment for their share of the land, the amount so paid shall be held by the United States for such disposition as the chiefs of the Peorias, &c. shall designate; and a sufficient amount of the funds of the Miamies who remove shall be set apart, so that the interest thereon, at five per cent, shall be equal in proportion to the numbers of the Miamies removing, to the school-fund income of the said Peorias, and upon such confederation the united tribe shall take the name of "Peorias and Miamies."

ARTICLE XXX. The provisions of article twenty-three of this treaty, relating to the removal of restrictions from the alienation of land, and as to the conveyance of land in certain cases, made as to the Peorias, &c. shall apply also [to] the Miamies; and it is agreed that those who decide to remove shall do so within two years from the ratification of this treaty.

ARTICLE XXXI. The reserved or common lands of the Miamies in the eastern part of Kansas, amounting to about twenty-three thousand acres, shall be sold, for the benefit of the tribe, in the following manner: Whereas the said lands have heretofore been appraised under direction of the Secretary of the Interior, which appraisal is on file in that department, such appraisal shall be taken as the basis of the sale; and whereas the said tract of land is now occupied for the most part by white settlers, it is agreed that the said settlers shall have a pre-emption right to the lands which they occupy, in legal subdivisions, at the appraised value thereof; and immediately after the ratification of this treaty it shall be the duty of the Commissioner of Indian Affairs to give notice, by publication for thirty days in some newspaper in the county in which the said lands are situated, that payment for the same must be made at said appraised value, by the person who occupies the land at the date of the ratification of this treaty, within six months after the date of such ratification; and, if such payment shall be made, patents in fee-simple shall be issued to the purchasers; and after the said six months sealed bids, at not less than the appraised value, shall be received by the Commissioner of Indian Affairs for any of said lands remaining unpaid for, and awards made to the highest bidder for cash until all of said lands are sold: *Provided*, That the Miamies shall not be held by this article as conceding any point in dispute relative to the validity of certain head-rights, sixty-eight in number, heretofore granted upon their reserve, and certain moneys taken from the Western Miamies and paid to said sixty-eight persons.

ARTICLE XXXII. The United States agree to the same provision in regard to taxes levied upon their lands under authority of the State of Kansas as is set forth in the twenty-fifth article, in regard to the Peorias, &c. so far as relates to redeeming their lands from taxes, in case such taxes are decided to have been lawfully levied.

ARTICLE XXXIII. A register shall be made by the agent of the tribe, within six months after the ratification of this treaty, of all who shall desire to remove, and all who desire to remain, and the provisions of article twenty-eight, in relation to the Peorias, &c. shall also apply to the Miamies.

Miamies.

Provision as to those wishing to remain in Kansas and become citizens; as to those wishing to remove.

Vol. x. p. 1093.

Stricken out.
Post, p. 527.

Alienation, &c.
of land.

Stricken out.
Post, p. 527.

Reserved
lands to be
sold.

Mode of sale

Stricken out.
Post, p. 527.

Taxes.
Stricken out.
Post, p. 527.

Register.
Stricken out.
Post, p. 527.

Payments and
allowances to
the Miamies

Vol. x. p 1094.

Stricken out.
Post, p 527.

School section
to be patented
to, &c

Proviso
Stricken out
Post, p 527.

Claims for
damages
Stricken out.
Post, p 527.

This treaty is
for Western Mi-
amies
Claims of
others.
Stricken out.
Post, p 527.

Agency build-
ings
Stricken out.
Post, p 527.

Transfer of
funds, &c
Stricken out.
Post, p 527.

ARTICLE XXXIV. In order that those who desire to remove may make preparations for the purpose, the sum of thirteen thousand dollars of the amount due the Miamies under article third of the treaty of one thousand eight hundred and fifty-four, shall be paid to them, per capita, within thirty days, and the additional sum of ten thousand dollars in ninety days after the ratification of this treaty; and upon the return of the register showing the names and number of those respectively who intend to retain their tribal condition and of those who will become citizens, an account shall be made of the amount due by the government to the tribe, and the share belonging to that portion who desire to become citizens shall be reserved to be paid to the parties entitled thereto; and, in making such account, their mill and blacksmith and other annuities shall be reduced to their actual cash present value; and after the reservation of the amount for those who become citizens, there shall be taken from the remaining moneys the amount necessary to pay for the share in the land purchased of the Peorias, &c., and the amount necessary to be capitalized as a permanent fund to make them equal in annuities to the Peorias, &c., and the balance, together with the share of the removing party derived from the sale of their lands, as fast as the same is received, shall be invested in seven-thirty United States bonds, maturing or convertible at the earliest date, and the interest upon the same shall be collected and paid to the Miamies, per capita, semi-annually at their new homes; and the share of the citizen Miamies in the proceeds of the lands shall be paid to the heads of families for their families, or to single persons, as the case may be, annually, until all the lands are sold.

ARTICLE XXXV. The school section upon the Miami reserve, now unimproved, shall be patented in fee-simple to the chiefs, Thomas Metosenyah and Big Leg, upon such division thereof as they may agree upon between themselves, upon notification of the said division to the Secretary of the Interior through the agent: *Provided*, That the portion of said school section, not exceeding four acres, heretofore used as a burial-ground, shall be perpetually reserved for such purpose.

ARTICLE XXXVI. An investigation shall be made by the Secretary of the Interior into all claims presented on account of damages committed by whites upon the lands of the Indians and for losses of stock and other property, and a report shall be made thereon to Congress, recommending such action as shall appear just and equitable.

ARTICLE XXXVII. The provisions of this treaty shall apply exclusively for the use and benefit of the Western Miamies; and an examination shall be made as to the claims of certain Eel River Miamies now resident among the Western Miamies, and such amounts as may have been withheld from them shall be refunded, and hereafter their annuities shall be paid to them among the Western Miamies, where they live.

ARTICLE XXXVIII. The United States agree that agency buildings shall be erected, in as central a position as possible, for the tribes interested in this treaty, at a cost not to exceed eight thousand dollars, in place of those of the Neosho agency, destroyed during the late war.

ARTICLE XXXIX. All necessary arrangements contemplated in this treaty, in regard to the transfer of invested funds from one tribe to another, or the disposal of securities belonging to one tribe in favor of another, or capitalization of annuities and other funds, where the same are or may be in the hands of the government, shall be made by the Secretary of the Interior in such manner as shall fully carry into effect the spirit and meaning of this treaty; and where appropriations are needed from Congress in order to carry into effect these stipulations, it shall be his duty to make report in relation to the same to Congress at the earliest day practicable after the ratification of this treaty.

ARTICLE XL. If any amendments shall be made to this treaty by the Senate, it shall only be necessary to submit the same for the assent of the particular tribe or tribes interested; and should any such amendments be made, and the assent of the tribe or tribes interested not be obtained, the remainder of the treaty not affected by such amendment shall nevertheless take effect and be in force.

Amendments.

ARTICLE XLI. The expenses of negotiating this treaty, not exceeding twelve thousand dollars, shall be paid by the United States.

Expense of
negotiating
treaty
Stricken out
Post, p. 527.

In testimony whereof, the before-named commissioners on behalf of the United States, and the before-named delegates on behalf of the Senecas, mixed Senecas and Shawnees, Quapaws, confederated Peorias, Kaskaskias, Weas, and Piankeshaws, Miamies, Ottawas, and Wyandottes have hereunto set our hands and seals the day and year first above written.

Signature.

LEWIS V. BOGY, [SEAL.]
Commissioner of Indian Affairs.

W. H. WATSON, [SEAL.]
Special Commissioner.

THOS. MURPHY, [SEAL.]
Supt of Indian Affairs.

G. C. SNOW, [SEAL.]
U. S. Ind. Ag't, Neosho Agency.

G. A. COLTON, [SEAL.]
U. S. Ind. Ag't for Miamis, Peorias, &c.

GEORGE SPICER, his x mark, [SEAL.]
JOHN MUSH, his x mark, [SEAL.]
Senecas.

JOHN WHITETREE, his x mark, [SEAL.]
JOHN YOUNG, his x mark, [SEAL.]
LEWIS DAVIS, his x mark, [SEAL.]
Senecas and Shawnees.

S. G. VALIER, [SEAL.]
KA-SHE-CAH, his x mark, [SEAL.]
Quapaws.

BAPTISTE PEORIA, his x mark, [SEAL.]
JOHN MITCHELL, his x mark, [SEAL.]
EDWARD BLACK, [SEAL.]
Peorias, &c.

THOMAS METOSENIAH, his x mark, [SEAL.]
THOS. F. RICHARDVILLE, [SEAL.]
Miamies.

JOHN WILSON, his x mark, [SEAL.]
J. T. JONES, [SEAL.]
Ottawas.

TAUROMEE, his x mark, [SEAL.]
JOHN KARAHO, his x mark, [SEAL.]
Wyandottes.

TREATY WITH THE MIAMIES. FEBRUARY 23, 1867.

In presence of —

FRANK VALLE, his x mark,
U. S. Interpreter for Osage River Agency.

JOHN B. ROUBIDEAU, his x mark.
U. S. Interpreter for Miamis.

WM. HURR,
Interpreter for Ottawas.

GEO. WRIGHT,
Interpreter for Wyandottes.

ABELARD GUTHRIE.

GEORGE B. JONAS.

THOS. E. MCGRAW.

LEWIS S. HAYDEN.

CHARLES SIMS.

R. McBRATNEY.

Witnesses to signature of Lewis Davis :

G. L. YOUNG.

G. C. SNOW,
U. S. Ind. Agent.

Schedule A.

A. — *Schedule showing the several items embraced in the sum agreed to be paid to the Wyandottes by the thirteenth article of the foregoing treaty.*

	1. Annuity due under the 6th article of the treaty of January 31, 1855..	\$ 8,750 00
Stricken out.	2. Amount discounted on \$ 53,594.53 in State bonds on the 13th of May, 1859..	15,187 03
Post, p. 527.	3. Interest on the above \$ 15,787 03 [\$ 15,187 03] from May 13th, 1859, to February, 1867, at 5 per cent.....	6,150 87
	4. Amount discounted on \$ 53,000 in State bonds, March 24, 1860	11,130 00
	5. Interest on the above \$ 11,130 from March 24, 1860, to February 24, 1867	4,618 95
	6. Moneys heretofore appropriated in fulfilment of treaty stipulations, but transferred to the surplus fund	3,635 05
	7. Amount for depredations on Wyandotte property, claim approved by Secretary of the Interior, March 21st, 1862	34,342 50
	Total amount	\$ 83,814 40

The above-named total sum is designed to represent the full claim of the Wyandottes against the United States under former treaties

The 1st, 2d, and 4th items, together with another named in the 14th article of the foregoing treaty, were examined and approved by the House Committee on Indian Affairs, and their payment recommended — (See Congressional Globe, page 1037, part 2d, 2d session of 38th Congress)

The 3d and 5th items constitute the interest on the moneys discounted on the bonds mentioned in items 2 and 4. Although the committee did not recommend the payment of this interest, they acknowledged its justice, but said that its allowance would possibly endanger the passage of the appropriation, as the general feeling was averse to paying interest on claims.

The 7th item embraces several small amounts for schools, blacksmith, &c., which were due and appropriated at the date of the treaty, but not paid, and were afterwards transferred to the surplus fund

The 8th item is for depredations on Wyandotte property during the Kansas troubles and the entire emigration to California. It was examined and approved by the Secretary of the Interior, March 21, 1862

B. — Names of settlers, Nos. of land and price thereof, together with the amount deposited by each settler on the ten-section reserve, in Miami County, Kansas.

Names.	Quarter.	Section.	Township	Range	No of Acres	Price per Acre	Sum deposited	Total
Andrew J. Sinclair.	E $\frac{1}{4}$	23	16	24	320	\$4.00	\$426 66	\$1,280.00
Zacheus Hays.	NW and E. $\frac{1}{4}$ } SW. and SE. } of NW.	26	16	.	160	4.75		
		22	.	.	120	4 50	433 00	1,300.00
Randolph Boyd	NE	26	.	.	160	4.75	253.33	760.00
John Nichols and William Gray.	W. $\frac{1}{2}$ SE.	.	.	.	80	3.75	100 00	300.00
John Martin	SE	19	.	25	160	5.25		
Same.	S. $\frac{1}{2}$ SE.	18	.	.	80	5.00	500 00	1,240.00
David H Banta.	SW	19	.	.	160	5.00	267 00	800.00
Reuben Fellows.	SW	27	24	.	160	4.00	214.00	640 00
J T. Pifer.	NW.	.	.	.	160	3.50	186 00	560 00
Leroy W Martin.	NE	19	.	25	160	5 25	200.00	840 00
Charles Converse	E $\frac{1}{2}$ NW and W $\frac{1}{2}$ and NE $\frac{1}{4}$ of NE	30	.	.	200	4 25		850 00
Benjamin Wingrove.	SE	31	.	.	160	4 25	226 66	840.00
Same.	SW. of SE	30	.	.	40	4 00		
Samuel McKinney.	SW	31	.	.	160	4 00	213 33	640.00
Squire James Waller.	NE	6	17	.	160	3.30	165 00	528.00
George A. Whittaker.	E $\frac{1}{4}$	27	16	24	320	4.50	480 00	1,440 00
William Smith.	E. $\frac{1}{4}$ SE. and SE. of NE	28	.	.	120	4 00		480.00
Edward Morgan.	N $\frac{1}{2}$ and SW $\frac{1}{4}$ of NW., and NW $\frac{1}{4}$ of SW.	6	17	25	160	4.00	215.00	640 00
Albert Benndorf.	S $\frac{1}{2}$ NE.	22	16	24	80	3.50	95 00	280 00
Charles Martin.	NW, S $\frac{1}{2}$, and NW. $\frac{1}{4}$ of SW.	†	16	25	280	3 50		980 00
Francis Hastings and William Morgan, jr	Half	23	.	24	320	4 00	426 66	1,280.00
Joel O. Loveridge, Geo W Loveridge, Alfred Loveridge, jointly.	E $\frac{1}{2}$ and SW $\frac{1}{4}$ of SW.	†	.	.	760	4 00	1,013 33	3,040 00
Isaac Shaw.	NE	1	17	24	160	5 00	250 00	800 00
Jacob Sims.	SE	13	16	24	160	3.50		560 00
Zacheus Hays.	SW	26	16	24	160	3 50		560 00
Town tract*.	N $\frac{1}{2}$	31	25	.	320	4 00		1,280 00
Ambrose Shields.	NE	34	16	24	160	3.50		560.00
Anthony Cott.	SE	22	16	24	160	3 00		480 00
Edward Dagenett	.	17	25	.	80	4 00		320 00
Total.					5,680		5,664 97	22,278 00

The three last named are half-breed Indians who will become citizens. Said Shields has 5 children; said Cott 3, and Dagenette 2. William Smith, the settler aforesaid, has a half-breed wife and 2 children. He takes said 120 acres in full of the interest of his family in net proceeds of the reserve, and is to pay one hundred and sixty dollars (\$160) besides.

Said Shields, Cott, and Dagenett take their respective tracts at the price stated, in lieu of a like sum of the shares of themselves and families in the net proceeds of the reserve, provided, that should the share of either family in the net proceeds of the reserve be less than the price agreed for the land taken by the head of such family, then the deficit to be paid in money as by other settlers. The title in each of the four cases last mentioned to be made jointly to the various members of the family by name, whose shares in said proceeds pay for same.

Joshua Clayton takes SE. $\frac{1}{4}$ section 36, township 16, range 24, 160 acres, at \$4 per acre, and deposits \$213, total payment, \$640.00.

Knoles Shaw, W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ section 6, town[ship] 17, range 25, 80 acres; has deposited \$94; total payment, \$280.00.

* This tract to be conveyed to David Perry and Chas. Sims, on payment of said one thousand two hundred and eighty dollars by June first.

† 19 and 18.

† 24 and 13.

Thos. Morgan and John W. Majors take E $\frac{1}{4}$ of said quarter at \$3 per acre deposited \$9; total, \$240 00.

There is [are] 80 acres untaken, for which a purchaser will be named by the chiefs before 1st June next.

Total land disposed of..... 6,000 acres

Total money deposited..... \$5,970 00

Total amount at prices agreed 23,438 00

The above lands to be patented to the persons aforesaid, or their representatives, on prompt payment of the price agreed, by 1st June, 1867; provided, that if any settler refuse or neglect to pay as aforesaid, then the tract of land by him claimed to be sold under sealed bids.

Ratification
with amend-
ments.

And whereas the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the eighteenth day of June, one thousand eight hundred and sixty-eight, advise and consent to the ratification of the same, with amendments, by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES, }
June 18, 1868. }

Resolved, (two thirds of the senators present concurring,) That the Senate advise and consent to the ratification of the articles of agreement concluded at Washington, D. C., the twenty-third day of February, one thousand eight hundred and sixty-seven, between the United States, represented by Lewis V. Bogy, Commissioner of Indian Affairs, W. H. Watson, Special Commissioner, Thomas Murphy, Superintendent of Indian Affairs, George C. Snow and G. A. Colton, U. S. Indian Agents, duly authorized, and the Senecas, represented by George Spicer and John Mush, the mixed Senecas and Shawnees, by John Whitetree, John Young, and Lewis Davis, the Quapaws, by S. G. Vallier and Ka-zhe-cah, the confederated Peorias, Kaskaskias, Weas, and Piankeshaws, by Baptiste Peoria, John Mitchell, and Edward Black, and the Ottawas of Blanchard's Fork and Roche de Bœuf, by John White and J. T. Jones, and including certain Wyandott[e]s, represented by Tauromee, or John Hat, and John Karaho, with the following

Amendments.

AMENDMENTS.

Art. IV.
Ante, p. 514.

ARTICLE IV. Strike out the following words: "and the land in Kansas herein ceded shall be open to entry and settlement the same as other public lands within sixty days after the completion of the surveys thereof"; and insert in lieu thereof: "under the pre-emption laws of the United States; but all such pre-emption shall be paid in the money of the United States, at the proper land office, within one year from the date of entry and settlement."

Art. XII.
Ante, p. 516.

ARTICLE XII. Strike out the following words: "the government being under obligations to protect them, but for the time unable to do so."

Same article. Strike out the following words: "upon such report, make such awards as he may deem equitable and just; and upon such award the United States will pay the claimants the amounts declared to be due: *Provided*, That the sums so paid shall not exceed thirty-five thousand dollars for the Senecas, twenty-five thousand dollars for the Shawnees, and thirty thousand dollars for the Quapaws; and if the awards shall exceed such amounts in either case, the claimants shall be paid pro rata from the amount appropriated"; and insert in lieu thereof: "report the same to Congress."

Art. XIII
Ante, p. 516.

ARTICLE XIII. Strike out the following words: "and in order to reorganize and provide for the Wyandott[e]s, many of whom have been in a disorganized and unfortunate condition since their treaty of one thousand eight hundred and fifty-five, it is provided that there shall be recognized due and paid to the Wyandott[e]s of all classes the sum of eighty-three

thousand eight hundred and fourteen dollars and forty cents, as more particularly stated and described in the schedule annexed to this treaty marked 'A'; and insert in lieu thereof: "and the Secretary of the Interior is hereby authorized and required to appoint three persons whose duty it shall be to ascertain and report to the department the amount of money, if any, due by the United States to the Wyandott[e] Indians under existing treaty stipulations, and the items mentioned in schedule A, appended to this treaty, and the report of the persons so appointed, with the evidence taken, shall be submitted to Congress for action at its next session.

ARTICLE XIV. Strike out the following words; "and the United States further agree to pay to the said Wyandott[e]s the sum of eleven thousand seven hundred and twenty-seven dollars and seventy-four cents, being the amount of taxes levied under the authority of the State of Kansas, contrary to the terms of the treaty of one thousand eight hundred and fifty-five, previous to the organization of the State government and for five years thereafter, in consideration of which the said Wyandott[e]s, receiving their portion of the said sum, shall in each case relinquish in writing by themselves, or through the Delaware agent as their guardian, all further claims against the United States as to matters relating to the said taxes."

Art. XIV.
Ante, p. 517.

ARTICLE XVIII. Strike out the following words: "such amount, not exceeding ten thousand dollars, as may be found justly due to individual Ottawas, for depredations and damages upon their property during the late war, the proof of such losses to be furnished to the Secretary of the Interior, and such amount shall be paid as may be adjudged by him to be equitably due; and."

Art. XVIII
Ante, p. 518.

ARTICLE XXIV. Strike out the following words: "and if any amount is found to be due, such balance, together with the interest of their invested funds, shall be paid to them upon the first of July, one thousand eight hundred and sixty-seven"; and insert in lieu thereof: "and reported to Congress."

Art. XXIV.
Ante, p. 519.

ARTICLE XXV. Strike out the following words: "and if such taxes are decided to be lawful, then the government will redeem the said lands from all taxes, down to the date of any deeds approved by the Secretary of the Interior; in consideration of which relief to the Indians, they hereby relinquish all right to payment from the government of any claims for damages to and depredations upon their property, made by parties who claim under such tax titles, and also all claims for damages on account of unfairness of the sales of their lands in one thousand eight hundred and fifty-seven.

Art. XXV
Ante, p. 520

Strike out the whole of articles twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, and forty-one.

Art. XXIX.
and others.
Ante, pp 521-523

Strike out schedule A.

Schedule A
Ante, p. 524

Attest:

GEO. C. GORHAM,
Secretary.

And whereas the foregoing amendments having been fully explained and interpreted to the duly authorized chiefs, delegates, and headmen of the Senecas, mixed Senecas and Shawnees, Quapaws, confederated Peorias, Kaskaskias, Weas, and Piankeshaws, Ottowas of Blanchard's Fork and Roche de Boeuf, and certain Wyandottes, they did respectively, on the first, seventh, eighth, and fifteenth days of September, one thousand eight hundred and sixty-eight, give their free and voluntary assent to the said amendments in a writing, which, after relating the aforesaid action of the Senate, reciting its said proposed amendments, and repeating the provisions of the fortieth article of the said treaty, concludes in the words and figures following, to wit: —

Amendments
assented to.

TREATY WITH THE MIAMIES. FEBRUARY 23, 1867.

Whereas the foregoing amendments to said treaty, made by the Senate of the United States in executive session on the eighteenth of June, one thousand eight hundred and sixty-eight, have been fully interpreted and explained to the undersigned severally representing the Senecas, mixed Senecas and Shawnees, Quapaws, confederated Peorias, Kaskaskias, Weas, and Piankeshaws, Ottowas of Blanchard's Fork and Roche de Boeuf, and the Wyandott[e]s, parties to said treaty, being duly authorized by their respective tribes thereto, [they] do hereby agree to and ratify said amendments in which their tribes are respectively interested.

Done at Neosho Agency, Shawnee Nation, this seventh day of September, A. D. one thousand eight hundred and sixty-eight.

GEORGE SPICER, *Chief and Delegate*, his x mark. [SEAL.]
 JOHN MUSH, *Delegate*, his x mark. [SEAL.]
 JOSEPH SPICER, *Councillor*, his x mark. [SEAL.]
For the Senecas.

Signed in presence of

GEO. MITCHELL, *S. I. Agt.*
 JAS. WHITECROW, *U. S. Interpreter.*
 JAMES H. EMBRY.

JOHN WHITETREE, his x mark. [SEAL.]
 JOHN YOUNG, his x mark. [SEAL.]
 ALFRED McDANIEL, his x mark. [SEAL.]
 WILLIAM JACKSON, his x mark. [SEAL.]
For the mixed Senecas and Shawnees

Signed in presence of

GEO. MITCHELL, *S. I. Agt.*
 JAS. WHITECROW, *U. S. Interpreter.*
 GEO. WRIGHT, *Interpreter.*
 LAZARUS FLINT, *Interpreter.*
 JAMES H. EMBRY.

S. G. VALIER, *Interpreter and Drghin.* [SEAL.]
 KA-SHE-CAH, his x mark. [SEAL.]
 CAH-HIC-CAH-TEDAY, his x mark. [SEAL.]
 GEORGE LANE, his x mark. [SEAL.]
For the Quapaws.

Signed in presence of

GEO. MITCHELL, *S. I. Agt.*
 LAZARUS FLINT.
 JAMES H. EMBRY.

Done at Neosho Agency, Shawnee Nation, this 8th September, 1868.

BAPTISTE PEORIA, *Head Chief of Peorias, &c.*, his x mark. [SEAL.]
 EDWARD BLACK, [SEAL.]
 YELLOW BEAVER, his x mark. [SEAL.]
For the confederated Peorias, &c.

Signed in presence of

FRANK VALLE, his x mark, *U. S. Int.*
 G. A. COLTON, *Agent.*
 JAMES H. EMBRY.

Done at Ottawa, Kansas, this first day of September, one thousand eight hundred and sixty-eight.

JOHN WILSON, his x mark. [SEAL.]
J. T. JONES, [SEAL.]

For the Ottawas of Blanchard's Fork and Roche de Bœuf.

Signed in presence of

WILLIAM HUBB, *U. S. Interpreter for Ottawas.*

ALBERT WILEY, *Agent for Ottawas.*

JAMES H. EMBRY, *Special Agent.*

Done near Wyandotte, Kansas, this fifteenth day of September, one thousand eight hundred and sixty-eight.

TAUROMEE,	his x mark.	[SEAL.]
JOHN KARAHO,	his x mark.	[SEAL.]
JACOB WHITECROW,	his x mark.	[SEAL.]
SILAS M. GREYEVES,	his x mark.	[SEAL.]
JOHN W. GREYEVES,		[SEAL.]

For the Wyandott[es].

Signed in presence of

GEO. WRIGHT, *Interpreter for Wyandottes.*

JAMES H. EMBRY, *Special Agent.*

J. P. ROOT.

J. S. STOCKTON.

Now, therefore, be it known that I, ANDREW JOHNSON, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution of the eighteenth of June, one thousand eight hundred and sixty-eight, accept, ratify, and confirm the said treaty, with the amendments, as aforesaid. Proclaimed

In testimony whereof, I have hereto signed my name, and caused the seal of the United States to be affixed.

Done at the city of Washington, this fourteenth day of October, in the [SEAL.] year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-third.

ANDREW JOHNSON.

By the President:

WILLIAM H. SEWARD,
Secretary of State.

Treaty between the United States of America and the Pottawatomie Tribe of Indians. Concluded February 27, 1867; Ratification advised, with Amendments, July 25, 1868; Amendments accepted August 4, 1868; Proclaimed August 7, 1868.

ANDREW JOHNSON,

PRESIDENT OF THE UNITED STATES OF AMERICA,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING: Feb. 27, 1867.

WHEREAS a treaty was made and concluded at the city of Washington, in the District of Columbia, on the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and sixty-seven, by and between Lewis V. Bogy, W. H. Watson, Thomas Murphy, and L. R. Palmer, commissioners on the part of the United States, and Mazhee, Mianco, Shawgwe, B. H. Bertrand, J. N. Bourassa, M. B. Beaubien, L. H. Ogee, and George L. Young, of the Pottawatomie tribe of Indians, and duly authorized thereto by them, which treaty is in the words and figures following, to wit: Proclamation.

Articles of agreement concluded at Washington, D. C., on the twenty-seventh day of February, 1867, between the United States, represented by Lewis V. Bogy, Commissioner of Indian Affairs, W. H. Watson, Special Commissioner, Thos. Murphy, Sup't of Indian Affairs for Kansas, and Luther R. Palmer, U. S. Indian Agent, duly authorized, and the Pottawatomie tribe of Indians, represented by their chiefs, braves, and headmen, to wit: Mazhee, Mianco, Shawgwe, B. H. Bertrand, J. N. Bourassa, M. B. Beaubien, L. H. Ogee, and G. L. Young. Contracting parties.

Whereas the Pottawatomies believe that it is for the interest of their tribe that a home should be secured for them in the "Indian country" south of Kansas, while there is yet an opportunity for the selection of a suitable reservation; and whereas the tribe has the means of purchasing such reservation from funds due and to become due under the provisions of previous treaties, without interfering with the exclusive rights of those of their people who hold their lands in common: Now, therefore, it is agreed — See post, p. 535.

ARTICLE I. It being the intention of the government that a commission shall visit the Indian country as soon as practicable after the ratification of the treaties contemplating the removal of certain tribes from Kansas, accompanied by delegates from the several tribes proposing to remove, it is agreed that a delegation of the Pottawatomies may accompany said commission in order to select, if possible, a suitable location for their people without interfering with the locations made for other Indians; and if such location shall be found satisfactory to the Pottawatomies, and approved by the Secretary of the Interior, such tract of land, not exceeding thirty miles square, shall be set apart as a reservation for the exclusive use and occupancy of that tribe; and upon the survey of its lines and boundaries, and ascertaining of its area, and payment to the United States for the same, as hereinafter mentioned and set forth, the said tract shall be patented to the Pottawatomie nation: *Provided*, That if the said Pottawatomies shall prefer to select a new home among the Cherokees, by agreement with the said Cherokees for a price within the Commission to select a reservation. Extent of reservation. proviso.

EXHIBIT

2

University of Oklahoma College of Law

University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

2-21-1878

Message from the President of the United States, communicating, in answer to a Senate resolution of January 30, 1878, information in relation to a survey of lands in the Indian Territory.

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>

 Part of the Indian and Aboriginal Law Commons

Recommended Citation

S. Exec. Doc. No. 32, 45th Cong., 2nd Sess. (1878)

This Senate Executive Document is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

EXHIBIT
3

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In answer to a Senate resolution of January 30, 1878, information in relation to a survey of lands in the Indian Territory.

FEBRUARY 21, 1878.—Read, ordered to lie on the table and be printed.

To the Senate of the United States :

In response to the resolution of the Senate of January 30, 1878, I transmit herewith a copy of a report, dated the 16th instant, from the Commissioner of Indian Affairs.

R. B. HAYES.

EXECUTIVE MANSION,
February 20, 1878.

DEPARTMENT OF THE INTERIOR,
Washington, February 19, 1878.

SIR: I have the honor to acknowledge the receipt, by your reference of the 2d instant, of the following resolution of the Senate, dated the 30th ultimo:

Resolved, That, if not incompatible with the public interests, the President be, and he is hereby, requested to inform the Senate how many acres of land in the Indian Territory have been surveyed into sections and quarter-sections, for what purpose said survey has been made, and how much land remains in said Territory not surveyed.

Also, what amount of lands were owned by the several tribes of Indians previous to the treaties of 1866, and whether the Indian title to any of such lands has been extinguished since said treaties were made, and, if so, to what extent, and for what consideration.

In reply, I have the honor to transmit herewith copy of a report, dated the 16th instant, from the Commissioner of Indian Affairs, which

SURVEY OF LAND IN THE INDIAN TERRITORY.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 16, 1878.

SIR: I have the honor to acknowledge the receipt, by reference from the department, of a resolution adopted by the Senate of the United States, January 30, 1878, in the following words, to wit:

Resolved, That, if not incompatible with the public interests, the President be, and he is hereby, requested to inform the Senate how many acres of land in the Indian Territory have been surveyed into sections and quarter-sections, for what purpose said survey has been made, and how much land remains in said Territory not surveyed.

Also, what amount of lands were owned by the several tribes of Indians previous to the treaties of 1866, and whether the Indian title to any of such lands has been extinguished since said treaties were made, and, if so, to what extent, and for what consideration.

In compliance with the directions contained in your reference, I have the honor to report that the following tracts of country in Indian Territory have been surveyed:

	Acres.
Quapaw reservation.....	56,685
Peoria, &c., reservation.....	50,301
Modoc reservation.....	4,040
Shawnee reservation.....	13,048
Wyandotte reservation.....	21,406
Seneca reservation.....	51,958
Osage reservation.....	1,466,167
Kansas reservation.....	100,141
Pawnee reservation.....	283,026
Unoccupied Cherokee lands west of 96°, east of Pawnee reserve.....	105,456
Unoccupied Cherokee lands west of 96°, west of Pawnee reserve.....	6,239,106
Unoccupied Creek lands north of Cimarron River and west of Pawnee reserve.....	683,139
Sac and Fox reservation.....	479,667
Pottawatomie "30-mile square" tract.....	575,877
Chickasaw reservation.....	4,650,935
Kiowa and Comanche reservation.....	2,968,893
Wichita reservation.....	743,610
Cheyenne and Arapahoe reservation.....	4,297,771
Unoccupied Creek and Seminole ceded lands.....	1,645,890
Unoccupied Choctaw and Chickasaw leased lands.....	1,511,576
Total area surveyed.....	25,948,692

Of these the Sac and Fox reservation and the Pottawatomie "30-mile square" tract, the Quapaw, Peoria, Modoc, Shawnee, Seneca, and Wyandotte reservations have been surveyed and subdivided into 40-acre tracts; the remainder into sections, as the public surveys are made.

The object of these surveys was the fulfillment of treaty stipulations, and to enable the department to ascertain the exact location, quality, and quantity of these several tracts with a view to the settlement of

The following tracts remain unsurveyed:

	Acres.
The Cherokee reservation, estimated.....	5,031,351
The Creek reservation, estimated.....	3,215,495
The Choctaw reservation, estimated.....	6,688,000
The Ottawa reservation, estimated.....	14,860
The Seminole reservation, estimated.....	200,000
Total estimated area unsurveyed.....	<u>15,149,706</u>

Previous to the treaties of 1866—

	Acres.
The Quapaws owned.....	75,167
The Mixed Senecas and Shawnees.....	63,767
The Senecas of Sandusky.....	73,364
The Cherokees.....	13,172,235
The Creeks.....	6,998,808
The Seminoles.....	1,682,883
The Choctaws and Chickasaws.....	19,032,174
Total area of Indian territory.....	<u>41,098,398</u>

By the 4th article of the Omnibus treaty of February 23, 1867 (15 Stat. at L., p. 514), the Quapaws ceded to the United States 18,482 acres of their lands, at the rate of \$1.15 per acre, and the United States, by the 22d article of the same treaty, sold the same to the Peorias, &c., at the same rate, leaving a reservation of 56,685 acres to the Quapaws, which they still hold.

By the 2d article of said treaty the Mixed Senecas and Shawnees ceded to the United States the north half of their reserve, estimated to contain 30,000 acres, for the sum of \$24,000, which land, by the 22d article of the same treaty, was sold by the United States to the Peorias, &c., at the same price. This tract, by survey, contains 31,819 acres, which, with 18,482 acres of Quapaw lands, constitutes the present Peoria, &c., reservation of 50,301 acres.

By the 3d article the Mixed Senecas and Shawnees ceded to the United States that portion of their remaining lands west of Spring River, supposed to contain 12,000 acres, at \$1 per acre, which land, by the 16th article, was sold to the Ottawa Indians by the United States, at \$1 per acre, and constitutes the present Ottawa reserve, and contains, by survey, 14,860 acres. Of the remainder of their lands, 17,088 acres, the Shawnees, by an agreement with the Modoc Indians, made June 23, 1874, and confirmed by Congress March 3, 1875 (18 Stat. at L., p. 447), sold to the United States 4,040 acres for \$6,000 as a permanent reservation for the Modoc Indians, which is still held by them, leaving 13,048 acres, which the Shawnees hold and occupy as their reserve.

By the 1st article of same treaty, the Senecas of Sandusky ceded to the United States a strip of land on the north side of their reservation, containing 20,000 acres, for \$20,000, which land, by the 13th article, the United States set apart as a future home for the Wyandottes. By the fourteenth article provision is made for the reimbursement to the United States of the cost of the land. This tract, the present Wyandotte reserve, contains 21,406 acres. The Senecas hold the remainder, 51,958 acres, as their present reservation.

The Cherokees, by the 16th article of the treaty of July 19, 1866 (14 Stat. at L., p. 799), ceded to the United States the authority to settle

friendly Indians on any part of their lands west of 96°. These lands (8,140,884 acres), when so occupied by friendly Indians, are to be paid for to the Cherokees, at such price, as may be agreed upon, as stipulated in said 16th article.

In accordance with this stipulation and an act of Congress approved June 5, 1872 (17 Stat. at L., p. 228), the Kansas and Osage tribes of Indians were settled upon the tract of country lying between the Arkansas River and 96°, the Kaws occupying a tract of 100,141 acres and the Osages a tract of 1,466,167 acres. The price paid for these two tracts was 70 cents per acre.

By the 4th section of an act of Congress approved April 10, 1876 (19 Stat. at L., p. 28), there was set apart, for the use and occupation of the Pawnee Indians, a tract of country comprising 230,014 acres, out of the lands named in the 16th article of said Cherokee treaty, the price not to exceed 70 cents per acre. The Pawnees have been in possession of this reserve for several years, but no payment has been made to the Cherokees. The lands were appraised last year by a commission appointed under the 5th section of an act of Congress approved May 29, 1872 (17 Stat. at L., p. 190), at an average valuation of 59.9 cents per acre. The remainder of the Cherokee lands west of 96° (6,344,562 acres) is unoccupied, the United States not having as yet settled thereon any other tribes.

By the 3d article of the treaty concluded June 14, 1866 (14 Stat. at L., p. 786), the Creek Indians ceded to the United States, to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, at 30 cents per acre. Of this cession there were sold to the Sac and Fox Indians, at the price paid the Creeks, 479,667 acres, and to the Seminoles, at 50 cents per acre, 200,000 acres.

There are included in the Pottawatomie "30-mile square" tract, 222,668 acres, from which, by an act of Congress approved May 23, 1872 (17 Stat. at L., p. 159), allotments were authorized to be made to the Pottawatomie citizen band, and the absentee Shawnee Indians, the cost thereof to the United States (viz, 30 cents) to be paid by said Indians. No money, however, has yet been paid, though a number of allotments have been made. Of the remainder, a portion is occupied by the Cheyenne and Arapahoe Indians, by authority from the President, dated August 10, 1869, and the remaining portion is unoccupied.

By the 3d article of the treaty of March 2, 1866 (14 Stat. at L., p. 755), the Seminoles ceded to the United States their entire domain at 15 cents per acre, being the land ceded by the Creeks for the Seminoles in the treaty of August 7, 1856 (11 Stat. at L., p. 699). Of this cession, 353,209 acres are included in the Pottawatomie "30-mile square" tract for the settlement of the Pottawatomie citizen band of the absentee Shawnee Indians, as recited in the Creek cession. Of the remainder, a portion is occupied by Cheyennes and Arapahoes, by authority from the President, dated August 10, 1869, and the balance is unoccupied by any tribe.

By the 9th article of the treaty of June 22, 1855 (11 Stat. at L., p. 613), the Choctaws and Chickasaws leased to the United States all their lands

treaty of June 22, 1855, and known as the "leased lands," to the United States.

By the 2d article of the treaty of October 21, 1867 (15 Stat. at L., p. 582), the United States set apart out of these leased lands a tract of country containing 2,968,893 acres as a permanent home for the Kiowa and Comanche Indians, the consideration therefor being a relinquishment of all their right to occupy permanently the territory outside of this tract, including their old reservation, as defined in the treaty of 1865. By an unratified agreement, made October 19, 1872, the Wichitas were assigned another tract of country out of these leased lands, embracing an area of 743,610 acres. The Cheyenne and Arapahoe Indians, by authority from the President, dated August 10, 1869, occupy 2,489,160 acres, and the remainder of these leased lands (1,511,576 acres) are unoccupied by any tribes.

The resolution of the Senate is herewith respectfully returned.

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

E. A. HAYT,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

S. E. 32—2



DATE DOWNLOADED: Thu Sep 17 12:29:44 2020
SOURCE: Content Downloaded from HeinOnline

Citations:

Bluebook 21st ed.

To provide for allotment of land in severalty to United Peorias and Miamies in Indian Territory, and for other purposes., Chapter 422, 50 Congress, Public Law 50-422. 25 Stat. 1013 (1889).

ALWD 6th ed.

To provide for allotment of land in severalty to United Peorias and Miamies in Indian Territory, and for other purposes., Chapter 422, 50 Congress, Public Law 50-422. 25 Stat. 1013 (1889).

APA 7th ed.

To provide for allotment of land in severalty to United Peorias and Miamies in Indian Territory, and for other purposes., Chapter 422, 50 Congress, Public Law 50-422. 25 Stat. 1013 (1889).

Chicago 7th ed.

"Chapter 422, 50 Congress, Session 2, An Act: To provide for allotment of land in severalty to United Peorias and Miamies in Indian Territory, and for other purposes.," U.S. Statutes at Large 25, no. Main Section (1889): 1013-1016

McGill Guide 9th ed.

To provide for allotment of land in severalty to United Peorias and Miamies in Indian Territory, and for other purposes., Chapter 422, 50 Congress, Public Law 50-422. 25 Stat. 1013 (1889).

MLA 8th ed.

To provide for allotment of land in severalty to United Peorias and Miamies in Indian Territory, and for other purposes., Chapter 422, 50 Congress, Public Law 50-422. 25 Stat. 1013 (1889). HeinOnline.

OSCOLA 4th ed.

To provide for allotment of land in severalty to United Peorias and Miamies in Indian Territory, and for other purposes., Chapter 422, 50 Congress, Public Law 50-422. 25 Stat. 1013 (1889).

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <https://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your license, please use: Copyright Information

over and across said reservation, now occupied by the Cedar Rapids, Iowa Falls and Northwestern Railway Company, as well as the damage to the balance of the lands of said reservation by reason of the taking and occupying of said strip for railroad purposes; and said commissioners shall also appraise and report the value of any improvements that may be found on any of said lands with the name of the person who made the same.

Right of way reserved.

SEC. 2. That any person who has heretofore resided on and made improvements on any of said lands, but who was compelled by the military authorities of the United States to abandon the same, shall be entitled to the prior right for the period of six months after the filing of the said report, to enter and purchase the land (not exceeding one hundred and sixty acres) so occupied and improved by such person at the price at which the same was appraised by said commissioners, exclusive of improvements. But if the person entitled to make such purchase shall fail to avail himself of his prior right within the time stated, then the Secretary of the Interior shall cause said lands, or such thereof as remain unentered, to be sold to the highest bidder, and at a price not less than the appraised valuation of such lands and improvements; such sale to be held at the local land office for the district in which they are located; and the said railroad company shall be entitled to enter and purchase the aforesaid strip of land of the width aforesaid, now occupied by its road-bed by paying the amount so assessed as the value thereof together with the amount of damages assessed as aforesaid.

Prior right to former dispossessed settlers.

Auction sale of land

SEC. 3. This act shall take effect and be in force and authorize the entry and sale of the said right of way, or of any tract or parcel of land so appraised, so soon as, and not until, a majority of the adult male Indians of the Yankton tribe of Sioux Indians consent to the entry and sale of such right of way, or of said appraised lands, or of any part of the same. And if said Indians shall at any future time consent in the manner above stated, to the sale or disposal of any tract or parcel of said appraised land, to the sale of which their consent had not theretofore been given, such tract or parcel shall then be sold in the manner hereinbefore provided. Patents shall be issued in due form for any lands, or the right of way, entered or sold by virtue of this act, and the moneys arising from the sale of said land, right of way, and damages, after deducting the expense of said appraisal, shall be covered into the annuity fund of said Indians, or expended in such manner as the Indians may determine, subject to the approval of the Secretary of the Interior; that the commissioners hereunder shall be paid the sum of five dollars per day for the time actually occupied in performing the duties conferred upon them by this act; *Provided*, That any officer or employee of the Government detailed to act as commissioner shall be paid his actual and necessary traveling and other expenses only.

Consent of Indians requisite.

Patents to issue.

Proceeds.

Compensation.

Proviso. Employees of the Government.

SEC. 4. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of five hundred dollars, or so much thereof as may be necessary, to defray the expense of procuring the consent of said Indians, and to pay said commissioners.

Appropriation for expenses.

Approved, March 2, 1889.

CHAP. 422.—An act to provide for allotment of land in severalty to United Peorias and Miamies in Indian Territory, and for other purposes.

March 2, 1889.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of chapter One hundred and Nineteen of the acts of eighteen hundred and eighty seven, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations,

Lands in severalty to Wea, Peoria, Kaskaskia, Piankeshaw, and Western Miami Indians.
Vol. 24, pp. 388, 391.

and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," are hereby declared to extend to and are made applicable to the Confederate Wea, Peoria, Kaskaskia, and Piankeshaw tribes of Indians, and the Western Miami tribe of Indians, now located in the northeastern part of the Indian Territory and to their reservation, in the same manner and to the same extent as if said tribes had not been excepted from the provisions of said act, except as to section six of said act, and as otherwise hereinafter provided.

That the Secretary of the Interior is hereby authorized and directed, within ninety days from and after the passage of this act, to cause to be allotted to each and every member of the said Confederate Wea, Peoria, Kaskaskia, and Piankeshaw tribes of Indians, and the Western Miami tribe of Indians, upon lists to be furnished him by the chiefs of said tribes, duly approved by them, and subject to the approval of the Secretary of the Interior, an allotment of land not to exceed two hundred acres, out of their common reserve, to each person entitled thereto by reason of their being members of said tribes by birth or adoption; all allotments to be selected by the Indians, heads of families selecting for their minor children, and the chiefs of their respective tribes for each orphan child. All differences arising between members of said tribes, in making said allotments, shall be settled by the chiefs of the respective tribes, subject to the approval of the Secretary of the Interior: *Provided*, That before any of the allotments herein provided for shall be made, there shall be set apart, not to exceed twenty acres in all, for school, church, and cemetery purposes; the location of the same to be selected by the chiefs of said tribes, subject to the approval of the Secretary of the Interior, in such quantities and at such points as they shall deem best, which, together with all improvements now existing or that may hereafter be made by the tribes thereon, shall be held as common property of the respective tribes. If in making the selections as herein provided for, the sites of present school buildings should not be retained, then all improvements thereon may be removed. If not removed, then they shall be sold after appraisement by the chiefs of the tribes; the sale to be approved by the Secretary of the Interior and the proceeds placed to the credit of the proper tribe. If any religious denomination, with the consent of either or both of said tribes, should erect any building for church or school purposes upon any of the land selected for church use, the said building, together with the land, shall be held the property of such religious denomination so long as they shall occupy the same for religious or school purposes. And should such denomination at any time desire to move said church or school house to any other place on their reservation, they may do so; or, if they prefer, may sell the same with or without the lands upon which said house is situate, and apply the proceeds to their new building.

The land so allotted shall not be subject to alienation for twenty five years from the date of the issuance of patent therefor, and said lands so allotted and patented shall be exempt from levy, sale, taxation, or forfeiture for a like period of years. As soon as all the allotments or selections shall have been made as herein provided, the Secretary of the Interior shall cause a patent to issue to each and every person so entitled, for his or her allotment, and such patent shall recite in the body thereof that the land therein described and conveyed shall not be alienated for twenty-five years from the date of said patent, and shall also recite that such land so allotted and patented is not subject to levy, sale, taxation, or forfeiture for a like period of years, and that any contract or agreement to sell or convey such land or allotments so patented entered into before the expiration of said term of years shall be absolutely null and void. SEC. 2. That in making allotments under this act no more in the aggregate

Allotments.

Lists to be furnished.

Distribution.

Settlement of differences.

Proviso.

School, etc., reservation.

Sale of school buildings.

Building for church or school.

Removal, etc.

Land inalienable for twenty-five years.

Patents.

than seventeen thousand and eighty-three acres of said reservation shall be allotted to the Miami Indians, nor more than thirty-three thousand two hundred and eighteen acres in the aggregate to the United Peoria Indians; and said amounts shall be treated in making said allotments in all respects as the extent of the reservation of each of said tribes, respectively. If, in making said allotments any difference shall arise between said tribes, all such matters of difference shall be determined by the Secretary of the Interior. After the allotments herein provided for shall have been completed, the residue of the lands, if any, not allotted, shall be held in common under present title by said United Peorias and Miamies in the proportion that the residue, if any of each of the said allotments shall bear to the other. And said United Peorias and Miamies shall have power, subject to the approval of the Secretary of the Interior, to lease for grazing, agricultural, or mining purposes from time to time and for any period not exceeding ten years at any one time, all of said residue, or any part thereof, the proceeds or rental to be divided between said tribes in proportion to their respective interests in said residue. And after said allotments are completed each allottee may lease or rent his or her individual allotment for any period not exceeding three years, the father acting for his minor children, and in case of no father then the mother, the chief acting for orphans of the tribe to which said orphans may belong.

At the expiration of twenty-five years from the date of the passage of this act, all of said remaining or unallotted lands may be equally divided among the members of said tribes, according to their respective interests, or the same may be sold on such terms and conditions as the President and the adult members of said tribe may hereafter mutually agree upon, and the proceeds thereof divided according to ownership as hereinbefore set forth: *Provided*, That before any division of the land is made, or sale had, that three-fourths of the bona fide adult members of said tribes shall petition the Secretary of the Interior for such division or sale of said land: *Provided further*, That sections one and two of this act shall not take effect until the consent thereto of each of said tribes separately shall have been signified by three-fourths of the adult male members thereof, in manner and form satisfactory to the President of the United States.

SEC. 3 That any act or part of acts of Congress heretofore passed that may conflict with the provisions of this act, either as to land or money, are hereby repealed.

SEC. 4—That full jurisdiction is hereby conferred upon the Court of Claims, subject to an appeal to the Supreme court of the United States, as in other cases, to hear and determine what are the just rights at law, or in equity, of those Wea, Peoria, Kaskaskia, and Piankeshaw Indians and of their children, or heirs at law, or legal representatives, who became citizens of the United States under the provisions of article twenty-eight of the treaty of February twenty-third, eighteen hundred and sixty seven, made with the confederated tribes of Peorias, Kaskaskias, Weas, and Piankeshaw in the invested funds and other common property of the said confederated tribes. And the exercise of such jurisdiction shall not be barred by any lapse of time heretofore, nor shall the rights of said Indians be impaired by any ruling or determination upon such rights heretofore made. Suit may be instituted against the United States in said court of Claims within twelve months after the passage of this act, but not later, on behalf of said Indians who so become citizens of the United States, their heirs and legal representatives, in the name and style of "The Citizen Wea, Peoria, Kaskaskia, and Piankeshaw Indians," in accordance with the practice of said Court, for the hearing and determination of such rights at law and in equity as are claimed for said citizen Indians, or any of them, in such suit, which rights or

Allotment to Miamies.

To United Peorias.

Residue to be held in common.

Leases authorized.

Lease of allotments.

Division of unallotted lands after twenty-five years.

Proviso.
Petition of Indians.

Consent of Indians.

Repeal.

Court of Claims to determine rights of citizen Indians to tribal funds.

Vol. 15, p. 520.

Action not barred by limitation, etc.

Style of proceeding.

equities arise out of the provisions of said treaty, or any law of the United States relating to the invested funds and common property of said confederated tribes. Said "confederated tribes of Peorias, Kaskaskias, Weas, and Piankeshaws" may be made a party defendant in said suit, on petition in that name to be made such party defendant, to be filed within three months from the date of the bringing of such suit, but the United States, through its proper officers, shall defend said suit on behalf of said Indians, whether or not they shall become parties to the same. Said courts shall determine what are the legal and equitable rights and interests of the Indians who separated from the tribes to which they belonged, and became citizens of the United States under said treaty; and of the heirs and legal representatives of such of them as are dead, and shall ascertain the value thereof, after deducting what has been paid to each of said Indians on account of such invested funds and common property. And such sums shall be paid to the persons who are respectively entitled to the same out of any money or funds held in trust by the United States for and on account of said confederated tribes of Peoria, Kaskaskia, Wea, and Piankeshaw Indians. Out of the funds so found due to said citizen Indians said Court of Claims may allow a reasonable compensation to the counsel or attorneys of such Indians, to be ratably apportioned upon and paid out of the sums due them, respectively; and the court may ascertain the reasonable value of the services of counsel employed by said confederated tribes to represent the tribes on such examination, not to exceed ten per centum of the aggregate sum actually in controversy, and the Secretary of the Interior shall cause to be paid to said counsel so much of the sum so ascertained as in equity and justice he may consider to be due them for such services, out of any money in the Treasury of the United States now due to such tribes arising from the sale of the lands of said tribe in Kansas.

SEC. 5 That the Secretary of the Interior shall transmit to said Court of Claims, upon its request, certified copies of any records, documents, or papers that relate to the rights of any of said Indians involved in such suit.

Approved, March 2, 1889.

March 2, 1889.

CHAP. 423.—An act providing for the erection of sundry light-houses and fog-signals in Lakes Erie, Huron, Michigan, and Superior.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a light-house be established at or near Eleven-foot Shoal, off Point Peninsular, Lake Michigan, Michigan, at a cost not exceeding sixty thousand dollars, and when said light shall be completed the light now maintained at Point Peninsular shall be discontinued.

That a light-house and fog-signal be established at Squaw Island, Lake Michigan, at a cost not exceeding twenty-five thousand dollars.

That there be established a light-house at or near Old Mackinaw Point, at a cost not exceeding twenty-five thousand dollars, and when the same shall be completed the light maintained at McGulpin's Point, shall be discontinued.

That a fog-signal and range-lights be placed on the end of the west pier at Ashtabula, Ohio, Lake Erie, at a cost not exceeding seven thousand dollars.

Approved, March 2, 1889.



DATE DOWNLOADED: Thu Sep 17 12:35:20 2020
SOURCE: Content Downloaded from HeinOnline

Citations:

Bluebook 21st ed.

To provide for the termination of Federal supervision over the property of the Peoria Tribe of Indians in the State of Oklahoma and the individual members thereof, and for other purposes., Public Law 84-921 / Chapter 881, 84 Congress. 70 Stat. 937 (1956).

ALWD 6th ed.

To provide for the termination of Federal supervision over the property of the Peoria Tribe of Indians in the State of Oklahoma and the individual members thereof, and for other purposes., Public Law 84-921 / Chapter 881, 84 Congress. 70 Stat. 937 (1956).

APA 7th ed.

To provide for the termination of Federal supervision over the property of the Peoria Tribe of Indians in the State of Oklahoma and the individual members thereof, and for other purposes., Public Law 84-921 Chapter 881, 84 Congress. 70 Stat. 937 (1956).

Chicago 7th ed.

"Public Law 84-921 / Chapter 881, 84 Congress, Session 2, An Act: To provide for the termination of Federal supervision over the property of the Peoria Tribe of Indians in the State of Oklahoma and the individual members thereof, and for other purposes.," U.S. Statutes at Large 70, no. Main Section (1956): 937-938

McGill Guide 9th ed.

To provide for the termination of Federal supervision over the property of the Peoria Tribe of Indians in the State of Oklahoma and the individual members thereof, and for other purposes., Public Law 84-921 / Chapter 881, 84 Congress. 70 Stat. 937 (1956).

MLA 8th ed.

To provide for the termination of Federal supervision over the property of the Peoria Tribe of Indians in the State of Oklahoma and the individual members thereof, and for other purposes., Public Law 84-921 / Chapter 881, 84 Congress. 70 Stat. 937 (1956).
HeinOnline.

OSCOLA 4th ed.

To provide for the termination of Federal supervision over the property of the Peoria Tribe of Indians in the State of Oklahoma and the individual members thereof, and for other purposes., Public Law 84-921 / Chapter 881, 84 Congress. 70 Stat. 937 (1956).

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

Public Law 921

CHAPTER 881

AN ACT

To provide for the termination of Federal supervision over the property of the Peoria Tribe of Indians in the State of Oklahoma and the individual members thereof, and for other purposes.

August 2, 1956
[S. 3968]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the purpose of this Act is to provide for the termination of Federal supervision over the affairs of the Peoria Tribe of Indians located in northeastern Oklahoma and the individual members thereof, and for a termination of Federal services furnished to such Indians because of their status as Indians.

Indians, Peoria
Tribe.
Federal super-
vision terminated.

SEC. 2. All restrictions on the sale or encumbrance of trust or restricted land owned by members of the Peoria Tribe of Indians of Oklahoma (including allottees, heirs, and devisees, either adult or minor), regardless of where the land is located, are hereby removed three years after the date of this Act, and the patents or deeds under which titles are then held shall pass the titles in fee simple subject to any valid encumbrance. The titles to all interests in trust or restricted land acquired by members of the tribe by devise or inheritance three years or more after the date of this Act shall vest in such members in fee simple, subject to any valid encumbrance.

Restrictions re-
moved on sale of
land.

SEC. 3. (a) The Federal trust relationship to the affairs of the Peoria Tribe and its members shall terminate three years after the date of this Act, and thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians (including the Act of June 26, 1936 (49 Stat. 1967), and the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378)) shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

25 USC 501.
25 USC 462.
25 USC 478a.

(b) Nothing in this Act shall affect the status of the members of the tribe as citizens of the United States.

(c) Prior to the termination of the Federal trust relationship in accordance with the provisions of this section, the Secretary of the Interior is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.

Training program.

SEC. 4. (a) Effective when all claims of the tribe that are now pending before the Indian Claims Commission or the Court of Claims have been finally adjudicated, the corporate charter issued pursuant to the Act of June 26, 1936 (49 Stat. 1967), as amended, is hereby revoked.

Corporate charter
revoked.

Powers of Secretary terminated.

(b) Effective when all claims of the tribe that are now pending before the Indian Claims Commission or the Court of Claims have been finally adjudicated, all powers of the Secretary of the Interior or other officer of the United States to take, review, or approve any action under the constitution and bylaws of the tribe are hereby terminated. Any powers conferred upon the tribe by such constitution which are inconsistent with the provisions of this Act are hereby terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is consistent with this Act without the participation of the Secretary or other officer of the United States.

Roll of members.

SEC. 5. Nothing in this Act shall affect any claims heretofore filed against the United States by the Peoria Tribe.

SEC. 6. The Peoria Tribe shall have a period of six months from the date of this Act in which to prepare and submit to the Secretary a proposed roll of the members of the tribe living on the date of this Act, which shall be published in the Federal Register. The proposed roll shall be prepared in accordance with eligibility requirements prescribed in the tribe's constitution and bylaws. If the tribe fails to submit such roll within the time specified in this section, the Secretary of the Interior shall prepare a proposed roll for the tribe, which shall be published in the Federal Register. Any person claiming membership rights in the tribe or any interest in its assets, or a representative of the Secretary on behalf of any such person, may, within sixty days from the date of publication of the proposed roll, file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such roll. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals by the Secretary, the roll of the tribe shall be published in the Federal Register, and such roll shall be final for the purposes of this Act.

Publication in FR.

Approved August 2, 1956.

Public Law 922

CHAPTER 882

August 2, 1956
[S. 3259]

AN ACT

To amend the Act to promote the education of the blind, approved March 3, 1879, as amended, so as to authorize wider distribution of books and other special instructional material for the blind, to increase the appropriations authorized for this purpose, and for other purposes.

Education of the blind.
20 Stat. 468.

Expenditure of appropriation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the paragraph of section 102 of the Act of March 3, 1879, as amended (20 U. S. C. 102), labeled "First" is amended to read as follows:

"First. Such appropriation shall be expended by the trustees of the American Printing House for the Blind each year in manufacturing and furnishing books and other materials specially adapted for instruction of the blind; and the total amount of such books and other materials so manufactured and furnished by such appropriation shall each year be distributed among all the public institutions, in the States, Territories, and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia, in which blind pupils are educated. Each public institution for the education of the blind shall receive, in books and other materials, upon requisition of its superintendent, that portion of the appropriation as is shown by the ratio between the number of blind pupils in that institution and the total number of blind pupils in all of the public institutions in which blind pupils are educated. Each chief State school officer



DATE DOWNLOADED: Thu Sep 17 12:38:00 2020
SOURCE: Content Downloaded from HeinOnline

Citations:

Bluebook 21st ed.

To reinstate the Modoc, Wyandotte, Peoria, and Ottawa Indian Tribes of Oklahoma as federally supervised and recognized Indian tribes., Public Law 95-281, 95 Congress. 92 Stat. 246 (1978).

ALWD 6th ed.

To reinstate the Modoc, Wyandotte, Peoria, and Ottawa Indian Tribes of Oklahoma as federally supervised and recognized Indian tribes., Public Law 95-281, 95 Congress. 92 Stat. 246 (1978).

APA 7th ed.

To reinstate the Modoc, Wyandotte, Peoria, and Ottawa Indian Tribes of Oklahoma as federally supervised and recognized Indian tribes., Public Law 95-281, 95 Congress. 92 Stat. 246 (1978).

Chicago 7th ed.

"Public Law 95-281, 95 Congress, Session 2, An Act: To reinstate the Modoc, Wyandotte, Peoria, and Ottawa Indian Tribes of Oklahoma as federally supervised and recognized Indian tribes.," U.S. Statutes at Large 92, no. Main Section (1978): 246-248

McGill Guide 9th ed.

To reinstate the Modoc, Wyandotte, Peoria, and Ottawa Indian Tribes of Oklahoma as federally supervised and recognized Indian tribes., Public Law 95-281, 95 Congress. 92 Stat. 246 (1978).

MLA 8th ed.

To reinstate the Modoc, Wyandotte, Peoria, and Ottawa Indian Tribes of Oklahoma as federally supervised and recognized Indian tribes., Public Law 95-281, 95 Congress. 92 Stat. 246 (1978). HeinOnline.

OSCOLA 4th ed.

To reinstate the Modoc, Wyandotte, Peoria, and Ottawa Indian Tribes of Oklahoma as federally supervised and recognized Indian tribes., Public Law 95-281, 95 Congress. 92 Stat. 246 (1978).

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use: Copyright Information

EXHIBIT

6

Public Law 95-281
95th Congress

An Act

May 15, 1978
[S. 661]

To reinstate the Modoc, Wyandotte, Peoria, and Ottawa Indian Tribes of Oklahoma as federally supervised and recognized Indian tribes.

Indian Tribes of Oklahoma, reinstatement. 25 USC 861.	<i>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,</i> That (a) Federal recognition is hereby extended or confirmed with respect to the Wyandotte Indian Tribe of Oklahoma, the Ottawa Indian Tribe of Oklahoma, and the Peoria Indian Tribe of Oklahoma, the provisions of the Acts repealed by subsection (b) of this section notwithstanding.
Repeals.	(b) The following Acts are hereby repealed: (1) the Act of August 1, 1956 (70 Stat. 893; 25 U.S.C. 791-807), relating to the Wyandotte Tribe; (2) the Act of August 2, 1956 (70 Stat. 937; 25 U.S.C. 821-826), relating to the Peoria Tribe; and (3) the Act of August 3, 1956 (70 Stat. 963; 25 U.S.C. 841-853), relating to the Ottawa Tribe.
Rights and privileges.	(c) There are hereby reinstated all rights and privileges of each of the tribes described in subsection (a) of this section and their members under Federal treaty, statute, or otherwise which may have been diminished or lost pursuant to the Act relating to them which is repealed by subsection (b) of this section. Nothing contained in this Act shall diminish any rights or privileges enjoyed by each of such tribes or their members now or prior to enactment of such Act, under Federal treaty, statute, or otherwise, which are not inconsistent with the provisions of this Act.
Modoc Indian Tribe. 25 USC 861a. Organization assistance.	(d) Except as specifically provided in this Act, nothing contained in this Act shall alter any property rights or obligations, any contractual rights or obligations, including existing fishing rights, or any obligation for taxes already levied. SEC. 2. (a) (1) The Modoc Indian Tribe of Oklahoma is hereby recognized as a tribe of Indians residing in Oklahoma and the provisions of the Act of June 26, 1936, as amended (49 Stat. 1967; 25 U.S.C. 501-509), are hereby extended to such tribe and its members. The Secretary of the Interior shall promptly offer the said Modoc Tribe assistance to aid them in organizing under section 3 of said Act of June 26, 1936 (25 U.S.C. 503).
Tribal membership.	(2) The provisions of the Act of August 13, 1954 (68 Stat. 718; 25 U.S.C. 564-564w), hereafter shall not apply to the Modoc Tribe of Oklahoma or its members except for any right to share in the proceeds of any claim against the United States as provided in sections 6(c) and 21 of said Act, as amended (25 U.S.C. 564e and 564t). (3) The Modoc Indian Tribe of Oklahoma shall consist of those Modoc Indians who are direct lineal descendants of those Modocs removed to Indian territory (now Oklahoma) in November 1873, and who did not return to Klamath, Oregon, pursuant to the Act of March 9, 1909 (35 Stat. 751), as determined by the Secretary of the Interior, and the descendants of such Indians who otherwise meet the membership requirements adopted by the tribe.

(b) The Secretary of the Interior shall promptly offer the Ottawa Tribe of Oklahoma and the Peoria Tribe of Oklahoma assistance to aid them in reorganizing under section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503), which Act is re-extended to them and their members by this Act.

Ottawa Indian
Tribe.
Peoria Indian
Tribe.

(c) The validity of the organization of the Wyandotte Indian Tribe of Oklahoma under section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503), and the continued application of said Act to such tribe and its members is hereby confirmed.

Wyandotte
Indian Tribe.

SEC. 3. (a) It is hereby declared that enactment of this Act fulfills the requirements of the first proviso in section 2 of the Act of January 2, 1975 (88 Stat. 1920, 1921), with respect to the Wyandotte Tribe of Oklahoma, the Ottawa Tribe of Oklahoma, and the Peoria Tribe of Oklahoma.

25 USC 861b.

(b) It is hereby declared that the organization of the Modoc Tribe of Oklahoma as provided in section 3(a) of this Act shall fulfill the requirements of the second proviso in section 2 of the Act of January 2, 1975 (88 Stat. 1920, 1921).

(c) Promptly after organization of the Modoc Tribe of Oklahoma, the Secretary of the Interior shall publish a notice of such fact in the Federal Register including a statement that such organization completes fulfillment of the requirements of the provisos in section 2 of the Act of January 2, 1975 (88 Stat. 1920, 1921), and that the land described in section 1 of said Act is held in trust by the United States for the eight tribes named in said Act.

Publication in
Federal Register.

SEC. 4. The Wyandotte, Ottawa, Peoria, and Modoc Tribes of Oklahoma and their members shall be entitled to participate in the programs and services provided by the United States to Indians because of their status as Indians, including, but not limited to, those under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13), and for purposes of the Act of August 16, 1957 (71 Stat. 370; 42 U.S.C. 2005-2005F). The members of such tribes shall be deemed to be Indians for which hospital and medical care was being provided by or at the expense of the Public Health Service on August 16, 1957.

25 USC 861c.

Approved May 15, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1019 accompanying H.R. 2497 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 95-574 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD:

Vol. 123 (1977): Nov. 3, considered and passed Senate.

Apr. 11, H.R. 2497 considered and passed House; passage vacated; S. 661 passed in lieu with amendment.

Vol. 124 (1978): May 2, Senate concurred in House amendment.

Public Law 95-282
95th Congress

Joint Resolution

May 19, 1978

[H.J. Res. 859]

Making supplemental appropriations for the United States Railway Association for the fiscal year ending September 30, 1978, and for other purposes.

U.S. Railway
Association,
supplemental
appropriation.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following is appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1978, and for other purposes, namely:

UNITED STATES RAILWAY ASSOCIATION

ADMINISTRATIVE EXPENSES

For an additional amount for "Administrative Expenses", \$13,000,000, to remain available until September 30, 1979.

Approved May 19, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1083 (Comm. on Appropriations).

SENATE REPORT No. 95-800 (Comm. on Appropriations).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Apr. 27, considered and passed House.

May 11, considered and passed Senate.