Lincoln County Advocate.

"Hew to the Line, Let the Chips Fall Where They May."

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THE BLACK HILLS.

SPEECH OF HON. J. P. KIDDER.

In the House of Representatives on Thursday, June 29th, 1876, the House having under consideration a bill to declare the Black Hills, in the Territory of Dakota, open to exploration and settlement, to secure the right of way thereto, and for other purposes, Mr. Kidder spoke as follows:

MR. SPEAKER: On the 28th day of February last I introduced the following bill:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of country in the Territory of Dakota lying between the forty-third and forty-sixth degrees of north latitude and the one hundred and second degree of west longitude and the western boundary of the Territory of Dakota is hereby declared to be open to exploration and settlement; and the true intent and meaning of the treaty with the Sioux Indians, concluded April 29, 1868, is declared to be that men and women are not excluded thereby from traveling over, exploring, or settling upon any portion of said Territory included within said boundaries.

SEC. 2. That it shall be lawful for any persons to travel upon, over, or through, on foot or otherwise, any Indian reservation in said Territory, for the purpose of arriving at, going to, or reaching any point or place within the boundaries aforesaid, and returning therefrom in the same manner.

STATEMENT OF FACTS.

The area of the Sioux Indian reservation in Dakota, including all additions, is 56,072 square miles, or 35,886,080 acres.—The area of that portion of this reservation lying west of the one hundred and second degree of west longitude, which includes the Black Hills, is 30,636 square miles, which will leave, after this portion is opened for settlement, as a reservation 25,436 square miles, or 16,279,040 acres. More than one-third of the entire Territory of Dakota is now included in this reservation.

The number of Indians, parties to this treaty, as reported by the several agents, is (men, women, and children) 40,391.

If these lands had been assigned to the Indians in severalty, each Indian, squaw, and papoose would have had a title to more than 988 acres. Take from this reservation 30,436 square miles, what this bill calls for, and then there will be reserved for each Indian man, woman, and child over 482 acres, when a white man, including his family, is entitled to only his rights by pre-emption, homestead, and timber culture, 480. Pass this bill and there is left for each Indian, estimating six in each family of white men, more than five times as much land as we are entitled to.

Our Government agreed to subsist these Indians, by stipulation in this treaty, four years; but since the expiration of that time (1873) it has continued to feed them until up to the time of the making of the report of the Secretary of the Interior for 1875 it had expended for that purpose $3,390,000.

The treaty was never "approved by Congress."

The statute which authorized the making of the treaty (*vide* 15 Statutes at Large, page 17, section 2) reads as follows:

The commissioners are required to select a district of country for the Indians, and "when so selected, and the selection approved by Congress, shall be and remain permanent homes for said Indians," &c.

The treaty was not before the House. The House never considered or passed upon it. It was ratified by the Senate only, and therefore not "approved by Congress," as the act authorizing the commission to treat with the Indians required it to be; consequently the so-called treaty did not become a law.

AUTHORITIES IN POINT.

1. A treaty under the Constitution is declared to be the supreme law of the land. This, unquestionably, applies to all treaties where the treaty-making power, without the aid of Congress, can carry it into effect. Until this power is exercised, as where the appropriation of money is required, the treaty is not perfect. This results from the limitations of our Government. The action of no department of Government can be regarded as law until it shall have all the sanctions required by the Constitution to make it such. As well might it be contended that an ordinary act of Congress without the signature of the President was a law, (*vide* seventh circuit of Michigan, 2852, Turner *vs.* American Baptist Missionary Union, 5 McLean, page 344.)

Congress may repeal a treaty; (first circuit of Massachusetts, 1855, Taylor *vs.* Morton; 2 Curtis, circuit court, page 454; affirmed, 2 Black, page 486.)

An act of Congress can abrogate a treaty; (Supreme Court 1870; The Cherokee tobacco, 11 Wallace, page 616; second circuit of New York, 1871, Ropes *vs.* Clinch, 8 Blatchford, page 304; 13 Int. Rev. Rec., page 132.)

Congress may abrogate a treaty, provided the subject-matter is within the legislative power of Congress. (United States *vs.* Tobacco Factory, 1 Dill.)

As well might we say that an ordinary statute is passed and has become a law when it has not been concurred in by either the House or Senate.

This treaty, then, not having been "approved by Congress," the House not having acted upon it, is not only voidable but void, and is not binding upon either party, and before I close these remarks I will try to satisfy you, sir, that the Indians, allowing their acts to demonstrate their meaning, so regarded it. The authorities upon this point are all one way. None can be found contravening the doctrine here laid down.

2. Again, as to the title of the Indians to their reservations. The right of Indians in their lands is that of occupancy alone. Possession, when abandoned, attaches itself to the fee without further grant. (19 Wallace, United States *vs.* Cook, page 591.) The fee is in the United States; this is the title by which they hold their lands. It was so decided by the Supreme Court as early as 1823 in Johnson *vs.* McIntosh, 8 Wheaton, page 574. The authority of this case has never been doubted. (1 Kent, page 257; Worcester *vs* Georgia, 6 Peters, page 580; Cherokee Nation *vs.* Georgia, 5 Peters, page 48.)

The last point made in relation to the title of the Indians to their lands is not presented to sustain the doctrine in this case that the Indians have abandoned the reservation, because the facts will not sustain it. The have not, in accordance with legal technicality, abandoned it, but the truth is they have never occupied the Black Hills part of it for any purpose whatever, and are now only standing guard at the portal thereof like the "dog in the manger," except that they may also satiate their blood-thirsty appetites in the warm, gushing gore of inoffensive victims. This point is presented to merely show that the equities in this regard are all in the United States.

The stipulation of the treaty have been broken on the part of the savages; we are therefore under no obligation to support them or not to occupy this reservation.

For the sake of the argument only, we will admit that the treaty was ratified according to law and is binding upon the parties, and insist that it has been broken by the acts of the Indians in such a manner that our Government is in no way under the least obligation to respect it, and it should be regard by us as null and void.

I purpose now to ventilate this view of the question, and inquire—

Have the Indians lived up to the obligations of the treaty on their part?

By article 11, among other things, the Indians agreed "that they will not attack any persons at home or traveling, nor molest nor disturb any wagon-trains, coaches, mules, or cattle" of other persons'; "that they will not attempt to harm white persons," &c.

We are told by persons who boast of their Christian philanthropy and transcendent love for the Indian that all of our troubles with these people, the robberies and murders they commit upon the whites, are the legitimate result of our tyranny and oppression of them.

How convenient for philanthropic purposes and advancement of human efforts to benefit these Indians, whether pretended or real, practical or impractical, this may be in excusing the barbarities of the savages, it lacks the essential quality of truth to sustain it, while it tends to engendered a false and sickly sympathy in behalf of the Indian race and a prejudice toward our own.

No reliance can be placed in the plighted faith of the North American Indian until he has become civilized and enlightened. The fictions of Cooper and Longfellow have no existence in fact, they are purely imaginary and meretricious. This want of fidelity is shown by their utter disregard of their stipulations and in all their dealings with the white man.

See what our Government has done for them, as I have before stated, by way of furnishing them subsistence. What have *they* done in return? From the day they fixed their cross to this treaty hitherto they have been engaged in predatory raids upon our western frontier, robbing and murdering the settlers, sparing neither age nor sex, nor condition in life, committing such "hellish torture as can only be suggested by savage lust." Hundreds, yes, I may with truthfulness say thousands, (if we could ever arrive at the facts,) of our frontier settlers, whom this Government of our is bound to protect, have fallen victims to the frightful forays of these barbarians. Human life and property have not been secure from the midnight incursion, the fatal rifle-shot, the tomahawk, and scalping-knife. More than two hundred American citizens (we know) while employed in lawful pursuits in the Northwest, and on the ceded lands, too, have been murdered by the Sioux within the last seven years and before the attempted occupation of the Black Hills by the whites. Miners, wood-choppers, steamboat-men, and others have been ruthlessly murdered by them while in quiet pursuit of their legitimate business, and our Government at the same time expending millions of dollars annually for the support of these same Sioux, without consideration therefor or expection of being benefited thereby.

In view of these facts (and strange and horrible as it may appear) it is our frontier history. I ask what kind of a claim, if any, have they upon us?

I have lived upon the frontier about twenty years, and have had an opportunity to know as much by ocular observation as a man who has never crossed going westward the Hudson or Mississippi rivers.

To-day Sitting Bull and his associated chiefs, who were parties to this treaty, with their three thousand warriors from their strong-holds on the Yellowstone and Powder Rivers, hundreds of miles from their reservation, shake their bloody girdles of white men's scalps, on some of which the human gore has not yet coagulated, in the faces of your officers, and bid defiance to your laws and military authority.

SPECIFICATIONS AGAINST THE SIOUX.

In 1870 fifteen men were murdered by these Indians on the Missouri River just below Fort Peck. The steamer Key West, when navigating these waters in 1871, was fired into and the clerk was shot through the body. Ten men were murdered by them near the present site of Carroll on the Missouri. Near Fort Lincoln, Bismarck, and Fort Berthold, annually since 1868, many white men have been killed by them, and in all over twenty-nine. In 1873 above and near Fort Rice seven white men were slain by them. In the fall and winter of 1874–'75 thirteen men were killed by Sitting Bull's party on the Yellowstone River. In Judith Basin twenty-four men were murdered by the Sioux between the years 1870 and 1875. Within the time last named more than one hundred persons have been killed by them on the North Platte and north of the Union Pacific Railroad, while all along the Missouri down as far as Running Water white men have been murdered by these Indians nearly every year. The steamers navigating the Missouri River have been fired into every year since 1869 by the Sioux lying in ambush, and their men have often been killed and wounded. No less than five boats carrying Government supplies on the upper Missouri were fired into in 1874 and several of the crews were killed and many wounded. A year has not passed since this treaty was made that they have not fired into the steamers navigating this river.

Now, sir, I ask any one to point out to me a rational cause, and excuse even, for the perpetration of these cowardly crimes and the long and loud denunciations of the white man's inhumanity toward the Indians and of the eulogies heaped upon the transcendental virtues and the fidelity of these robbers and murderers.

Again, the Government has paid to various parties since the conclusion of this treaty, on account of the depredations of these Indians on the property of our fellow citizens, the sum of $15,130.24, and it ought to have paid millions of dollars for this purpose, and that sum would not liquidate their indebtedness to us in this respect.

They have never attempted to utilise the country known as "Black Hills;" never hunted or fished therein; and had it not been for the restless mental activity of our citizens, which is ever seeking unexplored fields in science as well as in geography, and which gave to us the priceless treasures of California and the west coast, the silver of Nevada and Colorado, and acres of Texas, and developed in the Black Hills country golden treasures, these graceless paupers of the nation never would have dreamed of going into it. To them it had no attractions until the white man came and gave to them an easy chance to add to their decorations bleeding scalps, and well have they availed themselves of this golden opportunity. And yet, sir, this race, these Indians, we have always carefully protected, sheltered, fee; nay, more, invited here to this city, made them the guests of the nation, and honored them in as ostentatious a manner as we have ever done to representatives of nations equal to us in all that makes a nation great, "industry and education;" made them honored guests, while at their waists hung scalps of our bold pioneers—pioneers who felled the forests, bridged the streams, and developed such States as Kentucky, Indiana, Illinois; yes, the entire grand West.

Sad to say, we are to have the perpetual heritage of a race devoid of all sentiment of principle, senseless to an animation of joy, except spring from an act of cruelty redolent with blood and echoing with the agonized cry of the tortured victim. These are the "noble men of the forest," for which we are to pray for, pay for forever, while the widows and orphans they make annually weep, stare, and die.

Sir, in the face of this and more, so horrible that it cannot be spoken aloud, only whispered among those who know of their atrocities, I would like to know if there can be any obligation, legally, morally, in justice, or equity, or "the allegiance we owe to God and our country," to adhere to the misnamed treaty stipulations. Would we have suffered, unless compelled *vi et armis*, from any nation such treatment to our citizens? If a treaty did exist, who suffers from its violations? Most surely the party who violates it. When the pirates from Tripoli outraged our commercial pride the young nation hesitated not a moment, and demanded and received prompt satisfaction. No; this sickly sympathy, born in false teachings, reared beyond the reach of the arrow and tomahawk, must be taught to know that the pioneers have a right to live in quiet possession of homes wrung from field and forest, blessed bo love of wife and caresses of children, undisturbed by the yell, tomahawk, and shot of these "treaty wards of the nation."

Now, sir, these atrocities, depredations, and murders were not committed by the lower grade of the Indians, but were instigated and participated in by the headmen and chiefs of the various tribes, many of whom had just returned from the sweet endearments of Washington's national hospitality. These leaders were ignorant of their responsibilities, but were conscious that if caught there was sufficient pulpit and press sympathy to enable them to escape punishment. Need I allude to the instances where conviction and sentence to death have been pardoned by appeal to the Executive by those striving to do right, have erred mightily.

With these facts before us, can any man say they have lived up to their treaty stipulations? No, sir.

Treaty or no treaty, we shall ever continue to take care of them. The Divine Master said to his chosen apostles: "The poor I leave with you." He must have meant, as to the United States, "Lo, the poor I leave with you," as a perpetual heritage. The Black Hills are of no use to them, as I have said before, neither as a hunting or fishing country; but to us in the West particularly, and to the entire nation, of incalculable value. Opened up by our hardy and industrious people, soon a populous country will be known, and in a shorter space of time than Colorado, with her acknowledged wealth, will come a new State, to add light and beauty to the glorious constellation of States.

Pass this bill, and you invite to a healthy, salubrious, and fertile country the masses who are dying for want of space in your beautiful cities; deny it, and you simply put blocks in front of the car which "westward takes its course." Pass it, and you benefit the Indian in spite of himself, for then each one will possess in his own right more land than he can ever occupy and enjoy.

Doing justice to our white settlers, to our anxious emigrant, to thousands in the Old World who want to come to our free land will benefit them, and in time, it is to be hoped, remove them from "*in puris naturalibus*" condition to one where the Christian friends who are anxious to help them may hope of success.

THE PRESENT STATUS OF THE BLACK HILLS.

That gold is in the Black Hills pioneers have known for more than thirty years. The geological survey of Professor Hayden over ten years ago established that fact. The explorations of Professor Jenny in 1875 were sufficiently thorough to establish beyound a doubt that valuable gold fields exist there. Within the last six months citizens of my Territory have gone there comparatively poor and have returned "well off." That more than one hundred thousand dollars' worth of gold dust has been taken out of these hills by the people of Dakota alone, been brought home and there sold, is a fact of which I have personal knowledge.

That sentiment which is founded on the great popular idea of inalienable rights inherent in the bosom of every man which has felled forests and peopled the plains from one ocean to the other attempted to open the Black Hills in 1874 and 1875.—Squads of men were there, inoffensively, quietly, taking the precious metal from the "auriferous gulches which furrow its mountain-slopes." Whereupon a military order was issued to "put out" these men therefrom, and as they were seemingly slow in getting ont, many of them were arrested, confined in military prisons and other bastiles for months, and, in numerous instances their teams and entire outfit were taken from them by the military authorities, and their wagons and subsistence destroyed by fire. Such acts on the part of those who consummated them were without authority of law and an outrage upon the rights of peaceful citizens.

But since the explorations of Professor Jenny, and within a few months, the Black Hills have become occupied by a large population of the bone and sinew, the bold and hardy yeomanry of our country. It is estimated that there are at least eight thousand men there pursuing the even tenor of their way, tilling the soil, planting crops, fencing their lands, building houses, making homes for the beloved ones left behind them, and who are anxiously waiting for the blissful moment of reunion with their brave husbands and fathers, and until recently without any interference from our Government. But the Indians, wanting new relays for their girdles, and in strict accordance with their custom for the last hundred years, were continually murdering innocent men, women, and children out side of their reservation in the Territory of Wyoming and elsewhere, and committing such numerous crime the contemplation of which makes humanity's warm life-blood congeal at its source and stand still in its fountains, caused this order to emanate:

HEADQUARTERS ARMY,
Washington, May 2[illegible], 1876.

GEN. P. H. SHERIDAN, Chicago:

I have just been to the President with Governor Thayer. After reading the papers and some discussion, the President said that the people had gone to the Black Hills of Dakota, inside the Sioux Indian reservation, or who may hereafter go there, are there wrongfully, and they should be notified of the fact; but the Government is engaged in certain measures that will probably result in opening up the country to occupation and settlement. In the mean time the Indians should not be allowed to scalp and kill anybody, and you are authorized to afford protection to all persons who are conveying food and stores for those already there. I understand that arrangements are now in progress with Red Cloud and Spotted Tail to remove, and mean time the agency Indians should be kept near the agencies.

If satisfactory arrangements are not concluded, the new orders will be made as to whites who have intruded on the Sioux reservation.

W. T. SHERMAN, General.

About four weeks ago the United States Indian agent at the Cheyenne agency on the Missouri River addressed a letter to the honorable Commissioner of Indian Affairs that three friendly Indians had been killed by men going to the Black Hills over the Fort Pierre route, and that an Indian war was inevitable if travel thereon was not interrupted. Thereupon the following order was issued:

SAINT PAUL, MINNESOTA, June 2, 1876.

To the Commanding Officer at Fort Sully, D. T.:

In compliance with instructions from the General of the army, just received from the Lieutenant-General, you are directed to take such steps as will prevent emigrants from going to the Black Hills over the Sioux reservation by the Fort Pierre route, and you are further directed to use the troops at your command to enforce these instructions to the best of your ability.

By command of General Terry.

RUGGLES,
Acting Adjutant-General.

Pursuant to which the commanding officer at Fort Sully stopped all provision trains and men *en route* for the Black Hills, and forbid their crossing the river there. In a short time hundreds of tons of freight were landed there destined for the gold region, and hundreds of men in charge of the same, but were detained or turned back by the military authorities. This fact being made known to the Government, this order was issued:

HEADQUARTERS ARMY OF THE UNITED STATES,
Washington, D. C., June 8, 1876.

GEN. P. H. SHERIDAN, Chicago, Illinois:

Judge Kidder, of Dakota, represents that there are about a hundred tons of provisions at Fort Pierre, ready for the Black Hills, and that the commanding officer forbids their going. We have just seen the President, who consents that these provisions may be hauled out, but that no escort can be given. You may instruct accordingly.

The commanding officer should see that the parties who go out with the train are armed and prepared to defend the train and to prevent its falling into the hands of hostile Indians. Judge Kidder has been very zealous in this matter in the interests of his Territory.

W. T. SHERMAN, General.

The commanding officer at Fort Sully, being "hard of hearing," or very slow, or not knowing the order was issued, had not, up to the 20th of June, permitted the provisions to be "hauled out." when, "forbearanse ceasing to be a virtue," the order enlarging his instructions was issued in these words:

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, June 20, 1876.

GENERAL P. H. SHERIDAN,
Commanding Division of Missouri, Chicago, Ill.:

In regard to the route to Black Hills from Fort Pierre, you may go out and return with provisions, but they can have no military escort. The trains must take their own risk.

Instruct the officers accordingly.

W. T. SHERMAN, General.

Of the result of this order I am not informed.

Newspapers inform us that—

We have good evidence that the route to Custer City from Cheyenne is now guarded against Indian depredations by Companies K of the Third Infantry and H of the Twenty-third Infantry, and that General Sheridan was promised adequate military guard for the Cheyenne route. We have also good evidence that Captain Tolman's company of the First Infantry is now patrolling the Missouri River in the vicinity of Fort Pierre for the purpose of preventing all travel from Southern Dakota to the Hills.

Colonel Townsend, commanding Fort Laramie, announces, among other things, that—

Two companies of cavalry will constantly patrol the road between this point and Custer City for the protection of travelers.

It appears, then, relying upon these orders and this information, that there is only one ingress and egress to the Black Hills, and that is by the way of the Union Pacific Railroad. In connection with these facts I desire to state another, that to get to the Black Hills from Fort Pierre via the Union Pacific Railroad the emigrants at Fort Pierre will have to travel over one thousand miles farther than to go direct from there, it being from Fort Pierre only one hurdred and twenty miles to Custer City. Chicago is over three hundred miles nearer the Black Hills via Yankton, Dakota, than it is by way of Cheyenne, Wyoming, and the road through the former Territory is very much better. This extra distance, then, in order to enjoy the lovely scenery of the gold-bearing hills and the ecstacy of anticipated riches must be traveled over, not only by the good people of Dakota, but by the people of Minnesota, Wisconsin, and other States east of the Missouri River and north of the forty-second parallel.

This I call an outrage upon these people too grievous to be borne. We are willing to submit to any general order controlling alike the people on both sides of the Black Hills. We are willing to be excluded from them if all are, but we cannot consent to stultify ourselves, belittle our intelligence, and smother that inherent right of justice and equality which was implanted in the bosom of every man by Him who from the beginning has carried the scales of justice equipoise, by remaining silent or passive when so great a wrong has been perpetrated in a manner that is known by a gazing world.

The Fort Pierre route should be opened at once or the Cheyenne route should be closed. This would be meting out even-handed justice. The closing of this route and the protection of the routes from Cheyenne and Fort Laramie by the military is such an exhibition of favoritism in favor of the latter routes and the injustice to the former is so flagrant that the people of Dakota feel that they have a right to speak in language that will not be misunderstood, and demand that justice shall be done them by being placed upon an equality with those residing west of the Black Hills.

Only one way to get into the Black Hills! I have been taught to believe that I can start from any place and go to any other place in the world. But I give that up now. One is obliged to start either at Sidney, Cheyenne, or Fort Laramie to get into the Black Hills.

It has now transpired that "these Indians" were not killed, or any Indians in the region of Fort Pierre, or any Indians east of the Black Hills, by parties going there, as stated to the Commissioner of Indian Affairs by the Cheyenne agent, and that the agent was [illegible]

(Continued on [illegible] Page.)

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