

James W. Co
Sept 2, 1869
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Secretary's decision
upon letter referred
to him, in relation to a
question of heirship
in the case of John
Williams, of the
Indian Returns
the letter

See Letter to Mr
Coombs
July 9, 1869

1 David 1869

Department of the Interior

Washington, D.C. February 2^d 1869

Sir: I have this day received a letter addressed to you by order of the Council of the Shawnee tribe of Indians, which you have endorsed with the request that this Department decide the legal question presented.

It appears that a member of the Shawnee tribe of Indians died seized in fee of 200 acres of land, which he held by a patent issued to him in accordance with the stipulations of the treaty of May 10. 1854.

He left neither child nor widow. The child of a sister is the only surviving relative, who is a member of the said tribe. Sisters and brothers and nephews and nieces, however, who always have been, and still are members of the Wyandotte tribe of Indians, claim to be

his heirs at law and as such to possess the right to sell or otherwise dispose of said land.

The Shawnee Council are of opinion that the land descends to heirs who are members of the Shawnee tribe, and in default of such, reverts to the tribe. They desire to be informed whether in your judgment this opinion is justified by the law governing the case.

The Shawnees maintained their tribal relations and the land in question was located within the bounds of the tract, situate in Kansas, which had been ceded and assigned to them by said treaty.

The Commissioner of the General Land Office, after consultation with the Secretary of the Treasury, held in 1832, that where an Indian holding a reservation in fee died, leaving heirs, who would be recognized as such by the laws of the State within whose limits the land were situate, in case he were a citizen of the State, the rights of such heirs would be so recognized.

by the United States and they would have the same advantages which accrued under the laws of the State regulating the descent of real estate; and where he dies without heirs, it reverts by the law of escheat, to the State. It was stated by the same officer in a letter to Attorney General Butler, dated March 6th 1834, that the courts of some of the States exercised the same control over Indian reservations as other real estate and directed the sale thereof under execution, and through their courts decreed partition or authorized the sale thereof by administration to pay debts. He inferred from these facts that the laws touching inheritance, the settlement of intestate estates and the protection of real property, applies to the Indians, as fully as to the white population.

In other instances serious doubts have been expressed on the subject. The question submitted must therefore

be determined by the treaties concluded with the Shawnees and the Acts for the organization of the Territory of Kansas and her subsequent admission as a State into the Union. These treaties and Acts have been so fully and ably considered by the Supreme Court in the case of the Kansas Indians (5 Wall. 67) as to render superfluous any comment upon them.

The Court denied the right of Kansas to tax the land held in severalty by the Shawnees and affirmed that those with separate estates had the same rights in the tribe as the others whose estates were held in common. They are a distinct people with a perfect tribal organization and have not signified their consent to be included within the limits of Kansas. The concluding sentence in the opinion seems decisive of the question: "As long as the United States recognizes their National Character they are under

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"the protection of treaties and the laws
"of Congress, and their property is with-
"drawn from the operation of State
"laws."

It may therefore be safely asserted
that the Kansas law of descents does
not apply to the land, mentioned in
said treaty, whereof a member of the
Shawnee tribe of Indians died seized.

The letter referred by you to
this Department is herewith returned.

Very respectfully,

Your obt. servant
O. H. Browning
Secretary.

Hon: M. G. Taylor.
Comr of Indian Affairs. }