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REPERCUSSIONS OF THE DAWES ACT:
LEASING, CITIZENSHIP AND JURISDICTION ON THE OMAHA AND
WINNEBAGO RESERVATIONS, 1887-1896

A Thesis

Presented to the

Department of History

and the

Faculty of the Graduate College

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

University of Nebraska at Omaha

by

Matthew J. Krezenski

December 2001

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University of Nebraska, in partial fulfillment of the
requirements for the degree Master of Arts,
University of Nebraska at Omaha.

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REPERCUSSIONS OF THE DAWES ACT:
LEASING, CITIZENSHIP AND JURISDICTION ON THE OMAHA AND
WINNEBAGO RESERVATIONS, 1887-1896

Matthew J. Krezenski, MA

University of Nebraska, 2001

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The General Allotment Act, or Dawes Severalty Act, passed in 1887, had terrible repercussions for the Native American. Although the negative effects of the Act were widespread across the entire country, the separate impacts on individual reservations varied. On the Omaha and Winnebago Reservations in northeastern Nebraska, the Indians faced an entirely new range of problems after allotment, problems which continue to complicate the lives of residents even today. Whites not only purchased “surplus” lands, but also sought to appropriate the allotted land through dubious leasing schemes.

The citizenship clause in the Dawes Act was particularly perplexing. Ostensibly, the Act granted citizenship to allotted Indians and placed them under the protection of the laws of the state in which they resided, while the United States Government retained title to the land held in trust. The difficulty stemmed from the ambiguous new status of the allotted Indian. Did the citizenship clause necessarily sever the existing tribal relationship between the tribes and the federal government? Did jurisdiction over the Indians now fall within state domain, or did it remain under the federal government?

Advocates of free-leasing between whites and Indians on the reservations claimed it was the former, while the Indian Office clung to the latter interpretation. In the first few years immediately following the passage of the Act, the Indian Bureau proved agonizingly slow in response to the inquiries of its agents regarding the matter. Eager whites were not so hesitant and, by the time the Indian Office had issued its official stance on leasing, whites were already in possession of much of the allotted land.

The ambiguous citizenship clause in the Dawes Act had provided the means for unscrupulous whites to take full advantage of the Indians. For its part, the Indian Office was not completely unaware of what had happened. Indeed, when a new agent arrived in the summer of 1893, the Commissioner's instructions to him were clear – root out and destroy the pervasive system of illegal leasing and reassert agency supervision over the tribes. This study traces the origins of the leasing problems on the Omaha and Winnebago Reservations following the Dawes Act and reconstructs the confrontation that ensued between the agent and the free-leasing factions. In the process, it illustrates not only another dark chapter in Indian-white relations in this country, but also demonstrates the need for caution in the appraisal of the roles and reputations of the Indian agents.

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INTRODUCTION

“ . . . With this new policy [allotment under the Dawes Severalty Act] will arise new perplexities to be solved and new obstacles to be overcome which will tax the wisdom, patience, and courage of all interested in and working for Indian advancement.”

John D. C. Atkins
Commissioner of Indian Affairs
Annual Report 1887

Congress passed the General Allotment Act, or Dawes Severalty Act, on February 7, 1887.¹ The act, which granted land in severalty to individual Indian allottees, was intended to individualize, “civilize” and Christianize the Indian. Advocates of the legislation hoped that private ownership of land would help to acculturate Indians to the white man’s ways. However, many unforeseen and detrimental effects quickly manifested themselves in the years following passage of the law. Ironically, this proposed solution to the “Indian problem” was itself the source of additional calamities, especially those associated with the alienation of Native lands despite the act’s provision for a twenty-five year government trust period designed to prevent transfer of allotments to non-Indians. The leasing controversy on the Omaha and Winnebago Reservations illustrates how white “land grabbers” twisted the intent and spirit of the citizenship clause in the Dawes Act to facilitate this alienation.

Omaha allotment actually predated passage of the Dawes Severalty Act. When the tribe ceded its traditional hunting grounds to the federal government in 1854, it agreed to settle on 300,000 acres in the northeastern corner of present-day Nebraska.²

Article Six stipulated that in the future reservation land could be surveyed and assigned to individual Indians. In 1865, however, the Omaha agreed to sell the northern portion of their reservation to the federal government, which intended to settle 1200 Winnebago refugees there.³ Article Four of this new treaty, which superseded the arrangements made in 1854, changed the conditions under which allotments would be made. Since in most cases the new terms reduced the amount of land the Omahas would receive, they protested at first, but eventually agreed to the less advantageous terms of the 1865 treaty.⁴ The U. S. land office finished the reservation survey work early in the summer of 1867 and the Indian agent completed the allotments by 1871.⁵ Although the Omahas received certificates of allotment in that year, the certificates did not grant actual title to the land.⁶

On August 7, 1882, Congress passed the Omaha Allotment Act. Section One of the act authorized the Secretary of the Interior to sell the portion of the Omaha reservation that lay to the west of the Sioux City and Nebraska Railroad line. Subsequent sections announced that the land ceded would be open to white settlement and that all proceeds from the sale of that land would be placed into a fund for the benefit of the Omahas, to be expended at the Secretary of the Interior's discretion. The act apportioned allotments according to the following formula: 160 acres to each head of household; eighty acres to each single adult over eighteen years of age; eighty acres to each orphan under eighteen years of age; and forty acres to each child under eighteen years of age. This new allotment schedule superseded the terms of the 1865 Treaty and also gave Indians who already held certificates under the 1871 allotment process the first

opportunity to re-select the same land for their allotment under the later Act. Once the Indians selected new allotments, their old certificates became “null and void.”⁷

The Omaha Allotment Act of 1882 carefully spelled out the conditions under which the patents to the land would operate. Only after the Secretary of the Interior approved the individual allotments would patents be issued. The patents would specifically declare that “. . . the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the *sole use and benefit of the Indians* to whom such allotment shall have been made. . .” [my emphasis]. Only after the twenty-five year trust period had expired would the Indians receive free and clear patent to their land. Furthermore, the same section explicitly stated that “. . . if *any conveyance* shall be made of the lands . . . or *any contract* made touching the same before the expiration of the time above mentioned, *such conveyance or contract shall be absolutely null and void*” [my emphasis]. These clauses were specifically included to protect the Indians from white men.⁸

Section Seven of the Omaha Allotment Act of 1882 did not specifically grant citizenship to the Omahas, but it did subject them to the civil and criminal laws of the State of Nebraska. Furthermore, it stipulated that any land lying east of the Sioux City and Nebraska Railroad line which remained after all the allotments had been selected was to be patented to and held collectively by the Omaha tribe. This tribal land enjoyed the same protection under the twenty-five year trust period that the individual allotments did. Each child subsequently born into the tribe during the twenty-five year period was entitled to an allotment from the tribal land under these same conditions.⁹

The Winnebagos also experienced allotment before the passage of the Dawes Severalty Act. Although a relatively small number of tribal members remained behind when ordered to leave their homelands in Wisconsin in 1838, the majority resettled on a reservation in Minnesota ten years later. Not long after Minnesota became a state in 1858, delegates from the Minnesota Winnebagos signed a treaty with the United States in which they agreed to accept allotments in severalty and sell their surplus reservation land to whites.¹⁰ The treaty, signed on April 15, 1859, declared that each head of family would receive no more than eighty acres, and each single male over eighteen years of age would receive no more than forty acres. Once the Secretary of the Interior approved the allotments, he would issue to the Indians certificates that expressly guaranteed that these lands were for their “exclusive use and benefit.” Furthermore, as a precaution against alienation, the treaty expressly forbade the leasing of the land except under the guidance of the Department of the Interior, and then only to the United States or to other members of the tribe. Finally, the land was to be exempt from taxation, levy, sale, or forfeiture until further notice by Congress.¹¹

It was not long, however, before public pressure prompted Congress to relocate the Winnebagos. The Act of February 21, 1863, authorized the president to remove all tribal members from their reservation in Minnesota and to place them on “unoccupied land beyond the limits of any State.”¹² Although the act stated that the new reservation was supposed to include land “well adapted for agricultural purposes,” the Winnebagos found themselves exiled on the barren and infertile Crow Creek Reservation in the Territory of Dakota. As many as a third of the tribe succumbed to starvation and

exposure that winter.¹³ In the spring, the survivors fled south and sought refuge among the Omahas. During the following year, the Winnebagos eagerly gave up their existing reservation land in Dakota Territory in exchange for land recently ceded by the Omahas.¹⁴ Although the 1865 Treaty with the Winnebago made no mention concerning allotments on their new reservation in Nebraska Territory, the 1863 act clearly intended that the Winnebagos be allotted once they were settled on their new reservation. It also subjected these Indians to the laws of the United States and also to the criminal laws of the state or territory in which they resided. In addition, the Winnebagos remained subject to the rules and regulations prescribed by the Secretary of the Interior. Furthermore, it specifically prohibited them from making valid contracts with anyone except other Indians without the permission of the president. Under the provisions of this act, the Department of the Interior issued 420 patents to the Winnebagos by 1872.¹⁵

By the time that the Dawes Severalty Act passed Congress in 1887, both the Omaha and Winnebago tribes already had substantial experience with the allotment process. While much of the wording in the Dawes Act was similar to previous specific legislation for these two tribes, there were some important differences. The amount of land prescribed for each recipient under the Dawes Severalty Act was identical to the Omaha allotment schedule under the 1882 legislation: each head of family received 160 acres; single persons over eighteen and orphans under eighteen each received eighty acres; and each child under eighteen received forty acres. Although this meant no increase for the Omahas, it effectively doubled the size of Winnebago entitlements from what they had been under the 1859 act. Indians who currently enjoyed terms that were

more generous than provided for in the Dawes Act were permitted to retain that benefit.

The Dawes Act increased but did not diminish the size of allotments.¹⁶

The Dawes Act likewise repeated the now familiar protective twenty-five year trust period during which Indians were entitled to the “sole use and benefit” of their allotment. It is interesting to note, however, that lawmakers had included a phrase granting the president permission to extend the trust period at his discretion. Apparently there were doubts among some in Washington that twenty-five years was enough time for the Indians to advance far enough along the white man’s road to be competent to take care of themselves. One stipulation also explicitly warned that any conveyance or contract involving the allotments within the trust period were immediately considered “absolutely null and void.”¹⁷

By far the most radical part of the Dawes Act was Section Six, which declared allotted Indians to be citizens of the United States and “. . . entitled to all the rights, privileges, and immunities” as any other citizen. Accordingly, Indian citizenship was not official until “the completion of said allotments and the patenting of the lands to said allottees.” The Department of the Interior later interpreted the phrase, “patenting of the lands” to include the Secretary of the Interior’s actual approval and the issuing of the physical patent, in person, to the intended recipient.¹⁸

The citizenship clause in the Dawes Act proved to be the source of much initial confusion and increasing trouble on the reservations. “Land grabbers” and “Indian skinners” from the nearby white towns were all too anxious to secure control of the Indians’ land, and they were quick to take advantage of the uncertainty and confusion

that ensued following passage of the Dawes Act. More damaging were the large and influential land syndicates that emerged specifically to exploit the situation. By the time that officials in Washington woke up to the danger and began to direct the agents to reassert their authority and crack down on white depredations, the land companies had already established powerful claims to the lands. They boldly resisted all efforts of the agents to reassert control and prevent Indians and whites from illegally leasing reservation land. Ultimately the land companies concocted dubious legal claims based on faulty interpretations of Indian citizenship and challenged the agent's jurisdiction in the matter. By calling in social and political favors, the advocates of "free-leasing" on the reservations influenced local courts and secured injunctions against the agent, thus preventing him from interfering with their lucrative leasing schemes. Never seriously expecting to win the final say in court, the land companies did not have to. In the end, repeated legal delays would guarantee the objective that they sought.

A study of the Omaha and Winnebago cases indicates how this "silent hand of duplicity" worked at the grass roots level, and how this pattern was duplicated on allotted reservations throughout the United States between 1887 and 1933. No greater tragedy befell Indian people during this era than the "raid on reservations" which collectively cost Native Americans over 90,000,000 acres of land by the time that Franklin Roosevelt's New Deal policies finally created a shift in Federal Indian policy.

There is, however, another aspect of Indian-white relations that a case study on the problems arising from jurisdictional disputes over leasing on the Omaha and Winnebago Reservations serves to illustrate. In his article, "The Civilian as Indian

Agent: Villain or Victim?,” historian William E. Unrau addressed the stereotypical notion of the civilian Indian Agent. As Unrau points out, some vocal opponents of the Indian service in the late 19th century overwhelmingly viewed the Indian agent as an “unprincipled opportunist who represented everything sinister in the machinations of the hated Indian ring.” According to Unrau, the literature of the day contended that, “no public servant was more guilty of subverting the government’s good intentions than the lowly Indian agent.” Even Indian Commissioner Thomas J. Morgan lamented in 1891 that it had become popular to view Indian agents as thieves. Conversely, during this same period, an army officer playing the role of Indian agent was viewed as “typically honest and efficient as opposed to his stupid and corrupt civilian counterpart in the Indian service.”¹⁹

Unrau argues that for a number of reasons it is “singularly unfair to cast the civilian agent as the principle villain.” Challenging what he calls the “devil theory of the Indian agent,” he points out that the agent was shouldered with awesome responsibilities in running the day-to-day operations of his agency, and his position of authority inevitably invited unsubstantiated criticisms. For example, the agent’s responsibility for issuing and revoking licenses made him susceptible to “easy charges of collusion and fraud” by disgruntled businessmen who failed in their bid to become agency traders. The agent was also responsible for authenticating the claims of whites who charged Indians with destroying or stealing their property and determining compensation to be withheld from future annuities if such claims were found true.²⁰

Although Unrau admits that false or inflated claims were “increasingly popular” and that the “rush on the government’s annuity coffers was big business,” he suggests that the agents themselves should not suffer entirely the blame. The bureaucratic system of Indian administration itself made such fraud “virtually unavoidable,” and the agents were almost as much a victim of the system as the Indians themselves. Moreover, similar conclusions were reached by many of the interested observers of the day. Civilian Indian agents, however, did serve as convenient scapegoats for the shortcomings of the Indian Bureau as a whole. Unrau concludes that “sweeping generalizations regarding alleged conspiracies to defraud both the public and the Indian at the grassroots level have resulted in a distorted picture” of the civilian agent.²¹

Although the events in the case study presented here do not involve civilian agents, the conclusions reached do lend credence to Unrau’s argument that not all agents were as corrupt as usually charged. The relationship between the local civilian community and Captain William H. Beck, as acting Indian Agent at the Omaha and Winnebago Agency, presents a clear example of the pressures and difficulties an honest agent might be pitted against while championing Indian rights against the insatiable avarice and greed of unscrupulous whites. Even modern writers who have mentioned Beck in passing have found it all too easy to assume that where there is smoke, there is fire. It is ironic that the very persistence and unwavering determination that Agent Beck demonstrated in his protection of the Indians prompted a mud slinging campaign against his character and commitment. The false allegations of corruption were nothing more than a last ditch effort by the agent’s adversaries to discredit him in the hopes of having

the troublesome agent removed and a new, more pliable agent, appointed in his stead. The point is that the allegations, which spread throughout the region by rumor and by the yellow press, were, even by the 1890s, all too stereotypical of the behavior that most people of the day expected from Indian agents. The case study presented here helps to illustrate the fallacy in such assumptions of guilt and begs that other reservation case studies be attempted to help correct the pitfall of automatically assuming an agent's guilt based on the presence of "smoke" alone.²²

This thesis has its origins as a shorter paper completed for a graduate seminar in Native American History that I had taken from Dr. Michael Tate during the spring of 2000. At that time I had little idea of how extensive and complex the events of William Beck's struggle against illegal leasing were. As my research progressed, sometimes at a snail's pace and other times by leaps and bounds, the intricate story unfolded. I often found myself surprised at how exciting it was to unexpectedly stumble upon material and quickly realize that it was a "key" piece of evidence or a missing piece to the puzzle. Now, two years later I am pleased to see the project to completion. During that time, however, I have incurred a debt of gratitude to persons whom I now take the opportunity to thank for their assistance, without which, this project would never have been brought to fruition.

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assistance, skillful editing, helpful suggestions, and kind encouragement over the past few years. I thank him for devoting his time to this project.

NOTES

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- ¹ 24 Statutes at Large 388-391.
- ² 10 Statutes at Large 1043.
- ³ 14 Statutes at Large 668, 671; Joan T. Mark, A Stranger in Her Native Land: Alice Fletcher and the American Indians. (Lincoln: University of Nebraska Press, 1988), 125.
- ⁴ Judith A. Boughter, Betraying the Omaha Nation: 1790-1916. (Norman: University of Oklahoma Press, 1998), 90.
- ⁵ *Ibid.*, 92.
- ⁶ Mark J. Swetland, “‘Make Believe White Men’ and the Omaha Land Allotment of 1871-1900,” Great Plains Research, 4 (August 1994), 210, 214.
- ⁷ 22 Statutes at Large 434.
- ⁸ *Ibid.*
- ⁹ *Ibid.*
- ¹⁰ 12 Statutes at Large 1101.
- ¹¹ *Ibid.*
- ¹² 12 Statutes at Large 53.
- ¹³ Swetland, “‘Make Believe White Men,’” 159.
- ¹⁴ 14 Statutes at Large 671.
- ¹⁵ Swetland, “‘Make Believe White Men,’” 159.
- ¹⁶ 24 Statutes at Large 388; 22 Statutes at Large 434; 12 Statutes at Large 1101.
- ¹⁷ 24 Statutes at Large 388.

¹⁸ Exhibit 7, “Commissioner D. M. Browning to Captain William H. Beck, November 3, 1893,” reprinted United States Circuit Court of Appeals, Eighth Circuit, No. 520. *William H. Beck vs. The Flournoy Live Stock and Real Estate Company*: 193 (1531). National Archives and Records Administration, Kansas City, Kansas.

¹⁹ William E. Unrau, “The Civilian as Indian Agent: Villain or Victim?,” Western Historical Quarterly, (August 1971) 408-409, 413.

²⁰ *Ibid.*, 411, 414-416.

²¹ *Ibid.*, 411, 416-417, 420.

²² *Ibid.*, 420.

CHAPTER ONE

DEBRIS OF THE PAST

“Splendid theories often prove faulty in application and actual practice. It appears to my mind that we are trying to erect a new superstructure without removing the debris of the past.”

Jesse F. Warner
Omaha and Winnebago Indian Agent
Annual Report, 1889

In his Annual Report to the Commissioner of Indian Affairs for 1889, Omaha and Winnebago Agent Jesse F. Warner raised several provocative questions about the “unresolved problem” associated with Indian citizenship status following allotment of reservations. Warner compared the process to “traveling upon an unknown road,” and he observed that agency control, while apparently indispensable, simultaneously appeared inconsistent with the freedoms implied by citizenship.¹ Warner was merely attempting to clarify his authority and define the extent of his jurisdiction as agent. He was not certain if he still held legitimate authority over Indians who had become citizens, and was worried that state authorities might hold him or his Indian police legally accountable for interfering with a citizen’s personal rights. More importantly, Warner inquired as to the exact meaning of the provision in the Dawes Act itself. The critical part of his inquiry focused on the ramifications of the clause calling for a twenty-five year trust period through which the federal government retained control of the allotted lands. Specifically, he wondered if jurisdiction of the land necessarily extended to include jurisdiction over

the civil rights of the individual Indian.² Many interested whites claimed that it did not. The interpretation of this meaning would prove to be of paramount importance in the debate over Indian legal rights to transfer their land titles to non-Indians.

Warner felt that his questions were well justified, especially since he complained that the uncertainty of the answers to the Indians' changed status had confronted him "at every turn."³ He reported that the State of Nebraska had recently organized the reservation into Thurston County and had subsequently begun taxing the personal property of Indians just as it did for non-Indian citizens. To make matters worse, whites in the area claimed that since Indians were now citizens, the earlier laws relating to them and their restrictive intercourse with the whites no longer applied.⁴ Warner did not necessarily agree. He understood the federal government's position to be that the conveyance of citizenship to Indian allottees provided only for state jurisdiction of the individual.⁵ But what was not clear to him was whether federal or state jurisdiction prevailed over the Indian who actually resided *on the reservation*. Warner and others complained about the "great disadvantage" that would likely prevail in the local and state courts which were notorious for their sympathy towards whites and their disdain for Indians. The question of jurisdiction would prove crucial, not only because it determined the ultimate authority of the agent and the federal government on the reservation, but also because it would address the legality of whites leasing reservation lands from Indians.

The practice of leasing reservation land to non-Indians was not new. It had been occurring unofficially on several different reservations since 1883 in the form of grazing

licenses.⁶ Although typically referred to as a “lease,” this license to use “surplus grass” on reservations differed from a lease in that the license was subject to revocation at any time. Although grazing leases with non-Indians did not necessarily lead to conflict on the reservations, some serious trouble did occur, particularly with the Cheyennes and Arapahoes in Indian Territory. In his report on the event, Commissioner of Indian Affairs John D. C. Atkins explained that from the very beginning many members of the two tribes violently opposed the practice. Tensions quickly escalated after a non-Indian herder on the reservation killed a Cheyenne named Running Buffalo. The incident served to exacerbate the existing animosity between the opposing groups not only within the tribes, but also with the white ranchers.⁷

Tension continued to mount and the civilian agent’s control grew tenuous. With rumors of an imminent hostile outbreak among the Cheyennes, the federal government finally took active measures to preserve the peace. The War Department immediately concentrated all available troops in the region and, on July 10, 1885, dispatched General Philip H. Sheridan to investigate the situation.⁸ On July 23, President Grover Cleveland voided all leases, agreements and licenses for grazing purposes made with the Cheyenne and Arapaho. In addition, Cleveland ordered the removal of all non-Indians who were grazing cattle on the reservation.⁹ Fortunately, in this particular case, the government arranged a peaceful settlement that avoided further hostilities.

Although the Department of the Interior never approved the leases, the Secretary admitted to treating them as licenses, and he stated that the arrangements allowed for the Indians to revoke them at will.¹⁰ On July 21, two days before the president’s

proclamation, the United States Attorney General issued his opinion on the subject. Citing the Trade and Intercourse Act of June 30, 1834, he held that leasing of Indian lands for any purpose was illegal without express consent from the federal government. The earlier act considered neither the character under which the Indians held title to their land nor the purpose for which they wished to lease it.¹¹ Without a treaty or statutory provision amending the 1834 act, the attorney general reasoned that government agents held no authority to make or approve leases any of reservation land.¹² Despite the clear rendering of a decision, white settlers remained drawn to the unique pecuniary advantages of dealing with Indians for use of their land. Apparently aware of this situation, Atkins called on the Department of the Interior to declare its official policy concerning the leasing issue.¹³ The Department of the Interior accepted the attorney general's ruling.

Although the Office of Indian Affairs forbade leasing on the Cheyenne and Arapaho reservations, and on other problematic reservations as well, it allowed the remaining reservations, including those of the Omaha and Winnebago, to continue the practice.¹⁴ The inherent difficulties and major expenses involved with halting leases on every reservation where they had already occurred prompted officials not to tamper with many of the existing cases. Perpetually understaffed reservation agencies and their nominal police forces were woefully inadequate to handle the job. After 1887, the agents' underlying fear that whites involved in leasing were likely to resist their authority further compounded these logistical problems. In other cases, agents declined to interfere simply because they saw no harm in the leasing process.

Leasing their land allowed Indians to derive at least some economic benefit from otherwise idle land. Many people saw leasing as mutually beneficial to all parties involved, including the Office of Indian Affairs. Consequently, the failure to widely enforce the attorney general's interpretation of the law encouraged Indians and whites alike to continue the practice. However, the unofficial and seemingly harmless leasing system in place by the mid-1880s was not static. With each passing year, whites became increasingly brazen in their dealings with the Indians. The informal leasing system quickly degenerated into larger schemes aimed at cheating the Indian and usurping their land altogether. By the end of the decade, reports from agents began pouring in to the Office of Indian Affairs decrying the Indians' situation and reporting blatant injustices suffered at the hands of unscrupulous whites. Many agents sought governmental sanction and regulation for leasing to protect the Indians from further manipulation, while allowing them to gain benefit from otherwise unproductive land.¹⁵ The reservations of the Omaha and Winnebago tribes, where leasing was not officially sanctioned but nonetheless tolerated because of an "absence of any complaints," at least initially, was not an exception to the trend.

Leasing, while officially illegal, was not totally opposed, for there were advocates of leasing on a limited scale among both the agents on the reservations and among officials in the Indian Office. For example, Agent Warner noted one of the potential benefits of leasing to be that money derived from the grazing leases and sale of hay from unallotted lands allowed the Omahas to purchase much needed farm machinery.¹⁶ Clearly, he reasoned, this was a benefit to the Indians who would otherwise have nothing

to show for their “surplus grass.” The year before, Commissioner Atkins had made a plea to congress, asking it to legislate the leasing issue and indicating that the Indians might not be the only ones to benefit. He reminded congress that the more Indians were able to provide for themselves, the less the office would require in appropriations to meet their needs. He expressed caution, however, and insisted that the leasing take place only under proper restrictions.¹⁷

Others felt that the Indians should be free to lease their lands without restriction. Several years later, theologian and advocate of forced acculturation for Indians, Dr. Lyman Abbott, reportedly made the comment that there were “. . . dudes in New York who smoke their cigarettes and live on the rents of their property.” The question Dr. Abbott posed was why create restrictions against the Indians from doing the same? To this, Charles C. Painter, of the reformist Indian Rights Association, responded derisively, “We are not trying to Christianize and civilize the New York dude. Perhaps that would be a more difficult thing than we have undertaken.”¹⁸ Painter was generally against the policy of leasing allotted lands. He felt it contradicted the original intent of the Dawes Act, which was to civilize the Indian in the classic tradition of the yeoman farmer.

The abuses were not all one-sided, however. Some Indians tried to get away with simultaneously leasing their allotment to more than one person. Oftentimes an Indian would secure some goods or small amounts of cash from several different prospective lessees in advance. Naturally, each lessee believed that the transaction was a down payment or security deposit on the land in question. Inevitably multiple lessees of the same allotment would discover the presence of the other and eventually figure out that

they had been deceived by the same Indian. No doubt, some Indians arranged multiple leases out of complete ignorance of the fundamentals involved in the system. Others, however, understood the system all too well and used it to take advantage of unsuspecting whites.¹⁹

Both situations were common among the Omahas who had been practicing leasing from an earlier date than the Winnebagoes. The Omaha reservation was first allotted in 1882, five years before the Dawes Act offered land in severalty to the rest of the country's Indians. The Act of August 7, 1882, placed the Omahas under the laws of the State of Nebraska, both civil and criminal, but did not make them citizens of the United States. The 1882 act did specifically state, however, that the Omahas' land was not taxable during the requisite twenty-five year trust period, nor could tribal members sell *or encumber* it in any way.²⁰ Apparently, whites did not interpret this clause to include an express prohibition against leasing Indian land under government trust. Whites interpreted the phrase "sole use and benefit of the Indian" to mean sole use *or* benefit. The Indians received compensation for the land leased, and since they derived benefit from it, no law was broken.

The leasing problems were becoming more acute each year as the rapacity of non-Indians for reservation land increased just as the availability of land outside the Thurston County reservations decreased. Following the passage of the Dawes Act in 1887, Commissioner of Indian Affairs John D. C. Atkins detailed Special Agent Alice C. Fletcher to conduct the allotment of the Winnebagos.²¹ In the spring of 1888, having completed only about 400 allotments, Fletcher returned to Washington. When she came

back to the reservation at the end of August, she found that during that summer cattlemen had “overrun the reservation.”²²

In 1887, Atkins reported his disappointment that Congress had still not addressed the issue and he again requested that it legislate on the matter.²³ The following year, Commissioner John H. Oberly expressed his concern that the leases still did not have legal standing. Since the leases closely affected the Indians’ welfare, and at the same time involved large property interests, he felt that the issue warranted prompt consideration by Congress. The Commissioner lamented the confusing situation since the Department could not approve of the leases, and thereby gain from them, without a law officially authorizing them to do so.²⁴

Even had Congress acted more quickly in passing legislation to either endorse or prohibit leasing, it would not have likely settled the issue. To some, the severalty law and the conveyance of citizenship to the Indians on the Omaha and Winnebago reservations indicated an apparent severance of their tribal relationship with the federal government. Some members of Congress argued that as citizens, Indians could no longer claim tribal status. Many whites, including those in state governments, assumed that this meant that the federal government could no longer exercise legal jurisdiction over allotted Indians. This assumption added a whole new level of confusion to the leasing controversy. After allotment, the central issue to some was no longer whether Congress allowed, restricted, or prohibited the leasing of Indian lands, but rather how quickly could the federal protective authority be abrogated.

A more legally complex issue questioned whether Congress still had the right to interfere in the matter at all, and the conflict evolved into a larger dispute between competing federal and state jurisdictions. Many advocates argued that congressional legislation restricting or prohibiting leasing of Indian lands only applied to non-citizen Indians, not to Indians who had been allotted and therefore declared citizens. Although the Dawes Act clearly expressed that the federal government held allotted land in trust for the “sole use and benefit of the Indians,” proponents of leasing did not interpret this to prohibit leasing. Through leasing, they reasoned, the Indian was ostensibly earning a rent from the lessee, and therefore gaining a “benefit.” But some Indian Service employees began to question this assertion about Native American benefits.

By September 1889, Agent Jesse Warner’s original enthusiasm for the benefits of leasing unused grazing land to non-Indians had soured. Warner described a typical scenario that he increasingly had to deal with from non-Indian ranchers on the reservation. While the Indian Office had previously tolerated leasing on the reservation because of a “lack of any complaints,” the once congenial arrangements had become decidedly problematic. Although the Indian Office instructed the agent to drive off any trespassing cattle and herders on the reservation, Warner responded that such an apparently simple remedy was no longer feasible. White men owned the land surrounding the reservation, “. . . and to ‘drive off’ is to drive into some man’s farm and be liable for all damages and vexatious lawsuits.”²⁵

The most common problem concerned habitual offenders. Warner’s Indian police force, heretofore-utilized primarily as truancy officers and to intercept whiskey peddlers

and timber thieves, consisted of only one captain and several privates.²⁶ The existing police force was not, in Warner's opinion, capable of handling the myriad of white "land pirates." Perhaps this last problem explains why Warner did not have his Indian police simply confiscate the trespassing cattle and levy fines on the owners when they came to collect their property. It was likely that a myriad of vexatious lawsuits, coupled with the disadvantageous position of the Indian in unsympathetic local and state courts, would render any action taken by the agent ineffectual. Laws defining punishment for depredations on reservation land existed, but since the process was lengthy and only the U.S. Department of Justice could initiate a case, these laws were rarely enforced.²⁷ Even with successful prosecution, Warner noted that the herders were so "impecunious" that the judgment awarded was ". . . not worth the paper upon which it was written."²⁸ Forced to witness the injustice for a number of years, Warner became convinced that new legislation was essential in order to prevent white transgressions on Indian land.²⁹

In the autumn of 1889, Robert H. Ashley replaced Jesse Warner as agent at the Omaha and Winnebago Agency. By this time many of the white lessees had actually taken up residence on the rented land and were becoming "more and more aggressive and independent."³⁰ Like Warner, Ashley was convinced that Congress could resolve most of the immediate problems by endorsing leasing on a restricted basis and under agency supervision.³¹ However, Ashley subscribed to the view held by Charles Painter and many others that upheld Henry Dawes' original intent of the allotment process to act as a catalyst for "civilizing" the Indian. In this regard, Ashley deviated from his predecessor's endorsement of leasing by suggesting that *only in certain qualified cases*,

such as due to age or disability, should the government allow Indians to lease their allotments in order to support themselves.³²

Congress finally showed some interest in the matter on January 13, 1891, when the United States Senate passed a resolution calling upon the Department of the Interior to report on the current state of the leasing controversy.³³ Commissioner of Indian Affairs Thomas J. Morgan received a full report from Agent Ashley within weeks. Ashley stated that the Winnebagos had not only been leasing their allotted lands to white people, but more alarmingly, that they had also surrendered “entire control” of the land to them as well. The Indians simply ignored the agent’s repeated warnings that they had no legal right to lease their allotments. The immediate problem was not, however, the existence of an unofficial system of leasing operating against federal law, but rather the damage that it was causing to Indian families.³⁴

Up until 1890, whites commonly arranged leases only for one year at a time and strictly for grazing purposes. Not only had the number of leases increased every year, but some of them even provided for an extended lease period covering multiple years. Another alarming development was that white lessees had begun to break the ground for farming and had even built their homes on the land. As of January 23, 1891, John F. Myers, the Thurston County Clerk, reported that Winnebago land leased to white settlers and recorded at the county offices totaled 22,134 acres.³⁵ Ashley’s explicit warnings to settlers that the leases were invalid despite the fact they had been recorded in the county clerk’s office had little effect.³⁶ Confident whites simply ignored Ashley just as had the

Indians. Abuse of the existing system to gain unfair advantage over Indians had become standard practice among many whites.

Several land syndicates, including B. T. Hull & Sons, Wheeler and Chittenden and E. J. Smith, arose at this time specifically to exploit the situation. By far the largest company operating on the Omaha and Winnebago Reservations was the Flournoy Livestock and Real Estate Company, which controlled at least 37,000 acres of Winnebago land by 1895. Three principal partners controlled the Flournoy Company. John S. Lemon, the company's president, was married to a Winnebago Indian woman named Henrietta. John F. Myers served as Treasurer of the Flournoy Company while simultaneously holding office as Thurston County Clerk. The third partner, Arthur W. Turner, served as Secretary. Although lessor investors held some shares, the main capitalist and acting manager was John F. Myers, who invested about \$4,000 into the venture.³⁷

The Flournoy Company convinced prospective lessees and the Indians themselves that the agent no longer held any legitimate authority over them. The Company then leased land directly from allotted Indians at an incredibly low average rate of sixteen and one half cents per acre. This same land was then sub-leased through the Company to white settlers for as much as two dollars and twenty-five cents per acre.³⁸ Serving in his official capacity as county clerk, Myers dutifully recorded all of the leasing transactions at the county offices in Pender, Nebraska.

The conflict of interests between white land grabbers and the agent had its roots in the brief period following the allotment process when the Dawes Act's provision for

Indian citizenship was not yet fully understood. The same phrasing in Section Six that land syndicates pointed to when claiming that the agent had no authority also caused the agent to have doubts. Like his predecessor, Ashley was unsure of his own authority in the matter and he requested clarification from the Commissioner. Specifically he wanted to know how far his authority extended in matters that involved Indians who had been made citizens.³⁹

Occasionally the Department of the Interior sent inspectors to investigate the conditions on Indian reservations. In the summer of 1890, Inspector William W. Junkin visited the Omaha and Winnebago reservations. In one of his reports, Junkin found “. . . considerable confusion and dissatisfaction over the questions of grazing and allotments” He traced the problems to the question of whether or not the Indians had the right to lease the lands in the first place. Junkin was certain that they did not. Furthermore, Junkin believed that leasing caused more harm than good, since, in his view, it promoted degenerative behavior instead of promoting the perceived civilizing effect of owning and working the land.⁴⁰ Clearly, Junkin was in the camp of those who felt that allowing Indians to lease their land would be to promote an Indian version of the undesirable “New York dude.”

Junkin was concerned that it was common among white men to lease grazing land from the Indians at only ten cents per acre. Considering that the market value for land of similar quality was five to ten dollars per acre, Junkin thought this amount absurdly low.⁴¹ Not only were the rents pitifully inadequate, but white men’s cattle were damaging crops and haylands of the few industrious Indians who were struggling to

“walk the white man’s road.”⁴² The Inspector readily observed that “the result of this leasing business is that the Indians receive a small compensation for this land and lie idle about all the time, eking out a miserable existence.” Whites were taking advantage of the Indians and in the process retarding their “progress toward civilization.”⁴³ Junkin implored the Secretary of the Interior to take steps to put an end to the “white menace” on the reservations.⁴⁴ He thought that it would be more beneficial for the Indians to farm their own lands and graze their own cattle, but if leasing was to be allowed, it should be done under regulation of the Interior Department and through the agent.

A subsequent report by another inspector, Arthur M. Tinker, indicated that white transgressions against the welfare of the Indians continued largely unabated, despite the agent’s constant efforts.⁴⁵ Tinker’s conclusion about the trouble between non-Indians and Indians on the reservation was similar to Junkin’s. The former suggested that if leasing was to be tolerated, then a responsible person acting in the best interest of the Indians should be empowered to make and enforce the leases. The Inspector felt that caution was necessary not only to protect the Indian from unscrupulous whites, but also to preserve the original intent of the Dawes Act in promoting the transformation of Indians into industrious citizens. Like Ashley, Tinker favored legislation that restricted leasing only to Indians who were unable to work the land themselves.⁴⁶

Congress finally passed legislation providing a means to that end on February 28, 1891. The act allowed leasing of reservation land when, “. . . by reason of age or other disability . . .” the allottee could not “. . . personally and with benefit to himself occupy or improve his allotment . . .”⁴⁷ It specified that leases made under such circumstances

would be allowed “ . . . upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior.”⁴⁸

Although the law was official, Ashley had not yet received the rules and regulations of the Department instructing him on the procedures to award leases. He earnestly requested “ . . . that this subject be given early attention . . . as year by year it becomes more and more complicated.”⁴⁹ In the meantime, deals involving leases negotiated directly between whites and Indians continued unabated. On February 15, 1892, almost a year after Congress authorized leasing for this specific category of allottee, the Department of the Interior finally directed Ashley to take charge of the leasing process under the earlier provisions of the law.⁵⁰ Although Congress had finally authorized leasing of reservation lands on a limited basis, non-Indians continued to work outside the system to their best advantage. This was not surprising given the new restrictions.

While making the decision to re-lease through the agency or to stand behind a current, illegal lease, the individual faced a number of influencing factors. Leasing through the agency was less advantageous and more restrictive than dealing directly with the Indians. The agency-supervised leasing system was specifically designed to protect the Indians from being taken advantage of by unscrupulous whites and to prevent capable Indians from leasing their land instead of working it themselves. The new more rigid and demanding requirements and restrictions of the Department replaced the more flexible and generous terms that favored the lessee under the old system.

The most obvious drawback confronting direct-from-Indian lessees under the new system was that the agent negotiated higher rates for the Indians' benefit. He had to physically inspect the land of the proposed lease and issue a sworn statement that the proposed rent was reasonable. Earlier it had been possible to lease good land for as little as ten to twenty cents an acre directly from Indians. With the agent enforcing "fair market" minimum pricing, the cost averaged about one dollar and twenty-five cents an acre, and oftentimes reached an even higher sum. The majority of actual settlers obtained a sublease through a second party, usually one of the big land companies, but occasionally from individual speculators as well. The land companies acted as middlemen, acquiring large tracts of land from the Indians at low rates and sub-leasing to whites at substantially higher rates. Consequently, large land companies such as the Flournoy Company acquired huge profits while the Indians lost control of their land and received few financial benefits.

Although for most settlers the cost of the sublease through a land syndicate or speculator was comparable to the costs through the agency, other considerations deterred them from leasing through the agency. There was the matter of financing the lease. Whether the settler dealt directly with an Indian or more commonly obtained his land through a sublease from a land syndicate such as Flournoy Company, his immediate financial burden was relatively light. Settlers who leased directly often paid paltry sums to secure the lease and then made either sporadic payments or no payments at all. Some whites, for example, paid their rents "in orders on stores, broken-down horses, groceries,

[or] a few dollars in money at a time . . .”⁵¹ One settler, Nicholas Fritz, allegedly used 6,500 acres of Indian land over a period of five years and paid nothing for it.⁵²

Those who subleased from land syndicates often signed promissory notes that allowed them to delay payment of some or all the rent until after they sold their future harvest, at which time they would make good on their note. Many settlers who leased land under the unregulated system did not qualify to carry a lease under the new agency system. Government regulations required the agent to collect cash payment in advance for the first six months of the lease, and the balance in bond at full value of the remaining rental. Most farmers did not have enough cash to meet this requirement.⁵³

This was especially true among settlers who faced the real possibility of having to pay dual rents on the same lease. This predicament occurred when land syndicates sold to local or regional banks the promissory notes that were given to them by the settler. The profit margins on brokered Indian leases were so high that speculators reaped huge returns on their investments despite the discount given to banks on the notes that they sold. Speculators pocketed cash and the banks now owned the settlers’ notes. Subsequently told that their existing leases were “null and void” and that they would have to re-lease through the agency with six months cash up front, spelled financial disaster for the settler. Under these conditions, it is understandable why so many settlers resisted the agent’s efforts to stop illegal leasing.⁵⁴

While the total cost of a lease through the agency was usually not greater than the cost through a land syndicate, the new regulations of the agency system disqualified many applicants from consideration for non-pecuniary reasons. In some cases, all or part

of the land currently occupied by a settler did not meet the criteria for leasing under the regulations set out by the Department. If those particular settlers wished to remain on the reservation, they would have to move to another part of it. Understandably, this was unacceptable to settlers who in previous years had built their homes and spent time breaking, tilling and fencing fields.

Besides the prohibitive initial cash outlay, the agent was also required to attest to the “. . . character, uprightness, and intelligence of the proposed lessee . . .” and to use his judgment to decide if the “. . . presence of said lessee will be beneficial to the Indians.”⁵⁵ If the lessee’s potential to set a “good example” for the Indians was not considered likely, the agent was to deny the lease. The office did not provide the agent with specific criteria for determining who represented a “good example.” In this sense, the Office of Indian Affairs vested discretionary power solely in the agent’s judgment.

By early 1892, the period of unregulated leasing on the Omaha and Winnebago Reservations was over. Congress had authorized leasing of unallotted tribal lands, as well as individual allotments under restrictive circumstances. The additional work and responsibility for overseeing the new agency leasing system was unceremoniously thrust upon the agent.⁵⁶ From then on he was responsible for arranging the leases and enforcing the rules of the Department of the Interior. In theory, the problems stemming from unregulated and illegal leasing would disappear. In their place, the new agency system would simultaneously protect the Indians’ best interests and allow for leasing on a limited basis for those who needed it most. In reality, the new system was set in place before the old system had been forced to release its grip. Officials in Washington did not anticipate

the strong reaction of local vested interests who had found lucrative investments within the earlier, unregulated system. Consequently, the new agency leasing system immediately ran into problems with which it was unprepared to deal.

NOTES

¹ Report of Agent Jesse F. Warner, September 11, 1889, in Annual Report of the Commissioner of Indian Affairs [ARCIA], 1889, 238.

² Ibid.

³ Ibid., 239.

⁴ Ibid., 238.

⁵ Ibid.

⁶ Report of Commissioner John D. C. Atkins, October 5, 1885, ARCIA, 1885, xvi-xvii; Report of Commissioner John D. C. Atkins, September 28, 1886, ARCIA, 1886, xviii.

⁷ Report of Commissioner John D.C. Atkins, October 5, 1885, in ARCIA, 1885, xvii.

⁸ Ibid., xviii.

⁹ Ibid.

¹⁰ Ibid., xvii.

¹¹ Ibid., xix.

¹² Report of Commissioner John H. Oberly, December 3, 1888, ARCIA, 1888, xxxix.

¹³ Report of Commissioner J. D. C. Atkins, October 5, 1885, ARCIA, 1885, xix.

¹⁴ Report of Commissioner J. D. C. Atkins, September 28, 1886, ARCIA, 1886, xviii.

¹⁵ Report of Agent Robert H. Ashley, August 26, 1890, ARCIA, 1890, 137.

¹⁶ Report of Commissioner J. D. C. Atkins, September 21, 1887, ARCIA, 1887, 153.

¹⁷ Report of Commissioner J. D. C. Atkins, September 28, 1886, ARCIA, 1886, xix.

¹⁸ C. C. Painter, "The Leasing of Indians' Land," in "Proceedings of the Twelfth Annual Meeting of the Lake Mohonk Conference of Friends of the Indian" (1894) reprinted in U.S. Board of Indian Commissioners, Annual Report [BIC Report] 1894, 120.

¹⁹ Indian Inspector James McLaughlin to Secretary of the Interior Hoke Smith, June 29, 1895. National Archives Microfilm Publications, Microfilm Publication M1070, Reports of Inspection of the Field Jurisdictions of the Office of Indian Affairs, 1873-1900, Roll 32.

²⁰ 22 Statutes at Large 434.

²¹ Report of Commissioner J. D. C. Atkins, September 21, 1887, ARCIA, 1887, lxviii.

²² Joan T. Mark, A Stranger in Her Native Land: Alice Fletcher and the American Indians. (Lincoln: University of Nebraska Press, 1988), 162.

²³ Report of Commissioner J. D. C. Atkins, September 21, 1887, ARCIA, 1887, xxvi.

²⁴ Report of Commissioner John H. Oberly, December 3, 1888, ARCIA, 1888, xl.

²⁵ Report of Agent Jesse F. Warner, September 11, 1889, ARCIA, 1889, 239.

²⁶ "Extract from an Inspection made by Inspector W.W. Junkin on the Omaha Reservation, dated June 2, 1890" in U.S. Congress, Senate, Letter from the Secretary of the Interior, S. Ex. Doc. 73 [Severalty Letter], 6.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Report of Agent Robert H. Ashley, August 26, 1890, ARCIA, 1890, 137.

³¹ Ibid.

³² Ibid.

³³ “Commissioner T. J. Morgan to Secretary John W. Noble, February 26, 1891,” Severalty Letter, 1.

³⁴ “Robert H. Ashley to T. J. Morgan, January 26, 1891,” Severalty Letter, 5.

³⁵ Exhibit A “Certified Abstract of Lands Leased on Omaha and Winnebago Reservation,” Severalty Letter, 9.

³⁶ “Robert H. Ashley to T. J. Morgan, January 26, 1891,” Severalty Letter, 5.

³⁷ U.S. Congress, Senate, “Transcripts of the Proceedings Had Before Senators William V. Allen and John M. Thurston and Congressmen George D. Meiklejohn, W.E. Andrews, and Jesse B. Strode, Members of the Nebraska Delegation in the Fifty-Fourth Congress of the United States, Sitting as a Body at the Omaha and Winnebago Reservations and at Pender, Thurston County, Nebr., on the 24th and 25th Days of July, A.D. 1895, for the Purpose of Inquiring into the Condition of Affairs on Said Reservations.” [Transcripts of the Proceedings] S.Doc. 79. 54th Cong., 1st sess., 1896. Serial set 3349, 37.

³⁸ *Ibid.*

³⁹ “Robert H. Ashley to Commissioner T. J. Morgan, October 22, 1889,” Severalty Letter, 7.

⁴⁰ “Extract from an Inspection made by Inspector W. W. Junkin on the Omaha and Winnebago Reservations, dated May 29, 1890,” Severalty Letter, 6-7.

⁴¹ “Extract from an Inspection made by Inspector W. W. Junkin on the Omaha Reservation, date June 2, 1890,” Severalty Letter, 6.

⁴² Arthur M. Tinker quoted in “Commissioner T. J. Morgan to Secretary John W. Noble, February 26, 1891,” Severalty Letter, 4-5.

⁴³ Extract from an Inspection made by Inspector W. W. Junkin on the Omaha Reservation, date June 2, 1890, Severalty Letter, 6.

⁴⁴ Extract from an Inspection made by Inspector W. W. Junkin on the Omaha and Winnebago Reservations, dated May 29, 1890, Severalty Letter, 6-7.

⁴⁵ Severalty Letter, 5.

⁴⁶ Severalty Letter, 5. Compare Tinker’s suggestion to Ashley’s similar plea in *ibid.*, 2-3.

⁴⁷ 26 Statutes at Large 794.

⁴⁸ 26 Statutes at Large 795.

⁴⁹ Report of Agent Robert H. Ashley, August 27, 1891, ARCIA, 1891, 288.

⁵⁰ Report of Agent Robert H. Ashley, September 1, 1892, ARCIA, 1892, 306.

⁵¹ Transcriptions of the Proceedings, 37.

⁵² Robert H. Ashley to Thomas J. Morgan, June 2, 1890, Severalty Letter, 8.

⁵³ Transcriptions of the Proceedings, 36.

⁵⁴ Report of Agent William H. Beck, August 24, 1894, ARCIA, 1894, 187;
William Beck to Commissioner Daniel M. Browning, August 9, 1893, Special Case 191,
Box 299, National Archives and Records Administration, Washington, D. C.

⁵⁵ Report of Commissioner Daniel M. Browning, September 14, 1894, ARCIA, 1894, 422.

⁵⁶ Report of Agent Robert H. Ashley, September 1, 1892, ARCIA, 1892, 306.

CHAPTER TWO

THE LEASING LAND GRAB

“One vexed question the Indians want settled is, whether they have a right to lease their houses and allotted land, also the unallotted land of the reservation for a term of years to white men, without consulting the Agent or anyone.”¹

Arthur M. Tinker
Indian Inspector
October 22, 1890

The Act of February 28, 1891, which amended the General Allotment Act of 1887, authorized leasing of tribal lands on authority of a council speaking on behalf of the entire tribe. It also allowed the leasing of allotted lands, but only if the allottee met certain qualifying restrictions. In the spring of 1892, the Commissioner of Indian Affairs instructed Agent Robert Ashley to present the leasing question directly to the Indians. The elected council of the Omahas approved the idea and authorized the agent to lease tribal lands at one-year periods for no less than twenty-five cents an acre. The Omahas requested that the agent, so far as possible, lease to members of the Omaha tribe first, before considering applications from white men. After approval by the agent, the Secretary of the Interior required that all prospective leases be forwarded to the Department for final approval. All leases were to be prepaid and bonded. Ashley reported that most unallotted Omaha land had already been leased under “favorable terms,” and that the remaining unallotted land should go quickly. The agent estimated that the combined rent for all Omaha land for the 1892 season should be more than \$12,000.²

Ashley addressed the issue of leasing to the Winnebagos in a similar manner. The Winnebagos proceeded to elect a council specifically to transact all business related to leasing tribal land. Like the Omahas, the Winnebagos also requested that the agent give preference to members of the tribe in granting leases. Under the new arrangements, Ashley expected the Winnebagos to receive double the income in 1892 that they had received in 1891. This estimate, however, did not take into consideration prior claims to tribal lands by previous illegal lessees.³

Many Omahas were still interested in leasing their individual allotments even though they were not authorized under the new restrictions. Ashley likewise received many letters from interested white men who were inquiring about leasing. The agent expressly stated to both Indians and whites that the Omahas did not have the right to lease any allotted lands except in special cases with the agent's permission. Nevertheless, the temptation among white men and Indians alike was too strong, and unauthorized leasing directly between whites and Indians occurred behind the agent's back. In August, Inspector William W. Junkin reported to the Secretary of the Interior that there were "innumerable" leases established by Omaha and Winnebago Indians with white men but without approval from the agent. Junkin pointed out that the white men usually cheated the Indians in the transactions and he remarked that the leases were on file at the Thurston County Recorder's Office in Pender.⁴

On April 28, 1891, a group of four Winnebago Indians – Thomas Decora, Alexander Payer, Joseph A. Lamere and Alex St. Cyr – acting without authority from the tribe, represented themselves as the official Winnebago council and proceeded to sign a

lease agreement with a white man named Nick Fritz. The lease granted use of certain unallotted lands to Fritz for grazing purposes only in consideration for an annual rent of \$522. If the government subsequently deemed it necessary to allot any of the land included in his lease, the agreement stipulated the deduction of fifteen cents for each acre removed from the lease from the final rent. Guy T. Graves, the Thurston County Attorney, witnessed the signing of the lease.⁵ The language of the document implied that the lease was renewable each year. Although Fritz had submitted his lease to Ashley for approval, the agent did not act on it at the time because he had not yet received any explicit instructions from the Department authorizing him to do so. This did not deter Fritz who, within the year, proceeded to invest \$2,500 for fencing the land. Following the expiration of the first lease, an officially recognized council of Winnebagos authorized the lease of the same land encompassed by Fritz's lease to another tenant.⁶

Ashley suspected that Fritz would probably "throw the case into court, or get action delayed," and either way the tribe would lose revenue.⁷ Ashley's prediction was not far off. Within the week, Fritz had secured the services of H. C. Brome, a lawyer from Omaha. Brome wrote a letter to Commissioner Thomas J. Morgan in which he explained that his client held a legitimate lease to the land signed by members of a council of Winnebago Indians in April 1891. Although it was true that Fritz had presented the lease to Ashley for approval, the agent had never acted on it, stating he had no authority to do so. Brome insisted that the Act of February 28, 1891 authorized such leases and that the lease was legal. Although Fritz claimed to have acted in good faith, he

was aware that a second Winnebago Council had later leased the same land to another tenant.⁸

Fritz planned to prevent the execution of any new leases made for the same land by tying up the issue in the local courts and within the Department of the Interior. Agent Ashley considered Fritz to be nothing more than a troublemaker and he claimed that Fritz had actually been using the 6,000 acres of Winnebago tribal land during the previous four years without paying the tribe anything for it. Despite his best efforts over the previous two years, Ashley had not been able to recover even one penny of the thousands of dollars that Fritz rightfully owed the Winnebago tribe. Fritz relied on his original, though entirely fraudulent, lease to delay matters and thus prevent action by throwing the matter into the local courts. The tactics that Fritz used to delay action in his case provides an early example of what would become common practice among the illegal lessees.⁹

On the day after Fritz received his lease, the same four Winnebagos returned to Pender where they illegally leased 1,556.81 acres of land for five years to the Flournoy Company for \$233.52, or fifteen cents an acre. John Myers, the Thurston County Clerk, witnessed the transaction. While acting in capacity of his job as county clerk, he was at the same time acting treasurer of Flournoy Company to whom the lease was being made. Later that year, two of the Winnebagos, Lamere and Payer, leased an additional 320 acres to the Flournoy Company through John S. Lemmon, the company's president, and the transaction was again witnessed by Myers.

Ashley reported the illegal leasing and requested instructions on how to proceed. The Acting Secretary of the Department of the Interior responded that the agent was

authorized to lease unallotted land on the Winnebago Reservation only if the minimum rent of twenty-five cents an acre could be obtained. If so, the Secretary agreed to approve one-year leases beginning May 1, 1893.¹⁰ The issue of leasing unallotted Omaha tribal lands, however, fell under a separate set of circumstances, and the Acting Secretary recommended that the leasing of unallotted Omaha land be temporarily suspended pending possible amendment to the Act of August 7, 1882.¹¹

The Indian Appropriations Act for the fiscal year ending June 30, 1894, the Acting Secretary explained, contained proposed legislation which, if passed, would double the amount of land allotted to the Omahas from one-sixteenth section (40 acres) to one-eighth section (80 acres). If the act passed Congress, it would still need to meet with the approval of the Omaha tribe before the Secretary of the Interior could officially authorize allotments. If this occurred, large amounts of tribally held land would suddenly be needed not only to provide new allotments, but also to increase the amount of land held by existing allottees. The amount of tribal land available for leasing would be reduced proportionately. The Acting Secretary pointed out that under the circumstances it would be prudent to wait until Congress decided the outcome of the pending legislation so that land possibly needed for allotments would not be leased prematurely.¹²

The Act of February 28, 1891, authorized the leasing of unallotted tribal lands only as long as the Indians, in council, gave their consent. The Winnebagos granted Ashley permission to lease unallotted land in 1892, but with the stipulation that he give preference to members of the tribe before leasing to white men. The Winnebagos agreed to lease the tribes' unallotted lands for one year on the best terms they could get. On

March 28, Ashley advertised for informal proposals to lease, but by April 10, he had only received one proposal for “a very small part” of the total. As it happened, very few potential lessees expressed an interest in any of the 7,000 acres of unallotted reservation land. This was largely because a group of Winnebago Indians had already leased the tribal land to the Flournoy Company without the agent’s knowledge. Through this illegal lease, the Company had already claimed most of the land that Ashley now offered to lease in 1892. Apparently, most prospective lessees were not willing to contest the land syndicate’s claim to the land.¹³

At least one interested party, however, showed some interest. John Lemmon’s wife, Henrietta, a Winnebago Indian, procured a one-year lease with Ashley on June 2, 1892, for 6,720.32 acres of unallotted tribal land. Of course, the real impetus behind the lease was John Lemmon, who was president of the Flournoy Company.¹⁴ He likely saw a unique opportunity to get “legally” what he had already acquired in practical terms, “illegally.” He used his wife’s status as a Winnebago to take advantage of the tribe’s clause requiring the agent to lease to tribal members before whites, many of whom were held at bay by the Flournoy Company’s claim to the land.

After Ashley had already drawn up the original lease, John Lemmon discovered that the Omahas had recently granted a five-year lease on a large tract of tribal pasture to Rosalie Farley. Rosalie was an Omaha married to a white man. Rosalie’s husband, Edward Farley, acted as his wife’s business agent. Since competition for acquiring land was increasing, Lemmon wanted to secure his land for five years as well. Accordingly, Henrietta contacted Ashley and expressed her interest in extending the lease period to

five years instead of one. Ashley, in turn, consulted with the Winnebago council on her request, but the council decided unanimously to keep the lease for one year only. It is possible that Ashley forwarded the lease to Washington on the original terms of a one-year lease without informing Henrietta that the council had denied her request for the extension. When the Secretary of the Interior approved it on September 10, 1892, the lease provided only a one-year term.¹⁵

When Ashley first notified Henrietta that the lease was available, she originally told him she would come to the agency with the payment to pick it up. However, days went by and she failed to show. When Ashley reminded her later that the first payment was due before she could receive the lease, Henrietta blamed the delay on her own difficulty in receiving payment from one of her own sub-lessees, Nick Fritz. More time passed and Ashley came to the conclusion that Henrietta was not going to honor the lease. The Department directed Ashley to pursue legal action against Henrietta in local court to enforce the terms of the lease.¹⁶

It is likely that upon receiving the news that the agency lease only provided for a one-year period, John Lemmon decided that he would be better off holding the illegal five-year lease direct from the Indian "council." The land covered in Henrietta's one-year agency lease was nearly identical to the land that her husband, through the Flournoy Company, had leased earlier through the "council." Apparently John decided that if the terms were still favorable, it might be worthwhile to legitimize his claim to the land by securing an agency-endorsed lease. Not until after he found out that the Winnebagos would only lease the land at one-year intervals, did he change his mind. Since reverting

to the old lease gave him claim to the land for five years, he must have decided that it was worth taking a risk and standing behind the old lease. By insisting the old lease was valid, Lemmon maintained control of the land. In the meanwhile, he needed to figure out how to void Henrietta's contractual obligation under the new lease.

On October 13, 1892, John Lemmon responded to Ashley's repeated requests for payment in an angry letter on Flournoy Company letterhead. Lemmon indicated that Henrietta refused to honor the lease because she claimed that the terms of the lease as approved were "wrong." John complained that Ashley had excluded some of the very land that he and his wife had hoped to secure through the lease. Furthermore, the lease was only good for one year, not the five years that they had sought.¹⁷ In response, Ashley pointed out that the land described in the lease had not changed at all. If it did not include the land that Henrietta had wanted, he wondered why she had signed the lease. Ashley also pointed out that the original lease specified a one-year period, not five, and although he admitted Henrietta had requested that it be extended, the tribe had declined to do so.¹⁸ Nevertheless, John had found his excuse and was sticking to his story. As far as he was concerned, Henrietta's lease was invalid and he refused to be restrained by it.

The Flournoy Company claimed possession of all the land covered by Henrietta's lease under the five-year extension provision of an earlier unauthorized lease in 1891. The rental agreed to in this older, though unauthorized, lease was considerably less than the terms of the recent lease approved by Agent Ashley and the Secretary of the Interior. The Flournoy Company and its sub-lessees had since fenced a great majority of the land in question. White settlers sub-leased the land from the Flournoy Company for five year

periods, and were paying on average one dollar an acre for land and breaking it for agricultural purposes.

Ashley reported that the refusal of the Lemmons to make good on the lease and their violation of the provisions of the 1891 act by sub-leasing and using land for agricultural purposes were indicative of their lack of respect for the authority of the Interior Department over the Indian lands.¹⁹ In addition to disputing possession of the land in local courts, the Flournoy Company used threats and intimidation to prevent any potential lessees from making proposals directly to Ashley to rent the unallotted land. Strictly denying the authority of the agent in all leasing matters, the Flournoy Company dealt directly with the Winnebagos. By inducing the Indians to take small amounts of money, the Flournoy Company hoped to justify its claim of possession under the 1891 lease.²⁰

When the Department of the Interior received word of Henrietta Lemmon's refusal to honor the lease agreement, it directed the matter to the U.S. Attorney General and requested that steps be taken to bring suit against her and two others who failed to make payments on their leases. On November 8, 1892, the attorney general directed the District Attorney for Nebraska to file suit against Henrietta Lemmon as the principal, and Dwight M. Wheeler and Nick Fritz as sureties on Lemmon's bond, for rent due under the agreement with Ashley and as approved by the Department of the Interior.²¹

By the end of April 1893, the Commissioner of Indian Affairs was pressing Agent Ashley for information regarding the case. Ashley replied that although he had written District Attorney Benjamin S. Baker numerous times during the previous months, he was

unable to get the information requested by the Commissioner. Ashley stated that what little information he did have was from outside sources. In November of the previous year, Ashley had sent a letter to Baker in which he offered to provide any information necessary to help the case. Ashley even offered to travel to Omaha to meet with him, if necessary. The district attorney, however, never responded to Ashley's letters.²²

Still pressed for information, Ashley decided to travel to Omaha to find out first hand what was going on with the case. Baker had filed the petition on December 7, 1892, and the defendants filed their answers on January 5. While in Omaha, Ashley sought out the district attorney who informed Ashley that the case was awaiting trial during the May term, but he doubted whether it would be heard during that time. He did not elaborate on the reasons for the expected delay.²³

The May term came and went, but the case was not heard. On July 11, 1893, Baker wrote a letter to the Attorney General of the United States in which he explained that the hearing of the case of *United States vs. Henrietta Lemmon, et. al.* had been delayed. Although Baker stated that he protested the action, the court granted the defendants a continuance because their "key witness" was severely ill.²⁴

The defendants in the case of *United States vs. Henrietta Lemmon, et. al.* shared the same lawyer, H.C. Brome. Henrietta, however, filed a separate answer in which she flatly denied that she had ever made an agreement with Ashley to lease land for a period of one year beginning on May 1, 1892, as the complainant charged. She stated that the agreement she signed in the presence of Ashley on April 30, 1892 at the agency was for a period of no less than five years, and she alleged that *if* the lease she signed on that date

stated the lease was for less than five years, then it must have been “unlawfully and fraudulently” altered or otherwise changed in the respect to length of the lease. Alternatively, she surmised that Ashley had substituted a different lease at the time of her signing than the one she agreed to sign, and indeed thought she was signing. Her answer further stated that at the time of the lease, Ashley explained to her that the lease would not become official until the Secretary of the Interior approved and returned it to the agency and the agent, in turn, supplied her with a final copy of the documents. She alleged that Ashley had never delivered the lease to her nor had she ever taken possession of the land covered by the lease. According to her, the lease was never finalized. Perhaps most interesting of all, she claimed that the United States, as complainant, did not have the right to collect rental money in the first place because it was not the “real party of interest in this action” over the land.²⁵ The tenuous constructions and interpretive technicalities heavily relied upon by Brome in his pseudo-legal defense of Henrietta Lemmon in her case against the United States were indicative of what was to come.

By the early 1890's, there was no shortage of white men in northeastern Nebraska who did not covet the rich agricultural and grazing lands which appeared to them as “going to waste” within the boundaries of the Omaha and Winnebago Reservations. For their part, there were many Indians on the reservation who were just as eager to lease the land as there were whites willing to do so. Whites offering even the smallest down payments in money or goods found no dearth of desperate Indians willing to sign over the use of their land for a pittance. Despite the congressional legislation official authorizing

leasing under on a limited scale and under certain restrictions, the Indian Office was slow to provide guidelines to its agents in the field. Ashley's resultant hesitation to act on the leases only served to alienate the more impatient among both the whites and the Indians eager to make leases immediately. Consequently, by the time the agent was in the position to officiate over the leasing process, a great portion of the land on the reservations was already held under illegal leases.

NOTES

¹ Arthur M. Tinker to Secretary of the Interior John W. Noble, October 22, 1890. Microfilm Publication, M1070, roll #32. National Archives and Records Administration, Washington, D. C.

² Robert Ashley to Commissioner T. J. Morgan, April 18, 1892. Special Case 191. Box 299, National Archives and Records Administration, Washington, D. C. [SC191]

³ Ibid.

⁴ Inspector William W. Junkin to Secretary of Interior John W. Noble, August 27, 1892. SC191. #31908-92.

⁵ Farm lease, signed by Thomas Decora, Alex Payer, Nick Fritz, A. J. Lamere, Guy T. Graves, April 28, 1891. SC191.

⁶ Ibid.

⁷ Robert Ashley to Commissioner T. J. Morgan, April 18, 1892. SC191.

⁸ H.C. Brome to Commissioner T. J. Morgan, April 23, 1892. SC191. #16824-92

⁹ Robert Ashley to Commissioner T. J. Morgan, April 18, 1892. SC191.

¹⁰ Acting Secretary of the Interior George Chandler to Commissioner T. J. Morgan, March 15, 1893. SC191.

¹¹ Acting Secretary of the Interior George Chandler to Commissioner T. J. Morgan, March 8, 1893. SC191.

¹² Ibid.

¹³ Robert Ashley to Commissioner T. J. Morgan, April 11, 1893. SC191.

¹⁴ Robert Ashley to Commissioner T. J. Morgan, October 17, 1892. SC191.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ John S. Lemmon to Robert Ashley, October 13, 1892. SC191. #38083-92, enclosure 1.

¹⁸ Robert Ashley to Commissioner T. J. Morgan, October 17, 1892. SC191. #38083-92.

¹⁹ Ibid.

²⁰ Robert Ashley to Commissioner T. J. Morgan, April 11, 1893. SC191.

²¹ Attorney General William H. H. Miller to Secretary of the Interior John W. Noble, November 8, 1892. SC191.

²² Robert Ashley to Commissioner Daniel M. Browning, April 29, 1893. SC191. #16287-93.

²³ Ibid.

²⁴ Benjamin S. Baker to Attorney General Richard Olney, July 11, 1893. SC191. #26713-93, enclosure 1.

²⁵ "Separate Answer of Defendant Lemmon," *United States vs. Henrietta Lemmon, et. al.*, January 5, 1892. SC191.

CHAPTER THREE

A CURIOUS CONDITION OF AFFAIRS

“A prerequisite of citizenship upon the part of the Indian is that he should be an allottee of lands. Citizenship confers, as is contended, upon the Indian all the rights, privileges and immunities that it confers upon the white citizen, and that therefore in order to most effectually [*sic*] rob the Indian he must first be elevated to the rank of a citizen; this accomplished he is the oyster of the white man, and without the protection of the Government from the rapacity and frauds of the crafty whites who are only too anxious to speedily possess themselves of all the substance of the Indians.”¹

Andrew J. Sawyer
District Attorney for the State of Nebraska
August 1, 1895

In late June 1893, newly-appointed Indian Agent William H. Beck arrived in Pender amid great fanfare. Members of the Pender Ring, anxious to get on his good side, gathered to welcome the agent personally and later they held a banquet in his honor at the Grand Peebles Hotel.² Little did the Penderites know that over the next few years Beck would prove to be their most ardent opponent as he worked tirelessly to end their exploitation of the Indians under his care.

Commissioner of Indian Affairs Daniel M. Browning had forewarned Beck about what he could expect to face as agent for the Omahas and Winnebagos. Certainly the most difficult matter facing Beck involved the continued unauthorized leasing of Indian land. Browning was convinced that the leasing, which he admitted had been “in vogue” for several years on the reservations, had been “greatly detrimental” to the Indians’ best interests and those of the Department of the Interior. Accordingly, the Commissioner wanted Beck to finally “crush out and destroy” the illegal leasing before it destroyed the

effectiveness of agency supervision.³ Upon assuming control of the agency from Ashley, Beck began to assess the condition of affairs on the reservations for himself. He did not like what he found.

By the end of July, Beck had come to terms with what he felt was a vastly disorganized mess. The problems stemming from indiscriminate leasing practices on the reservations were even more perplexing than Browning had indicated. Although the Winnebagos were generally in favor of allotments, Beck reported to the Commissioner that their understanding of the responsibilities that went along with owning private land was "limited."⁴ He confirmed that many of the Winnebagos had made illegal leases with whites for unreasonably low rates. In addition, Indians who had leased their land were not progressing towards "civilization," but had resorted to idleness, poverty, and despair.⁵ Beck also reported that the situation with the Omahas was even worse. Many of the Omahas had leased their allotments to whites as well, and had even allowed the whites to take possession of the Indians' government-built houses.⁶ Equally alarming, the Omahas were indifferent to the agent's authority, and they openly ignored the regulations of the Department concerning leasing procedures. Beck suspected that the previous agent had not done much, if anything, to enforce the rules or assert his authority.⁷

Beck began to identify the problems and he took immediate steps to correct them. The agent found that numerous problematic circumstances arose from complications involving illegal leasing. Most alarming among the immediate problems were incidents of Indians leasing land that did not belong to them in the first place. In some cases, an

Indian claiming to be a minor's legal guardian had leased the minor's allotment to whites. The self-appointed guardian then kept the proceeds from the lease. Minors who subsequently came of age and sought to assume control of their allotments found their land already leased, unbeknownst to them. Other problems arose from Indian husbands retaining control of their ex-wives' land even after the couple had divorced. A variant of this situation occurred when an ex-husband and a new husband quarreled over the right to lay claim to the same woman's land. These unusual situations were the source of consistent complaints from Indians seeking redress from the agent. Even the Omahas, who claimed to have no agent, were not above seeking his help under these circumstances.⁸

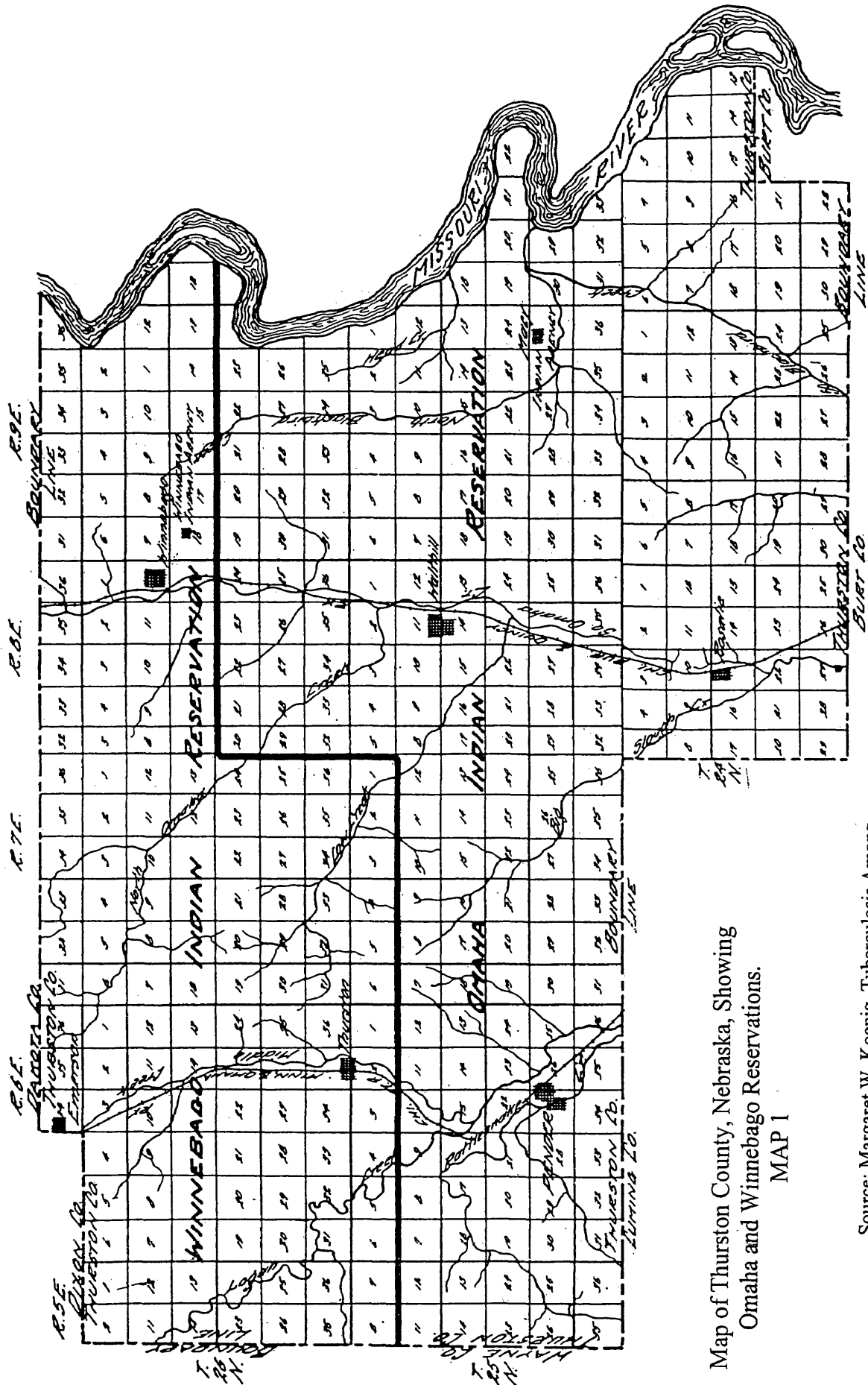
While some Omahas continued to deny the agent's authority over them, others simply resented his assertion of it. The "precautions" of the Department, which Beck rigidly enforced, precluded Indians who were capable of working their land from leasing their allotments to others. Many preferred to lease their land for cash rather than work it on their own. These Indians, resentful of agency restrictions on leasing, simply went behind the agent's back and dealt directly with the whites.⁹

Many problems had occurred because previous agents had failed to amend allotment records to reflect divisions of land among families in which deaths had occurred following the original awarding of the allotments. In one case, a widow continued to lease her deceased husband's land without benefit to her children. In another, the son leased his deceased father's land without sharing the proceeds with his widowed mother. A brother might lease land belonging to deceased parents without

regard to other siblings who had an equal claim to it. Beck linked the trouble in all these situations to the dubious leasing procedures of white men and the inattention of previous agents.¹⁰

In general, whites did not consider the Indian's individual title to the land when seeking to arrange a lease. In many cases the only formality they required to effect a lease with an Indian was the Indian's "signature to some paper." To whites, it was not important who the Indian happened to be; *any* Indian who claimed ownership of the land would do. In this manner white men managed to obtain leases on certain tracts of land from individual Indians who legally had no claim to that particular parcel of land. Some illegal leases involved land belonging to as many as fifteen different Indian allottees. In many cases, not a single allottee with valid claim to the land in question was even involved in the actual lease with white men.¹¹

Clerks at several local county offices usually recorded the leases made between white men and Indians. Beck found 1,227 leases on file at the Thurston County office at Pender, in addition to "large numbers" at West Point in Cummings County, Tekamah in Burt County, and a lesser number at Ponca in Dixon County. In addition to those recorded, whites had transacted large numbers of leases that remained off the record. In several cases, the original lessee had sub-leased to a third party, and the third party to a fourth, and so on, so that a chain of leases included as many as five separate parties. In most cases, the original lessee had since moved out of the state and, in some cases, the first or second sub-lessees could not be found either. Speculators held illegal leases covering huge tracts of land which they divided into dozens of smaller parcels and sub-let



Map of Thurston County, Nebraska, Showing
 Omaha and Winnebago Reservations.
 MAP 1

Source: Margaret W. Koenig, Tuberculosis Among
 the Nebraska Winnebago: A Social Study of an Indian
 Reservation. (Lincoln: Nebraska State Historical Society, 1921).

to actual settlers. To his chagrin, Beck discovered that in some cases the settler on a given tract of land did not even know what land he was on or who held the original lease to it.¹²

Although the Office of Indian Affairs had already issued a set of regulations for the proper leasing of allotted reservation land, these had been largely ignored. Since no agent had submitted leases involving Omaha or Winnebago allotted lands under those rules to the Department for approval, Beck considered all existing leases on allotted land to be illegal. Commissioner Daniel M. Browning instructed Beck to inform all pretended lessees that their leases were “null and void, and to no effect.” Subsequently, settlers who could meet the qualifications could apply to the agent for permission to lease their land under Department regulations.¹³

To help manage the daunting task of notifying each lessee and lessor, Beck prepared drafts of two separate form letters: one version for the lessee and one for the lessor. In plain and explicit language, each notice explained why the current lease held by the settler was void. It also explained the only circumstances under which settlers could legally lease from the Indians. In accordance with the instructions received from the Department, the notice ordered the lessee to arrange a legal lease through the agency or vacate the premises by December 31, 1893. The notice also authorized the settlers to harvest and remove their current crops, but specifically warned against any further planting until the settlers obtained a legal lease from the agent.¹⁴

Beck believed that the majority of settlers were ignorant of the illegality of their pretended leases. It seemed to him that the majority of settlers were honest citizens who

had secured in good faith leases through local real estate companies or directly from Indians. He felt confident that most of the settlers would be willing and eager to re-lease lands through the agency as instructed. In reality, it was not that simple. Each settler faced his own set of unique problems and it was easier for some settlers to re-lease through the agency than others.

Many lessees who obtained land by sub-leasing through large land syndicates found themselves in particularly difficult situations. Beck learned that some settlers who wished to lease legally through the agency were nonetheless hesitant to do so since land companies, or in some cases local banks, still held their notes. Although the agent attempted to reassure these settlers that the land companies and banks had no legal recourse, many settlers remained unconvinced. In describing the situation to his superiors in Washington, Beck warned that the large lessees were resorting to “every trick and threat in law” to frighten their sub-lessees into submission.¹⁵

Beck’s sense of duty to protect the Indians in his charge created many enemies within the neighboring white communities. His rigid enforcement of the regulations governing leases caused him to turn away many prospective settlers because they could not afford to meet the financial terms. Beck turned others away because, in his judgment, their presence on the reservation would be either an “injury” or at least not a benefit to the Indians.¹⁶ Although Beck did not specifically intend to frustrate settlers, his efforts often had that effect. Indignant settlers who were denied legal leases through the agency were likely candidates to add to the ranks of those already maintaining their illegal leases through the land companies.

Finally, the new agency system strictly prohibited all speculators from acquiring and dealing in reservation land. Only actual “tillers of the soil,” those planning to farm the land as homesteaders, could lease from the Indians through the agency. The agent held discretion over whether the presence of a prospective white settler would be beneficial to the Indians. He hoped that in addition to providing a source of income for those Indians who needed it, the presence of hardworking and independent yeoman farmers would provide positive role models for the Indians. These industrious white neighbors would have the added effect of helping to accelerate the supposed “civilizing effect” that allotment advocates had promised all along. While agency leasing would promote this environment, it also meant that speculators and land companies operating on the reservation would be completely cut out of the action.

The new agency leasing system resulted in a protracted and tedious process that excluded many prospective lessees from getting land. The restrictions and high up front costs associated with leasing through the agency no doubt contributed to the decision of many settlers to stand behind their pretended leases and contest the agent’s actions against them. The prohibition against leasing allotments for speculative reasons encouraged powerful corporations to further scheme against the agent.

Illegal settlers were not the only ones to groan under the weight of the new leasing system. The paperwork at the agency concerning leases alone inundated the available staff, which initially consisted of only the agent and a single clerk. The clerk completed forms in triplicate and then sent them to Washington, D.C. for approval. Errors found during federal processing required that the lease be returned to the agency

for correction and then be resubmitted. Beck found it harder to divide his attention between leasing matters and the “normal” business of running the agency.

The agent’s list of priorities also included tracking down and levying fees on cattlemen who had been using unallotted land for grazing. The agency had not authorized grazing leases for 1893, but that did not prevent white ranchers from pasturing their cattle on Omaha land. Although the number of cattle on tribal pastures was considerably lower than it had been the 1892, estimated rents for use of the land was still considerable. Along the same lines, the agent was eager to identify hay lands on the reservations and to work with individuals interested in contracting to cut the hay. Beck received multiple offers from whites willing to harvest hay on up to five hundred acres of land in a single deal. At a going rate of one dollar per acre, unallotted tribal hay land was a ready and renewable source of income for the Omahas.¹⁷ Since the cutting season for hay was at hand, Beck needed to work fast to get the contracts arranged. The agent felt that both of these sources of income were important to the Indians and he did not wish to see them lose revenue that could aid them in developing their allotments.

Beck’s efforts to manage his time was further frustrated by his need to prepare the annual report to the Commissioner of Indian Affairs, which was due by September. The Office required a census of the Indian population, estimates made for reservation school expenditures and reports, as well as investigations on various subjects pertaining to the overall condition of the reservations and operation of the agency. The leasing issues on top of regular agency business, Beck admitted, was more than he and his single clerk

could handle. To help with the work, Beck requested the Office to send an additional clerk, preferably an individual with some legal experience.¹⁸

If completion of the notices swamped the agency staff, the task of delivering them to residents was especially problematic. The notices required delivery to illegal lessees in several towns and numerous locations throughout the reservations, each many miles away from one another. Although Pender, Bancroft and Emerson were relatively close, other towns such as West Point and Tekamah required longer trips. Beck understood that the interests of many honest settlers were at stake. Timely delivery of the notices was important in order to prevent settlers from incurring additional expenses on improving the farms they might be forced to give up. These settlers would need to relocate to other areas and start over if they wished to remain on the reservation. The agent requested authorization to employ up to four deputies on a day-to-day basis at the expense of a dollar and a half a day to serve the notices.¹⁹

Unfortunately, the additional amount of work associated with the notification process was extremely tedious and time-consuming for the agent and his clerk. The agent or his clerk had to fill out each eviction notice, including an exact description of the land involved in the pretended lease. This meant indicating the exact section or part section, including the township and range in which it was located. Given the complexities and overall disarray of the unregulated leasing practices stretching back several years, this was a daunting task. It was sometimes difficult to determine the actual individual who currently held land through illegal lease. In many cases, these tasks required tedious examination of the leases available at various local county offices. Once

the forms were completed, they required someone to perform the even more time-consuming task of delivering them. Nevertheless, by October 1, 1893, the agent had warned all of the illegal occupants of the Department's ultimatum.²⁰

The settlers were anxious to get their leases approved. Fall planting time was fast approaching and many felt it an undue hardship if they were prevented from getting the next years' crop planted on time. The Indian lessors were also anxious for they hoped to lease their allotments to get money to live on before winter arrived. Although Beck advised those interested in leasing that he could do nothing for them until specifically authorized to proceed by the Department of the Interior, he indicated he was aware of their plight.²¹

This did not mean that Beck was not anxious to arrange the leases. On the contrary, he felt that agency leasing should begin as soon as possible. The agent hoped that leasing reservation land through the agency would assert the federal government's authority and serve as a "source of embarrassment" to the land syndicates which assured their tenants that the agent had no jurisdiction. It would also provide an example to those whites who were unsure of what course of action to pursue. Beck predicted that once the agency began to lease the very land claimed by the companies, their response would confirm the rumors that they would resist his authority.²² Although Beck was not looking for a fight, he probably felt the sooner the inevitable confrontation occurred, the sooner he could assert his authority. The agent did not have a very good idea of how tenacious and underhanded the Pender Ring could be in protecting its interests, but he would find out soon.

It did not take long after Beck began investigating the illegal leasing in mid-July for rumors of a “movement on foot” by the opposition in Pender to reach his ears. A “perfectly reliable source” had informed Beck that a group from Pender intended to raise \$3,000 to fund an organization they named the Indians’ Protective Association (IPA). The IPA was a front for organized activity of the land ring to thwart the agent in his attempt to interfere with their claims on the reservation.²³ Within a month’s time the fund had collected \$1,500 and the IPA boasted that it could raise the amount to \$5,000 if necessary.

The opposition from Pender included individual speculators, representatives of land syndicates, and other Penderites who had a personal stake in limiting the agent’s authority. Though there were several others, the largest member by far was the Flournoy Live Stock and Real Estate Company. William E. Peebles served as the “mouth-piece” of the ring.²⁴ Although he was the founder of Pender, the town’s first mayor, its current postmaster, and editor of one of the town’s newspapers, Peebles did not have a direct interest in the land business. His primary objective was boosting the town, a goal for which the cheap availability of Indian land played a large role. The Pender Ring was largely responsible for Agent Beck’s warm welcome earlier that summer. Although the Pender Ring had hoped to count Beck as one of their “friends,” he had made it clear that he could not be bought.²⁵ Peebles had since seen the new agent as nothing more than an obstacle in his way.

Identified by Beck as the “advisor and schemer” for the land ring, Peebles was also the leader of the self-serving IPA. As editor of the *Thurston County Republican*,

Peebles was in the position to influence public opinion. In late August, the *Republican* ran a story in response to the notices that agency employees had delivered to most settlers on the reservations.²⁶ The paper characterized the order for settlers to vacate reservation lands as an “arbitrary action” on the part of the Indian Bureau. It also argued that “many interesting and important questions” pertaining to the Indians and Indian citizenship had arisen which now required interpretations from the courts. While the article conceded that the Indians were wards of the government, it questioned how far that guardianship extended. In an ominous warning, the *Republican* predicted that it would take more than the order of the Indian Office and Captain Beck to drive settlers off the land. The Pender Ring meant to fight to the end.²⁷

The Flournoy Company instructed its lawyer, H. C. Brome of Omaha, to secure an injunction from the United States District Court of Nebraska. As Beck understood it, the purpose of the injunction was to prevent him from delivering eviction notices to the company’s sub-lessees. Since such an injunction would obstruct the action of the federal government, Beck could not understand how a state judge could properly grant it. Nevertheless, late on the evening of October 11, 1893, U.S. Marshal Frank E. White served the agent with an injunction to that effect. Judge Elmer S. Dundy granted the injunction based on the Flournoy Company’s bill of complaint.²⁸

The injunction ordered Beck to refrain from interfering in any manner with the Flournoy Company or any of its tenants in the use and possession of the lands leased by them. This included more than 30,000 acres of land located on the Winnebago Reservation. At the same time, Marshal White also served Beck with a subpoena

commanding him to appear in front of the circuit court in Omaha on November 6. During the following few days, Beck wrote to the clerk of the court and requested a copy of the complainant's bill so that he could prepare a proper response. He also contacted United States District Attorney Benjamin S. Baker, seeking his advice in the matter. Finally, he notified the Commissioner of Indian Affairs of what had happened and requested instructions on how to proceed.²⁹

Based upon what he had seen in the language of the injunction, Beck was confident that the Fournoy Company's case was extremely tenuous. The agent was certain he would have no difficulty proving the basis of its claim to be false. In the bill of complaint, Brome asserted that the Winnebagos, having been allotted land in severalty, were citizens and had severed their tribal relations with the United States Government. The Winnebagos, he claimed, no longer existed as a tribe.³⁰ Beck knew this to be false. The Indians did not own their land yet because the Secretary of the Interior had neither approved the allotments nor issued any patents for them. Until the Secretary approved the leases, the proposed allotments remained classified as tribal lands. The tribal status of the Winnebagos and the tribes' relationship to the federal government thus remained intact.³¹

District Attorney Baker neglected to respond to Beck's repeated communications concerning the suit. The agent confided in the Commissioner that he did not expect any assistance from Baker.³² This was unfortunate since Beck was anxious to get the injunction dissolved as quickly as possible. In order to prevent further delay, he requested that the Commissioner designate special counsel to advise him on procedure

and act as his attorney in the matter. If the Office could not arrange to send someone, Beck requested permission to acquire a local attorney to assist him. Whatever the Office decided, Beck realized the latest events had turned the tables against him and he felt that only prompt legal action could correct the situation.

The damage was done. Judge Dundy's grant for injunction against the agent established a legal precedent that lent an air of credibility to the Flournoy Company's claims against the federal government's authority over the disputed land. Beck now realized that the Flournoy Company intended to make good on its threat to bog the matter down in court. The company welcomed the inevitable delay that would result. It is also likely that Beck fully realized the extent of the Company's tactics. His sense of urgency to have the case settled as quickly as possible indicates that he recognized that even the Flournoy Company understood that it did not really need to win the case to beat the agent. They were already winning.

With no legal support forthcoming from Washington, D. C. or the state district attorney's office, Agent Beck decided to focus his attention on matters where he still maintained some clear authority. This amounted to proceeding with evictions of illegal lessees who did not yet enjoy the protection of state-ordered injunctions. Quick action was necessary to recover as much land as possible for the Indians before more settlers had the chance to secure injunctions. The more land recovered from illegal lessees, the more land the agent could legally lease through the agency and thereby obtain a fair price for the Omahas and Winnebagos. Unfortunately, Beck was still unsure about how to proceed with the evictions.

One of the major grievances in the Flournoy Company bill of complaint was that the agent intended to use force to remove the settlers. This accusation, though completely unfounded at the time, had garnered a large amount of public sympathy for the Flournoy settlers. In the opinion of many whites, including those of the state court, even if the Flournoy leases were invalid (a point which they denied), the agent still needed to obtain orders of ejection through due process of law.³³

While Beck understood his authority through the Department of the Interior to include that eviction power, he was nonetheless hesitant to do so at the risk of further alienating public opinion and strengthening support for the land syndicates. Unfortunately, the alternative meant seeking the assistance of the district attorney's office and filing individual suits of ejection for each individual case. Even had Beck enjoyed the cooperation of the district attorney's office, the matter would still have been costly and time consuming. Under the circumstances, the agent hoped that the Department of Justice would grant him permission to proceed with the evictions under its authority. This would legitimize his actions with due process and eliminate the time-consuming process of directing each case through the various government agencies in Washington.³⁴

In hopes of setting a precedent, Beck forwarded to the Commissioner what he felt was the most clear-cut case of illegal leasing. A man named George F. Phillips had illegally leased a section of allotted land from an Omaha Indian. Beck informed Phillips that he needed to re-lease the land through the agency or vacate. Since Phillips was unable to re-lease the land under the agency's terms, he agreed to vacate. Beck had subsequently re-leased the land in question to another white, Franklin J. Coil, and the

Secretary of the Interior had approved the lease. When Coil attempted to take possession of the land, however, Phillips still occupied it and refused to leave. Phillips had thrown his lot in with the land companies, claiming his original lease was legal and that the agent had no authority to remove him. Beck hoped that official permission from Washington, D. C. to proceed with the eviction of Phillips would demonstrate the legitimacy of the agent's authority to evict trespassers from the reservation without having to secure orders through local courts.³⁵

While waiting for a decision to that effect, Beck continued to apply for individual evictions, but this process was slow and expensive. Filing the required paperwork at the courthouse included paying fees in each separate case. Since no regulations covered the use of agency funds for that purpose, procedure required that the agent write for permission to the Office of Indian Affairs. The Commissioner then forwarded the request to the Department of the Interior, which in turn forwarded it to the Department of Justice. The Attorney General then approved it and forwarded the information to the district attorney's office in Lincoln, Nebraska . Only then could the district attorney secure the necessary paperwork to proceed with legal evictions. Although individual cases posed no great amount of bureaucratic red tape, collectively the situation was daunting because the agent faced hundreds of potential cases. If the procedure was not changed, it would greatly hamper the agent's efforts to clear the two reservations of illegal settlers.³⁶

NOTES

¹ Andrew J. Sawyer to Secretary of Agriculture J. Sterling Morton, August 1, 1895. Special Case 191. Boxes 299-302, National Archives and Records Administration, Washington, D. C. [SC191].

² Rosalie LaFlesche to Francis LaFlesche, August 17, 1893, LaFlesche Family Papers. Manuscript 2026. Microfilm. Reel 1. Nebraska State Historical Society.

³ “Commissioner D. M. Browning to Captain William H. Beck, July 17, 1893.” reprinted United States Circuit Court of Appeals, Eight Circuit, No. 520. *William H. Beck vs. The Flournoy Live Stock and Real Estate Company*: 1521

⁴ Report of Agent William H. Beck, August 25, 1893, Annual Report of the Commissioner of Indian Affairs [ARCIA] 1893: 194.

⁵ Report of Commissioner Daniel M. Browning, September 14, 1895, ARCIA, 1895, 193-194.

⁶ Ibid.

⁷ Ibid., 195

⁸ William Beck to Commissioner D. M. Browning, July 26, 1893. Special Case 191. Box 299, National Archives and Records Administration, Washington, D. C. [SC191]; U.S. Congress, Senate, “Transcripts of the Proceedings Had Before Senators William V. Allen and John M. Thurston and Congressmen George D. Meiklejohn, W.E. Andrews; and Jesse B. Strode, Members of the Nebraska Delegation in the Fifty-Fourth Congress of the United States, Sitting as a Body at the Omaha and Winnebago Reservations and at Pender, Thurston County, Nebr., on the 24th and 25th Days of July, A.D. 1895, for the Purpose of Inquiring into the Condition of Affairs on Said Reservations.” [Transcripts of the Proceedings] S.Doc 79. 54th Cong., 1st sess., 1896. Serial set 3349, 38.

⁹ Report of Agent William H. Beck, August 25, 1893, ARCIA, 1893, 195.

¹⁰ William Beck to Commissioner D. M. Browning, July 26, 1893. SC191.

¹¹ Ibid.

¹² William Beck to Commissioner D. M. Browning, August 9, 1893, SC191. #30258-93.

¹³ Exhibit 4, “Commissioner D. M. Browning to Captain William H. Beck, July 17, 1893” reprinted United States Circuit Court of Appeals, Eight Circuit, No. 520. *William H. Beck vs. The Flournoy Live Stock and Real Estate Company*: 1521. National Archives and Records Administration, Kansas City, Kansas.

¹⁴ Exhibit 5, “Copy of Blank Lessor Notice,” and Exhibit 6, “Copy of Blank Lessee Notice” in United States Circuit Court of Appeals, Eight Circuit, No. 520. *William H. Beck vs. The Flournoy Live Stock and Real Estate Company*: 1524-1528. National Archives and Records Administration, Kansas City, Kansas.

¹⁵ William Beck to Commissioner D. M. Browning, August 9, 1893, SC191. #30258-93.

¹⁶ Transcripts of the Proceedings, 49-50.

¹⁷ William Beck to Commissioner D. M. Browning, July 26, 1893, SC191. #28354-93.

¹⁸ William Beck to Commissioner D. M. Browning, August 22, 1893; September 18, 1893. SC191.

¹⁹ William Beck to Commissioner D. M. Browning, September 1, 1893. SC191.

²⁰ Transcripts of the Proceedings, 38.

²¹ William Beck to Commissioner D. M. Browning, September 25, 1893, SC191. #36386-93.

²² William Beck to Commissioner D. M. Browning, August 9, 1893, SC191. #30258-93.

²³ William Beck to Commissioner D. M. Browning, August 9, 1893, SC191. #30258-93.

²⁴ William Beck to Commissioner D. M. Browning, August 22, 1893, SC191. #332304-93.

²⁵ Rosalie La Flesche to Francis La Flesche, August 17, 1893, La Flesche Family Papers. Manuscript 2026. Microfilm. Reel 1. Nebraska State Historical Society.

²⁶ “The Land Leasing Trouble,” *Thurston County Republican*, August 1893, newspaper clipping in SC191.

²⁷ Ibid.

²⁸ William Beck to Commissioner D. M. Browning, August 9, 1893, SC191. #30258-93.

²⁹ William Beck to Commissioner D. M. Browning, October 13, 1893, SC191. #38803-93.

³⁰ Bill of Complaint, “Flournoy Live Stock and Real Estate Company vs. William H. Beck”, No. 95 Q, Circuit Court of the United States for the District of Nebraska. October 9, 1893. SC191. #42667-93 enclosure 1.

³¹ William Beck to Commissioner D. M. Browning, October 13, 1893, SC191. #38803-93.

³² Ibid.

³³ Bill of Complaint, “Flournoy Live Stock and Real Estate Company vs. William H. Beck”, No. 95 Q, Circuit Court of the United States for the District of Nebraska. October 9, 1893. SC191. #42667-93 enclosure 1.

³⁴ William Beck to Commissioner D. M. Browning, January 5, 1894, SC191. #1640-94.

³⁵ William Beck to Commissioner D. M. Browning, January 29, 1894, SC191. #4636-94.

³⁶ Ibid.

CHAPTER FOUR

DETERMINED ADVERSARIES

“The acts of this Company show a determined effort to continue their unlawful leasing and possession of the land which have to be met by continued determination against them.”¹

John R. Beck
Acting Agent, Omaha and Winnebago Agency
December 18, 1894

Beyond the legal complications of dealing with illegal leasing, Agent William Beck worked tirelessly to arrange new, legal leases for the benefit of the Indians. This task expanded to include leases on unallotted Omaha tribal lands for grazing and farming purposes. A number of Omahas, anticipating future allotments, had claimed specific tracts of unallotted land for their children, and had subsequently leased this unallotted land to whites. At the time, the Secretary of the Interior had not yet authorized the leasing of unallotted lands and therefore Beck immediately classified this category of settlers as illegal. They were among the first group of individuals that Beck had notified during the previous year to vacate by December 31, 1893. Upon notification, however, the great majority of these settlers had come to the agent requesting permission to lease legally through the agency under Department rules. Beck informed them that he would present their case before the Department, but he could make no promises.²

Other whites had also demonstrated interest in such possibilities and the agent could see no reason not to accommodate them as long as the Department of the Interior

approved. He believed it would serve to increase revenues for the Indians.³ The settlers would also break land for farming and otherwise improve the lands that would, under previous conditions, have remained idle. This would increase the value of the land and make it easier for future Indian allottees to begin working their land once the leases expired.

Beck was aware of one possible problem in this arrangement. The Indian Appropriation Act of March 3, 1893, had amended the Act of August 7, 1882, to allow for additional allotments to the Omahas.⁴ The agent knew that the Office of Indian Affairs was anticipating authorization from the Department to conduct another allotment in the near future. If this occurred, valid leases on the land would potentially complicate the allotment process. At the time Beck had no instructions on the matter, and he thus requested permission to lease Omaha tribal land for one-year grazing terms or three-year farming terms.⁵ At the Secretary's discretion, Beck was willing to lease either formally through regular leases, or informally, in which case the leases would end in case of further allotment. He simply wanted to know what the Department desired him to do so that he could either take steps to lease the land or take steps to evict the present settlers.⁶ On March 14, Secretary of the Interior Hoke Smith authorized the agent to lease unallotted land informally for one-year terms, beginning May 1, 1894. The Secretary specified that the Omahas had to agree to the leasing arrangements and that the leases would remain subject to future allotments.⁷

The situation concerning unallotted land was more complicated on the Winnebago reservation. Beck had found out what Agent Ashley had already known. A "secret

committee” of Winnebago Indians, including Alexander Payer, Alex St. Cyr, Joseph Lamere and Thomas Decora, had already leased the majority of unallotted land on the reservation. Most of the land was under control of the Flournoy Live Stock and Real Estate Company and the other large land companies. The agent was busy determining the location of unallotted land unaffected by the five injunctions against him. Only after he could determine what land was available would he begin to arrange leases for it.⁸ Beck was dismayed when he later found out that only a small portion of the eastern extreme of the Winnebago reservation was available for leasing. He suggested that the Department give him permission to lease this land “informally” to cattlemen.⁹ The Secretary granted approval to lease the available unallotted land under conditions very similar to those granted to the Omahas. Each potential lessee could only use the land for grazing purposes and at a minimum price of twenty-five cents an acre. The lease had to be informal in nature, good only for a period of one year beginning May 1, and it required the prior approval of the Winnebago Council.¹⁰

On September 1, 1893, while examining the agency records for delinquent lessees, Beck discovered that Rosalie Farley, an Omaha Indian, was past due on her May 1 payment for a lease on approximately 22,000 acres of Omaha grazing land.¹¹ Agent Ashley had arranged the original lease, and the Omaha tribe had agreed to lease the land to Rosalie Farley. Her latest five-year payment of \$5,408.04 was now overdue. Rosalie had made it known that she intended to sub-let the land and contract for cattle. Edward Farley, Rosalie’s husband and a white man, acted as her agent and manager in the

business. He had contracted with a number of whites to graze their cattle on the land the coming year.¹²

Almost immediately problems with the lease became evident. Several Indian families were living on the land and they had broken over six hundred acres of it for farming. Anticipating future allotments, other Indians had marked out claims for their children on the lands. All of this violated Rosalie Farley's rights to the land for grazing purposes as stated in her lease.¹³ The Omaha tribal council had even filed suit against her in the circuit court, demanding cancellation of the lease.¹⁴ Beck later found out that William Peebles and Henry Fontenelle, an Omaha and long-time enemy of the La Flesche family, had told the tribe that as long as the Farley lease was in effect, it would prevent the Department of the Interior from making new allotments. Peebles convinced the tribal council that they had to revoke the lease or the Omahas would suffer. Peebles had circulars printed and distributed around the area, making sure that Edward Farley's potential customers received copies. Claiming that the Farley lease of Omaha pasturelands had expired, the notice warned that any livestock found on the land after May 1, 1893, would be confiscated and held for damages by the tribe. Ten council members apparently signed the notice. Rosalie told Beck that she had offered to make the payment to Agent Ashley if he would guarantee to protect her rights in the lease, but Ashley had refused to do so.¹⁵

By spreading the circulars, as well as publishing notices in local newspapers, the Indians' Protection Association hoped to prevent Rosalie from being able to sub-lease the land. The tactic had a tremendous effect on the Farley's business. Of the 22,000 acres in

the original lease, the Farleys only managed to pull in revenue from 7,000 acres. Of the sub-leases made, one for 200 acres had been broken for farming by the sub-lessees. Edward Farley alleged that the Omahas had induced the men who had broken the land to do so in order to violate the terms of the Farley lease.¹⁶ The Omaha council, consisting of Fire Chief, Sin-de-ha-ha, Prairie Chicken, White Horse, Jessie Fremont, Du-ba-moni, Zhinga-ga-he-ga, Wa-ha-nin-ga, Big Elk and Little Cook, filed suit in the circuit court on May 11, 1893. The Farleys obtained legal representation from the Omaha firm of Breckenridge and Breckenridge.¹⁷

Although in the beginning some of the illegal lessees had cut their losses and moved off the reservations, many had remained, and resistance to Agent Beck's authority was growing stronger with each passing day. As long as it appeared that the Flourney Company held the upper hand, illegal settlers were little concerned with the agent's threats. Beck was determined to counter their tactics with prompt action. Rather than wait on the Commissioner's response to his request for counsel, Beck took the initiative to line up a local attorney. He sent a letter that same day to Ralph W. Breckenridge of the firm Breckenridge and Breckenridge of Omaha, the same firm employed by the Farleys.

The Flourney Company, having political and social ties with the white community, was able to exert its influence in the local courts. The fact that the Flourney Company was able to obtain the preliminary injunction in the first place indicated the attitude of the state courts in the matter. If the case was to receive a fair hearing, it was necessary to go beyond the state court. Under the circumstances, the best option was to

submit the case before the Circuit Court of Appeals in St. Paul, Minnesota. Only then could Beck hope to get the injunction dissolved. Attorney Ralph W. Breckenridge agreed that that course of action offered the best chance of success.¹⁸

Beck had to act quickly in order to arrange for that to happen before he was required to answer the subpoena in early November.¹⁹ Although the deadline for his answer at the district court in Omaha loomed only two weeks away, Beck still had heard nothing from the Office of Indian Affairs concerning his request for special counsel in the case. Growing impatient, he urgently repeated his request to the Commissioner. If District Attorney Benjamin S. Baker must have charge of the case, then Beck strongly advised the Commissioner to secure a special assistant for the case. The agent insisted that Baker was too preoccupied with other matters to give the injunction suit the attention it required. He also suspected Baker of secretly aiding the Flournoy Company by unnecessarily delaying the case. Each delay weakened his and the federal government's authority in the matter while strengthening the opposition in Pender.²⁰

Beck made it clear that he did not trust Baker to argue the case in the best interests of the federal government. As chairman of the recent Republican State Convention, Baker associated with a delegation of private local supporters that included prominent men such as John Lemmon, John Myers and Arthur Turner – the Flournoy Company's president, treasurer and secretary, respectively.²¹ Once the Commissioner of Indian Affairs realized the implications of this relationship, he would better understand Beck's reluctance to have the case solely in the hands of Baker. Beck intimated

somewhat sarcastically that he was willing to leave the outcome of the case completely in Baker's hands unless the Office instructed the agent otherwise.²²

The agent's lack of confidence in Baker's enthusiasm to pursue the case against the Flournoy Company was well founded. Several days later Beck received a letter from the district attorney in which he voiced his opinion that the argument as laid out in the Company's bill of complaint had some merit.²³ Baker agreed with Flournoy Attorney H. C. Brome's argument that the Act of Congress of 1863 made the Indians citizens of the United States. The courts had not yet construed any of the later acts specifically mentioned by the complainant's bill. These subsequent acts remained open to interpretation. Baker felt that it was the courts' rightful place to decide the meaning of laws, not the Department of the Interior, the Indian Office, or the agent.

That Baker did not fully grasp the magnitude of the situation was apparent. Completely missing the critical issue, he placed the essence of the debate on the question of whether or not the original Flournoy Company leases were made for one year or for five. The real issues, Beck understood, had absolutely nothing to do with the terms of the leases. Baker wrote a bold and patronizing letter to Beck in which he condescendingly recommended that the agent get all his facts straight. Only after Beck had taken the time to "fully digest the whole matter" would Baker be willing to meet the agent in Lincoln to prepare a response to the complainant's bill. The furious agent endorsed the back of the letter and forwarded it to the Commissioner as proof that Baker was unsuitable to argue the case on the behalf of the interests of the United States.²⁴ By this time, Secretary of the Interior Hoke Smith had already forwarded the agent's request that the Justice

Department assign a special assistant to the case. United States Attorney General Richard Olney, however, denied the request, stating that it was his judgment there was “no need.”²⁵

Whether he liked it or not, Beck would have to make do with Baker as counsel. On November 7, 1893, Agent Beck appeared in Omaha before the United States Circuit Court, with District Attorney Baker by his side. Baker had prepared an answer to the complaint based largely on materials the agent had compiled and drafted in the weeks after the injunction. Beck’s detailed reply explained the position of the Department concerning the leasing of reservation lands, and refuted point by point each aspect of the argument as set out by Brome in his bill of complaint. The explanation Beck provided thoroughly repudiated the complainants’ argument. Although the district attorney never admitted it, Beck believed that the expression on Baker’s face betrayed his realization that the views of the Department were correct. Even after the district attorney moved that the court dissolve the injunction, Beck still did not trust that Baker would vigorously pursue the case. The clerk set the date for hearing the motion on November 20, 1893.²⁶

The hearing date had come and gone and a week had passed with no word from Baker about the case. Beck proceeded to Omaha on November 27 to find out what was causing the delay. Baker explained that Judge Elmer S. Dundy had granted the complainants time to obtain their own affidavits in response to Beck’s affidavit, and that the court had still not set a firm date for the hearing. Annoyed by what he felt were unwarranted delays, Beck warned the Commissioner that further delays could only injure United States interests in the case.²⁷

Reportedly, executives of the Flournoy Company had boasted that the case might experience delays amounting to two years or more. During that time, the injunction against Beck would serve to protect the Company, which would continue to profit at the expense of the Indians. The original leases they held were set to expire on January 1, 1896 anyway. By the time the case was over, even a favorable verdict for the federal government would prove to be a dead letter. The Company would have achieved its goals through its delay tactics.²⁸

Beck began to worry even more in early December when it became evident that the circuit court routinely prosecuted criminal cases before considering cases involving civil matters.²⁹ The thirty-first of December, the deadline for illegal settlers to vacate, was fast approaching and at the rate things were going the Flournoy injunction would prevent Beck from enforcing the notices. Beck asked the Commissioner to do what he could to influence the Department of Justice to push for an early hearing.³⁰

The land companies had reassured their tenants that the federal government could not interfere with their leases. In order to boost the Indians' welfare, as well as rattle the confidence of the land companies and their tenants, Beck struggled to find a legal way to remove the settlers from the reservations. Although the agent considered pursuing formal legal action against each non-Flournoy lessee on the reservations, he eventually dismissed this idea as impractical. From his experience with the local courts, the process would take so long as to “ . . . practically amount to leaving the lessees alone indefinitely.”³¹ The process would hardly be worth the effort and expense.

Although Beck had planned to exercise his authority to eject settlers not covered by the Flournoy Company injunction, he found that his Indian police were not reliable. They were afraid to use force against white men because of the local courts. The agent complained that outside of tracking down truant pupils from the reservation schools or apprehending individual timber thieves, the Indian police were useless. Beck realized that unless something changed soon the government's authority on the reservations would be destroyed.³²

The agent went so far as to suggest that the Department send a troop of cavalry to the reservations with orders to remove the trespassers. He specifically suggested cavalry, because infantry would not be able to move around quickly enough. Since the injunction only applied to him, the local courts could not charge the commanding military officer with contempt of court for acting on independent orders to evict trespassers from the reservation. Beck believed that such a move by the government would go far to undermine the land companies' control over their tenants and help reassert federal authority on the reservations.³³

Since the delays experienced in the judicial system were allowing the Flournoy Company to gain ground in the leasing dispute, Beck began to explore other options. The present injunction only prevented the agent from interfering with the Flournoy Company and its sub-lessees. Otherwise, only about twenty-five illegal settlers had voluntarily left the Omaha Reservation, and many of those who remained, sided with the free-leasing advocates operating from Pender.³⁴ The apparent effectiveness of the Flournoy

Company's resistance in the courts had emboldened other settlers who leased their reservation land from other large companies or directly from the Indians.

Other large land companies especially took note of the Flournoy Company's successful tactics and quickly began to emulate them by filing their own suits. Beck received notice of an injunction from the district court on January 6, 1894, restraining him from interfering with lands leased by Ernest J. Smith.³⁵ This second injunction prevented the agent from interfering with an additional 4,960 acres of Winnebago land held by illegal leases to Smith. This did not bother Beck nearly as much as the fact that the same court that delayed hearing his answer to the first suit had issued an additional injunction on the same grounds. Beck warned the Commissioner of Indian Affairs that the action of the court further served to increase the contempt in which many white settlers held the authority of the United States.³⁶

The Flournoy case still did not have a court date by the end of January. Judge Dundy had, however, granted injunctions to two additional land companies – B. T. Hull and Sons and Wheeler and Chittenden.³⁷ The agent's previous request that Baker acquire and forward a copy of Ernest Smith's bill of complaint had remained unanswered. Baker's term in office had expired and his replacement had not been named. Although the U. S. Attorney General's office had written Baker and requested that he continue to act as counsel for Beck until the new district attorney arrived, Baker was unavailable.³⁸ Assistant District Attorney H. H. Baldrige was reluctant to take charge of the cases since he expected the new district attorney to arrive any day. In the meantime, Beck received a fifth injunction, preventing his interference with lands leased by John B. Carey.³⁹ These

latest events had convinced Beck that his chance of winning a favorable decision from the local courts was unlikely.

By early April 1894, Beck had completed responses to the additional injunction cases against him and forwarded them to the assistant district attorney. A few days later Baldrige acknowledged receipt of the agent's affidavits and advised Beck that the court had ordered testimony in the cases to be taken in Pender.⁴⁰ This news alarmed Beck because he felt that it indicated that Judge Dundy was already planning to hear the case in court. Beck was especially upset because Dundy had not yet responded to his repeated requests to have the injunction dissolved, and at this point it seemed that the judge had no intention of doing so. Brome, the Flournoy Company's lawyer, was already preparing to gather evidence in anticipation of the case going to trial. Beck wondered why Brome would make preparations for a case that might never go to court. He suspected Brome already knew that Dundy did not intend to dissolve the injunction. What the agent did not know at the time was that Baker had already made a deal with Brome, agreeing that he would not push the motion to dissolve the temporary injunction before the case went to court on its merits. With this privileged information, the Flournoy Company could then reassure its sub-lessees that the injunction would protect them until the trial. Meanwhile, to buy more time, the Company probably exerted its influence with Dundy and Baker to ensure that they delayed the case as long as possible. When the case finally came up for decision, the Company could count on Dundy's judgment in favor of the Flournoy Company.⁴¹

Beck made a trip to the district attorney's office in Omaha to find out why the district court had not heard the motion for the dissolution of the injunctions. When Beck confronted Baldrige, the assistant district attorney admitted that Baker had "neglected" to push the matter. Baker tried to explain why the motions had not been heard, but Beck was tired of the former district attorney's excuses. The latter insisted that if Dundy would not hear the cases, then Judge Henry C. Caldwell or Judge Walter S. Sanborn would. The agent complained that if the court had the time to hear evidence on the Flournoy Case in preparation for trial, then the court should have time to hear his motion to dissolve the injunction.⁴²

Baker spoke with Dundy the following day and the judge agreed to postpone the hearing of evidence until April 19. Five days later, Dundy also agreed to hear the motion to dissolve the injunction. Although Beck preferred not to have Dundy hear the motion, he was glad that the matter was finally getting some attention. Or so he thought. On April 19, Beck proceeded to Pender in order to hear the taking of testimony in the Flournoy Case, but neither the plaintiff nor the judge had shown up. Beck stayed the night at Pender and the next morning received a telegram informing him that the taking of testimony was postponed. He returned to the agency to find a letter from Breckenridge stating that the hearing scheduled for the previous day was postponed because Judge Dundy was ill. Breckenridge also informed the agent that the hearing scheduled for April 24 to dissolve the injunction was also postponed for the same reason. Breckenridge decided to write to Judge Caldwell and request that he hear the case instead.⁴³

On April 23, Beck received a telegram from St. Paul, Minnesota announcing that Judge Sanborn would hear the motion for dissolution of the injunction on May 2, 1894. Although Breckenridge had written to Judge Caldwell, the two judges had made arrangements that separated their workload into geographical districts, and Nebraska fell under Sanborn's area of responsibility.⁴⁴ Beck, Breckenridge and Sawyer all traveled to St. Paul for the hearing. After a long delay, it appeared as though Beck had finally gotten things the way he had wanted them. His hope was short lived. Having heard the case, Judge Sanborn declined to dissolve the injunction on May 3.⁴⁵

Sanborn based his decision partly upon the fact that the Department of Justice had been so slow to act on the matter. The motion for dissolution was first filed on November 18, 1893, but it had taken until May 2, 1894 for the case to be heard. Although Beck had submitted an affidavit outlining his repeated efforts to have the case heard earlier, Sanborn decided that it was the federal government's responsibility to push the case, not the agent's. According to Beck, Sanborn implied that had the Department of Justice pushed the case earlier in 1893, he would have readily dissolved the injunction. Considering that affected settlers had already planted for the season and the case would soon be going to court on its merits anyway, there was little reason for dissolving the injunction now. Finally, although Sanborn did not dispute that the United States still held title to the land, he was unsure whether the agent could lawfully use force to remove settlers from the reservation.⁴⁶

Instead of dissolving the injunction, Sanborn allowed it to stand, but he modified it slightly to allow the government to eject settlers through the courts. The modified

order prohibited Beck and his subordinates from “interfering with or disturbing” the Flournoy Company or any of its sub-lessees in the possession or use of the land covered by the bill of complaint except through “suits or actions in proper Courts.”⁴⁷ Understandably, Beck was disappointed at Sanborn’s ruling. In effect, the only concession Beck received was the ability to eject Flournoy sub-lessees through due process of law in the courts. Beck had already decided it was not worthwhile to proceed in that direction even with illegal settlers who did not enjoy the protection of an injunction.

Beck understood that his true enemies were the land syndicates, not the individual settlers. Rather than attack the settlers, he sought ways to attack the Flournoy Company directly. The Company’s injunction had been used so effectively against him, he thought that one might prove equally effective against the Company. He suggested that the Department of Justice direct the district attorney to file for an injunction against the Flournoy Company. This maneuver would restrain them from using the land “in any way” and prevent them from receiving rents until the case was decided in the courts. This would prohibit the company from re-leasing any land that Beck opened and would effectively prevent the Company from earning additional profits on future rents. Beck happily reported that the new district attorney, Andrew J. Sawyer, would be willing to cooperate in such an endeavor, his views being “identical” to those expressed by the Department.⁴⁸

Whatever the Department of the Interior decided on that issue, Beck emphasized the need to have the hearing of the case be pushed by the Department of Justice.

Breckenridge and Beck had assembled the evidence for the defense and had filed all the necessary documents with the court by May 23.⁴⁹ They planned to request that Circuit Justice David J. Brewer, due to arrive in Omaha on June 11, preside over the trial. The U. S. Attorney General assured the Secretary of the Interior that he would hasten the proceedings by “every means” in his power.⁵⁰ Sawyer assured Olney that he and Breckenridge were doing everything they could to push the case to trial.⁵¹

Although Beck and his lawyers had hoped to have Justice Brewer hear the case, Breckenridge later confided to Beck that there was “a kind of an understanding” between Brewer and Dundy that they would not hear one another’s cases without the other’s consent.⁵² Apparently Dundy wanted to preside over this case himself and Judge Brewer declined to accept the case. Judge Dundy was out of town at the time, not scheduled to return until June 27. Breckenridge suggested that Beck be in Omaha when Dundy arrived because together they might persuade the judge to hear the case promptly. Upon his return to Omaha, Dundy insisted on hearing the backlog of criminal cases before directing his attention to civil suits.⁵³ He set the hearing on the Flournoy Case for July 10, 1894.

On that day, Judge Dundy provided each side *one hour* to present its case, including all testimony, before he retired to make his decision. Four days later he ruled in favor of the plaintiff and ordered that Agent Beck and his subordinates “be and are forever enjoined and restrained from interfering with or disturbing the complainant or his lessees in the possession or use of the lands described in the complaint” except through suits or actions through the courts.⁵⁴ In other words, Dundy confirmed Sanborn’s

modified injunction and made it permanent. To add insult to injury, Dundy had assessed the costs of the suit to Beck.

In explaining his decision, Dundy stated that it did not matter to him whether or not the Winnebagos were citizens or whether or not the leases made between them and the Flournoy Company were legal. As far as he was concerned, since the government had tolerated the illegal leases for the past three years without taking steps to remove the settlers, it would be unfair to evict them by force now.⁵⁵ Dundy further ruled that military force could not be employed to forcibly remove citizens from the land during peace time. If the agent desired to have the settlers removed, he must file an individual suit in ejectment and obtain a writ of possession through the courts. After that a U.S. marshal would serve the writ and evict the settler.⁵⁶

Beck did not understand why Dundy placed such great emphasis on the use of force to remove the settlers. There was no proof that the government threatened or intended to use force. Rumors had spread in the local newspaper that Beck might use force, and indeed he was contemplating it, but nothing ever happened. Furthermore, the agent did not intend to take any action until due process of law was obtained. Beck pointed out that Dundy made no reference or decision as to the title or rights of the United States concerning the land.⁵⁷ It is likely that Dundy avoided the real issues involved in the suit because to rule against the interests of so many settlers and the influence of the land syndicates would have made him very unpopular in the community. Rather than take responsibility for a decision that would hurt the white citizens and help the Indians, Dundy decided to let higher courts take the blame.

According to Breckenridge, Judge Dundy held the view that neither the agent nor the United States Government had authority to exercise control over the allotted Winnebago families or their allotments under the Dawes Severalty Act. Inexplicably, Dundy chose to ignore the fact that the bill expressly stated that any contracts involving the allotments during the twenty-five year trust period were “null and void.” Beck and Breckenridge concluded that Dundy had made up his mind in the matter long before the case had even made it to court. Beck even claimed that Dundy had said that he had given the case “as full consideration as he cared to give it” before he granted the original injunction.⁵⁸ Dundy, probably acting under the influence of the Penderites, had issued the original temporary injunction, played along with the Penderites scheme of delaying the matter, and finally, after being forced to hear the case, presented a decision that the Flourmoy Company had probably known he would make all along. The agent complained to his superiors about the decision, reminding them that he had predicted that a trial before Dundy “would apt to result in an adverse decision.”⁵⁹

When Beck had first arrived at the Omaha and Winnebago Agency, he had expected to encounter some difficulties with the illegal leasing. His instructions from the Office of Indian Affairs were clear, to put an end to the illegal leasing that cheated the Indians and prevented them from making progress in the white man’s ways. In his pursuit of justice, he was supposed to create a new system of leasing based on agency enforcement of regulations authorized by the Department of the Interior. Yet, his steps in that direction had provoked opposition from powerful land syndicates operating chiefly out of nearby Pender, Nebraska. During the previous several years, these companies had

grown rich by taking advantage of the Indians' naiveté and exploiting their lands. To preserve their lucrative leasing arrangements the syndicates influenced local and state courts to issue injunctions restraining the agent from interfering with their schemes.

Through selective and manipulative interpretation of the laws pertaining to Indian citizenship, land syndicates such as the Flournoy Company purposely confused state and federal jurisdictions over Indian lands. Meanwhile, the Pender Ring's Indians' Protective Association spread propaganda through rumors and in the local newspapers. Countless delays postponed settlement of the issue while injunctions prevented the Indian agent from interfering with the companies' possession of Indian lands. Agent Beck lamented that each day which passed without a ruling from the local courts weakened the federal government's authority to protect the Indian estate. In addition, when the case was finally heard, Judge Elmer Dundy's ruling in favor of the Flournoy Company avoided the real issues and ensured the opportunity for even more delays.

The Dundy decision was a setback, but Beck was determined to fight on. Beck, Breckenridge and Sawyer agreed unanimously that Dundy's decision was faulty and that the case must be appealed.⁶⁰ In little over a week after Dundy's adverse ruling, U. S. Attorney General Richard Olney advised Sawyer to proceed with an appeal immediately. By the end of August, Breckenridge, acting in official capacity as Special Assistant to the U.S. District Attorney for Nebraska, had completed the appeal and the case was set to be heard by the United States Circuit Court of Appeals, Eighth Circuit, in St. Louis, Missouri. Judge Amos Thayer of the circuit court of appeals set the hearing for December 3, 1894.⁶¹ Beck attempted unsuccessfully to get the case advanced for an early

hearing. His failure to do so allowed the Flourney Company to deprive the Indians of their land for at least five more months. In the meantime, all the agent could do was prosecute individual cases and wait for his case to be heard by the court of appeals in Saint Louis.

The immediate success of the Flourney Company was as detrimental to the Indians' best interests as it was a source of "much trouble" to the agency in leasing matters. The Flourney victory in Omaha bolstered the position of the "free-leasing" advocates in Pender. In the months following the Dundy decision, prospective white settlers sought to lease Indian land on easy terms through the Flourney Company rather than through the restrictive agency system. The decision even encouraged some settlers to back out of their contracts through the agency and revert to their old leases through the land companies or the directly with the Indians. One such case involved a Winnebago named Ulysses S. Grant and a white man named John D. McKinnie.

On February 8, 1894, Beck had arranged a lease between Grant and McKinnie for land allotted to three of Grant's minor children. The Secretary of the Interior approved the lease on August 21. Near the end of September, Grant notified Beck that McKinnie's rent was past due. The agent sent a notice to McKinnie informing him to pay the past due amount or the agent would have to take "action" against him immediately.⁶² McKinnie responded by stating that he held a prior lease directly from Grant and that under its terms he was completely paid up and owed Grant nothing. He claimed that his previous lease gave him "as good a claim" to his land as the Flourney Company had on

its land. McKinnie repudiated the agency lease and insisted that until the original lease was declared void, he would continue to hold the land under it instead.⁶³

Beck requested the necessary authorization from the Secretary of the Interior to proceed with legal action to evict McKinnie and sue for the balance of the unpaid rent due under the agency lease. He emphasized the importance of prompt action in this particular case, as it would help “. . . put an end numerous others which are likely to arise.”⁶⁴ In what illustrates yet another example of the bureaucratic red tape the agent had to deal with, the Commissioner replied that Grant had to personally request the Secretary to approve action on his behalf.⁶⁵

The agent believed that the Interior Department had to make it clear that it would protect Indians leasing through the agency and that whites would not get away with cheating them. Beck felt it was important to evict McKinnie immediately, even though past due rent would be lost. The agent wanted the McKinnie case to be an example. McKinnie's actions demonstrated that he was not the type of person whose presence on the reservation would be beneficial to Indians. He had shown that he was willing to take advantage of the Indians and had defied the authority of the agency. Beck complained that there were a number of other cases very similar to this one. He was aware that some whites were taking advantage of the Indians' ignorance by inducing them to accept payments under the old lease. Beck lamented that the Indians did not realize that by accepting payment under the old lease that they were considering it binding. Whites could use this as evidence in the courts to defend their claim to the legality of the lease.

Beck felt that if the Department failed to take immediate action against McKinnie, it would only encourage other whites to do the same.⁶⁶

Although Beck was determined to bring a halt to the illegal leasing occurring on the reservations, he found his authority as agent continually questioned. Land syndicates such as the Flourney Company were instrumental in stirring up popular resistance against the agent. The syndicates' efforts were bolstered by unscrupulous town boosters from nearby Pender. Beck realized he had inherited a daunting position from his predecessor. Although the agent worked tirelessly to place the leasing business under agency supervision, his efforts were confounded by sympathetic local courts. Beck's superiors in Washington, D. C. had made it clear to the agent that the only way to stamp out the corruption and protect the Indians from the rapacity of the land grabbers was through the justice system. The agent's experience with Judge Dundy, however, indicated that that route would be long and difficult. Despite his frustrations, Beck realized that his chances for a fair trial would greatly increase once the case was heard by outside judges free of entanglements with local politics.

NOTES

¹ John R. Beck to Commissioner D. M. Browning, December 18, 1894. Special Case 191. Boxes 299-302, National Archives and Records Administration, Washington, D. C. [SC191].

² William H. Beck to Commissioner D. M. Browning, March 2, 1894. SC191. #9546-94.

³ Ibid.

⁴ Secretary of the Interior Hoke Smith to Commissioner D. M. Browning, March 14, 1894. SC191. #39047-94.

⁵ William H. Beck to Commissioner D. M. Browning, February 17, 1894. SC191. #7670-94.

⁶ William H. Beck to Commissioner D. M. Browning, March 2, 1894. SC191. #9546-94.

⁷ Secretary of the Interior Hoke Smith to Commissioner D. M. Browning, March 14, 1894. SC191. #39047-94.

⁸ William H. Beck to Commissioner D. M. Browning, March 2, 1894. SC191. #9546-94.

⁹ William H. Beck to Commissioner D. M. Browning, March 16, 1894. SC191. #10942-94.

¹⁰ Secretary of the Interior Hoke Smith to Commissioner D. M. Browning, March 23, 1894. SC191. #39169-94.

¹¹ William H. Beck to Commissioner D. M. Browning, September 25, 1893. SC191.

¹² Ibid.

¹³ Rosalie Farley to William H. Beck, September 8, 1893. SC191.

¹⁴ Ralph W. Breckenridge to William H. Beck, September 7, 1893. SC191. #36387-93.

¹⁵ Ibid.

¹⁶ Affidavit of Edward Farley, November 16, 1893. SC191. #43602-93, enclosure #1.

¹⁷ Ibid.

¹⁸ Ralph W. Breckenridge to William H. Beck, October 23, 1893. SC191 #40768-93, enclosure #1.

¹⁹ William H. Beck to Commissioner D. M. Browning, October 13, 1893. SC191. #38803-93.

²⁰ Ibid.

²¹ William H. Beck to Commissioner D. M. Browning, October 23, 1893. SC191. #39963-93.

²² Ibid.

²³ U.S. District Attorney for the District of Nebraska Benjamin S. Baker to William Beck, October 26, 1893. SC191. #40706-93.

²⁴ Ibid.

²⁵ U.S. Attorney General Richard Olney to Secretary of the Interior Hoke Smith, October 31, 1893. SC191. #40757-93.

²⁶ William H. Beck to Commissioner D. M. Browning, November 10, 1893. SC191. #42667-93.

²⁷ William H. Beck to Commissioner D. M. Browning, December 7, 1893. SC191. #45861-93.

²⁸ Ibid.

²⁹ Omaha Bee, December 5, 1893; William H. Beck to Commissioner D. M. Browning, December 10, 1893. SC191.

³⁰ William H. Beck to Commissioner D. M. Browning, December 7, 1893. SC191. #45861-93.

³¹ William H. Beck to Commissioner D. M. Browning, January 5, 1894. SC191. #1640-94.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ William H. Beck to Commissioner D. M. Browning, January 7, 1894. SC191. #1800-94.

³⁶ Ibid.

³⁷ William H. Beck to Commissioner D. M. Browning, January 29, 1894. SC191. #4805-94.

³⁸ Acting Attorney General Lawrence Marewelly to Secretary of Interior Hoke Smith, January 26, 1894. SC191. #4127-94.

³⁹ William H. Beck to Commissioner D. M. Browning, February 19, 1894. SC191. #7672-94.

⁴⁰ William H. Beck to Commissioner D. M. Browning, April 20, 1894. SC191. #15817-94.

⁴¹ U.S. District Attorney for Nebraska A. J. Sawyer to U.S. Attorney General Richard Olney, July 14, 1894. SC191.

⁴² William H. Beck to Commissioner D. M. Browning, April 20, 1894. SC191. #15817.

⁴³ Ibid.

⁴⁴ William H. Beck to Commissioner D. M. Browning, April 23, 1894. SC191. #15879-94.

⁴⁵ United States Circuit Court, District of Nebraska, The Flournoy Live Stock and Real Estate Company vs. William H. Beck, No. 95 Docket Q, Order of the Court.

⁴⁶ William H. Beck to Commissioner D. M. Browning, May 7, 1894. SC191. #17725-94.

⁴⁷ Order of the Court, No. 95 Doc. Q. United States Circuit Court, District of Nebraska, The Flournoy Live Stock and Real Estate Company vs. William H. Beck, May 3, 1894. SC191. #18518-94.

⁴⁸ William H. Beck to Commissioner D. M. Browning, May 7, 1894. SC191. #17725-94.

⁴⁹ William H. Beck to Commissioner D. M. Browning, May 19, 1894. SC191. #19564-94.

⁵⁰ Attorney General Richard Olney to Secretary of the Interior Hoke Smith, May 26, 1894. SC191.

⁵¹ Andrew J. Sawyer to Attorney General Richard Olney, May 30, 1894. SC191.

⁵² Ralph W. Breckenridge to William H. Beck, June 26, 1894. SC191.

⁵³ William H. Beck to Commissioner D. M. Browning, June 29, 1894. SC191.

⁵⁴ Decree, Circuit Court of the United States, District of Nebraska, Flournoy vs. Beck, July 14, 1894. SC191.

⁵⁵ Andrew J. Sawyer to Attorney General Richard Olney, July 14, 1894. SC191.

⁵⁶ Ibid.

⁵⁷ William H. Beck to Commissioner D. M. Browning, July 16, 1894. SC191.

⁵⁸ Ralph W. Breckenridge to William H. Beck, July 14, 1894. SC191. #27415-94, enclosure #1.

⁵⁹ William H. Beck to Commissioner D. M. Browning, July 16, 1894. SC191.

⁶⁰ A. J. Sawyer to R. W. Breckenridge, July 12, 1894. SC191; R. W. Breckenridge to Attorney General Richard Olney, July 14, 1894. SC191; William H. Beck to Commissioner D. M. Browning, July 21, 1894. SC191.

⁶¹ Attorney General Richard Olney to Secretary of the Interior Hoke Smith, July 19, 1894. SC191. #27538-94.

⁶² William H. Beck to John D. McKinnie, September 25, 1894. SC191.

⁶³ John D. McKinnie to William H. Beck, September 27, 1894. SC191.

⁶⁴ William H. Beck to Commissioner D. M. Browning, September 28, 1894. SC191.

⁶⁵ Commissioner D. M. Browning to William H. Beck, October 8, 1894. SC191.

⁶⁶ William H. Beck to Commissioner D. M. Browning, October 12, 1894. SC191. #40665-94.

CHAPTER FIVE

SUMMER OF DISCONTENT

“I shall represent the fact that there is law enough, if it is enforced.”¹

William H. Beck
Omaha and Winnebago Indian Agent
July 19, 1895

The case finally reached the United States Circuit Court of Appeals in Saint Louis, Missouri, on December 10, 1894. Judges Henry C. Caldwell’s and Amos Thayer’s ruling effectively reversed Judge Elmer Dundy’s earlier decision and dismissed the Flourney Company’s complaint. They ruled that there was no reason that Congress could not declare Indians to be citizens of the United States while it temporarily retained title to their land in trust. The rights implied by citizenship did not include the right to administer land without reference to the character of the title under which it was held. The judges reasoned that the provision in the sixth section of the Dawes Severalty Act which granted citizenship to allotted Indians did not cancel the restriction against alienation found in the preceding section of the same act. The two provisions, in other words, were not meant to be mutually exclusive. They felt that it was obvious that Congress had inserted the provisions intentionally for the “well-defined purpose” of protecting Indians from losing their lands. The provisions were not inconsistent, and could not logically be interpreted to mean otherwise. They were certain that the leases held by the Flourney Company openly violated the laws of the United States and were

therefore “utterly null and void.”² The illegal settlers on the reservation were trespassers in the eyes of the law.

The judges’ ruling did not stop there, however. They went on to lambaste the Flournoy Company for what they felt was a shameful attempt to camouflage its sordid business behind a cloak of legality. The judges believed that the Flournoy Company had obtained the leases with full understanding that the Dawes Act expressly prohibited such contracts. The Flournoy Company had deliberately violated the law believing that the federal government could not prevent them from doing so without bringing a multitude of suits for eviction. Furthermore, the judges thought it was fair to infer that the Flournoy Company believed that that course of action would prove a “. . .barren remedy, and that the law might be violated with impunity.” Finally, Thayer and Caldwell scolded the District Court of the State of Nebraska for its role in confirming injunctions against Agent Beck to prevent him from evicting illegal lessees. They stated that Dundy, by aiding the land company in retaining possession of land acquired in open violation of federal law, had committed a gross injustice against Agent Beck, an officer of the United States, acting under its orders.³ Attorney Ralph Breckenridge believed that the decision dealt the Flournoy Company their “death blow,” but warned that they might have some scheme in store to retain possession of the land while pending an appeal to the United States Supreme Court.⁴

Meanwhile back at the agency in Nebraska, John Beck, William Beck’s son and Acting Agent at the Agency while his father was in Saint Louis, reported that news of the decision did little to change things on the reservations. The Flournoy Company

continued to conduct business as usual, leasing from Indians and sub-letting to whites. Members boasted that despite appellate court's ruling, the matter was not yet finished. Company officials had intimated that an appeal to the United States Supreme Court could possibly delay the final decision for another two years. According to the acting agent, they snidely remarked that the Company had three months to file for a *supersedeas*, a court order which would temporarily prevent the execution of the existing court order pending appeal. The Flournoy associates boasted that with their influence in Washington, D. C., they would get it allowed. John Beck believed they were not entitled to a *supersedeas*, but at the same time, he recalled that his father had felt the same way about the original injunction.⁵ He thought it unlikely that the Company would be able to secure the *supersedeas* through Judges Caldwell or Thayer, but was unsure as to the disposition of Justice David J. Brewer in the matter.⁶ While Breckenridge was unaware of the extent of the Company's influence, he was certain that they would “. . . leave no stone unturned to carry into effect their villanous [*sic*] scheme.”⁷ Beck warned that should the Company be successful in obtaining a *supersedeas*, the Indians would likely give up and submit to the Company. Although the Indians realized they had been treated unfairly, they felt the little they had received from the Company during the period of unregulated leasing was better than the nothing they were getting during the injunctions, especially during the winter.⁸

The Flournoy Company, unfazed by Judge Thayer's ruling, decided to take the offensive in the war against the agent. Beck reported that John Lemmon was circulating a petition among the Winnebagos calling for dissolution of the agency. He also heard

rumors that the free-leasing advocates anticipated involving “state authorities” in the matter should the agency attempt to remove the Flournoy Company or its tenants from the reservations.⁹ Flournoy Attorney Harry C. Brome was already in Washington seeking a *supersedeas*. Breckenridge believed that Nebraska Congressman John Meiklejohn was the source of the Flournoy Company’s influence in Washington, D. C. In Breckenridge’s view, Meiklejohn had been fooled by “continued and persistent misrepresentations” into believing that there was some substance to the Flournoy Company’s claims of injustice.¹⁰

Shortly after William Beck had returned to the Agency in late December, he eagerly set about making preparations to evict illegal occupants of reservation land. He posted a notice informing trespassers of the results of the Circuit Court of Appeals decision in Saint Louis, and instructing them to vacate the land or face summary eviction.¹¹ The agent complained to the Commissioner of Indian Affairs that his four Indian policemen were not sufficient to enforce the rules of the Department on the reservation. In light of the Flournoy Company’s “outrageous behavior” in response to the recent ruling, Beck considered “all legal means” to eject the company’s tenants exhausted. In order to enforce the law, the agent suggested that the time had finally come for troops to be used. He requested that the Commissioner arrange for the U.S. Army to dispatch a company of infantry or a troop of cavalry to the reservations immediately to aid in removing trespassers. Beck hoped the mere presence of the force would “serve all purposes.”¹² Commissioner Daniel M. Browning, however, disagreed with the agent’s assessment and declined to send troops. He felt that only steps through the courts should be taken.¹³

The Flourney Company continued to resist Beck's authority, published false statements in the local newspapers, and continued to make leases. On January 4, 1895, an article in the Pender newspaper, *The Republic*, announced that the Flourney case had been appealed to the United States Supreme Court and, while it admitted that it was hard to tell when a decision would be made, it suggested that if the case took its "regular course" it would be "years." Although authored anonymously, the writer was clearly in the camp of the free-leasing Penderites. Yet another piece announced that the Flourney's attorney, Brome, had successfully obtained a *supersedeas* in Washington, D. C. The article claimed that the *supersedeas* amounted " . . . to the same thing as a restoration of the injunction granted by Judge Dundy of Omaha." The prose in last piece indicates that it was most likely propaganda written by William Peebles. The article claimed that the citizens of Pender and the "great majority" of the Thurston County hailed the news with delight. It also admitted that the reservations were the "principal contributor" to Pender's prosperity and that if Beck succeeded in removing the settlers, the land would revert back to a "tract of fertile but wild and nonproductive prairie."¹⁴

Beck condemned the "false statements and scurrilous attacks" on the agency and himself, pointing to them as yet further examples of the "outrageous conduct" that members of the Pender Ring had lately resorted to. He dismissed Lemmon's tirade as pure lies, and pointed out that Lemmon was generally known to be of "bad character." In response to the last article, Beck claimed that he had twice enough applicants waiting for land. Furthermore, the prospective lessees could afford to give bond and would not demoralize the Indians, unlike the current Flourney lessees.¹⁵

Despite the personal attacks and the allegations of wrongdoing at the agency, what most alarmed Beck was the news that Brome had secured a *supersedeas* in the case. If true, the court order would prevent him from taking action against the illegal lessees until the case was heard on appeal to the Supreme Court. The delay would mean another victory for the Flournoy Company and another blow to the Agent's authority on the reservations. Beck made a special trip to the Western Union telegraph station in Dakota City, Nebraska on January 5, where he fired off a telegram to the Commissioner reporting the news and requesting the Commissioner verify whether it was true. If it was, Beck recommended that a motion to vacate the *supersedeas* be filed immediately.¹⁶ Two days later, Beck found out locally that a *supersedeas* had *not* been granted. Justice Brewer had only granted Brome an appeal to the Supreme Court. The agent was relieved, since an appeal did not interfere with his ability to proceed with evictions.¹⁷ He discovered that the announcement in the newspaper which stated that a *supersedeas* had been granted, was nothing more than a Flournoy Company ploy meant to "mislead ignorant people" into a false sense of security and reassurance. United States Attorney General Richard Olney later confirmed that Justice Brewer had not granted a *supersedeas*, nor had Brome even applied for one.¹⁸ According to Brome, the appeal he secured gave the Flournoy Company "all the benefits" of a *supersedeas*.¹⁹ Although this was patently false, the advice was good enough for the Flournoy Company.

Beck was anxious to get the case heard before the Supreme Court as soon as possible. Even without a *supersedeas* officially preventing him from asserting his authority on the reservations, the Flournoy Company's stubbornness and refusal to give

up claim to the land blunted Beck's push to evict the illegal settlers. Although he had applied for troops to facilitate the process, his superiors in Washington declined his request. Beck would have to make do with legal action in local courts and use of his small Indian police force to proceed with evictions. Since a *supersedeas* was not issued, Solicitor General Holmes Conrad directed Breckenridge to apply to a Circuit Judge for an order to execute the December 10 mandate of the Circuit Court of Appeals. Conrad had already directed the Circuit Court of Appeals to grant the order. Apparently Breckenridge only need apply to the Appeals Court to get the order. With that accomplished, Conrad felt that ". . . the case in its present condition . . . [was] . . . not one of such urgency . . . [nor] present[ed] questions of such public importance, as would justify the Department in asking for its advancement, or which the court, following its usual practice, would be likely to advance upon the docket."²⁰ In other words, the Solicitor General wanted the agent to secure a court order to enforce the decision against the Flournoy Company. However, since this would supposedly solve Beck's problems with the Flournoy Company, the appealed case was not so urgent and therefore would have no reason to be booted up the list of cases to be heard by the Supreme Court any time in the near future.

Apparently the Solicitor General did not understand that Flournoy Company paid no attention to anything that was not state ordered. The Flournoy Company had the state courts in their pocket, and they had little reason to fear local government enforcement of the appellate court's decision. Beck and his counsel needed to come up with another plan if they were to stop the Flournoy Company. Breckenridge decided that their best chance

of success was in obtaining a broad injunction against the Flournoy Company. Although Conrad endorsed the idea, he suggested that if the injunction did not work out, authority to use military force might be the next step. Conrad did not pretend to know under what circumstances Breckenridge would ask for the injunction, but he cautioned the attorney to take care that it not present the Flournoy Company with an opportunity to contest the injunction's grounds. The Solicitor General was reluctant to use military force, but he feared that it was a remedy to which they might "ultimately be driven."²¹ Beck went to Omaha at Breckenridge's request, bringing with him a list of names of illegal lessees and descriptions of the land each held through illegal leases. Later, the two of them went to Lincoln to consult with Andrew J. Sawyer, the district attorney, who suggested that the bill of complaint include all illegal settlers on the both reservations. Back in Omaha, Breckenridge and Beck prepared the bill of complaint seeking an injunction against the Flournoy Company and 265 individual settlers. Breckenridge planned to submit the bill of complaint and request for injunction to the Circuit Court for the District of Nebraska. Beck hoped that the injunction would prevent the Flournoy Company from receiving any further payments from its sub-lessees.²²

In the meantime, Conrad contacted Breckenridge, inquiring whether he and Beck had considered the possible delay and expense that litigation under a separate bill against the trespassers would entail. Breckenridge admitted to Beck that this surprised him, since he was under the impression that the injunction was Conrad's idea in the first place.²³ Breckenridge telegraphed Conrad, explaining that he and Sawyer agreed that the expense of additional litigation would be much less than the cost of employing troops.

Furthermore, in Beck's opinion a "considerable number" of the illegal lessees named in the bill of complaint were likely to cease resisting the agent once served with the writ. Even if the injunction was not completely successful in releasing all the settlers from the Flournoy Company's grip, it would still reduce the numbers of illegal settlers on the reservations, and any military force eventually resorted to would be lessened proportionately.²⁴ If enough settlers obeyed the injunction, it was quite possible that the U.S. Marshal could handle the remaining settlers for their contempt of court. Beck did not really care either way. He, no doubt, would have just as soon have preferred to use troops, but his instructions from the Commissioner of Indian Affairs insisted that he "exhaust all legal remedies before applying for troops."²⁵ Breckenridge added that he had not yet had the chance to file the bill of complaint, but he planned on doing so that very day. While he was certain it was the most desirable action to take, he would hold off until he heard from Conrad.²⁶

Although the mandate of the Appellate Court was handed down, nothing had come of it. Beck wondered whether an injunction against the Flournoy Company would be granted or if troops were going to be sent. Although Beck had notified Flournoy Company tenants to vacate the land or lease through the agency, he reported that a large number of them simply ignored his ultimatums. Flournoy Company spokesmen had convinced the settlers that the agent had no authority, so many of the tenants decided to pay their 1895 rents to the Company. The agent pointed out that if something was not decided soon, the rents for 1895 would be completely lost to the Indians. Furthermore, the delay was reducing the chances of recovering land under the four remaining

injunctions then in force against the agent.²⁷ Beck was initially dismayed at Breckenridge's decision to hold off on filing the injunction because the delay prevented settlers from using their subpoenas as an excuse not to make payments on notes held by the Flournoy Company.²⁸

Beck later found out that even had Breckenridge filed for the injunction immediately, Judge Elmer S. Dundy would not even look at the bill of complaint. Not only did Dundy refuse to have anything to do with the injunction against the settlers, but he also refused to hear the other four injunction cases against Beck still pending in the Circuit Court for the District of Nebraska.²⁹ The constant uphill struggle that Breckenridge faced to get legal matters attended to in the local state courts was beginning to wear on the attorney. Since Judge Dundy had refused to consider his application for an injunction, Breckenridge had little choice but to travel to Saint Paul, Minnesota, in the hopes that Judge Sanborn might. Sanborn, however, refused to issue a mandatory injunction unless each of the 265 defendants were notified and a hearing was made. A discouraged Breckenridge telegraphed Conrad to suggest that, under the present circumstances, military force was now preferable. To his astonishment, Conrad replied that he should apply for individual writs of possession and have the U.S. Marshal serve them. As Breckenridge was aware even if Conrad was not, a writ of possession was not applicable to their case. Judge Sanborn had refused to order the writs on those grounds. Breckenridge doubted that Conrad would opt to accept the delay and expense involved in a hearing for the injunction. One of the few remaining options was use of the military.³⁰

Sanborn had grumbled to Breckenridge that he had suspected that Conrad had wanted to use military force all along, but was trying to dump the responsibility of directing its use onto the courts instead of shouldering the responsibility himself. Breckenridge warned Beck that when the agent made his requisition for troops to be careful not to use them to remove John B. Carey, B. T. Hull & Sons, E. J. Smith, and F. B. Hutchins and Sons. Their injunctions against Beck were still in effect and Dundy would likely slap Beck with contempt of court if he interfered with them. Sanborn refused to hear the injunction cases, but he arranged for a judge from Wyoming to hear them in Lincoln, Nebraska, on April 16. Breckenridge was satisfied with that arrangement, since he felt that any judge but Dundy would do.³¹ The news was good enough for Beck to legitimately report that he had exhausted every legal means to dislodge the Flournoy Company from the reservation and he made another formal recommendation for the use of troops.³²

The Department of the Interior was still not convinced that the military needed to get involved with the situation on the reservations. While Beck was awaiting a decision on his request, Sawyer had suggested increasing the Indian police force on the reservation to help with the evictions. Beck felt it worth a try and he formally requested permission to expand his police force by one captain and sixteen policemen. He made it clear that his latest request was in addition to, and not instead of, the request for military assistance.³³

To Breckenridge's surprise, Conrad had directed him to pursue the injunction through Sanborn, although it meant costly delays. Breckenridge filed for the injunction

through the U.S. Circuit Court for the District of Nebraska on March 21. Conrad later stated that he was always “decidedly adverse” to using troops, but was willing to do so if it was necessary. Judge Sanborn had given the defendants thirty days in which to reply to Breckenridge’s bill of complaint and request for injunction. Sanborn arranged for the Wyoming judge, last name Riner, to hear the case in Omaha on April 22. Conrad stated that if the injunction was awarded, he would direct the district attorney and the U.S. Marshal to employ all available means to enforce the injunction. If the use of civil force was still found to be inadequate, however, he would consider military force.³⁴

On March 22, 1895, the same day that Beck wrote the Commissioner requesting military support against the Flournoy settlers and the day after Breckenridge filed for an injunction in Saint Paul, James B. Sheean, of the law firm Smith and Sheean in Omaha, wrote Commissioner Browning, expressing interest on behalf of his client, the Flournoy Company, to arrange a settlement.³⁵ Perhaps suspecting the game was nearly up, the Flournoy Company had decided to offer terms. Sheean forwarded copies of a formal proposal signed by John Lemmon and John Myers to the Commissioner of Indian Affairs and the Secretary of the Interior. The proposal contained only two terms. First, the Flournoy Company agreed to surrender possession of the land in question on January 1, 1896. They reserved the right to remove all buildings and improvements. Second, the Flournoy Company promised to end all litigation it currently held against the federal government. With agreement of the courts, the Company suggested that all legal proceedings currently pending would be suspended. The Company would be allowed to collect rent from its tenants, and in turn, would pay the Indians according to the terms of

its lease. This offer was actually quite absurd since the Company's claim to the land was a pretended five-year lease with the four man Winnebago "council" in January 1891. The illegal lease under which they nonetheless continued to hold claim to the land was due to expire on January 1, 1896 anyway. The Flournoy Company had been seeking delay through the courts all along, and now that the end was nearly at hand they felt desperate enough to try anything. The Commissioner referred the proposition to Beck and left the decision up to him. Beck, who realized that Lemmon and Myers had tried to arrange a "truce" behind his back, flatly rejected the offer.³⁶

News spread quickly that the judge from Wyoming was due to arrive in Omaha on April 22, to rule on Breckenridge's request for the injunction against the Flournoy Company and the illegal settlers. Breckenridge reported that the illegal settlers understood that the United States intended to remove them from the reservations. He also advised Conrad that there had recently been some "friction upon the reservations" between a number of illegal settlers and Beck. The attorney believed that the action had been largely fomented by the Flournoy Company and "other persons" interested in keeping the settlers on the land. While the whole matter had attracted a great deal of local attention, the illegal settlers and their supporters anticipated Judge Riner's arrival with dread. Breckenridge suggested to Conrad that it might strengthen Beck's authority among the illegal settlers if word was leaked to the public that even if the injunction was denied, officials in Washington were determined to use the military to eject trespassers on the reservation.³⁷ Breckenridge suggested the same thing to Commissioner Daniel M.

Browning, adding that if Judge Riner was aware that military force was going to be used if the civil process failed, he might be more inclined to grant the injunction.³⁸

An article in the *Omaha World-Herald* quoted Breckenridge as saying that A. C. Abbott, ex-county judge of Thurston County, had told him that an organization of twenty men had planned to kill Beck if they were forced off the reservation. Abbott reportedly described the group of men as determined to stay unless put off by military force.³⁹ John Lemmon responded with a lengthy letter to the editor of the *Pender Republican*. Lemmon accused Breckenridge of making up the story about a group of men wanting to kill Beck in order to influence officials in Washington, D. C., to send the military. The letter warned that the Flournoy Company intended to stand by their tenants in the leasing dispute. Referring to the Agency as a “hotbed of rottenness,” and a “stench in the nostrils of honest men,” Lemmon warned the community that the situation was not only Beck against the Flournoy Company, but Beck against all of Thurston County, “every man, woman and child, both Indian and white.” Responding to Beck’s comment that he was a “damned anarchist,” Lemmon retaliated against the agent’s character, remarking that, “If this government has no better material out of which to make Indian agents, the sooner it goes out of business the better.” Lemmon accused Beck of concocting “deceptive schemes” to swindle Flournoy renters, and claimed that only through “the presence of some force more powerful than civil officers of the law” could Beck enforce such “unlawful proceedings.”⁴⁰

As Beck pointed out to the Commissioner, Lemmon published this and other similar “incendiary articles” like it for no other reason than to influence and confuse

ignorant settlers of the real facts.⁴¹ Lemmon's amateur propaganda, suggesting that his company's problems were Thurston County's problems, was a vain attempt to gain support and sympathy from the community and turn public opinion against Beck. His reference to the possible use of the military force to evict settlers indicates that he was aware it was being considered and also that he feared that if it came to that, his company would no longer be able to resist the agent.

Although Breckenridge, Beck and Sawyer were in Omaha on April 22 to be present at the hearing for the injunction against the Flournoy Company and the illegal settlers, neither Judge Dundy nor Judge Riner were in town. Riner was still in Lincoln hearing the cases of the four injunction suits against Beck. The cases of Frank B. Hutchens, (trustee for Chittenden) and Ernest J. Smith were both dismissed, but the suits of B. T. Hull and Sons and John B. Carey had gone to court. The previous week Breckenridge had been in Lincoln, trying to get all four injunctions dismissed. Unfortunately, Judge Dundy was also there, and he announced in open court in the "most emphatic terms" that he disapproved of the government's policy concerning the injunctions and he declared that he would not hear the cases "so long as there was another litigant in the court with a case ready to be heard."⁴² The two judges finally agreed to hear the case on the April 26. The court heard arguments for several hours, during which time, Beck later complained to the Commissioner that Dundy "acted throughout as if he were Counsel for the defendents [*sic*]."⁴³

Breckenridge was certain that Judge Dundy and Judge Riner disagreed on every point in the case but one. Consequently, the judges agreed to postpone the case until a

later date, despite “as vigorous a protest against further delay” as either Sawyer or Breckenridge could make without being charged with contempt of court. Breckenridge stated that afterwards, Judge Riner had confided in him that they were entitled to the injunction, but he had to agree with Dundy on his point that an injunction should not be granted on *ex parte* affidavits alone. Breckenridge lamented the decision, since he realized that Riner would probably not be in town when the case came up again June 1, which would leave the case at the mercy of Dundy. The attorney complained to Conrad that he had “not the slightest doubt in the world that because of the sympathy of Judge Dundy with the opposition, the machinery of the court will be used to obstruct as long as possible any action which the United States may authorize taken.”⁴⁴ Beck’s condemnation of Dundy was more succinct. The day after the hearing, the agent telegraphed Browning from Omaha, complaining that Judge Dundy had acted “. . . in accordance with the Counsel of the illegal lessees [*sic*].”⁴⁵ Beck believed that any adverse decision made by Dundy in the case could quickly be reversed in the Appellate Court, but he complained that Dundy was well aware of that too, which is why he had been reluctant to hear the cases and when forced to, maneuvered to postpone his decision.⁴⁶

Beck was convinced that the state courts were firmly committed to the Flournoy Company and the plight of the illegal settlers. He complained that the failure of the United States to secure justice through the courts had emboldened the trespassers and encouraged them to defy his authority on the reservations. Although his Indian police had evicted some settlers, many simply returned and threatened to resist being evicted a second time. Civilians, as well as county officials, had threatened the lives of his Indian

police. Beck understood that the Penderites had sworn in a “large number” of deputies and planned to arrest his Indian police. The agent was worried that his small, poorly armed Indian police force practically invited resistance. He felt that if he had a sufficient number of them, he could avoid trouble. While the agent clearly preferred to have a troop of cavalry sent to the reservations, he would settle for authorization to increase his police force. Beck felt it imperative to the dignity of the United States that the trespassers be removed from the reservations immediately.⁴⁷

Although Secretary of the Interior Hoke Smith finally acquiesced to Beck’s request for troops, Acting Secretary of War Joseph B. Doe refused to authorize them, stating that “it is not thought that the facts warrant the use of troops as requested.” Instead, Doe suggested that Captain Beck be furnished with a “sufficient number” of properly armed Indian police to evict the settlers.⁴⁸ A few days later, Doe authorized the delivery of twenty Springfield rifles and ammunition to the agent to arm his Indian police.⁴⁹ Upon Secretary Smith’s later request that War Department increase the number of rifles to seventy, Secretary of War Daniel S. Lamont amended the original order.⁵⁰ The Ordnance Office express shipped seventy .45 caliber, model 1884 Springfield rifles and 2,800 rifle ball cartridges from the Rock Island Arsenal to Beck to arm his substantially enlarged police force.⁵¹

Although the Circuit Court of Appeals had overturned Judge Dundy’s earlier ruling in favor of the Flournoy Company and had denounced the illegal settlers as trespassers, Agent Beck still faced stiff resistance in trying to clear the reservations. Sympathetic local courts continued to harass the agent at every opportunity. Bureaucratic

red tape in Washington also proved to be the source of some perplexing obstacles. Meanwhile the advocates of free-leasing in Pender continued to spread rumors and propaganda designed to confuse settlers and alienate public opinion against the agent, attempting to undermine support from the community. Unable to remove the illegal settlers in the face of such steep opposition, and having eliminated every means through the courts to enforce the Appellate Court decision, Beck finally resorted to the use of armed force. Although the War Department declined to send troops, it agreed to supply the agent with rifles and ammunition. What Beck did with them was yet to be seen.

NOTES

¹ William H. Beck to Commissioner D. M. Browning, July 19, 1895. Special Case 191. Boxes 299-302, National Archives and Records Administration, Washington, D. C. [SC191].

² *Beck vs. Flourney Live Stock and Real Estate Company*, December 1894.

³ *Ibid.*

⁴ Ralph W. Breckenridge to Commissioner D. M. Browning, December 20, 1894. SC191. #50213-94.

⁵ John R. Beck to Commissioner D. M. Browning, December 18, 1894. SC191. #50279-94.

⁶ John R. Beck to Ralph W. Breckenridge, December 19, 1894. SC191. #50218-94, enclosure 1.

⁷ Ralph W. Breckenridge to Commissioner D. M. Browning, December 20, 1894. SC191. #50213-94.

⁸ John R. Beck to Commissioner D. M. Browning, December 18, 1894. SC191. #50279-94.

⁹ *Ibid.*

¹⁰ Ralph W. Breckenridge to Commissioner D. M. Browning, December 20, 1894. SC191. #50213-94.

¹¹ William H. Beck, "Notice to Trespassers," January 1, 1892. SC191.

¹² William H. Beck to Commissioner D. M. Browning, January 2, 1895. SC191.

¹³ Commissioner D. M. Browning to William H. Beck, January 9, 1895. SC191.

¹⁴ Original newspaper clippings from "Pender Republican," January 4, 1895. SC191.

¹⁵ William H. Beck to Commissioner D. M. Browning, January 15, 1895. SC191. #2871-95.

¹⁶ Telegram, William H. Beck to Commissioner D. M. Browning, January 5, 1895. SC191.

¹⁷ Telegram, William H. Beck to Commissioner D. M. Browning, January 7, 1895. SC191.

¹⁸ Attorney General Richard Olney to Secretary of the Interior Hoke Smith, January 10, 1895. SC191. #4798-95.

¹⁹ William H. Beck to Commissioner D. M. Browning, January 7, 1895. SC191. #1640-95.

²⁰ Solicitor General Holmes Conrad to Secretary of Interior Hoke Smith, February 13, 1895. SC191. #7995-95.

²¹ Solicitor General Holmes Conrad to Ralph W. Breckenridge, March 5, 1895. SC191. #12658-95, enclosure 3.

²² William H. Beck to Commissioner D. M. Browning, March 16, 1895. SC191. #12207-95.

²³ Ralph W. Breckenridge to William H. Beck, March 16, 1895. SC191.

²⁴ Ralph W. Breckenridge to Solicitor General Holmes Conrad, March 16, 1895. SC191. #12658-95, enclosure 4.

²⁵ William H. Beck to Commissioner D. M. Browning, March 19, 1895. SC191. #12658-95.

²⁶ Ralph W. Breckenridge to Solicitor General Holmes Conrad, March 16, 1895. SC191. #12658-95, enclosure 4.

²⁷ William H. Beck to Commissioner D. M. Browning, March 8, 1895. SC191. #10846-95.

²⁸ William H. Beck to Commissioner D. M. Browning, March 19, 1895. SC191. #12658-95.

²⁹ Ralph W. Breckenridge to William H. Beck, March 19, 1895. SC191.

³⁰ Ralph W. Breckenridge to William H. Beck, March 20, 1895. SC191.

³¹ Ibid.

³² William H. Beck to Commissioner D. M. Browning, March 22, 1895. SC191. #12884-95.

³³ Telegram, William H. Beck to Commissioner D. M. Browning, March 29. SC191. #13380-95.

³⁴ Solicitor General Holmes Conrad to Secretary of the Interior Hoke Smith, April 2, 1895. SC191. #14218-95.

³⁵ James B. Sheean to Commissioner D. M. Browning, March 29, 1895. SC191. #13575-95.

³⁶ Copy of Proposal, J. S. Lemmon and J. F. Myers to Secretary of the Interior Hoke Smith, March 29, 1895. SC191. #13575-95.

³⁷ Ralph W. Breckenridge to Acting Attorney General Holmes Conrad, April 5, 1895. SC191.

³⁸ Ralph W. Breckenridge to Commissioner Daniel M. Browning, April 5, 1895. SC191.

³⁹ "Mr. Breckenridge tells the History of the Trouble with the Police" Omaha World Herald, April 3, 1895.

⁴⁰ J. S. Lemmon to Editor, Pender Republican, April 3, 1895. Newspaper clipping in SC191.

⁴¹ William H. Beck to Commissioner D. M. Browning, April 8, 1895. SC191.

⁴² Ralph W. Breckenridge to Solicitor General Holmes Conrad, April 27, 1895. SC191. #19321-95.

⁴³ William H. Beck to Commissioner D. M. Browning, April 30, 1895. SC191. #19321-95.

⁴⁴ Ralph W. Breckenridge to Solicitor General Holmes Conrad, April 27, 1895. SC191. #19321-95.

⁴⁵ Telegram, William H. Beck to Commissioner D. M. Browning, April 27, 1895. SC191.

⁴⁶ William H. Beck to Commissioner D. M. Browning, April 30, 1895. SC191. #19321-95.

⁴⁷ William H. Beck to Commissioner D. M. Browning, May 17, 1895. SC191. #21688-95.

⁴⁸ Acting Secretary of War Joseph B. Doe to Secretary of the Interior Hoke Smith, May 31, 1895. SC191.

⁴⁹ Acting Secretary of War Joseph B. Doe to Secretary of the Interior Hoke Smith, June 3, 1895. SC191.

⁵⁰ Secretary of War Daniel S. Lamont to Secretary of the Interior Hoke Smith, June 10, 1895. SC191.

⁵¹ Acting Chief of Ordnance Charles Sholes to Captain William H. Beck, June 14, 1895. SC191.

CHAPTER SIX

TALES OF WOE

“ . . . A public man rarely receives justice at the hands of a newspaper reporter. Unworthy men are very often exalted and praised by them, while worthy men have been beaten down and traduced.”¹

William V. Allen
U.S. Senator, Nebraska
August 1, 1895

News that Agent William Beck had received authorization to enlarge his Indian police force and arm them with government rifles in order to evict Flournoy settlers alarmed Company officials and the free-leasing faction in Pender. Although they had been successful at keeping the agent at bay through their influence in the local courts and law enforcement agencies, a large armed force under the agent's control was a serious threat to their interests. In early July 1895, Beck had begun to use his Indian police to evict the remaining Flournoy settlers from the Winnebago Reservation. What had often been analogized in the local newspapers as an ongoing “war” between the agent and “General” William Peebles, complete with battles won and lost, was moving closer to becoming the real thing.

The reaction of the Penderites to Beck's latest move was swift. Many of the evicted settlers who could not or would not re-lease through the agency assembled in Pender and swore out complaints against the Indian police. Thurston County Sheriff John Mullin, reportedly with a “large number of deputies,” proceeded to re-establish the evicted settlers on their land. When Indian police were encountered, the size of Mullin's

force apparently convinced the still outnumbered Indians to retreat to the agency and no confrontation occurred between the opposing armed forces.² On July 9, 1895, Flournoy Attorney Harry C. Brome secured from Judge W. F. Norris in Ponca, Nebraska, an injunction prohibiting Beck and his men from evicting the Flournoy settlers from the Winnebago Reservation.³ The injunction specified that the settlers should remain on the land until January 1, 1896, precisely the day that many of the original Flournoy leases expired.⁴ Sheriff Mullin attempted to serve the injunction on Beck at the agency sometime on the 17th or 18th of July, but the agent was not there, having left for Sioux City, Iowa on agency business.⁵ Instead, Mullin read the injunction to Henry French and George Rice Hill, two members of Beck's Indian police, and left a copy of the notice of injunction on Beck's desk at the agency.⁶

On the evening of July 17, William E. Peebles and G. S. Harris arrived in Omaha to purchase guns and ammunition. The men meant to purchase 100 Winchester repeating rifles, 100 shotguns and ammunition ostensibly to arm, "special deputy sheriffs" that, according to Peebles at least, Sheriff Mullin had requested to assist enforcement of the Norris injunction.⁷ However, George F. Phillips later swore in an affidavit that on July 17, Peebles had solicited John Tucker and himself to sign a petition to purchase guns ostensibly for the purpose of supporting the sheriff in enforcing the injunction against Beck. Phillips claimed that he told Peebles that he already had a gun and did not need to buy another, to which Peebles reportedly inquired whether Phillips was willing to assist the sheriff. Phillips said that he would only if Mullin specifically requested help and deputized him in accordance with the law. Peebles made no reply. Later that morning,

Phillips saw Mullin and asked whether the sheriff intended to take on deputies to assist him. He was surprised to find out that Mullin had no knowledge of Peebles' petition to arm citizens as special deputies, nor did the sheriff feel he needed such help.⁸ Peebles apparently took it upon himself to organize an armed extralegal posse, fooling settlers by giving them the impression that his efforts were legitimate and on the behalf of the sheriff.

Peebles explained to a newspaper reporter in Omaha that while the citizens of Pender were not "warlike" people, they did intend to see that Beck obeyed the law. He claimed that Beck had already received notice of the injunction but continued to evict settlers. The agent and his Indian police, Peebles dramatically alleged, treated the settlers roughly, handcuffing the men "like convicts" and hauling women and children in wagons to the edge of the reservation, where the settlers and their belongings were unceremoniously "dumped in a heap."⁹ Ironically, in another interview, Peebles portrayed Beck as the leader of a land ring willing to adopt "violent measures" to secure lucrative profits at the expense of innocent settlers. In yet another ironic twist, he claimed that although the people of Pender had tried to settle the question of jurisdiction in a competent court, the agent had "begged the issue" and thwarted justice.¹⁰ This was only a taste of the new propaganda campaign that he and the Pender faction embarked upon in their effort to discredit Beck and the agency administration.

Peebles complained that the businessmen of Pender were tired of the agent's "lawlessness" and "proposed to see that justice was meted out." He further reported that Sheriff Mullin supposedly intended to arrest any Indian police that violated the Norris

injunction, and Peebles boasted that if Beck or his Indian police resisted, “trouble of a serious nature” would follow.¹¹ After the reservations were “clear” of the Indian police Mullin and his “special deputies” would arrest Beck as well. However, if what George Phillips later reported was true, Peebles’ claims were nothing more than sensational propaganda. When asked about the possibility that the military might interfere, Peebles dismissed the thought, confidently predicting that the War Department would “keep its hands off” the matter.¹² His portrayal of innocent white citizens being roughly and unlawfully treated by Indians was nothing more than propaganda aimed at bolstering general support for the Pender faction in its struggle against the agent.

Regardless of the dubious nature of Peebles’ actions, the following evening boxes of guns arrived in Pender, where dozens of excitable and curious townspeople had gathered to see what was going on. Although rumors spread that Peebles had secured 150 Winchesters and 50 Marlin long range guns with 10,000 rounds of ammunition, Peebles himself later admitted that he only managed to acquire about 100 rifles of two different makes and sizes, along with shotguns and only 5,000 rounds of ammunition.¹³ Despite the arrival of the weapons and the great excitement among interested settlers, Sheriff Mullin refused to deputize any of them.¹⁴

Peebles’ falsehoods were not limited to misrepresenting the plans and activities of Sheriff Mullin. He apparently made up inflammatory stories about Beck as well. Peebles knew that the sheriff had planned to visit the agency on the 17th in order to serve Beck with the Norris injunction. An Omaha reporter quoted Peebles as having said that upon receiving the injunction, Beck had decided to ignore it and had continued to evict settlers

from the reservations.¹⁵ Assuming the quote was accurate, Peebles must have made the comment on or before July 18, since he reportedly arrived in Omaha the night of the 17th. It is reasonable to assume that the reporter took the quote that night or the next day before the newspaper went to print. In either case, it was extremely unlikely that Peebles knew whether Mullin had successfully served the injunction or not by that time, much less how Beck may have responded to it. The agent, in fact, was not available when Mullin called, having traveled to Sioux City shortly after hearing of the Norris injunction to report the news to his superiors and request instructions of whether to obey it once it was served. Since Beck traveled straight from Sioux City to Ponca, Nebraska on the 19th, he did not come into physical possession of the injunction notice until his return to the agency on the 20th, at the earliest. In response to Beck's earlier request that the Indian Bureau provide instructions on how to proceed in face of the injunction, the Commissioner told him to follow the district attorney's instructions to obey the court order. Peebles charge that Beck had both received the injunction and had chosen to ignore it is clearly false, yet another example of his unscrupulous character and devious scheming.

At the same time that Beck reported the news of the injunction, he informed his superiors in Washington, D. C., that Peebles had gone to Omaha to secure guns and ammunition to arm evicted Flourney settlers.¹⁶ The agent admitted to a reporter for the *Sioux City Tribune* that the news did not come as a surprise to him. As he understood it, the group of men who signed Peebles' petition consisted largely of desperate men whom he had already evicted from the reservation.¹⁷ As a precaution, Beck requested the Commissioner of Indian Affairs authorize troops to protect his Indian police from

interference by the civilian authorities and the rumored “Pender posse.”¹⁸ The agent did not anticipate bloodshed, but warned that he would enforce the laws of the United States, “no matter at what cost.”¹⁹ While the agent predicted that not one shot would be fired, he warned that even one shot would be as bad as 1,000 as far as the repercussions went.²⁰ Had the agent been aware of Peebles’ latest statements, he may have been less optimistic in his assessment of the situation. Commissioner of Indian Affairs Daniel M. Browning instructed Beck to direct the matter to District Attorney Andrew J. Sawyer. Sawyer sent for a copy of the bill on which Judge Norris had granted the injunction and in the meantime directed the agent to obey the order. The next day Beck left Sioux City for Ponca, Nebraska, where he hoped to see Judge Norris about the injunction.²¹

In the meanwhile, the *Omaha World-Herald* quoted Sawyer as having compared Peebles with the infamous John Brown raid on Harper’s Ferry. The way the district attorney saw it, what the Penderites were doing was nothing short of armed insurrection against the federal government.²² Peebles responded that such a comparison was not accurate, since John Brown sought to “accomplish a good object by unlawful means” and the citizens of Pender sought only to sustain the law. Peebles also commented that Commissioner Browning was neither judge nor jury for Nebraska, nor was Beck the “lord high sheriff” of Thurston County. The citizens of Pender, he claimed, were simply enforcing the lawful order of local state court. The firearms were necessary should the Indian police violate the court order and continue to evict settlers from the reservation. He also took the opportunity in a letter to the editor to administer another dose of his “poor settler” propaganda, suggesting that Beck should wait for the Supreme Court’s

decision on the appeal, rather than push forward with evictions. Peebles slandered Beck, portraying the agent as determined to “make homeless a lot of earth’s poor toilers” so that the agent’s own alleged land ring cronies could profit.²³ The appearance of these accusations echoed the allegations in the apparently forged letters that had appeared in June.

Peebles’ rhetoric apparently had some effect upon the public. An anonymous letter to the editor of the *Omaha World-Herald* called for the federal government to investigate Beck. The letter was openly sympathetic toward the settlers, claiming that nothing good could come from evicting the “250 families” so close to harvest time. Appealing to the readers’ sense of humanity, it warned that most of the hard-working settlers would become paupers for the winter if forced off the land without the chance to harvest the seasons’ crops. It also suggested that “something more” than a sense of duty must have driven the agent to evict the settlers, and it implied that Beck’s “favorites” lurked behind the scenes, waiting to rush in and appropriate the settlers’ crops.²⁴ Although it was possible that the piece was submitted by Peebles himself, the style was not as sensational or inflammatory as his typical writing, and the impression is of someone responding to the existing propaganda, not creating it. It is evident that the writer of this letter was acquainted with some of the other accusations towards Beck floating around the community at the time, but the author was ignorant or overlooked several important facts. The figure of 250 families is grossly exaggerated. The number of effected lessors at the time was less than forty. The writer also ignored the fact that all settlers had been given the opportunity to harvest their original crops, regardless of whether they decided

to leave the reservation or re-lease through the agency. In both cases, Beck had expressly warned the settlers not to plant next seasons' crops until each had secured the land through the agency. Although not completely accurate, the anonymous letter to the editor indicates that Peebles propaganda campaign was having some impact on the community.

Discrediting the agent through the local newspapers was not enough. In order for Peebles' and his associates' plan to work, they needed to get Beck removed from his position as agent. To this end, the Pender gang worked covertly to subvert the Commissioner's confidence in the agent. Although conclusive proof is lacking, there is little doubt that Peebles was behind the scheme to defame the agent. By inducing Indians to sign a petition to remove the agent, or in some cases simply forging their names to it, Peebles and his Pender gang hoped to undermine the Indian Office's trust in their agent. In some instances, poorly forged letters were sent to the Commissioner or Secretary of the Interior, purporting to be from individual Indians, seeking to "blow the whistle" on Beck's alleged mismanagement of the agency and the supposed criminal abuse of his power.²⁵

One forged letter, purported to be from an Omaha Indian named "Siles Philips," unfavorably criticized Beck's administration, implicating the agent and his staff, namely one of his clerks, Thomas Sloan, in illicit leasing practices. While the penmanship of the letter was reasonably good, the grammar and spelling were especially poor, almost as if the forger tried too hard to make it appear as though a semi-literate Indian had written it.²⁶ Upon closer examination, however, Beck showed that there was no Omaha Indian

named Siles Philips, though there was one by the name of Cyrus Phillips.²⁷ Furthermore, Indian Inspector James McLaughlin interviewed Cyrus Phillips and allowed him to inspect the letter. Not only did Cyrus deny having written the letter, but his signature to an affidavit signed in the presence of McLaughlin did not match the signature on the forged letter. The Inspector concluded that the original letter was a forgery.²⁸

On another occasion, a similar letter supposedly written by Omaha Indian John H. Bear charged Beck with leasing Omaha land to speculators against the wishes of the Indian owners. The letter implicated Thomas and John Ashford, the agency traders, agency clerk Thomas Sloan, Nick Fritz, C. J. O'Conner, Beck's son-in-law Charles McKnight, and others as members of an illicit land ring operating out of the agency. In a sworn statement witnessed by Sloan, the real John H. Bear denied writing the letter. Of course, the fact the Sloan witnessed the signing of the affidavit by Bear is somewhat suspect since the forged letter implicated him. However, Bear's handwriting on the affidavit does not match that purported to be his on the original letter, again suggesting forgery. The fact remains that *someone* wrote the letters. It is probable that both letters were forged by unknown parties associated with the Pender faction, most likely Peebles himself, or at least someone under his direction. Both letters were written with the intent to bring into question the agent's integrity. Both letters were written in June, about the same time that similar accusations began to appear in local papers.²⁹

In another attempt to subvert the agent, Peebles managed to arrange for a delegation of Nebraska senators and congressmen to visit Thurston County on an unofficial "fact-finding" mission.³⁰ The congressional entourage included Senators

William V. Allen and John M. Thurston, and Representatives George D. Meiklejohn, W. E. Andrews and Jesse B. Strode. The ostensible purpose of the visit was to obtain the Omahas' feelings regarding another allotment and to investigate the controversy and allegations concerning the management of the agency. Beck had returned from Ponca, Nebraska and Sawyer came up from Omaha to be present at the meetings. In Pender, a special committee of twenty-two citizens was appointed to meet and escort the delegation during their stay.³¹ Peebles had plenty of opportunity to influence the congressmen, who arrived in Pender on Tuesday, the 23rd. Peebles put the delegation up in his hotel and, that evening, the congressmen heard complaints from a group of evicted settlers.³² The official stenographer of the proceedings was absent from this initial meeting, however, and as a result no records of the discussion were made.

District Attorney Sawyer swore out a complaint against Peebles, George Harris, John Myers, William Myers, George Myers, John Lemmon, W. S. Garrett and others before Justice of the Peace Ashley Londrosh, charging the men with "conspiring willfully and unlawfully to oppose the government by force." U. S. Deputy Marshal Henry Boehme arrested Peebles and Myers on the Omaha Reservation the following day after a luncheon with the congressional delegation on the lawn in front of the Indian school, but not before Peebles spoke briefly to the delegation. Lemmon and Harris, apparently not members of the Pender committee, were absent from the luncheon and remained at large. The arrests reportedly came as a complete surprise.³³

It became evident to an eyewitness correspondent from the *Bancroft Blade* that the proceedings at the agency on the 24th were "all a farce" and that the meeting was

“packed” with “would-be land speculators” from Pender. The reporter commented that Strode, Meiklejohn, and Thurston had clearly sided with Peebles, despite what he felt was their weak defense against the charges made by Beck at the meeting. The reporter’s version of the meeting concluded that the congressional delegation was “clearly prejudiced” against the agent from the beginning.³⁴ A short article in the *Blair Pilot* announced that the congressmen would have been lucky to leave Pender without being drafted into “General” Peebles’ “army,” and suggested that the congressional visit was nothing more than a “smart ruse” to divert attention from the real issue.³⁵ Indeed, Beck was certain that the whole investigation was nothing more than another attempt by Peebles to get an additional Omaha allotment and open the reservation to the “mercy of the rapacious land-pirates,” while causing further delays which would allow his associates to collect on notes. Delay here was crucial, since the payment of notes was directly linked to the ability of the tenants to harvest and sell their crops.³⁶

After hearing the Omahas speak about allotment, the delegation proceeded to the Winnebago Reservation. Upon arrival they ate dinner and, at 9 o’clock that evening, assembled at the Agency to hear more testimony. By that time, however, the Winnebago Indians who had assembled at the agency earlier that day in anticipation of the meeting had since returned home.³⁷ According to Beck, the subject of Indian legislation “was only touched upon so far as it related to the interest of the white settler.” Nineteen settlers testified that day, claiming in some way or another to be victims of blackmail by an agency sponsored land syndicate. Although several men associated with the agency were implicated, no one directly linked Beck to the alleged corruption. The citizens’

committee of Pender and the congressional delegation left the Winnebago Agency late that evening with plans to reassemble the following evening at the opera house in Pender.³⁸

Taken at face value, the allegations of the nineteen men certainly appear to be the most damning evidence questioning Beck's administration at the agency. Upon closer investigation, however, the claims of corruption and impropriety are suspect at best. The nineteen men on record complaining of extortion and blackmail were the exact same men who Inspector McLaughlin had interviewed earlier that summer and who he concluded were liars. Beck had described them as falling under the category of "desperate men" that could either not afford a formal lease under the agency restrictions or were of such character that he or the Indian allottee simply refused to lease to them. Beck explained that as agent, he was the sole arbiter of whether a potential settler's presence on the reservation qualified as a positive influence and a desirable role model for the Indians. In many cases, the Indians themselves refused to transact business with the interested party because of previous experiences with ill treatment, unfair dealings or bad reputations.³⁹

The testimony of the Flourney witnesses is unreliable, inconsistent, and otherwise suspect. Of the individuals whom the witnesses testified as having been involved in corruption at the agency, only Beck and Thomas Ashford, the agency trader, were present to defend themselves. Collectively, their accusations only implied the agent's involvement by simple association. Not a single accuser directly implicated Beck to any wrongdoing, but simply assumed the agent was behind the graft because of his position as agent. Beck described Ashford's "opportunity" to speak in on his own behalf

as agent. Beck described Ashford's "opportunity" to speak in on his own behalf concerning the allegations as more of a "prosecution" by the Congressmen, than the behavior of an impartial investigation.

The individual allegations of agency corruption, furthermore, were noticeably similar in substance. The same small group of men, with a few exceptions, were implicated, although only one of them, Ashford, was present to defend himself against the allegations that evening. Beck complained that the tone of Thurston's voice was that of someone "interrogating a criminal" rather than the questioning of an impartial inquiry. Although Beck's son John was among those implicated earlier by the complainants, and his name was reportedly on the list the delegates had acquired the night of the 23rd, both Allen and Meiklejohn denied that John's name had appeared on the list. These men claimed that it had been a mistake and that at no time had John been implicated. The congressmen only admitted this, however, after they had found out that John Beck was present that evening and was willing to defend himself against the allegations. Although the delegation denied John was on the list that night, later when the list appeared in the newspaper, his name inexplicably headed the list.⁴⁰ Beck believed that although the ostensible reason for the congressional visit was to obtain information for future Indian legislation, the real reason was to investigate the agency's alleged corruption, as intimated by the Pender faction.⁴¹

It was obvious to Beck that the Congressional delegation had been fed additional information ahead of time, most likely the first night they arrived in Pender at the town meeting. What transpired the night of that initial meeting, which various persons alluded

reporter, despite the congressmen's assurances that comprehensive and inclusive transcripts were going to be made of the *entire* visit. There is no record of what occurred during this initial meeting in Pender. When viewed in context of the larger picture, the allegations of agency corruption appear for what they really were, a concocted plot on the behalf of the Pender Ring and Peebles to cast a pall over the impeccable administration of Agent Beck. The accusations came as only the last in a long line of attempts by the Penderites to slow or reverse the tide of Beck's late legal successes against their interests and that of the land syndicates.

By stirring up sympathy in the congressman for the so-called "plight" of what they represented as poor, innocent settlers, the Pender land ring was really looking out for its own selfish interests. The reason behind the ploy was not lost on Beck. He was aware that John F. Myers, the company's treasurer, had earlier sent notifications to regional grain elevators and lumber companies, warning those businesses not to buy crops from Flournoy tenants. The notification listed the names of the tenants as well as the amounts owed to the Flournoy Company on notes for rents due at the end of 1895. Thirty-three of the seventy-two tenants on the Flournoy Company's blacklist had since re-leased legally through the agency. The liens held by the Company on those individuals' crops and improvements amounted to \$8,451.00, slightly over half of the total \$16,524.94 the Company had hoped to collect from its sublessees for the 1895 crop season.⁴² The Flournoy syndicate and others interested parties held bank notes in the form of liens on the settlers' crops. The agent was well aware that the notes held by the local banks and land companies were tied to the settlers' ability to harvest their season's crops.

The congressional committee had been strongly influenced from the beginning and despite its claims at impartiality, was predisposed very early against the agency and its position in the matter concerning the settlers. The transcripts of the meetings seem to bear out Beck's impression as the bulk of time was spent investigating leasing issues and comparatively little time was spent on matters concerning the Indians. Beck's version of events that transpired during the informal congressional investigation as reported to his superiors in Washington was completely substantiated by the official transcripts published months after the event.⁴³ District Attorney Sawyer, who was present and witnessed the entire meeting, later commented that Beck had handled himself admirably, despite what the yellow press had spuriously labeled Beck's "Ire." To suggest that the sensational newspaper renditions of the event were wholly or in part embellished would be a monumental understatement.⁴⁴ Beck consistently told the truth, while many local newspapers knowingly or unwittingly reported false and sensationalized versions of the events, having obtained their information from heavily biased sources and those seeking to discredit the agency.

The ploy of the Penderites had the desired effect. While in Pender on July 25, the congressional delegation telegraphed Hoke Smith in Washington urging the Secretary of the Interior to suspend the evictions. They argued that the evictions were causing tremendous loss of crops to "innocent" settlers.⁴⁵ Acting Secretary John M. Reynolds replied the same day, stating that the Department was well aware of the situation and stood behind the agent in his actions, which he further pointed out were in accord with the decision of the Courts. Reynolds suggested that the congressional delegation advise

stood behind the agent in his actions, which he further pointed out were in accord with the decision of the Courts. Reynolds suggested that the congressional delegation advise the settlers to take leases under the Department regulations.⁴⁶ Not satisfied with Reynolds' decision, Senator Allen shot back to the acting secretary, labeling the evictions as "moral crimes" and insisting that "considerations of humanity and justice" demand a halt to the evictions.⁴⁷ Senator Thurston also telegraphed Reynolds, calling the evictions an "act of barbarism not to be tolerated under free government," and referred him to the letter in which their concerns were described at length. Thurston demanded that the Interior Department officially investigate the agency immediately.⁴⁸ The senator later followed up his relatively brief telegram with a lengthy letter in which he explained that the delegation was not concerned with the Flournoy Companies' legal battle against the Government, but rather the plight of the innocent settlers. Allegations of corruption within the Indian agency, he felt, should not be ignored.⁴⁹ Thurston was certain that a thorough and impartial investigation of the agency would change the views of the Department on the matter.⁵⁰

Rather than reply to Reynolds, Congressmen Meiklejohn went to the papers. The congressman complained to a reporter for the *Omaha World-Herald* that Reynolds' action in the matter concerning the evictions was a breach of etiquette and that the Acting Secretary should have waited until he received the delegates' letter before responding. He also admitted that the congressional delegation had been surprised to find out the department was aware of what was going on and even more so that they continued to endorse Beck's involvement regardless. The degree to which the congressional delegates

had been completely misled by their visit is indicated by Meiklejohn's statement in which he expressed his concern that, "the settlers ought to be protected in their possession of the crops as innocent holders of the leases, regardless of their legality." If the Department did not conduct an official investigation into the agent's apparent reckless handling of affairs, he vowed, then Congress would.⁵¹

A less-restrained editorial in the *Omaha World-Herald* complained that the settlers had become "shuttlecocks in the game played between the Beck and anti-Beck factions." The article portrayed Beck as a hot-headed and passionate man who could not be trusted to run the agency. It also attacked Reynolds and called his reply to the congressional delegates hasty and discourteous and accused him of having a "mad desire" to support the agent, "right or wrong."⁵² Amid the flurry of misled accusations and cries of injustice, Beck flatly denied the reports in the local newspapers of his alleged discourtesy to the congressmen. The official transcripts, compiled by the stenographer employed by the delegation to record the meetings, later substantiated Beck's claim. Although during one incident, when provoked by John Myers, Beck did seem to become noticeably excited, the agent never directed his anger to the congressmen, although the newspaper stories later completely misrepresented the event.⁵³

Beck later wrote to Senator Allen regarding an exceptionally inflammatory article in the *Sioux City Journal*, and requested that the senator, who knew the truth of the matter, publicly set the record straight.⁵⁴ Although the agent was impressed by the senator's conciliatory tone in what appeared to be a heartfelt letter, he remained disappointed by Allen's staunch refusal to officially repudiate the story. Allen explained

to Beck that it would be better to just let the matter go, rather than to draw further attention to it.⁵⁵ Beck believed that the *Sioux City Journal* had obtained the story from its correspondent in Pender. He was confident that the correspondent was the same source that supplied the dispatch to the *Omaha World-Herald* earlier. The agent's ultimate vindication in the matter had to wait several months until after the actual transcripts recorded during the alleged event were finally transcribed and printed for the record.⁵⁶

The congressional delegation met in conference the morning of the 25th and agreed to submit a telegram to Secretary of the Interior Hoke Smith. They requested that he suspend approval of any further leases made by the agent and "in the interests of justice," to order the agent to cease in prosecuting any further evictions. Their request seemed absurdly redundant, since Beck had already ceased with evictions on the advice of the District Attorney, to whom the Commissioner had already directed Beck to obey concerning the injunction. Apparently, the Pender committee had convinced the congressmen that Beck had already ignored the injunction and continued to evict settlers, which was false. Nevertheless, acting on the Pender committee's version of events, the delegation concluded that the evictions constituted "rank injustice" to what was represented as a large number of honest and hard-working citizens who earnestly felt that their leases were valid. Apparently unaware or unconcerned with the agent's numerous and repeated warnings to the illegal settlers regarding leasing, the congressmen felt it was wrong that the government failed to evict the settlers until *after* their crops were planted and "practically matured." Again, the Pender faction completely misrepresented the true situation. By selectively omitting critical aspects of the controversy, namely that the

situation in an equitable manner. They insisted that the government must give the settlers an opportunity to remove their crops, unaware that the government had already done so and all but the most desperate settlers had satisfactory re-leased through the agent. Finally, the testimony heard by the congressmen alarmed their “high sense of public duty,” towards the settlers who had won their sympathies. The delegation urged an “immediate and searching” investigation into the administration of the Omaha and Winnebago Agency.⁵⁷

At no time before the congressional delegation’s visit to Thurston County had there been a single accusation involving an agency-sponsored land ring operating on the reservation. The confrontation between Beck and the “free-leasing” faction in Pender had hitherto been fought out in local and regional courts. The Penderites had rested their tenuous legal case against the assertion of federal jurisdiction over the reservation solely on contorted and self-serving legal interpretations of the citizenship clause of the Dawes Act. Exerting strong social and political ties in the community, they tied the matter up in sympathetic state courts, where a series of excessive and arguably calculated delays worked toward their advantage. When the case could no longer be reasonably delayed, the Pender faction exerted their influence to secure an ultimately favorable decision from Judge Dundy. Although Beck and his legal team immediately appealed the decision, the process entailed six further months of delay. Once higher federal courts backed Beck’s claim to jurisdiction, it appeared to the land syndicates and other speculators that they would be forced to acquiesce. The Penderites, however, still had another trick up their

sleeve. To that end, the Penderites embarked upon a devious scheme to traduce and denigrate the agent with hopes of securing his removal.

Only during the weeks following the Circuit Court of Appeals decision, which flatly denied the legality of the Flournoy Company leases and completely reversed Dundy's erroneous decision on several counts, did the Penderites resort to alternative tactics. The Flournoy Company had failed to secure a *supersedeas* in their appeal to the Supreme Court. The failure to obtain a *supersedeas* precluded the possibility of an extension of the injunction against the agent during the interim until the appeal on the case was heard. The federal courts had confirmed the agent's jurisdiction and authority once already and few men in the know at Pender were not so naive as to think the Supreme Court would overturn that decision in their favor. Worse yet for the die-hard advocates of free-leasing, Beck's claim to authority over the reservation lands was substantially bolstered by the enlargement of his Indian police force. If Beck insisted on disrupting their crime against the Indians, perhaps it was time to take their chances with another, less scrupulous agent. It is likely that Peebles and his associates in the Pender land ring masterminded an entirely different approach to secure the ends favorable to their interests.

NOTES

¹ William V. Allen to William H. Beck, August 1, 1895. Special Case 191. Boxes 299-302, National Archives and Records Administration, Washington, D. C. [SC191].

² Annotated newspaper clipping, "The Reservation Situation," West Point Republican, July 26, 1895. SC191.

³ "Ewing Held for Trial," Omaha World-Herald, July 23, 1895; Newspaper clipping, "Reviewing the Trouble," West Point Republican, July 26, 1895, in SC191.

⁴ "Settlers' Secret Mission," Omaha World-Herald, July 19, 1895.

⁵ Unidentified newspaper clipping, probably *The Pender Times* or *The Pender Republican*, July 18, 1895, SC191.

⁶ "Settlers' Secret Mission," Omaha World-Herald, July 19, 1895.

⁷ "He Comes To Buy Firearms," Omaha World-Herald, July 18, 1895.

⁸ Affidavit of George F. Phillips, August 26, 1895, SC191.

⁹ Unidentified newspaper clipping, July 18, 1895, SC191.

¹⁰ "He Comes To Buy Firearms," Omaha World-Herald, July 18, 1895.

¹¹ Ibid.

¹² Unidentified newspaper clipping, July 18, 1895, SC191.

¹³ Newspaper clipping, "Arms Arrive at Pender," The Sioux City Journal, July 19, 1895, SC191.

¹⁴ Hand written annotation by William Beck on newspaper clipping, "The Reservation Situation," West Point Republican, July 26, 1895, SC191.

¹⁵ "He Comes To Buy Firearms," Omaha World-Herald, July 18, 1895.

¹⁶ Telegram, William H. Beck to Commissioner D. M. Browning, July 18, 1895. SC191.

¹⁷ Untitled newspaper clipping, The Sioux City Tribune, July 18, 1895, Vol XI, No. 251, SC191.

¹⁸ Telegram, William H. Beck to Commissioner D. M. Browning, July 18, 1895. SC191.

¹⁹ Untitled newspaper clipping, The Sioux City Tribune, July 18, 1895, Vol XI, No. 251, in SC191.

²⁰ "Arms Arrive at Pender," The Sioux City Journal, July 19, 1895. SC 191.

²¹ William H. Beck to Commissioner D. M. Browning, July 19, 1895. SC191.
"Beck Calls On Judge Norris," Omaha World-Herald, July 20, 1895.

²² "War On the Government," Omaha World-Herald, July 20, 1895.

²³ "Mr. Peebles Makes Answer," Omaha World-Herald, July 22, 1895.

²⁴ "Time to Call Beck Down," Omaha World-Herald, July 22, 1895.

²⁵ William H. Beck to Commissioner D. M. Browning, June 26, 1895. SC191.

²⁶ Siles Philips to Secretary of the Interior Hoke Smith, June 10, 1895 (apparent forgery). SC191. #26791-95, enclosure #3.

²⁷ William H. Beck to Commissioner D. M. Browning, June 26, 1895. SC191. #26791-95.

²⁸ Affidavit of Cyrus Phillips, witnessed by Inspector James McLaughlin, June 26, 1895. SC191. #26791-95, enclosure #2.

²⁹ William H. Beck to Commissioner D. M. Browning, July 16, 1895. SC191. #30039-95. John H. Bear to Commissioner of Indian Affairs, June 29, 1895 (apparent forgery). SC191; Affidavit of John H. Bear, July 15, 1895. SC191.

³⁰ William H. Beck to Commissioner D. M. Browning, July 19, 1895. SC191.

³¹ "Ewing Held for Trial," Omaha World-Herald, July 23, 1895.

³² Newspaper clipping, "The Agency Trouble," The Bancroft Blade, July 26, 1895, SC191; Newspaper clipping, "The Reservation Situation," West Point Republican, July 26, 1895. SC191.

³³ “Peebles A Prisoner,” Omaha World-Herald, July 25, 1895.

³⁴ “The Agency Trouble,” The Bancroft Blade, July 26, 1895 in SC191.
Newspaper clipping annotated by William Beck.

³⁵ Untitled newspaper clipping from The Pilot, Blair, Washington County, Nebraska, July 25, 1895, in SC191. William Beck penciled a comment in the margin, stating that he felt the article was the “gist” of the whole affair.

³⁶ William H. Beck to Commissioner D. M. Browning, July 31, 1895. SC191. #32564-95.

³⁷ William H. Beck to Commissioner D. M. Browning, July 31, 1895. SC191. #32564-95.

³⁸ “Beck’s Ire,” Omaha World-Herald, July 25, 1895.

³⁹ U.S. Indian Inspector James McLaughlin to Secretary of the Interior Hoke Smith, October 4, 1895. SC191 [McLaughlin Report]; Exhibit 38, McLaughlin Report, “List of the 19 sub-lessees who appeared before the Congressional Delegation at Pender July 23rd, 24th, & 25th, 1895 and reasons of Agent not leasing to them,” September 30, 1895. SC191.

⁴⁰ William H. Beck to Commissioner D. M. Browning, July 31, 1895. SC191. #32564-95.

⁴¹ William H. Beck to Commissioner D. M. Browning, July 27, 1895. SC191. #31710-95.

⁴² John F. Myers to Holmquist Grain and Lumber Company of Pender, August 1, 1895. SC191; William H. Beck to Commissioner D. M. Browning, August 12, 1895. SC191.

⁴³ William H. Beck to Commissioner D. M. Browning, July 31, 1895. SC191. #32564-95; Telegram, William H. Beck to Commissioner D. M. Browning, July 27, 1895. SC191, #31354-95; William H. Beck to Commissioner D. M. Browning, July 27, 1895. SC191, #31710-95; U.S. Congress, Senate, “Transcripts of the Proceedings Had Before Senators William V. Allen and John M. Thurston and Congressmen George D. Meiklejohn, W.E. Andrews, and Jesse B. Strode, Members of the Nebraska Delegation in the Fifty-Fourth Congress of the United States, Sitting as a Body at the Omaha and Winnebago Reservations and at Pender, Thurston County, Nebr., on the 24th and 25th Days of July, A.D. 1895, for the Purpose of Inquiring into the Condition of Affairs on

Said Reservations.” S.Doc. 79. 54th Cong., 1st sess., 1896. Serial set 3349, [Transcripts of the Proceedings], 39-40.

⁴⁴ “Beck’s Ire,” Omaha World-Herald, July 25, 1895; “Every Inch a Soldier!,” Omaha World-Herald, July 26, 1895.

⁴⁵ Telegram, William Allen, John Thurston, George Mieklejohn, W.E. Andrews and J.B. Strode to Secretary of the Interior Hoke Smith, July 25, 1895. SC191.

⁴⁶ Telegram, Acting Secretary of the Interior John M. Reynolds to William Allen, John Thurston, George Mieklejohn, W.E. Andrews and J.B. Strode, July 25, 1895. SC191; “Beck’s Course Approved,” Omaha World-Herald, July 27, 1895.

⁴⁷ Telegram, William V. Allen to Acting Secretary of the Interior John M. Reynolds, July 27, 1895. SC191.

⁴⁸ Telegram, John M. Thurston to Acting Secretary of the Interior John M. Reynolds, July 26, 1895. SC191.

⁴⁹ William V. Allen to Acting Secretary of the Interior John M. Reynolds, July 29, 1895. SC191; John M. Thurston to Acting Secretary of the Interior John M. Reynolds, July 27, 1895. SC191. #31883-95; Telegram, George D. Mieklejohn to Acting Secretary of the Interior John M. Reynolds, July 29, 1895, SC191. #32936-95; “Thurston Is In Earnest,” Omaha World-Herald, July 29, 1895; “Tweedledee, Tweedledum: Senator Allen so Regards the Fight Between the Flournoy Company and Its Enemies,” Omaha World-Herald, July 30, 1895; W. E. Andrews to Acting Secretary of the Interior John M. Reynolds, July 31, 1895, SC191. #32960-95.

⁵⁰ John M. Thurston to Acting Secretary of the Interior John M. Reynolds, July 27, 1895. SC191. #31883-95.

⁵¹ “Surprised: Congressmen Mieklejohn Talks Plainly on the Upholding of Captain Beck,” Omaha World-Herald, July 27, 1895.

⁵² “A Serious Situation,” Omaha World-Herald, July 31, 1895.

⁵³ “Beck’s Ire,” Omaha World-Herald, July 25, 1895; William H. Beck to Commissioner D. M. Browning, July 31, 1895. SC191. #32564-95.

⁵⁴ William H. Beck to Senator William V. Allen, July 26, 1895. SC191.

⁵⁵ William V. Allen to William H. Beck, August 1, 1895. SC191.

⁵⁶ Transcripts of the Proceedings, 39-40

⁵⁷ William V. Allen, John M. Thurston, W. E. Andrews, J. B. Strode and G. Meiklejohn to Secretary of the Interior Hoke Smith, July 25, 1895. SC191; "Congressmen Act Quickly," Omaha World-Herald, July 26, 1895.

CHAPTER SEVEN

GIVING UP THE GHOST

“I am informed that the entire sentiment of the antagonistic element in the Pender district seems to have under gone a change.”¹

William H. Beck
Omaha and Winnebago Indian Agent
October 13, 1895

The injunction suits filed by B. T. Hull and Sons and Robert Pilgrim, et. al, effectively prevented Agent William H. Beck from evicting illegal tenants of land included in those suits, despite the ruling of the Circuit Court of Appeals in December of 1894. While Special Assistant U.S. District Attorney Ralph W. Breckenridge had, at Beck's direction, filed for counter-injunctions hoping to prevent the land companies from collecting rent, none of the U. S. District Court judges for Nebraska would hear the cases. Judges Amos Thayer and Walter S. Sanborn were both too busy themselves to take up the demurrers. Instead, they arranged to have the cases heard by Judge O. P. Shiras in the U.S. District Court for the Northern District of Iowa in Dubuque on August 23. Breckenridge ensured Beck that the arrangement was “entirely satisfactory” with him, since he was personally acquainted with Shiras and felt confident that he would not be “. . . influenced by conditions other than those presented by the facts. . .”² A couple of weeks later, Judge Shiras had made up his mind and on Tuesday, October 8, handed down his decision in the case of *Robert Pilgrim et al. vs. Beck*. Shiras found in favor of Beck and dissolved the injunction protecting land covered by Robert Pilgrim's restraining order.³

Finally clear of legal entanglements, Beck and his Indian police wasted no time in resuming the eviction of the remaining illegal settlers hitherto covered by the now defunct injunction. Within the week, sixteen illegal lessees had been officially evicted. Twelve of those, with no remaining legal recourse, chose to arrange leases through the agency and were permitted to return to farms. Beck expected the remaining four to do so soon thereafter.

Not every attempt to evict went as smoothly. On October 10, a band of eight armed white men from Pender, including John F. Myers and W. S. Garrett, confronted and drove away a group of six Indian police who were guarding the farm of a recently evicted illegal settler. Following Beck's implicit instructions to avoid situations that might instigate violence, the Indian police retreated to the agency to report the incident and seek additional orders. In response, Beck instructed the detachment of Indian police to return and retake possession of the farm. This time they were to arrest any person who attempted to interfere. Anticipating trouble, Beck later sent a second group of Indian police to reinforce the previous group. The Indian police managed to arrest Myers and Garrett, returning the trespassers to the agency where Beck had them arraigned before magistrate. The two men were charged with several counts of violation of the law and jailed. After posting bond of five hundred dollars each, the men were released and their trials scheduled for later that month.⁴

In the days that followed, rumors quickly spread that John S. Lemmon, president of the Flournoy Company, had informed his former sub-lessees that he was "done" and would not offer up any more resistance against the agent. Beck triumphantly reported to his superiors in Washington, D. C., that he viewed Myers' attempt to intimidate his police

as a “last effort” on the part of the Flournoy Company to interfere with the evictions. Furthermore, the agent was eager to report that the “antagonistic element” in Pender had finally cooled as well.⁵

Both Myers’ and Garrett’s cases, as well as an earlier pending case against Sheriff Mullin, were heard by Judge Shiras. The exact set of charges in each of the cases varied, but they notably held in common the charge of obstructing a government officer in the performance of his duty. On October 28, Shiras rendered his view that Beck and his Indian police had acted within the confines of their federally authorized jurisdiction on the reservations. The actions of Sheriff Mullins, as well as the subsequent actions of Myers and Garrett, the judge decreed, constituted interference and was, therefore, illegal. Breckenridge telegraphed news of the decision to Beck, who was at the time on a leave of absence in Fort McPherson, Georgia. He reported that Shiras, having agreed with him “on nearly all points,” had sustained the indictments against Mullin and denied Myers’ and Garrett’s writs of habeas corpus. Beck understood that the judge’s recent decision sustained his own position in the use of his Indian police. Excited to have the question over his authority and jurisdiction on the reservation finally settled, Beck informed the Commissioner of Indian Affairs that he would cut his vacation short and return to the agency immediately.⁶

Judge Shiras, whose court sat comfortably removed from local politics and public opinion of northeastern Nebraska, was not encumbered by political considerations or influenced by social ties with the community. He was the break that Beck and his legal team had needed so badly all along, a truly unbiased judge who considered nothing but the true intent and spirit of the law.

was the premise on which the Company justified its direct dealings with the Indians. Their self-serving interpretation served them well not only to defraud the Indians, but also to delay the government's reaction to its own, short-sighted policy.

Due to the unwavering determination of Agent Beck in his persistent efforts and staunch idealism to defend the best interests of the Indians under his charge, the delay tactics of the Flournoy Company and their Penderite supporters had begun to crumble. Despite his ultimate vindication, however, Beck's victory against the Pender ring was bittersweet. Although the Flournoy Company finally acquiesced in October 1895, this was short by only two months of the natural expiration of its original leases with the Indians, which were set to expire on January 1, 1896. The Company, though forced to give up the ghost in the end, had managed to bilk the Indians out of the benefit of their land for the better part of the preceding five years.

While the apparent capitulation of the Flournoy Company was a major victory for Beck in his crusade against illegal leasing, the war was not over. The injunction held by B. T. Hull and Sons, as well as others, remained in force. Although Breckenridge had sought to have the case involving that injunction heard since the previous May, Judge Elmer S. Dundy had continued to vacillate. By now, however, Breckenridge realized there was a much more favorable and expedient option available. If Dundy would not hear the case, perhaps he would consent to transfer the case to Judge Shiras. When Breckenridge approached the judge with the idea, Dundy appeared only too happy to wash his hands of the whole affair, and readily granted the request.⁹

Some evicted settlers were more tenacious than others. On October 26, Beck's Indian police evicted Oliver E. Anderson from the reservation for refusing to re-lease

legally Indian land which Anderson insisted was his under an earlier, illegal lease. Despite the eviction, Anderson subsequently returned to the reservation. On November 12, he applied for, and received from Judge W. F. Norris, Eighth Judicial District for Nebraska, an injunction against Beck and several members of his Indian police. When Beck received notification of the order on the morning of the fourteenth, he was dumbfounded. The restraining order directed him to present himself at the Cuming County Court House in West Point, Nebraska, at two o'clock the afternoon on 25th of that month. In addition, the order forbade Beck, or anyone acting under his authority, from interfering with Anderson's possession of the land in question until that time.¹⁰

Exasperated, Beck telegraphed District Attorney Andrew J. Sawyer in Omaha. In light of recent decisions made by the U.S. Circuit Court in the cases of Myers and Garrett, Beck did not understand how Judge Norris could issue such an order. Beck was certain the judge had no jurisdiction and he felt that Judge Norris knew this as well. Furthermore, by aiding violators of the law, he accused Norris of being "*particeps Criminis*" in the matter. The agent's immediate concern, however, was whether he should obey the injunction. He wanted to know if anything could be done to prevent Judge Norris from "violating the U. S. law and outraging the Executive Office of the Government" by granting such injunctions. Referring to section 3703 of *Lawsons Remedies and Procedures, Vol 7.*, Beck understood that a court order issued from a court that did not possess proper jurisdiction was void. The defendant in such case, he understood, was justified in refusing to comply with the unjust order. Although he probably would have felt better about getting a second opinion from Sawyer on the issue, Beck decided that he would arrest Anderson for returning to the reservation.¹¹

Beck expressed fears that if he did not react quickly to Anderson's defiance it might inspire others to follow his example.¹² Sawyer understood that as well, but thought it best, for time being, that Beck observe the injunction. Although Judge Norris had subsequently set the trial date for December 4 at Dakota City, Nebraska, when Beck arrived he found that Norris had pushed the date back to the following week and planned to meet instead at Pender, Nebraska. On that date Sawyer appeared and presented the case to Judge Norris, who, having heard the evidence dismissed the action against Beck. Beck, in turn, had Anderson indicted by the Grand Jury and arrested for resisting the Indian police. Although not as spectacular as the collapse of the Flornoy resistance, the Agent's latest legal victory was an important rearguard action and basically assured that Beck would not face the prospect of a multitude of individual suits filed by disgruntled ejectees.¹³

Only one last hurdle remained – the mandatory injunction case, *United States vs. Flornoy Live Stock and Real Estate Company, et al.*, which was still pending in the U. S. Circuit Court for the District of Nebraska. Included in the suit were 276 separate defendants. On January 7, 1896, Judge Shiras handed down his decree which Beck described as having “finally settle[d] the question of trespassing on Indian Reservations.”¹⁴

The defendants . . . [shall] be restrained and enjoined from in any manner interfering with the Indian Agent appointed by the President of the United States to control the Indians upon either the Winnebago or Omaha Reservations or both thereof in the discharge of his official duties touching the lands of said reservations and from in any manner urging or inciting any of said Winnebago or Omaha Indians to lease or otherwise contract concerning any of the lands of said reservations without the approval of said Indian Agent and the Commissioner of Indian Affairs and the Secretary of the Interior under the rules and regulations of the Secretary of the Interior.”¹⁵

Breckenridge agreed with Beck, reporting that decision had given the complainants everything it had asked for and described Judge Shiras' ruling as of "the most sweeping nature."¹⁶ After two and a half years of litigation and confrontation, the contest between Omaha and Winnebago Indian Agent William H. Beck and the illegal settlers finally came to an end. Beck's righteous persistence and tenacity in defending the rights of the Indians under his care finally paid off.

In his annual report to the Commissioner of Indian Affairs for 1896, Beck reported that a "large quantity of land" previously held by illegal lessees had been recovered. Beck had either re-leased the land to legitimate settlers or the land had remained in the possession of the original allottees who had occupied and farmed it themselves. The agent reported that he had reduced the number of Indian police on the agency payroll to one captain and ten privates. Beck predicted optimistically that the Winnebagos, having been placed in possession of their land once again, would "progress rapidly" in the way of farming, concluding that the Winnebagos "appear better, and are in more comfortable circumstances than they were some time ago."¹⁷

NOTES

¹ William H. Beck to Commissioner D. M. Browning, October 13, 1895. Special Case 191. Boxes 299-302, National Archives and Records Administration, Washington, D. C. [SC191] #42348-95.

² Ralph W. Breckenridge to William H. Beck, August 12, 1895. SC191; William H. Beck to Commissioner Daniel M. Browning, August 14, 1895. SC191.

³ William H. Beck to Commissioner D. M. Browning, October 13, 1895. SC191.

⁴ Ibid.

⁵ Ibid.

⁶ William H. Beck to Commissioner D. M. Browning, October 29, 1895. SC191; Telegram, John R. Beck to Commissioner D. M. Browning, October 30, 1895. SC191.

⁷ Acting Attorney General Holmes Conrad to Secretary of the Interior Hoke Smith, September 20, 1895. SC191.

⁸ Acting Attorney-General E.B. Whitney to Secretary of the Interior Hoke Smith, October 25, 1895. SC191; *Flournoy Live Stock and Real Estate Company vs. Beck*, No. 514, Supreme Court of the United States, October 23, 1895. 163 U.S. 686

⁹ William H. Beck to Commissioner D. M. Browning, October 13, 1895. SC191.

¹⁰ William H. Beck to Commissioner D. M. Browning, November 14, 1895. SC191; Restraining Order, *Oliver E. Anderson vs. William H. Beck, David St. Cyr, Solomon Hill, Henry French, George Ricehill, George Thunder, and James Fisher*, November 12, 1895; William Beck to A. J. Sawyer, November 14, 1895. SC191; Telegram, William Beck to A. J. Sawyer, November 14, 1895. SC191.

¹¹ William H. Beck to Commissioner D. M. Browning, November 14, 1895. SC191; Restraining Order, *Oliver E. Anderson vs. William H. Beck, David St. Cyr, Solomon Hill, Henry French, George Ricehill, George Thunder, and James Fisher*, November 12, 1895; William Beck to A. J. Sawyer, November 14, 1895. SC191; Telegram, William Beck to A. J. Sawyer, November 14, 1895. SC191.

¹² William H. Beck to District Attorney A. J. Sawyer, November 14, 1895. SC191.

¹³ William H. Beck to Commissioner D. M. Browning, December 26, 1895. SC191.

¹⁴ Decree, United States of America vs. The Flournoy Live Stock and Real Estate Company, et al, United States Circuit Court, District of Nebraska, January 7, 1896.

SC191; William Beck to Commissioner Daniel M. Browning, January 16, 1896. SC191. #96-2651.

¹⁵ Decree, United States of America vs. The Flourney Live Stock and Real Estate Company, et al, United States Circuit Court, District of Nebraska, January 7, 1896. SC191.

¹⁶ Ralph W. Breckenridge to Commissioner Daniel M. Browning, January 7, 1896. SC191.

¹⁷ Report of Agent William H. Beck, August 20, 1896, in Annual Report of the Commissioner of Indian Affairs, 1896, 196-199.

CONCLUSION

That the Dawes General Allotment Act of 1887 was a failure of cataclysmic proportions is a widely accepted tenant in the historiography of Indian-White relations. As an attempt to end the reservation system, the Act provided for the division of reservations into allotments to be assigned to individual Indians within the tribes. "Surplus" reservation land left over after all the authorized allotments were made, would be sold to eager white settlers, and the proceeds would be placed into federal bank accounts from which funds could be withdrawn in the future to aid in the assimilation of Native Americans. The selling of the so-called surplus reservation land was often the first step towards the increasingly rapid alienation of the tribal land base for Indians across the United States. A government trust period typically of 25 years was put in place to protect the naive Indian from being bested in his transactions with the white man. During that time, it was once thought, the allotted Indians would come to realize the benefit of owning and working their own lands. However, land was not enough and without the knowledge, the equipment and the desire to adopt the white man's farming ways many attempts to conform were doomed to failure. At the expiration of the trust period, much additional land was lost as the demoralized and impecunious Indians sold their failed farms to whites, which contributed to the further alienation of the Indian land base.

A microcosmic case study investigating the complex issues of the leasing controversy on the Omaha and Winnebago Reservations during the early 1890s provides the insight needed to understand how the Dawes Act played a key role in alienating

Indian lands. Many Omaha and Winnebago Indians believed that leasing their allotments to whites was a preferred alternative to working the land themselves. In some cases they were unwilling to work it themselves, and in many cases they were simply unable to do so because of a lack of capital and equipment.

The ambiguous citizenship clause in the Dawes Act provided the impetus for many whites to reason that the allotted Indians were citizens, that their tribal relationship with the federal government was dissolved, and that the Indians were solely under the laws of the state in which they held their allotments. Many whites in northeastern Nebraska during the 1890s were very interested in obtaining the rich virgin lands of what they considered to be the former Omaha and Winnebago Reservations. Leasing the land relatively cheaply from Indians was for many potential settlers a much more suitable arrangement than outright purchase. Land speculators, or more descriptively, land “sharks” operating out of nearby towns such as Pender, were especially interested in the possibilities, and they wasted little time in leasing most of the available land. On the Winnebago Reservation this included individual agreements with Indian allottees, as well as leases for larger amounts of unallotted tribal land, usually for periods up to five years. Controlling a virtual monopoly of the available land, syndicates such as the Flournoy Company reaped fantastic profits by sub-leasing the land to settlers at substantially higher rates.

First to inherit the leasing problem was Robert Ashley. He spent much of his tenure as agent trying to establish what his authority was, and whether or not the practice of unrestricted leasing that had been established on the reservations was acceptable to the Bureau of Indian Affairs. Gradually it became clear that he was only to permit leasing

under certain conditions and under the regulations set out by the Department of the Interior. By that time, however, illegal leasing was rampant on the reservations and the powerful land syndicates were firmly entrenched in their position.

These land syndicates had the firm support of the business community at Pender. The Penderites, especially those allied with the notorious William Peebles, were primarily interested in boosting theirs as the leading town in northeastern Nebraska. Their interests extended to include the success of the free-leasing advocates because cheap land on the nearby reservations would naturally attract additional settlers to the area. Furthermore, the syndicates' generous "lease now, pay later" terms attracted many sub-lessees. By subsequently transferring their sub-lessees' notes for future payment to third parties, the syndicates essentially bound the settlers to the companies' interests. Even if the settlers were later evicted from their land by the agent, this would not absolve them from paying their debt to the new holders of their original promissory notes. Propaganda and calm reassurances convinced the settlers that their possession of the rented farms was legitimate and secure. The syndicates and Penderites combined their efforts against the restrictive regulations that were enforced by the agent. In the face of organized and influential resistance, unfortunately, Agent Ashley was unable to reestablish control of the leasing situation. Knowing that his three-year stint as agent was nearly at an end, Ashley did not make much of an effort.

That was not the case, however, with U. S. cavalry officer Captain William H. Beck. Having arrived at the Omaha and Winnebago Agency in the summer of 1893, the new agent wasted no time in assessing the situation. By the end of his first month in residence, he understood that whites were taking full advantage of the Indians. To his

chagrin, he soon found his authority as agent had been undermined by the vacillation of his inept predecessor. His authority as agent and his jurisdiction on the reservation had therefore deteriorated badly even before he assumed the job. Under close consultation with the Commissioner of Indian Affairs and the Secretary of the Interior, Beck set out to correct the situation and restore agency supervision on the reservations. The agent was firmly committed, above all else, to the protection and well-being of the Indians under his charge.

His strong conviction to protect and promote the best interests of the Indians flew in the face of the interests of the various individuals and land syndicates. They were alarmed by Beck's attitude towards their claim to Indian land through what he referred to as "pretended" leases. "Free-leasing" advocates, opposed to the constraints levied by the regulations of the Interior Department, contested the agent's authority and jurisdiction in the local courts. With the assistance of sympathetic judges and political favors, the illegal lessees obtained restraining orders against Beck and his Indian police to prevent their interference. Responding to advice by his superiors in Washington, D.C., Beck observed the injunctions, confident that a careful consideration of the facts in a court of law would substantiate his authority and jurisdiction. He did not anticipate the degree to which his free-leasing adversaries held sway in the local courts. Countless delays in the court system worked to the advantage of the illegal lessees who were protected by the injunctions. Beck was virtually helpless – unable to act against the restraining orders and unable to get justice from the state courts on the issue. Eventually higher courts heard Beck's appeal in the case of the Flournoy Company. The faulty logic and self-serving interpretations of the citizenship clause in the Dawes Allotment Act, as presented by the

attorney for the Flournoy Company, was no longer sufficient. Despite legal vindication, Beck's battle against his leasing adversaries was only just beginning.

With their legal argument denied in the Circuit Court of Appeals, the Flournoy Company realized that it could stall the issue by appealing the case to the Supreme Court. In the meanwhile, it intensified the pressure on the agent by continuing to maneuver behind his back and undermine his reputation in the community. Rumors, falsified stories, and inflammatory editorials began to appear in the local newspapers. Likewise, continued support of local courts and law enforcement repeatedly blocked the agent's attempts at clearing the reservations of trespassers. A confrontation between Beck's enlarged Indian police force and armed mobs of Penderites seemed imminent.

The grave situation attracted the attention of state congressmen who were probably "invited" to investigate the leasing controversy on behalf of the Penderites. The Pender faction was able to predispose the congressional delegation towards the plight of what they falsely represented as "innocent" settlers. Poorly forged letters, purportedly from Indians, decried the agent's excesses and they complained about his corrupt administration. Additional stories and propagandist editorials appeared in the newspapers calling for Beck's dismissal, while the congressmen, completely snowballed by the manufactured drama of the "poor settlers," vehemently demanded a formal investigation of the agency. The unfounded allegations of corruption did not phase Beck's superiors in Washington, D. C., who held steadfast in their support of the agent.

Temporarily at least, the delay tactics of the Pender land ring were having the desired affect, but it did not last. By this time, the cases involving leasing and the agent's jurisdiction on the reservations had become a highly inflammatory issue. This was

especially true among citizens from the surrounding towns who, although they had no direct connection with the leasing or Pender, were outraged at the idea of a corrupt agent taking advantage of what was described as poor, innocent settlers. The Penderites used the widespread publicity of the leasing controversy to their advantage. They attempted to ruin the agent's reputation through a series of inflammatory editorials and sensationalized stories. Beck was the victim of much undeserved negative publicity as the Penderites sought to stir up public support against him in an attempt to have him removed from his position as agent. These last ditch efforts were in vain.

Beck and his legal team were able to secure favorable decisions on the injunction and other pending cases from courts which existed outside local jurisdiction, and which were far removed from political or social influence of interested third parties. This breakthrough proved the death blow for the Pender resistance. Once the Thurston County sheriff and other prominent Penderites involved in the leasing controversy were arrested, tried and convicted for defying the agent's authority on the reservation, many of the illegal lessees decided that it was finally time to give up the charade. The Flournoy Company, by far the largest of the land syndicates and the most vocal and visible opponent of the agent, was among the first to fold, and others quickly followed suit.

Although Beck had won the battle in the end, the land syndicates did not entirely lose the war. In the majority of cases, the original leases held by the companies originated from illegal transactions that took effect on January 1, 1891 and were set to expire exactly five years later. These companies realized huge profits on the illegally leased land for most of this time. In the beginning, they took advantage of the chaos surrounding the implementation of the Dawes Act to secure pseudo-legal claims to Indian

allotments. With the silent acquiescence of a vacillating agent who made only half-hearted protests against their actions, the syndicates acted quickly and quietly to establish and consolidate their widely-recognized control over the reservations.

After Beck arrived and took charge, however, it did not take long for the free-leasing Pender faction to realize they would not be so fortunate in the future. As Beck attempted to crack down on the illegal leasing that hitherto enjoyed de facto existence on the reservations, the Penderites fought back in kind, tied the matter up, and dragged it out in local and appellate courts. Time was on their side. In the end, they had lost their legal case, but the court battles were a means to an end, not the actual object of desire. It is not clear just how much of the 1895 season's rent the various syndicates recovered from their estranged sub-lessees, but it is certain that the previous four years of annual rents amounted to extremely lucrative returns on their initial investments. The profits came at the expense of the Indians. They lost control of their land for up to five years, during which time they received little, if any, compensation. There was no feasible means to recover any damages, not in a local court system that strongly favored whites over Indians.

The Dawes Act adversely affected the Indians' right to their land in ways perhaps unobservable in too broad and inclusive of studies, as the leasing controversy on the Omaha and Winnebago Reservations illustrates. The relentless struggle that Indian Agent William H. Beck waged against the various "land sharks" and "Indian skimmers" of the surrounding white communities also provides an example of how an honest agent can easily be mistaken for yet another of those too often stereotyped corrupt agents. Historical investigation on a case-by-case basis of specific reservations and their

surrounding communities are essential to understand the full impact of legislation meant to “civilize” the Indians and assimilate them into mainstream culture. The reality of such a complex situation often proves to be the opposite of general appearance.

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