

THE WINNEBAGO and SIOUX - DAKOTA REMOVAL ACTS (1863)

Following the conclusion of the Dakota War in September 1862, Indian combatants were tried by a five-member military commission. In the 392 trials, 69 defendants were acquitted; 303 were sentenced to die; and 38 were hung on December 26, 1862, in Mankato.¹ As in all wars, the remaining or surviving members of the defeated nations did not escape retribution or “victor’s justice.” Driven by fear, resentment, prejudice, rumors and economic self-interest, many settlers demanded that the once-rebellious tribes be banished from the state. Reacting swiftly, Minnesota’s congressmen introduced legislation authorizing removal of the tribes and the sale of their reservation lands to settlers. In an article published on the centennial of the removal acts, Professor William E. Lass described their background:

It is difficult to separate fear and prejudice from the economic motives behind the settlers’ demands. The Winnebago had never been welcome in southern Minnesota. Forced out of their native Wisconsin, they were relocated several times in Iowa and Minnesota before being moved in 1855 from the Crow Wing area onto some of the choicest land in Blue Earth county. Since some white settlers were displaced in order to create the reservation, the presence of the Winnebago had been resented from the beginning. Only a few people stood to profit directly from their removal, but many business leaders in Mankato believed that the growth of the “Key City” depended on opening the reservation to white settlers. Capitalizing on both the economic and emotional pressures, therefore, some prominent men in Mankato

¹ The trials were conducted from September 28 through November 3, 1862. On the trials, see Carol Chomsky, “The United States-Dakota War Trials: A Study in Military Justice,” 43 *Stanford L. Rev.* 13 (1990). For a description of how the Indians defended themselves, see Douglas A. Hedin, “The Emergence of a Criminal Defendant’s Right to Testify at Trial in Minnesota” 15-20 (MLHP, 2011).

organized the semisecret “Knights of the Forest,” a group whose one aim was to get rid of the Winnebago.

The removal sentiment of frontier Minnesota was first voiced in Congress by Representative William Windom and Senator Morton S. Wilkinson. These men, both Republicans and known friends of the Lincoln administration had been embarrassed by the president’s commutation of the death sentence of all but thirty-eight of the over three hundred convicted Sioux. Wilkinson, especially, was under pressure to make an anti-Indian move since both his home-town newspapers, the *Mankato Record* and the *Mankato Independent*, had called for the hanging of all the convicted Sioux. [John C.] Wise, a Democrat [and editor of the *Record*], contended that the administration’s leniency was the result of an anti-Minnesota policy and that the Republicans listened to Eastern humanitarians rather than Western pioneers.

On December 16, 1862, Windom introduced a Winnebago removal bill in the House of Representatives, and on the same day Wilkinson introduced in the Senate two similar bills applying to both Sioux and Winnebago. By mid-February it was apparent that the measures would pass without great opposition. When the Winnebago bill passed the House, the *Independent* confidently announced, “Glorious News, the Winnebagoes to be Removed.” The act became law on February 21, and the Sioux act was passed on March 3. Both were very generally worded in order to give the Indian office maximum leeway in selection of a new location. The acts simply specified that the Indians were to be removed to unoccupied land, “well adapted for agricultural purposes,” beyond the limits of any state. The appropriations to effect the transfer were niggardly, only some fifty thousand dollars being allowed for the Sioux and an equal amount for the Winnebago. Thus, since there were over three thousand Indians involved, congress did, for all practical

purposes, place a limitation on the distance they might be moved.²

The Winnebago removal act passed Congress on February 21, 1863, and the authorization to remove the “Sioux or Dakota Indians” followed on March 3, 1863.³ The initial appropriations of \$50,016.66 to relocate the Sioux and \$50,000 to relocate the Winnebago were not enough and more money was soon needed to cover transportation expenses and to sustain the tribes. An additional \$137,293.40 was appropriated on June 25, 1864, and \$100,000 more in 1864 and 1865 was designated to benefit the Sisseton, Wahpaton, Medawakanton and Wahpakoota bands. The removal acts and excerpts from the subsequent appropriation bills are posted below.

The history of every law has three chapters: initially, the conditions that led the legislature to act, next, the passage of the law itself, and, finally, its implementation over time. How the removal laws were carried out — that is, how the tribes were transported from Minnesota to “their new homes,” as later legislation termed it — is told in vivid detail by Professor Lass in “The Removal From Minnesota of the Sioux and Winnebago Indians,” published in *Minnesota History* in 1963, and available through the website of the Minnesota Historical Society. It is highly recommended. William E. Lass, Professor Emeritus of History, Minnesota State University, Mankato, is also the author of “The First Attempt to Organize Dakota Territory” (MLHP, 2008). □

² William E. Lass, “The Removal from Minnesota of the Sioux and Winnebago Indians,” 38 *Minnesota History* 353, 354 (1963) (citing sources).

³ The Sisseton and Wahpaton bands may not have been immediately affected by this measure because they had decamped after the battle of Wood Lake on September 23, 1862. See William Watts Folwell, I *A History of Minnesota* 418 (Minn. Hist. Soc., 1956) (first published in 1921) (“The act of Congress of March 3, 1863, providing for the exile of all Sioux Indians from Minnesota, was superfluous as to the upper Sioux, the Sisseton and Wahpeton bands; they had removed themselves after the battle of Wood Lake. For five years they wandered over the prairies of Dakota, those who had been notoriously hostile occasionally concentrating at Devil’s Lake and those who at length were disposed to be friendly, if they had not been so before, occasionally gathered about Fort Wadsworth.”).

Winnebago Removal Act

12 Stat at Large, ch. 53, pp. 658-660 (1863)

CHAP. LIII — *An Act for the Removal of the Winnebago Indians, and for the Sale of their Reservation in Minnesota for their Benefit.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is authorized to assign to and set apart for the Winnebago Indians a tract of unoccupied land beyond the limits of any State, in extent at least equal to their diminished reservation, the same to be well adapted for agricultural purposes. And it shall be lawful for the President to take such steps as he may deem proper to effect the peaceful and quiet removal of the said Indians from the State of Minnesota, and to settle them upon the lands which may be assigned to them under the provisions of this act.

Sec. 2. *And be it further enacted,* That upon the removal of the said Indians from the reservation where they now reside, it shall be the duty of the Secretary of the Interior to cause each legal subdivision of the said lands to be appraised by discreet persons to be appointed by him for that purpose. And in each instance where there are improvements upon any legal subdivision of said lands, the improvements shall be separately appraised. But no portion of the said lands shall be subject to preemption, settlement, entry, or location under any act of Congress, unless the party preempting, settling upon, or locating any portion of said lands shall pay therefor the full appraised value thereof including the value of the said improvements, under such regulations as hereinafter provided.

Sec. 3. *And be it further enacted,* That after the appraisal of the said reservation the same shall be opened to preemption, entry, and settlement in the same manner as other public lands: *Provided,* That before any person shall be entitled to enter any portion of the said lands, by preemption or otherwise, previous to their exposure to sale to the highest bidder, at public outcry, he shall become an actual bona fide settler thereon, and shall conform to all the regulations now provided by law in cases of preemption, and shall pay, within the term

of one year from the date of his settlement, the full appraised value of the land, and the improvements thereon, to the land officers of the district where the said lands are situated. And the portion of the said reservation which may not be settled upon, as aforesaid, may be sold at public auction, as other public lands are sold, after which they shall be subject to sale at private entry, as other public lands of the United States, but no portion thereof shall be sold for a sum less than their appraised value before the first of January, Anno Domini eighteen hundred and sixty-five, nor for a less price than one dollar and twenty-five cents per acre, unless otherwise provided by law: *Provided*, That where improvements have been made upon said lands by persons authorized by law to trade with said Indians, the value of such improvements, or the price for which the same may be sold, shall be paid to the parties making the same; and in case the land upon which such improvements shall have been made shall be purchased by the parties making the same, at the appraised value as aforesaid, the value of the improvements so made by him shall form no part of the purchase price to be paid for said land.

Sec. 4. *And be it further enacted*, That the lands of said Indians which have been set apart for the payment of the debts of the said Indians, shall be sold on sealed bids for the best price the same will bring; but no bids shall be received for said lands until the first day of January, Anno Domini eighteen hundred and sixty-five, for less than two dollars and fifty cents per acre. Bids shall be received for tracts of quarter sections; and for such tracts conforming to the Government surveys less than one hundred and sixty acres as will secure the largest price for said lands, the Secretary is authorized to receive, in payment of said lands, certificates of indebtedness of said Indians, issued by the Commissioner of Indian Affairs for the debts of said Indians, secured to be paid out of the sale of said lands by the third article of the treaty of the said Indians with the United States, concluded at Washington on the fifteenth day of April, eighteen hundred and fifty-nine.* The money arising from the sale of their said lands, after paying the indebtedness required by said treaty to be paid, shall be paid into the treasury of the United States, and shall be expended as the same is received, under the direction of the Secre-

* The text of the 1859 U.S.-Winnebago Treaty is available online.

tary of the Interior, in necessary improvements upon their new reservation; and it shall be the duty of the Secretary of the Interior to allot to said Indians in severalty lands which they may respectively cultivate said improve, not exceeding eighty acres to each head of a family other than to the chiefs, to whom larger allotments may be made, which when so allotted, shall be vested in said Indian and his heirs, without the right of alienation, and shall be evidenced by patent.

Sec. 5. *And be it further enacted,* That the money to be annually appropriated for the benefit of the said Indians shall be expended In such manner as will, in the judgment of the President, best advance the said Indians in agricultural and mechanical pursuits, and enable them to sustain themselves without the aid of the Government. And in such expenditure reasonable discrimination may be made in favor of the chiefs who shall be found faithful to the Government of the United States, and efficient in maintaining its authority and the peace of the Indians. Said Indians shall be subject to the laws of the United States, and to the criminal laws of the State or Territory in which they may happen to reside. They shall also be subject to such rules and regulations for their government as the Secretary of the Interior may prescribe; but they shall be deemed incapable of making any valid civil contract with any person other than a native member of their tribe without the consent of the President of the United States, The Secretary of the Interior shall also make reasonable provision for the education of said Indians, according to their capacity and the means at his command.

APPROVED, February 21, 1863.

Sioux — Dakota Removal Act

12 Stat. at Large, ch. 119, pp. 819-820 (1863)

Chap. CXIX — *An Act for the Removal of the Sisseton, Wahpaton, Medawakanton and Wahpakoota Bands of Sioux or Dakato Indians, and for the disposition of their Lands in Minnesota and Dakotas.*

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That the President is authorized and hereby directed to assign to and set apart for the Sisseton, Wahpaton, Medawakanton, and Wahpakoota bands of Sioux Indians a tract of unoccupied land outside of the limits of any state, sufficient in extent to enable him to assign to each member of said bands (who are willing to adopt the pursuit of agriculture) eighty acres of good agricultural lands, the same to be well adapted to agricultural purposes.

Sec. 2. *And be it further enacted,* That the several tracts of land within the reservations of the said Indians, shall be surveyed, under the direction of the commissioner of the general land-office, into legal subdivisions to conform to the surveys of the other public lands. And the Secretary of the Interior shall cause each legal subdivision of the said lands to be appraised by discreet persons to be appointed by him for that purpose. And in each instance where there are improvements upon any legal subdivision of said lands, the improvements shall be separately appraised. But no portion of the said lands shall be subject to preemption, settlement, entry, or location, under any act of Congress unless the party preempting, settling upon, or locating any portion of said lands shall pay therefor the full appraised value thereof, including the value of the said improvements, under such regulations as hereinafter provided.

Sec. 3. *And be it further enacted,* That after the survey of the said reservations the same shall be open to preemption, entry, and settlement in the same manner as other public lands: *Provided,* That before any person shall be entitled to enter any portion of the said lands by preemption or otherwise, previous to their exposure to sale to the highest bidder, at public outcry, he shall become an actual

bona fide settler thereon, and shall conform to all the regulations now provided by law in cases of preemption; and shall pay, within the term of one year from the date of his settlement the full appraised value of the land, and the improvements thereon, to the land officers of the district where the said lands are situated. And the portions of the said reservations which may not be settled upon as aforesaid, may be sold at public auction, as other public lands are sold, after which they shall be subject to sale at private entry, as other public lands of the United States, but no portion thereof shall be sold for a sum less than their appraised value, before the first of January, Anno Domini eighteen hundred and sixty-five, nor for a less price than one dollar and twenty-five cents per acre, until otherwise provided for by law.

Sec. 4. *And be it further enacted,* That the money arising from said sale shall be invested by the Secretary of the Interior for the benefit of said Indians in their new homes, in the establishing them in agricultural pursuits: *Provided,* That it shall be lawful for said Secretary to locate any meritorious individual Indian of said bands, who exerted himself to save the lives of the whites in the late massacre, upon said lands on which the improvements are situated, assigning the same to him to the extent of eighty acres, to be held by such tenure as is or may be provided by law: *And provided further,* That no more than eighty acres shall be awarded to any one Indian, under this or any other act.

Sec. 5. *And be it further enacted,* That the money to be annually appropriated for the benefit of the said Indians shall be expended in such manner as will, in the judgment of the Secretary of the Interior, best advance the said Indians in agricultural and mechanical pursuits, and enable them to sustain themselves without the aid of the government; but no portion of said appropriations shall be paid in money to said Indians. And in such expenditure, said Secretary may make reasonable discrimination in favor of the chiefs who shall be found faithful to the Government of the United States, and efficient in maintaining its authority and the peace of the Indians. Said Indians shall be subject to the laws of the United States, and to the criminal laws of the state or territory in which they may happen to reside. They shall also be subject to such rules and regulations for their government as the Secretary of the Interior may prescribe; but they shall be incapable of making any valid civil contract with any person other

than a native member of their tribe, without the consent of the President. The Secretary of the Interior shall also make reasonable provision for the education of said Indians, according to their capacity and the means at his command.

APPROVED, March 3, 1863.

III—III

Funding the Removals

To pay for the removals and to maintain the displaced tribes in 1863, Congress initially appropriated \$50,016.66 for the Sioux and \$50,000 for the Winnebago; an additional \$137,293.40 was appropriated in 1864. To support the Sisseton, Wahpaton, Medawakanton, and Wahpakoota bands “at their new homes,” it appropriated \$100,000 in 1864 and 1865. These sums were included in the general appropriations bills for the Indian Department for these fiscal years.

1863 Appropriations

12 Stat. at Large, ch. 99, pp. 774, 784, 785 (1863)

Chap. XCIX — An Act making Appropriations for the current and contingent Expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes, for the Year ending June thirtieth, eighteen hundred and sixty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department and fulfilling treaty stipulations with the various Indian tribes —

For the current and contingent expenses of the Indian Department, namely:

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Sioux of Mississippi. — To enable the President of the United States to cause the Sioux of the Mississippi to be removed beyond the limits of any states, and for establishing them in their new homes, fifty thousand and sixteen dollars and sixty-six cents, the same being (in amount) equal one third of the whole sum heretofore stipulated to be paid in the several treaties heretofore existing between the said Indians and the United States, but which treaties have been abrogated in consequence of the war said Indians and the people of the United States.

For the purpose of maintaining the said Indians in their new homes, and subsisting them and making such provisions as will enable them to support themselves by agricultural pursuits, the President is authorized to use and expend one third of the unexpended balance now remaining in the treasury, which has heretofore been appropriated for the benefit of the said Indians, in such manner as he shall deem expedient and best calculated to promote the interests of the said Indians: *Provided*, That no part of said sum shall be paid to the said Indians in money.

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Winnebagoes. — For interest on one million one hundred thousand dollars, at five per centum, per fourth article treaty first November, eighteen hundred and thirty-seven, fifty-five thousand dollars.

For seventeenth of thirty instalments of interest on eighty-five thousand dollars, at five per centum, per fourth article treaty thirteenth October, eighteen hundred and forty-six, four thousand two hundred and fifty dollars. And the sum of fifty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money not otherwise appropriated, to enable the President of the United States to arrange for and effect the peaceful and quiet removal of said Indians to some suitable location outside the limits of any state, the said sum to be taken from and charged to the said fund of one million one hundred thousand dollars held by the United States for said Indians under the aforesaid treaty of first November, one thousand eight hundred and thirty-seven, and that the amount so

appropriated shall be replaced from the proceeds of the sales of the lands belonging to said Indians, which the Government may be authorized to sell by virtue of an existing treaty with said Indians, and by act of Congress.

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APPROVED: March 3, 1863.



1864 Appropriations

13 stat. at Large, ch. 148, pp. 161, 171-2, 180 (1864)

Chap. CXLVIII. — *An Act making Appropriations for the current and contingent Expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes, for the Year ending June thirtieth, eighteen hundred and sixty-five.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department and fulfilling treaty stipulations with the various Indian tribes.

For the current and contingent expenses of the Indian Department, namely: —

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Winnebagoes. — For interest on one million dollars, at five per centum, per fourth article treaty first November, eighteen hundred and thirty-seven, fifty thousand dollars.

For deficiencies in subsistence and expenses of removal and support of the Sioux and Winnebago Indians of Minnesota, during the fiscal year ending June thirtieth, eighteen hundred and sixty-four, one hundred thirty-seven thousand two hundred and ninety-three dollars

and forty cents: *Provided*, That the portion extended in behalf of the Winnebagoes shall be reimbursed to the treasury upon the sale of their lands In Minnesota, to enable the Secretary of the Interior to take charge of certain stray bands of Winnebago and Pottowatomie Indians, now in the State of Wisconsin, with a view to prevent any further depredations by them upon the citizens of that state, and for provisions and subsistence, ten thousand dollars: *Provided*, That the proportion of annuities to which said stray bands of Pottowatomies and Winnebagoes would be entitled if they were settled upon their reservations with their respective tribes shall be retained in the treasury to their credit, from year to year, to be paid to them when they shall unite with their said tribes, or to be used by the Secretary of the Interior in defraying the expenses of their removal, or settling and subsisting them on any other reservation which may hereafter be provided for them.

For the salary of a special agent, to take charge of said Indians, fifteen hundred dollars.

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For subsistence and clothing, and general incidental expenses of the the Sisseton, Wahpaton, Medawakanton, and Wahpakoota bands of Sioux or Dakota Indians, at their new homes, one hundred thousand dollars.

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APPROVED: June 25, 1864.



1865 Appropriations

13 stat. at Large, ch. 127, pp. 541, 559 (1865)

Chap. CXXVII. — *An Act making Appropriations for the current and contingent Expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes, for the Year ending June thirtieth, eighteen hundred and sixty-six.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department and fulfilling treaty stipulations with the various Indian tribes: —

For the current and contingent expenses of the Indian Department, namely:

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For subsistence, clothing and general incidental expenses of the Sisseton, Wahpaton, Medawakanton, and Wahpakoota bands of Sioux or Dakota Indians, at their new homes, one hundred thousand dollars.

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APPROVED: March 3, 1865



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