LEGAL STATUS OF INDIAN ALLOTTEES.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, November 21, 1892.

ELIHU COLMAN, Esq.,
U. S. Attorney, Fond du Lac, Wis.:

SIR: I have received your letter of November 9, 1892, stating that you are informed that patents have been issued under the allotment act of 1887 to Oneida Indians in Wisconsin, whereby they have become citizens of the United States; that it would seem to you, that although for some purposes they are under the authority of the Indian agent until the expiration of the twenty-five years, by becoming citizens and also by the provisions of the act they are subject and amenable to the laws of the State of Wisconsin, and therefore it can be no longer an offense to sell liquor to them and you have no right to prosecute for the same; and asking that you be advised as to the understanding of this office as to their condition during the twenty-five years until they receive their final patents, particularly with reference to section 2139 of the Revised Statutes of the United States.

You also ask that you be furnished with the views of this office as to the application of section 5388 to cases of timber trespass on Indian allotments.

In reply, I have to say that whether or not the Indians who have received allotments of lands in severalty under the act of February 8, 1887 (24 Stats., 388), as amended by the act of February 28, 1891 (26 Stats., 794), are still under the protection of section 2139 of the Revised Statutes, is a question which can, of course, only be authoritatively determined by the courts. I am of the opinion, however, that in the light of the decision of the Supreme Court in United States *v.* Holliday (3 Wall., 407), so long within the trust period as it may be deemed necessary by the Secretary of the Interior and the Commissioner of Indian Affairs for Indian allottees to remain under the charge of an Indian agent, the statute will apply to punish any one selling or giving them any intoxicating beverages.

The Attorney-General, in an opinion of January 26, 1889 (19 Opinions, 232), advised the Secretary of the Interior that—

"The Indians when organized as tribes, under the former policy of the Government, have been treated as domestic dependent nations under the guardianship of the United States. * * * In this contemplated new mode of life the guardianship which heretofore has been exercised over the tribe is to be transferred to the individual allottees provided for in this act. The separate manhood of each Indian is to be recognized, but still subject for a time to the care and supervision of the Government as a trustee or guardian. The real estate falling to each allottee is not intended to be used during the period of guardianship for speculative purposes, but is so conditioned that in their period of wardship or tutelage the Indians shall not be subject to the danger of entering into an unequal competition with the whites in the field of traffic and general business outside of agriculture and grazing."

In the case against Holliday, above quoted, the Indian to whom the intoxicating liquors had been given or sold was a citizen of the United States, having been made so by treaty which provided for the dissolution of his tribal relations. He was a voter in the State of Michigan; but the Secretary of the Interior and the Commissioner of Indian Affairs had decided that for certain purposes the tribal relations of these citizen Indians should be recognized, and an agent was appointed over them. In passing on the case the court held *inter alia* that—

"No State can by either its constitution or other legislation withdraw the Indians within its limits from the operation of the laws of Congress regulating trade with them; notwithstanding any right it may confer on such Indians as electors or citizens."

It also held that—

"Whether any particular class of Indians are still to be regarded as a tribe, or have ceased to hold the tribal relation, is primarily a question for the political departments of the Government and if they have decided it this court will follow their lead."

The Indian allottee remains for a time as shown above in a state of tutelage and wardship, and the Indian agent placed over him is continued for the purpose of executing the duties of the Government as his guardian. The fact that he is a citizen does not take him from under the operation of the laws of Congress made for his protection and benefit, and anyone who sells or gives him liquor is liable to punishment. The district court of the United States for Washington I believe, ruled contrary to this view in a case tried by it in the spring of 1890. I have not seen that decision and I do not believe that it has been published; but from the correspondence of the Indian agent on the subject, I believe the decision of the court was in error, because instead of following the decision of the political departments of the Government as to the condition of the Indians the court decided for itself how the particular class of Indians affected should be regarded, and holding that as they were citizens of the United States the action of Congress and the Executive in maintaining an agency over them was unauthorized, and that the Indians were not under an Indian agent within the meaning of the statute. This seems to me to be contrary to the rule laid down by the Supreme Court. The Indians affected by this decision below were those of Puyallup Agency, Washington.

In connection with this subject your attention is also invited to the opinion of Attorney-General Miller of March 12, 1890 (19 Opinions, 511), which has a most important bearing on the questions as to how the Indian allottees should be regarded and as to the duty of the Government to continue for a time its guardian care over them and their lands.

With regard to the application of section 5388 of the Revised Statutes to the unlawful cutting of timber on Indian allotments, I have to say that, as construed by the Attorney-General, the law clearly is that Indian allottees do not have the right to cut green merchantable timber on their allotments for the purpose of sale alone (19 Opinions, 232), but that—

"The cutting or destroying of timber on lands which have been patented to individual Indians is not an offense punishable under the act of June 4, 1888, chapter 340, amendatory of section 5388, Revised Statutes." (*Ibid*, 183.)

Depredations committed upon timber on allotments can, it seems, only be sued for by the United States as trustee of the allottee.

Very respectfully,

T. J. MORGAN,
Commissioner.

DECISION OF SUPREME COURT OF MICHIGAN REGARDING TAXATION OF CERTAIN INDIANS.

[Supreme court. The auditor-general, petitioner and appellant, *vs.* Sarah Williams, defendant. Filed December 22, 1892.]

DURAND, J.

The petition was filed in this case by the auditor-general under section 52 of act No. 195 of the session laws of 1889, praying for a decree in favor of the State of Michigan against certain lands in Isabella County for the taxes of 1889, among which lands are those of the defendant, being the southwest quarter of the southeast quarter of section 24, in township 15 north, range 4 west.

The defendant, who is an Indian woman of the Chippewas of the Saginaw, Swan Creek, and Black River Indians, filed her objections to the tax, claiming that her land was not taxable for the reason that it was patented to her on February 9, 1885, under and by virtue of the treaties of August 2, 1855, and October 18, 1864, between the United States and the Chippewas of Saginaw, Swan Creek and Blask River, in which she was denominated as a "not so competent," and which contained a clause that the land shall never be sold or alienated to any person or persons whomsoever, without the consent of the Secretary of the Interior for the time being. It is admitted that she is the patentee, under such patent, and that the Secretary has not removed the disability of "not so competent," mentioned therein; that he has not authorized the alienation of the land; that she has not applied to him for the removal of such disability, and that this land is a part of the lands set apart by the United States for the Indians, under the treaties referred to.

The treaty of October 18, 1864, among other things contains the following:

"So soon as practicable after the ratification of this treaty, the agent for the said Indians shall make out a list of all those persons who have heretofore made selections of lands under the treaty of August 2, 1855, aforesaid, and of those