Great and Little Osage Indians, providing for a considerable restriction of their ancient domains. A series of treaties were also negotiated about 1825 by Brig. Gen. Henry Atkinson of the United States Army and Benjamin O'Fallon, Indian agent, which dealt only with problems of trade and friendship.

F. TRIBES OF THE FAR WEST: 1846-54

In the late summer of 1846, war having been declared with Mexico, General Philip Kearney in command, the Army of the West advanced into New Mexico. Without doing battle New Mexico’s governor fled, leaving Kearney in control of the province. Following the cession of the province to the United States by the Treaty of Guadalupe Hidalgo, of February 2, 1848, a treaty of peace with the Navajo Indians who inhabited that region was concluded in 1849.

Two months later, December 30, 1849, another far western tribe, the Utahs, signed a treaty, and the period of negotiating with the Indians who roamed through the area acquired from Mexico and the Oregon Territory may be said to have opened.

To 'Fort Laramie in the early autumn of 1851 came a great number of Sioux, Cheyenne, Arapaho, Crow, Assiniboine, Gros Ventre, Mandan, and Arikara. After several days of conference, Indian agent Thomas Fitzpatrick secured their signatures to a treaty in which the natives promised peace, acknowledged certain boundaries and agreed to recognize the right of the United States to erect posts and maintain roads within their territory.

This treaty was never formally proclaimed by the President and because of this its validity was challenged in Roy v. United States and Ogallala Tribe of Sioux Indians. The Court of Claims examined the circumstances, found that the treaty had been acted upon by Congress, and referred to in subsequent agreements, and held that proclamation was not necessary to give it effect and that both parties were bound by the covenant from the date of its signature.

In the meantime the discovery of gold in California had caused the migration westward to assume the proportions of a stampede. Soon this newly admitted state was faced with the familiar problem of keeping available for preemption purposes an ample supply of public land. An equally familiar solution was quickly decided upon. Congress appropriated $25,000 and dispatched commissioners to treat with the California Indians regarding the territory they occupied.

Some 18 treaties with 18 California tribes were negotiated by these federal agents in 1851. All of them provided for a surrender of native holdings in return for small reservations of land elsewhere. Other stipulations made the Indians subject to state law.

When the terms of these various agreements became known the California State Legislature formally protested the granting of any lands to the Indians. The reasons for this opposition were reviewed by the President and the Secretary of the Interior, and finally a number of months after the agreements had been negotiated they were submitted to the Senate of the United States for ratification. This was refused on July 8, 1852.

The Indians, however, had already begun performance of their part of the agreement. Urged by government officials to anticipate the approval of the treaties they had started on the journey to the proposed reservations. Now they found themselves in the unfortunate position of having surrendered their homes for lands which were already occupied by settlers and regarding which, the Federal Government showed no willingness to take action. This situation was never remedied unless the creation in the 1820s of several small reservations for the use of these Indians can be said to have done so.

In 1852 the Apaches, occupying portions of the territory relinquished by Mexico, were invited to a Treaty Council at Santa Fe, New Mexico. They came and duly promised perpetual peace (Art. 2) with the United States. They also engaged (Art. 6) to refrain from warlike incursions into Mexico.

The following year the Comanches, Kiowas, and Apaches met at Fort Atkinson. An agreement very similar in substance to the Santa Fe Treaty was concluded July 27, 1853.

Although the number of families traveling the Oregon trail had increased steadily during the 40s, no agreements were made with the Indians of the territory until 1853. Then, in September of that year, the Rogue River Indians signed a treaty with the United States providing for a substantial cession of land (Art. 1) from which a certain portion was to be reserved for a temporary home until such time as a permanent residence should be designated by the President of the United States (Art. 2). A similar arrangement was made with another Oregon tribe, the Cow Creek Band, on September 19, 1853.

While these first treaties were being signed with the Indian tribes of the Far West, agreements with other tribes were being negotiated. Eight treaties providing for territorial cessions...
and 10 treaties stipulating for removal of the Indians to uncoupled land were signed during these years.

G. EXPERIMENTS IN ALLOTMENT: 503 1854-61

On March 24, 1853, George W. Manypenny, of Ohio, became Commissioner of Indian Affairs. The new official was designated by the President to enter into negotiations with the tribes west of the states of Missouri and Iowa for white settlement on their land, and extinguishment of their title. His first success in this connection was with the Ottos and Missouris on March 15, 1854. Article 6 of the instrument signed on that occasion provides:

The President may, from time to time, at his discretion, cause the whole of the land herein reserved, or any part thereof, to be surveyed off if not required for public purposes, and sell to any Indian or Indians of said confederate tribes, as are willing to avail [themselves] of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age; or two persons of the same family, if they locate on the same tract and not exceeding five, one half section; or if each of them is not exceeding ten, one section; and to each family of six and not exceeding six, one section; and to each family exceeding ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will secure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may, at any time in his discretion, after such person or family has made a location of the land reserved for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levies, sale, or forfeiture, which conditions shall continue in force until a State constitution embracing such land within its boundaries shall have been formed, and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and hold a portion of the land assigned, and on which they have located, or shall remove from place to place, the President may, if the patent shall have been issued, revoke the same, or if not issued, cancel the assignment, and may also withhold from such person or family any proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return, the tract may be declared abandoned, and thereafter assigned to some other person or family of such confederate tribes, or disposed of as is provided for the disposal of the excess of said land. And the residue of the land hereby reserved, after the Indian persons or families of such confederate tribes shall have assigned to them permanent homes, may be sold for their benefit in such laws, rules and regulations as may hereafter be prescribed by the Congress or President of the United States. No State legislature shall remove the restriction herein provided for without the consent of Congress.

This treaty, like many other treaties negotiated during the administration of Commissioner Manypenny, included a clause (Art. 3) by which the Indians relinquished all claims to moneys due under earlier treaties. The policy of paying Indians for lands by means of permanent annuities, which had involved the conservation of the Indian estate, was thrown into discard, and there was substituted a policy of quick distribution of tribal funds, parallel to the quick distribution of tribal lands which allotment entailed. Underlying this policy of quick distribution was the assumption that tribal existence was to be brought to an end within a short time.

On March 16, 1854, an agreement similar in its recitals regarding allotments was concluded with the Omahas. A third treaty providing for the individualization of land holdings was signed by the Shawnee Indians on May 10, 1854. The terminology used in this instrument varies somewhat from that of the preceding treaties. Instead of the provision that—

"The President may, from time to time * * * cause * * * to be surveyed off into lots, and to assign," article 2 holds that

all Shawnees * * * shall be entitled to * * * two hundred acres, and if the head of a family, a quantity equal to two hundred acres for each member of his or her family * * *.

Detailed provisions are also included for the assignment of individual holdings to intermarried persons, minors, orphans, adopted persons and incompetents, the latter to have the selection made by some disinterested person or persons appointed by the Shawnee Council and approved by the United States Commissioner. Further, article 9 provides that "competent" Shawnees shall receive their share of the annuity in money, but that that of the "incompetent" Indians "shall be disposed of by the President" in the manner best calculated to promote their interests, the Shawnee Council being first consulted with respect to such persons.

Six treaties stipulating allotment of land in severalty were

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 Treaty of March 10, 1854, 10 Stat. 1053. Concluded in United States v. Celestine, 215 U. S. 278 (1909); United States v. Button, 215 U. S. 291 (1909); United States v. Payne, 264 U. S. 448 (1924). By the terms of this agreement the United States under certain conditions agreed to assign to the Indians 880,000 for land ceded (Arts. 4 and 5). Later it was contended by the Omaha Tribe in a case argued before the Court of Claims in 1918 that although the cession had been made, the Government had failed to pay anything. The Government admitted but said that as the Omaha Indians did not own and did not have the right to make a cession thereof. In finding for the plaintiff the court said: "At the time the treaty was made the United States recognized the Omahas as having title to this land north of the east-west line, and specifically promised to pay for it. * * * the defendants can not be heard to say that the Omahas did not own the land when the treaty was made and had no right to make a cession of it." Omaha Tribe v. United States, 53 C. C. 540, 560 (1918), mod. 253 U. S. 275, 56 C. 561.

 Treaty of May 10, 1854, 10 Stat. 1053. Concluded in Walker v. Henshaw, 16 Wall. 436 (1872); United States v. Blackfeather, 165 U. S. 180, 180-187 (1894); Jones v. Meehan, 175 U. S. 1 (1899); Blackfeather v. United States, 190 U. S. 368 (1903); and Dunbar v. Greene, 198 U. S. 166 (1905). Commenting on this treaty, the Supreme Court declared: The treaty of 1854 left the Shawnees a people united, with a declaration of their dependence on the National government for protection and the vindication of their rights. Ever since this tribal organization has remained as it was before. * * * While the general government has a superintending care over their interests, and continues to treat with them as a nation, the State of Kansas is estopped from denying their title to it. She accepted this status when she consented to admit them into the Union. Conferring rights and privileges on these Indians upon their own status, determines their status, and the protection or voluntary abandonment of their tribal organization. As long as the United States recognizes their national character they are under the protection of treaties and the laws of Congress, and their property is withdrawn from the operation of State laws.

The Kansas Indians, 6 Wall. 131, 136-137 (1869).

concluded by Commissioner Manypenny in the next 2 months. In one of these, provision is made for the setting up of a permanent fund with the proceeds from the sale of the lands ceded by the Indians. The United States is charged with the duty of administering this fund. The extent of this obligation was determined by the Court of Claims which held in the Delaware Tribe v. The United States that the Intended trust related to the preservation of the principal received from the sale of the lands and could not be considered, as the Delaware Tribe claimed, an obligation to maintain unimpaired the face value of the securities in which the principal had been first invested.

In the autumn of 1854 the Chippewa of Lake Superior became a party to a treaty providing for the allotment of land to individual Indians by the President at his discretion, and with the power to make

**rules and regulations, respecting the disposition of the lands in case of the death of the head of a family, or single person occupying the same, or in case of its abandonment by them.**

Article 2 also provides for the partitioning of 80 acres 'to each mixed blood over 21 years of age.'

The Wyandot treaty concluded January 31, 1855 is particularly interesting; the first article stipulates that tribal bands are dissolved, declares the Indians to be citizens of the United States and subject 'to the laws thereof and of the territory of Kansas, although those who wish to be exempted from the immediate operation of such provisions shall have continued to them the assistance and protection of the United States. Article 2 provides for the cession of their holdings to the United States stipulating the 'object of which cession is, that the said lands shall be subdivided, assigned, and reconveyed, by patent, in fee simple, in the manner hereinafter provided for, to the individuals and members of the Wyandot nation, in severalty.' Articles 4 and 5 provide for the most detailed method of allotment yet encountered, in which three commissioners, one from the United States and two from the Wyandot nation, were to make a distribution of lands to certain specified classes of individuals. Patents are then to issue containing an absolute and unconditional grant of fee simple to those individuals listed as "competent" by the commissioners, but for those not so listed the patents will contain certain restrictions and may be withheld by the Commissioner of Indian Affairs. None of the land thus assigned and patented is subject to taxation for a period of 5 years.

In February of 1855 the Chippewa of Minnesota and the Winnebago signed treaties ceding their territorial holdings but out of which there is "reserved" and "set apart" for the Chippewa and "granted" for the Winnebago land for a permanent home. Further, the President is authorized whenever he deems it advisable to allot their lands in severalty.

The treaties of the Far West were not overlooked in this burst of treaty-making activity. In the closing months of 1854 and the opening days of the following year six treaties were negotiated with the Indians of Oregon, the various tribes of the Puget Sound region, etc. All of these provided for the allotment of land in severalty and for reservations of territory described by such phrases as "such portions * * * as may be assigned to them," "shall be held * * * as an Indian reservation," and "district which shall be designated for permanent occupancy."

Seven more treaties providing for the assignment of land to individual Indians were negotiated during Commissioner Manypenny's administration, which ended in 1857. All of these feature extensive land cessions with certain areas either "set apart as a residence * * * or "held and regarded as an Indian reservation" or "reserved * * * for the use and occupancy."

James W. Denver, Charles E. Mix, and Alfred B. Greenwood, who successively held the position of Commissioner of Indian Affairs until the outbreak of the Civil War, were likewise committed to a treaty policy providing for allotment in severalty. Under their auspices seven such agreements were negotiated. These instruments in form and substance differ little from those of the Manypenny administration.

H. THE CIVIL WAR: 1861-65

The four years of conflict between the states had its effect on the various Indian tribes. Violence and bloodshed had become commonplace and several Indian tribes seized the occasion to accommodate demands upon the Federal Government with a display of force. This was particularly the case in Minnesota,

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80 32 C. C. 483 (1031).
For opinion that a patent under Art. 13 should issue to Christian Indians but it may be restricted by act of Congress after issue unless the effect would be to invalidate title of bona fide purchaser; that title of Christian Indians will not be vested in the Indians comprising the tribe called by that name as tenants in common, but in the tribe itself or the nation; see 9 Op. A. G. 24 (1857). And see Chapter 15, sec. 1A.

10 Treaty of September 30, 1854, Art. 3, 21 St. 1109. Concluded in Feb. v. Brown, 162 U. S. 602 (1886) : Wisconsin v. Hitchcock, 201 U. S. 202 (1906) ; Chippewa Indians of Minnesota v. United States, 301 U. S. 358 (1937) ; and Minnesota v. United States, 305 U. S. 382 (1039). The President is empowered by Art. 3 to issue patents with "such restrictions of the power of alienation as may be necessary to prevent the power to make a reservation in trust by the Indians but it may be restricted by the President at his discretion."

12 Treaties of May 28. 1855, with the Missionaries and Umaklila Tribes, 12 Stat. 645: Treaty of June 25, 1855, with Indians in middle Oregon, 12 Stat. 941; Treaty of June 9, 1855, with Winnebago, 234 U. S. 245 (1014) (denying validity against the law of nations); and Treaty of September 30, 1854, art. 3, 21 St. 1109.


15 However several treaties of allotment were negotiated during this period. Treaty of March 13, 1862, with Kansas Indians, 12 Stat. 1221; Treaty of June 24, 1862, with Ottawas, 12 Stat. 1237; Treaty of June 28, 1862, with Kickapoos, 13 Stat. 623; Treaty of June 9, 1863, with the Nez Percé, 14 Stat. 647: Treaty of October 14, 1864, with the
where in the summer of 1862, the Sioux of the Mississippi par-
ticipated in a general unsuccessful uprising against the whites?"

While no treaty negotiations were attempted with the Sioux
of that state, the Chippewas were called to a series of treaty
councils in 1863 and 1864. Here their signatures were secured
to treaties providing for removal and allotment of land in
several. 13

In the Far West the United States succeeded in making
treaties at Fort Bridger, 14 Box Elder 15 and Tulilla Valley 16 in
the Utah Territory and at Ruby Valley 17 in the Nevada Territ-
ory with the Shoshones; at Lapwai in the Territory of Wash-
ington with the Nez Perce; 18 at Cosnejos in the Colorado Terri-
ory with the Ute; 19 and at Klamath Lake in Oregon with the
Klamath Indians. 20 The last mentioned were negotiating
with the United States for the first time and Article 9 of the
agreement signed by them included the very broad stipulation
then being inserted in many treaties that

* * * They will submit to and obey all laws and regu-
lations which the United States may prescribe for their
government and conduct.

I. POST CIVIL WAR TREATIES: 1865-71

The years immediately after the close of the Civil War were
filled with Indian councils and conferences. Usually these par-
leys resulted in the signing of treaties in which mutual pledges
of amity and friendship were prominent and frequent.

In October of 1865 the Cheyenne and Arapaho, 21 the Apache,
Cheyenne, and Arapaho 22 met the Comanche and Kiowa 23 met with
Army officers Sanborn and Harney and signed treaties promis-
ing that peace would hereafter be maintained. A few days
later eight tribes of Sioux at Fort Sully made the same
promise. 24

Klamaths, 16 Stat. 707. In addition, an agreement amendatory of the
Treaty of October 5, 1859. 12 Stat. 1111 was entered into with the
Kansans Indians, Treaty of March 13, 1862, 12 Stat. 1221. Also see
Chapter 8, sec. 11.

Seymour, Story of the Red Man (1929) 268-287.

3. Treaty of March 11, 1863, with Chippewa of the Mississippi and
the Pillager and Lake Winibigoshish Bands, 12 Stat. 1219; Treaty of
October 2, 1863, with Red Lake and Pembina Bands of Chippewa, 13
Stat. 667; Treaty of April 12, 1864, with Red Lake and Pembina Band
of Chippewa, 13 Stat. 689: Treaty of May 7, 1864, with Chippewa of
the Mississippi and the Pillager and Winnebago1sh Bands, 13 Stat.
693; Treaty of October 18, 1864, with Chippewa of Saginaw, Swan
Creek, and Black River. 14 Stat. 657.

4. Treaty of July 2, 1863, with Eastern Bands of Shoshone Indians,
18 Stat. 685.

5. Treaty of July 30, 1863, with Northwestern Bands of Shoshone
Indians, 13 Stat. 668.

6. Treaty of October 12, 1863, with Shoshone-Goshish Bands, 13
Stat. 681.

7. Treaty of October 1, 1863, with Western Bands of Shoshone Indians,
18 Stat. 689. Art. 6 of the treaty recites:

"The said hands agree that whenever the President of the United
States shall deem it expedient for them to abandon the roaming
life, which they have hitherto led, and become herdsmen or agricul-
turists, he is hereby authorized to make such reservations for
their use as he may deem necessary within the country above
described; and they do hereby agree to remove their camps
to such reservations as he may indicate, and to reside and
remain therein.

Art. 6 of the treaty with the Shoshone-Goshish Bands (see fn. 621,
supra) is similar.


9. Treaty of October 7, 1863, with Tabeguache Band of Utah,
13 Stat. 673.

10. "Treaty of October 14, 1864, with Klamath and Modoc tribes
and Yakahoock Band of Snake Indians, 16 Stat. 707.


12. Treaty of October 17, 1865, 14 stat. 713.


14. Two Kettles Band of Sioux Indians, Treaty of October 19, 1865, 14
Stat. 723; Blackfeet Band of Sioux, Treaty of October 19, 1865, 14
Stat. 724.

Immediately after the close of war, commissioners repre-
senting the President of the United States, appeared among
the Five Civilized Tribes. Some of these Indians had been openly
sympathetic with the rebel cause, even entering into treaties with
the Confederacy. This action was seized upon by the commis-
ioners as an indication of disloyalty; and a treaty negotiated in
1865 with the Creeks, Cherokees, Choctaws, Chickasaws, Osage,
Senecas, Shawnee, and Quapaw tribes opens with the
statement that the Indians by their defection had become
liable to a forfeiture of all the guarantees which the United
States had previously made to them.

While this treaty was never ratified, the principle announced
indoubtedly colored subsequent negotiations and is reflected in
the treaties of 1866 with the Seminoles, "Choc'taws and Chick-
asaws, 25 Creeks, 26 and Cherokees. 27 These agreements provide,
among other things, for the surrender of a considerable portion
of the territory occupied by the Indians; they pledge peace, gen-
eral amnesty, the abolition of slavery, and the assurance of civil
and property rights to freedmen, and acknowledge a large mea-
ure of control by the Federal Government over the affairs of
the tribes.

The summer of 1867 found the Plains still in the grip of the
Sioux War. Moreover, the Cheyenne and Arapaho, the Coman-
che and Kiowa had joined the belligerents, carrying hostilities
over a wide area.

The Indian Peace Commission, 28 composed of civilians and
Army officers appointed "to investigate the cause of the war
and to arrange for peace," 29 was successful in part. At
Medicine Lodge Creek in Kansas, the Kiowa, Comanche, and
Arapaho, 30 and the Cheyenne and Arapane promised peace, the
abandonment of the chase, and the pursuit of the habits of
civilized living.

In the summer of 1868, many Sioux, together with a scattering
of Cheyenne and Arapahos, renewed hostilities, which
were terminated by the treaty of April 29, 1868. 31 A month later
the Crows 32 and the Northern Arapahos and Cheyenne 33 put an
end to hostilities in two agreements concluded May 7, 1868, and

8. Treaty of October 2, 1863, with Red Lake and Pembina Bands,

The peace established by these agreements was a fleeting one. War
continued with the Sioux save for a brief interruption for 2 years
thereafter.


34. Treaty of April 29, 1868, 14 Stat. 703.


39. Treaty of April 29, 1869, 15 Stat. 593. By the Sioux treaty, the
United States agreed that for every 30 children of the said Sioux tribe
who can be induced or compelled to attend school a house should be
provided and a teacher competent to teach the elementary branches
of our English education should be furnished. (Quick v. Leupp, 210 U. S. 50, 50 (1907).)


May 10, 1888. By summer the Navajo, the eastern band of Shoshonee and the Bannock, and the Nez Perce had also become signatories to treaties of peace. These were the last treaties made by the United States with Indian tribes.

SECTION 5. THE END

The advancing tide of settlement in the years following the close of the Civil War dispelled the belief that it would ever be possible to separate the Indians from the whites and thus give them an opportunity to work out their salvation alone. Assimilation, allotment, and citizenship became the watchwords of Indian administration and attacks on the making of treaties grew in force.

The termination of the treaty-making period was presaged by section 6 of the Act of March 29, 1867, which provided:

"And all laws allowing the President, the Secretary of the Interior, or the commissioner of Indian affairs to enter into treaties with any Indian tribes are hereby repealed, and no expense shall hereafter be incurred in negotiating a treaty with any Indian tribe until an appropriation authorizing such expense shall be first made by law."

This provision marked the growing opposition of the House of Representatives to the practical exclusion of that House from control over Indian affairs. The provision in question was repealed a few months later but the House continued its struggle against the treaty system. Schmuckebier recounts the incidents of that struggle in these terms:

While the Indian Peace Commission succeeded in ending the Indian wars, the treaties negotiated by it and ratified by the Senate were not acceptable to the House of Representatives. As the Senate alone ratified the treaties, the House had no opportunity of expressing its opinion regarding them until the appropriation bill for the fiscal year 1870, making appropriations for carrying out the treaties, came before it for approval during the third session of the Fortieth Congress. The items providing funds for fulfilling the treaty obligations were inserted by the Senate, but the House refused to agree to them, and the session expired on March 4, 1869, without any appropriations being made for the Indian Office for the fiscal year beginning July 1. When the first session of the Forty-first Congress convened in March, 1869, a bill was passed by the House in the same form as at the previous session. The Senate promptly amended it to include the sums needed to carry out the treaties negotiated by the Peace Commission.

The House again refused to agree but a compromise was finally reached by which there was voted in addition to the usual appropriations a lump sum of twenty million dollars "to enable the President to maintain peace among and with the various tribes, bands, and parties of Indians, and to promote civilization among said Indians, bring them, where practicable, upon reservations, relieve their necessities, and encourage their efforts at self-support" (16 Stat. L. 40).

The House also insisted on the insertion of a section providing "That nothing in this act contained, or in any of the provisions thereof, shall be so construed as to ratify or approve any treaty made with any tribes, bands, or parties of Indians since the twentieth day of July, 1873." This was rather a remarkable piece of legislation in that it did not abrogate the treaties, it withheld its approval although the treaties had already been formally ratified and proclaimed. It had no legal effect, but merely wrote into the act the feeling of the House of Representatives. At the next session of Congress a similar section was added to the Indian appropriation act for the fiscal year 1871, with the additional provision that nothing in the act should ratify, approve, or disapprove any treaty made since July 20, 1867, "or affirm or disaffirm any of the powers of the Executive and Senate over the subject." The entire section, however, was inadvertently omitted in the enrollment of the bill, and was not formally enacted until the passage of the appropriation act for the fiscal year 1872 (16 Stat. L. 570).

Probably one of the reasons for the refusal of the House to agree to the treaty provisions was its distrust of the administration of the Office of Indian Affairs. Another reason was during the debate on this bill that General Garfield made his scathing indictment of that Office. (PP. 53-56.)

"Discontinuance of treaty making, 1871.—When the appropriation bill for the fiscal year 1871 came up in the second session of the Forty-first Congress the fight of the previous year was renewed, the Senate insisting on appropriations for carrying out the new treaties and the House refusing to grant any funds for that purpose. As the end of the session approached it appeared as if the bill would fall entirely, but after the President had called the attention of Congress to the necessity of making the appropriations, the two houses finally reconciled their differences.

The strong fight made by the House and expressions of many members of the Senate made it evident that the treaty system had reached its end, and the Indian appropriation act for the fiscal year 1872, approved on March 3, 1871 (16 Stat. L. 566), contained the following clause, tacked on to a sentence making an appropriation for the Yakima Indians: "Provided further, That no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty: Provided further, That nothing herein
The substance of treaty-making was destined, however, to continue for many decades. For in substance a treaty was an agreement between the Federal Government and an Indian tribe. And so long as the Federal Government and the tribes continue to have common dealings, occasions for agreements are likely to recur. Thus the period of Indian land cessions was marked by the “agreements” through which such cessions were made. These agreements differed from formal treaties only in that they were ratified by both houses of Congress instead of by the Senate alone. Like treaties, these agreements can be modified, except that rights created by carrying the agreement into effect cannot be impaired. In referring to such an agreement, Justice Van Devanter said: But it is said that the act of 1902 contemplated that they alone should receive allotments and be the participants in the distribution of the remaining lands, and also of the funds, of the tribe. No doubt such was the purport of the act. But that, in our opinion, did not confer upon them any vested right such as would disable Congress from thereafter making provision for admitting newly born members of the tribe to the allotment and distribution. The difficulty with the appellants’ contention is that it treats the act of 1902 as a contract, when “it is only an act of Congress and can have no greater effect.”

SECTION 6. INDIAN AGREEMENTS

Following this enactment, a congressional committee was appointed to prepare a compilation of treaties still in force. Act of March 3, 1873. 17 Stat. 675.