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LETTER OF C. S. VINSON TO GREEN McCURTAIN

Lehigh, I. T.,
March 8, 1897.

Hon. Green McCurtain,
Principal Chief, C. N.,

Dear Sir:

In answer to your communication asking my official opinion as to the constitutionality of the act of the general council, approved Sept. 18, 1896, entitled "an act concerning mines and mineral claims," I have the honor to say that I have carefully considered the said act and am of the opinion that it is unconstitutional, and for the following reasons:

1. Article 1st of the treaty of 1855 the United States guarantees our lands to us, to be held

in common, so that each and every member of either tribe (meaning the Choctaw and Chickasaw tribes) shall have an equal undivided interest in the whole; ;rovided, however, no part thereof shall ever be sold without the consent of both tribes and etc.

The real purpose and interest of this law was to ratify and confirm coal leases, and leases for other minerals, oil, etc., already made and entered into by and between certain citizens on the one part, and certain non citizens of the other part. And common report as well as the public records of the various counties of this nation show, that nearly all the coal and other minerals including oil, certainly miles and miles thereof, has already been so leased to non citizens before this law was enacted. To allow a few citizens, or a set of them, to thus set aside for their own use and benefit and to the exclusion of all other citizens these large tracts of mineral lands is in direct conflict with our patent as well as the art 1st and 1st section of our constitution which is as follows:

Sec. 1. "That all freemen, where they form a social compact, are equal in rights, and that no man or set of men, are entitled to exclusive separate

public emolument, or privileges from the community, but in consideration of public services."

It is plain that the confirming and ratifying of large areas of coal and other mineral leases amounting to hundreds of miles by this law renders it exclusive from the fact that it is an open secret that certain non citizen corporations secure by this late law the practical monopoly of all the coal and oil in certain large sections of our country.

Part of sec. 1st of said act reads as follows: "And all such claims, and discoveries, where the laws of this nation have been observed, in making and recording the same are hereby declared to be the property of the citizen or citizens who have discovered and recorded such claims, their heirs or assigns, and are to be recognized and treated as the property of the citizens holding such claims, and may be by such holders sold, assigned or devised unto their heirs or assigns, provided the said heirs or assigns shall be citizens of the Choctaw nation at the time of making suchdisposition of such claims. And citizens holding such claims may lease them to non citizens or foreign corporations, provided always that the interest and rights of the Choctaw

nation are recognized in such leases.

Again this law is unconstitutional because it undertakes to stretch the mine right to work a mine into one of absolute property. The 18th section of art 7 of our constitution says: "Any citizen of this nation who may find any mine or mines, or mineral waters shall have the exclusive right and privilege to work the same, etc." This right to work the mine is not capable, in any fair construction, of being stretched out to make it property which in a round about way may be practically sold to non citizens, for it must be remembered that our public records show that these leases are for 49 years, and some of them 99 years; and thus under this pliant construction a citizen or citizens can by boring holes down to coal, make the coal for a mile in every direction of his property and as such transfer it to non citizens. This is plainly contrary to our patent, and the real meaning of this section of our constitution. To bring out the iniquitous qualities of this act it must be remembered that the extent and number of these coal and oil and other mineral leases, ratified and confirmed by this act, are an unknown quantity -- our council legislated in the dark.

Again all such leases were in open violation of our law against leasing improvements.

It will also be observed that this act provides for the transfer or assignment of one citizen's right or claim to any other citizen; this was in order that the few beneficiaries under this act might squeeze out by any means, foul or fair, small holders of claims.

Again the public policy of the nation has limited all coal and mining contracts to six years, yet this law confirms and ratifies leases ranging as said before in terms of from 20 to 99 years is in open violation of that part of art 1, treaty of 1855 which says: "Provided however that no part there of (meaning public domain) shall even be sold without the consent of both tribes." But admitting the contentions of the advocates of this bill, still it can not be effective until agreed to and enacted by the Chickasaw legislature, which has never been done. Again it is plain that the real meaning of "to work a mine" in this 18th section (remembering our patent that we are to have an equal and undivided interest in the whole) can not be held to be royalties, as are now paid, but the profits which arise from actual mining operations.

To bore a hold down to coal and thus discover it, is not such work as is meant by the words in this 18th section. This is plain for this reason: On man may bore 500 holes and thus under this law become the owner of 1000 miles of coal, clearly an amount greater than ever an Indian, with his undue propensity for work would need. But it is clearer still, that to allow the right of property to attach to 1280 acres of land, as it does under this act, because a man bores a hole at a certain point within that tract and discover coal or other mineral, is simply to allow a few enterprising citizens to appropriate and monopolize all the minerals in our country, and this is what this act practically does, and what it was intended to do, and hence is unconstitutional and void. The act contravenes the terms of the title to the Choctaws and Chickasaws to their lands, and is out of harmony and equity. The provision in the Choctaw constitution simply affords its citizens an opportunity to labor, just the same as is afforded by the law of the nation to labor on a farm which he may make. The idea of royalty is not in the 7th art 18th section of the constitution. Royalty is that which belongs to the whole

people, and can no more be taken from the proprietors and owners of the land, and bestowed on private individuals thereof, than a section of land can be given, conveyed or sold to a private individual without the consent of the Choctaws and Chickasaws.

It is utterly inconsistent with the equal interest of every citizen in the lands to bestow unequal benefits on a few of the citizens. What a citizen can make or create by his own individual efforts is quite different from having a proprietary interest in the property he may use, and the giving a citizen the exclusive right to labor upon or work a mine of his own discovery and enjoy the profits is unequal enough, because this right can not be enjoyed by all alike for the reason that there are not means enough for all to have one to work.

My opinion therefore is that this law conflicts with our patent and our public policy as to our mines, and deprives not only ourselves, but the Chickasaws of vested rights and because of these qualities is null and void.

Respectfully,

C. S. VINSON,
National Attorney,
C. N.