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Indian Affairs,  
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Mr. Cablett Phillips,  
City, Nov. 5, 1893.

In reference to the  
allotment of lands being  
made to the Moquis  
Indians, and the rights  
of this govt. to make  
the allotments.

writes

And Nov 11, 93.

L.B. 268. p. 220.

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P. H. [Signature]  
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OFFICE OF  
W. HALLETT PHILLIPS,  
WASHINGTON, D. C.  
*603 Louisiana Avenue.*

Nov. 5, 1895.

Hon . D. M. Browning,  
Commissioner Indian Affairs.

Sir :

For many years I have been deeply interested in the Mokus of Arizona. These people the most important of the Pueblo or town Indians occupy several Pueblos in the northern portion of Arizona. I have only recently ascertained that allotments are being made of their lands. The matter to which I wish to call your attention, is whether the allotment law is applicable to these people and in this connection I particularly direct you to the decision of the Supreme Court of the United States in the case of United States against Joseph, reported in United States Supreme Court Reports, 614. This holds that the Pueblo Indians are not Indians in the sense in which that word is used in the general laws of the government regulating our intercourse with the Indians and the right and title to land. As is no doubt known to you the Pueblo Indians have for over a thousand years occupied their lands and towns and have attained a high degree of cultivation. They have always been self-supporting and occupy the peculiar position

of dwellers in towns and at the same time agriculturists. The Mokis in their art and manufactures are the most advanced of all the Pueblos. Their ownership of their land under the decision of the Supreme Court, is as much a vested right as those possessed by any other community. The fact that they hold their land in ~~com-~~  
~~mon~~ does not affect their proprietary right nor afford our government any justification for their interference any more than it would sanction interference with the property arrangements of our own citizens. The rights of these people were recognized by the Spanish government, by Mexico, and were solemnly promised protection in our treaty with the last-named country.

Mr. Justice Miller says in his opinion they hold their land in common and in this respect they resemble the Shakers and other communistic societies in this country and cannot for that reason be classed with the Indian tribes to which the general laws of the government are directed. The decision continues:--"

"Turning our attention to the tenure by which these communities hold the land we find it is wholly different from that of the Indian tribes to whom the Act of Congress applies. The United States have not recognized in these latter any other than a passing title, with the right of use until by treaty or otherwise that right is extinguished, and the ultimate title has been always held to be in the United States, with no right in the Indians to transfer it or even their possession without consent of the government. The Pueblo

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Indians, on the contrary, hold their lands by a right superior to that of the United States. Their title ~~dates~~ dates back to grants made by the government of Spain before the Mexican Revolution. A title which was fully recognized by the Mexican Government and protected by it in the treaty of Guadaloupe, Hidalgo, by which this country and the allegiance of its inhabitants were transferred to the United States."

It was accordingly held that the inhabitants of the particular Pueblo in question had a title to their lands which could not be interfered with by the United States. The main point of the decision was that the United States could not treat these people as Indians or differently from the other inhabitants or citizens of Mexico, and that they were under the Treaty entitled to similar rights. This is very fully shown in the learned opinion of the Supreme Court of New Mexico in the case of United States against Santisvivan and United States against Joseph, 1st. New Mexico Reports, 592. This opinion was fully affirmed by the Supreme Court of the United States. No executive order or similar governmental action could affect the status of these people or alter their rights to their land. The treaty of Guadaloupe Hidalgo provides for the protection of the rights of the inhabitants of the ceded country to their property. This included the claims of towns or Pueblos. In my opinion the government has no more

right to allot and partition the lands of the Mokis towns than they have to do so with the lands belonging to any other towns embraced within the ceded territory. It is true the Supreme Court in their opinion proceeded to show that the lands belonging to the Taos Pueblo had been confirmed to it by an Act of Congress. But in regard to the question which I now present to you, it can make no difference so far as the position of the United States is concerned whether the Mokis have a paper title to their land. They still hold them as they have held them from time immemorial in full right of property and the fact that no patent may have issued to them does not affect the question as to whether Congress intended that the allotment act should be applied to these people. If so applicable then Congress has done what the Supreme Court has declared they had no right to do, that is, treat the Pueblo people as Indian tribes. The lands in question are occupied by the towns and fields of the Mokis. ~~The title of these people ante-dates the~~ Spanish or Mexican occupation and never was regarded by those nations as standing on the same footing as other Indian claims. This is a historical fact which the Courts have decided. The Pueblos were incorporated into the mass of Mexican citizenship and were confirmed in all their rights except those of independence. If it

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is determined that the rights of these people to their lands is simply an equitable one this equitable right constitutes property and it devolves upon this government to protect it by the necessary formal acts. But the question as to the nature of the title to their lands does not govern the inquiry as to whether the Mokis can be treated as other Indians to whom the general laws of Congress are to be applied. This last question the Supreme Court has disposed of in the negative, and this determines the power of the Department in this case to apply the allotment law. The question of title can only properly arise when the government asserts some superior right to the land or such right is claimed by some one under the government. It is not necessary there should be a grant or concession in writing. It is sufficient if there is a right or title recognized by the former government and such right or title may rest on the general law of the land. ~~As previously shown the~~ laws of Mexico recognize and confirm the Mokis in all their rights of ownership. The Act of Feb. 18th, 1891, (26th Stat. 794) provides for allotments in any case where a tribe or band of Indians is located upon a reservation created for their use. This cannot be applied to the Pueblo people for they under the decisions of the Court have not like other Indians the use merely, but have also

plenary ownership of their lands which they have possessed for many centuries. Their status cannot be affected as said by the Supreme Court by the fact that an agent had been appointed for them, nor ought it to be controlled by the further fact that for some govern-

~~mental purpose the extent of their lands has been defined by the~~

Department. I am informed that the allotments have been made without the knowledge of the Mokis, who are totally unacquainted with our language or our usages. Owing to this they have not protested, but I do not think this any reason to prevent you from taking notice of the matter and executing justice to this interesting and ancient people. General Armstrong has been among the Mokis and is familiar with them. They should be confirmed in their title to their lands the same as the Pueblos of New Mexico, of which Territory Arizona was a part when the confirmations were made and it is greatly to be hoped that some means will be found of doing this by the action of the land office if legislative action is not deemed necessary.

Very respectfully,  
*W. Hallett Phillips*

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