

9-9-1850

## Report : Claim of Seneca Indians of New York

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IN SENATE OF THE UNITED STATES.

SEPTEMBER 9, 1850.

Submitted, and ordered to be printed.

Mr. WALES made the following

REPORT:

*The Committee on Indian Affairs respectfully submit the following report on the claim, referred to it, of the Seneca Indians, of New York, for certain moneys lost by them through one of the agents appointed by the government for the management of their affairs:*

By the 4th section of the act of June 27, 1846, making appropriations for the Indian department, the Secretary of War was "required to ascertain what annuities or moneys have been wrongfully withholden from the said Senecas, by the late sub-agent of the United States, and so lost to them;" and, to enable him to perform this duty in a satisfactory manner, he was authorized to appoint a commissioner or commissioners to make the necessary investigation, and to collect testimony in relation to the matter; and the result was required to be reported to Congress. The sum of \$500 was at the same time appropriated to defray the expenses of such investigation. The Secretary of War appointed a commissioner accordingly, who made a careful and laborious investigation of the whole case—occupying the greater portion of an entire year—and who submitted an elaborate report of the facts ascertained by him, accompanied by the evidence he collected in relation thereto. This report and evidence were submitted by the Secretary to Congress, on the 8th of January, 1848, as a compliance, on his part, with the requirements of the law, and comprise Senate Document No. 31, first session thirtieth Congress. The investigation and report thus procured and carefully made, and submitted to Congress by a high executive officer, in fulfilment of the duty imposed upon him by the law, to ascertain the merits and extent of the claim, may, it is presumed, be safely relied on. The committee perceive no good reason to doubt the correctness of the results and conclusions arrived at by the commissioner. Before proceeding to state them, and the facts connected with them, however, it is deemed proper to give a brief view of the position held towards the Indians in question by the agent appointed for them by the United States, in order that the merits of the case, and the obligations of the government arising out of it, may the more clearly be understood.

At an early period, when the affairs and interests of these Indians, and their relations with the government and our citizens, were becoming more complex and important, they felt the necessity of having an agent, in whom they could confide, to attend to their interests and to manage their concerns for them. The government obligated itself to provide them with

one; who, in the 6th article of the treaty of 1794, is styled "the Superintendent appointed by the President, for the affairs of the Six Nations (New York Indians) and their Indian friends." This superintendent or agent has always had charge of, and been required by his appointment and instructions to exercise a careful supervision over, all their affairs and interests, of whatever character; and, being appointed by the government, and giving bond to it for the faithful discharge of all his duties and trusts, the Indians have ever looked up to him as a safe depository of their interests, and as a person to be confidently relied on in all matters connected therewith. His connexion with, and supervision and management of, their money affairs, have not been confined to those arising out of their relations with the United States, but have extended to and embraced those with the State of New York and with individuals. Hence, the annuities and moneys due to them from that State have always been received and paid over by him; and he has, in like manner, had the control and management of pecuniary trusts and obligations existing between them and individuals. In view of these facts, there seems to be no good reason to doubt that whatever amount the Indians may have lost, through the malfeasance or even the negligence, of the government agent, the United States are morally, if not legally, bound to make good to them. Nothing short of this would be consistent with justice and good faith towards these helpless and dependant wards of the general government.

The agent through whom the losses were sustained resigned in 1840, and the Indians have ever since been endeavoring to obtain remuneration for those losses. The Commissioner of Indian Affairs, in his instructions to the commissioner appointed by the Secretary of War to investigate the claim, states that it became apparent, soon after the agent's resignation, that all was not right in his dealings with the Indians; that the subject had been repeatedly brought before the department by the Indians, but that, the individual being out of office, "the department had no means of compelling restitution of the moneys said to have been withheld." Their repeated applications to the department proving fruitless, they were compelled themselves to lay their case before Congress. Their claim was investigated and favorably considered in the Senate, and an item was inserted in the Indian appropriation bill to pay them. This was disagreed to by the House of Representatives; which led to a committee of conference between the two houses, and that conference to the adoption of the 4th section of the act of June 27, 1846, requiring the investigation of the claim in the manner it has been by the Secretary of War, through the instrumentality of a commissioner appointed for the purpose.

The claim is made up of various items, which, and the material facts connected with them, are as follows:

The first is for the principal of a fund, known as the "Phelps and Gorham annuity fund," amounting to \$7,143, and the annuity due thereon from 1837, when it was first withheld, to the present time inclusive. This fund was created by a sale by the Indians, in 1788, of some of their lands to Messrs. Phelps and Gorham, and it was so secured as to give to the Indians a regular annuity of five hundred dollars. It is shown, in the report of the commissioner appointed by the Secretary of War, that the agent appointed by the government to take charge of the affairs and interests of the Indians had the control and management of this fund from the earliest period; that it was regularly transferred from one agent

to another; and that it came into the hands of the individual who was agent in 1837, when it disappeared, and the Indians have received nothing on account of it since. Having been used or disposed of by that individual, he pretended to replace or secure it to the Indians by a mortgage on certain property of his own, executed in 1837, but which was entirely worthless, because the property had previously—in 1835—been mortgaged to other parties for as much as it was worth; which previous mortgage was foreclosed, and the property sold and transferred into other hands, and the Indians were thus left without their fund or any security for it. Under these circumstances, there would seem to be no doubt of the obligation of the government to make good the amount to them, as well as the amount of annuity upon it, of which they have been deprived since 1836, but which they would have regularly received, as they had previously, had not the fund been made way with, but been properly taken care of and managed by the government agent.

In regard to the next item, it appears that, by a treaty or agreement with Messrs. Troup, Ogden, and Rogers, in 1826, the Indians became possessed of United States stock yielding an income of \$2,583 per annum; that this stock was placed in the Ontario bank, in Canandaigua, New York, in trust for the Indians, where it still is; and that the income has been regularly collected by the bank, and paid over to the government agent for the Indians for payment to them. It is satisfactorily shown that it was paid to him for the years 1837, 1838, and 1839, but that he never paid any portion of it to the Indians for those years. They have, therefore, a just claim against the government for the amount which they thus lost.

The next item is for the amount of an annuity of \$500, due from the State of New York under a treaty of 1815, which the same agent received in 1837 and 1838, but never paid over to the Indians, as is satisfactorily established by the report of the Commissioner. The Indians rely upon the agent appointed for them by the general government to collect this annuity for them and to pay it over; and this has always been properly done, except during the years mentioned. The amount for those years having been lost through that agent, without any fault on the part of the Indians or of the authorities of New York, there is an unquestionable obligation on the part of the United States to repair that loss.

The following are the facts ascertained by the Commissioner in relation to the next item: A difficulty arose in relation to the distribution of a part of the annuity due from the United States to the Indians, in 1838, in consequence of an effort to effect a change in the established custom of paying such moneys to the chiefs to be disposed of by them by distributing the annuity money directly and equally among the heads of families. The money was first deposited in the Bank of Buffalo to the credit of certain chiefs, who drew it therefrom, and took it to the council-house. The Indians then quarrelled all day about the disposition to be made of it; and being unable to settle the difficulty, they deposited it for the night with one of the chiefs, from whom it was the same night taken by force. On a search-warrant it was recovered and taken into court, and the judge advised its re-deposit in the bank, in the names of the same chiefs to whose credit it had been there previously, until the difficulty should be settled. By the advice of the agent, however, it was deposited to the credit of only four of them; and at his instigation and request it was af-

terwards drawn out and placed in his hands upon the pretext of enabling him to distribute it to the heads of families. Only \$117 50 was so distributed or paid—the agent having kept and made way with the balance, amounting to \$3,482 50. Under these circumstances, there would seem to be no doubt of the obligation of the government to make good the amount.

The next and last item pertains to the claim of an individual Indian rather than of the tribe. It appears from the report of the commissioner that Mrs. Polly Jameson, an Indian woman of property and respectability placed a sum of money in the hands of the agent for safe-keeping, of which he never paid her back but \$180, and that the balance, amounting to \$1,631, she could never recover, and lost entirely. The commissioner ascertained that to be the amount she actually thus lost; that the money was intrusted to the agent solely in consequence of his official position and connexion with the Indians; that this was done because he was “an officer appointed by the government for the special purpose of taking charge of the interests of the Indians,” individually as well as collectively. This case is one of great hardship, and merits the most favorable consideration.

The following is a detailed statement of the items of the claim, and the amounts to which, according to the report of the commissioner appointed to investigate it, the Indians are entitled:

1st. Principal of Phelps and Gorham annuity fund	-	-	\$7,143 00
2d. Annuity of \$500 due thereon from 1837 to 1850 inclusive, fifteen years	-	-	7,500 00
3d. Income on stock placed in Ontario bank for 1837, 1838, and 1839, viz: \$2,583 per annum	-	-	7,749 00
4th. Annuity of \$500 from the State of New York for 1837 and 1838	-	-	1,000 00
5th. Amount deposited by chiefs in Buffalo bank, and drawn therefrom by the agent, less \$117 50 thereof distributed to heads of families	-	-	3,482 50
6th. Amount deposited with agent by Mrs. Polly Jameson, less \$180 paid her back by him	-	-	1,631 00
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			28,505 50

It would thus appear, from a laborious and careful investigation by a commissioner specially appointed for the purpose by authority of Congress, and whose report was adopted by the Secretary of War, who was required to ascertain the merits and extent of the claim, that there is justly and fairly due from the government to the Seneca Indians of New York the sum of \$28,505 50, exclusive of interest, which they also claim, and to which they are entitled upon every principle of justice and equity. They lost the money entirely through the malfeasance of the agent appointed by the government to take charge of their affairs, and to watch over and protect their interests, and whom they were consequently led to confide in implicitly in all matters connected therewith. They repeatedly, and year after year, made application to the department for justice, but no proper attention appears to have been paid to their solicitations, and they were finally compelled, in 1845, to do what the committee think the department should have done for them—to lay their claim before Congress, and urge it upon the consideration of that body. It is, therefore, one of

those few peculiar cases in which the government is fairly and justly bound to pay interest—which would be awarded to them in any court of law and equity. The matter is one of great consequence to them, and they have interests of great magnitude and importance depending upon the amount that may be allowed to them. It is their intention to devote it, whatever it may be, to the establishment of manual-labor and other schools, for the education and training of their youth in letters and in the mechanic arts; and pursuits of civilized life, and thus to secure their advancement in civilization, their moral and social elevation, and their permanent welfare, happiness, and prosperity. An object so important and praiseworthy—one which the government has steadily kept in view in its relations with the various Indian tribes—should strongly commend their case to the liberal consideration of Congress. The committee, therefore, respectfully recommend that an item or section be inserted in the Indian appropriation bill making provision for the payment of the claim, principal and interest.