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Report on Payments Due the Pottawatomies

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IN THE SENATE OF THE UNITED STATES.

JANUARY 19, 1870.—Ordered to be printed.

Mr. HARLAN, from the Committee on Indian Affairs, submitted the following

REPORT.

The Committee on Indian Affairs, to whom was referred Senate resolution of April 29, 1870, as follows—

Resolved, That the Committee on Indian Affairs be requested to report to the Senate what action, if any, has been taken upon the report made on the 18th day of January, 1869, to the Secretary of the Interior by the commissioners appointed by the President under the Senate amendment to the 10th article of the treaty with the Pottawatomie Indians of August 7, 1868, which report ascertains the principal sum due those Indians from the United States to have been, in the year 1862, \$178,953 43; and what action, if any, has been taken upon the supplementary report of said commissioners made on the 22d day of January, 1869, ascertaining the interest due on said principal sum at the latter date to be \$48,897 95. And that said committee report whether in their opinion the results at which said commissioners arrived are correct, and what reasons exist, if any, why the sums so found due said Indians should not be paid—

have had the same under consideration, and respectfully report :

The report of the commissioners referred to in the foregoing resolution, dated January 19, 1869, indicates that they have found a balance due said Indians amounting to \$178,953 43; and by a supplementary report, dated January 22, 1869, they report a further amount of \$48,897 95 due said Indians as interest on an alleged indebtedness of \$160,540 48, at 5 per cent., from December 19, 1862, to the date of said supplemental report.

The first-named sum (\$178,953 43) is the aggregate of various sums supposed to be due under treaties commencing December 2, 1795, and ending with treaty of July 23, 1846, as follows :

MONEY DUE POTTAWATOMIE INDIANS.

RECAPITULATION.

Statement of stipulations, payments, and balances.

Schedule—	When proclaimed.	To what date calculated.	Stipulations.	Payments.	Due Indians.	Due United States.
A.....	Dec. 2, 1795	Dec. 2, 1860	\$65,000 00	\$42,000 00	\$23,000 00	.....
B.....	Dec. 26, 1803	Dec. 26, 1860	3,800 00	2,200 00	1,600 00	.....
C.....	Apr. 24, 1806	Apr. 24, 1826	5,000 00	.....	5,000 00	.....
D.....	Jan. 27, 1808	Jan. 27, 1861	21,200 00	16,800 00	4,400 00	.....
E.....	Jan. 16, 1810	Jan. 16, 1861	25,500 00	20,250 00	5,250 00	.....
F.....	Dec. 30, 1816	Dec. 30, 1828	12,000 00	12,000 00	.....	.....
G.....	Jan. 4, 1819	Jan. 4, 1861	19,500 00	19,500 00	.....	.....
H.....	Jan. 15, 1819	Jan. 15, 1861	105,000 00	103,750 00	1,250 00	.....
I.....	Mar. 25, 1822	Mar. 25, 1861	132,280 00	112,235 23	20,044 77	.....
K.....	Feb. 7, 1827	Feb. 7, 1861	200,263 37	208,620 47	.....	\$8,357 10
L.....	Jan. 7, 1829	Jan. 7, 1861	208,203 00	194,957 91	13,245 09	.....
M.....	Jan. 2, 1830	Jan. 2, 1861	527,351 00	501,629 01	25,721 99	.....
N.....	Jan. 21, 1833	Jan. 21, 1861	419,309 83	413,780 33	5,529 50	.....
O.....	Jan. 21, 1833	Jan. 21, 1861	701,148 50	661,431 61	39,716 89	.....
P.....	Jan. 21, 1833	Jan. 21, 1861	298,721 00	299,349 29	.....	628 29
Q.....	Feb. 21, 1835	Feb. 21, 1861	1,304,399 99	1,319,664 99	.....	15,265 00
R.....	Feb. 21, 1835	Feb. 21, 1861	110,000 00	112,200 00	.....	2,200 00
S.....	Feb. 18, 1837	Feb. 18, 1861	135,604 33	135,604 33	.....	.....
T.....	July 23, 1846	July 23, 1860	629,286 00	629,286 00	.....	.....
Deficiency for outfit for emigrating Indians.....					28,442 02	.....
For emigrating Indians.....					62,590 00	.....
Payment to Pottawatomies prior to 1819.....					.....	30,387 34
					235,791 16	56,837 73
					56,837 73	.....
Balance due Pottawatomies as awarded.....					178,953 43	.....

Which, to be understood, must be considered item by item.

The first item of \$23,000 is alleged to be due under article 4 of the treaty of December 2, 1795, allowing the Pottawatomie Indians a perpetual annuity of \$1,000 a year, which would amount, from the day of the treaty up to December 2, 1860, to \$65,000, of which sum the commissioners report that they find evidence of the payment of \$42,000, being \$1,000 a year, from 1819 to 1860, inclusive. The said balance of \$23,000, of which they find no evidence of payment, covers the period from the date of the treaty, 1795, to 1819. The payments, it would appear, have been regularly made from the last named date.

It may be observed in relation to this item that more than forty years had elapsed before the Pottawatomies alleged a want of fulfillment, of which there is no evidence adduced except the absence of vouchers. During that period it is known that these Indians were at war with the people of the United States, being allies of the British government, and had forfeited all rights under preëxisting treaties, including, of course, the treaty of 1795. These obligations were not resumed until the year 1815. (Statutes at Large, vol. 7, page 131.) This disposes of \$20,000 of the \$23,000 of alleged indebtedness.

It is well known that several of the public buildings were plundered and burned by the British during the war of 1812, and that the buildings containing the papers and records of the Treasury Department were burned about the year 1829, which is sufficient to account for the probable loss of the vouchers for the remaining three years.

The next item of \$1,600, alleged to be due said Indians, originates under the third article of the treaty of December 26, 1803, providing for the payment of forty bushels of salt annually, amounting in the aggregate, from the date of the treaty aforesaid to December 26, 1860, to 2,280 bushels, of which vouchers for the delivery of only 1,320 bushels are reported by the commissioners, leaving a balance of 960 bushels due,

which the commissioners call 320 barrels, and estimate to be worth \$5 per barrel, making the \$1,600 which they allege to be still due.

The commissioners report the payment of this annuity regularly from year to year, beginning in 1819 and ending in 1856 inclusive.

It will be seen from this statement that the major part of this deficiency accrued prior to 1819. The absence of the vouchers during that period may be accounted for as in the case of the first item named, leaving but four years, from 1856 to 1860, or 160 bushels of salt, instead of 960 bushels as reported by said commissioners, which could not be estimated to be worth more than one dollar per bushel, or in the aggregate \$160. And it is probable, your committee think, that this has been paid under some other head, as will be made more fully manifest hereafter.

The next item of \$5,000 is claimed under the fourth article of the treaty of April 24, 1806, which provides for the annual payment of \$500 per year for the period of ten years, nine years of which would have terminated previous to the treaty of 1815, and if not paid was abrogated by the war, and the absence of vouchers for the last year may be accounted for as in the case of the first item.

The next item, \$4,400, is claimed under the second article of treaty of January 27, 1808, which provided for a permanent annuity of \$400 per year, amounting up to January 27, 1861, (53 years,) to \$21,200, of which the commissioners find evidence of payment of only \$16,800, being the regular annual payments as in the other cases, from 1819 to 1860, inclusive, the commissioners finding no evidence of payment of this annuity prior to 1819, the absence of vouchers or actual non-payment being accounted for or justified as in preceding cases.

The next item, \$5,250, is claimed under the third article of the treaty of January 16, 1810, which provides for a permanent annuity of \$500 a year, amounting in the aggregate, up to January 16, 1861, to \$25,500, of which the commissioners find evidence of the payment of \$20,250, covering the annual payments from 1819 to 1860, inclusive, with the exception of the year 1826 and half of 1856.

It will be seen that nine of these payments, making \$4,500 of the alleged deficit, occurred prior to 1819, leaving but \$750. The absence of vouchers for so trivial a sum under the proper head is not sufficient evidence in the judgment of your committee to justify the award of even that amount; for it is well known to those conversant with this branch of the public service that amounts due an Indian tribe under one head are frequently commuted and paid under some other head of indebtedness; provisions and clothing, for example, being frequently substituted for money, with the consent of the Indians. The committee think it probable that a careful examination of the whole account current would explain this apparent discrepancy.

The next item of \$1,250 originates under the third article of the treaty of January 15, 1819, granting a permanent annuity of \$2,500 a year, amounting in the aggregate, up to January 15, 1861, (forty-two years,) to \$105,000, of which the commissioners find evidence of the payment of \$103,750, covering the whole period from 1819 to 1860, inclusive, except one-half a year for 1855 or 1856. The commissioners admit that the disbursing officer is credited with the payment of the full amount in his account, as audited and allowed at the Treasury Department; but they do not find the vouchers for one-half year's payment, which, in the opinion of your committee, is hardly sufficient to justify this claim. The presumption is that he would not have been credited in the absence of requisite evidence, when his accounts were settled at the Treasury Department.

The next item, \$20,044 77, originates under the 4th article of the treaty of March 25, 1822, granting an annuity of \$5,000 a year for 20 years, and authorizing the employment of a blacksmith and a teacher for the term of 15 years, at the rate of \$1,000 a year for both. The commissioners claim that the Indians were entitled, under this article, up to March 25, 1861, to \$132,280, of which they find evidence of the payment of only \$112,235 23, leaving the alleged deficit of \$20,044 77.

The commissioners find evidence that the annuity in money was paid regularly from 1822 to 1841, inclusive, except for the years 1835 and 1836. And from their statements of payments made under the head of blacksmith they find evidence of the payment, from the year 1825 to 1858, inclusive, of \$18,362 72; and under the head of teacher \$3,872 51. But the commissioners recite the fact that the provision for blacksmith was made permanent by the treaty of January 7, 1829, and estimate the salary at \$720 a year; which, from March 25, 1822, to March, 1861, (39 years,) would amount to \$28,080. They also estimate the salary of teacher at \$280 a year, making for 15 years \$4,200; showing, as they think, a deficiency on account of blacksmith and teacher of \$10,044 77.

Your committee observe, in relation to this part of the alleged deficit, that there is nothing authorizing the commutation of this service, and obligating the Government to pay its supposed value in money; nor is there anything justifying the commissioners' arbitrary estimate of blacksmith's salary at the rate of \$720, and the salary of the teacher at \$280 per year. Your committee would observe also that the treaty of 1829 modifies the provisions of the treaty of 1822 in relation to teacher, making the continuance of his employment to depend on the will of Congress, and it does not appear that Congress authorized the employment of a teacher after the date of said treaty.

And it is clear, from the evidence furnished by the commissioners in their report, that disbursements were made from year to year on account of blacksmith, with reasonable regularity, and as your committee are bound to infer that when any interruption did occur in such employment, it was on account of the unsettled condition of said Indians, and not the fault of the Government.

This disposes of the whole of said supposed deficiency, with the exception of the annuity for the years 1835 and 1836, amounting to \$10,000. But the commissioners claim (see report, page 4) that under the third, fourth, and fifth articles of the treaty of February 7, 1827, the said Indians were entitled to annuities, services of blacksmith, iron and steel, expenditures for education, cost of mill, support of miller, for salt, goods, and the payment of debts, amounting in the aggregate, up to February 7, 1861, to \$200,263 37; and that they find evidence of payments and disbursements under these various heads during the same period amounting to \$208,620 47, showing an excess, according to their statement, of \$8,357 10, nearly equal to the deficit under the preceding item. But in the last statement the commissioners estimate \$220 a year for iron and steel under this treaty, amounting to \$7,480, for which your committee find no provision in the said treaty; which sum, being added to the former sum of \$8,357 10, makes \$15,837 10. From this excess deduct the deficiency of \$10,000 found under the preceding head, and we have an excess of \$5,837 10; or, taking both together, we find an indebtedness on the part of the Indians to the Government of the United States for that amount.

The next item of \$13,275 09 is claimed to be due under the various provisions of the treaty of January 7, 1829. This supposed deficiency is arrived at in the following manner: The commissioners state that

the amount of \$64,000 would be due said Indians, as per annuity of \$2,000 a year for 32 years, from January 7, 1829, to January 7, 1861, of which they find evidence of payment from year to year up to and including 1860, with the exception of \$2,000 for 1830, \$1,000 for 1832, and \$2,000 for 1838, amounting to \$5,000. They also allege that they do not find the requisite vouchers for \$1,000 of the limited annuity provided for in said treaty expiring in 20 years; nor evidence of the disbursement of \$1,000 for the purchase of a section of land granted to Nancy Burnett; nor evidence of the payment of one installment of the annuity of \$100 a year for 25 years to Topenebe. The commissioners state that said Indians were entitled, during said period, to \$17,542 worth of tobacco, of which they find evidence of the disbursement of only \$11,500; and that they would have been entitled, under the head of iron, to \$2,631 25, of which they find evidence of payment of only \$1,983 30; and that they would have been entitled, under the head of steel, to \$1,534 75, and they find evidence of the disbursement of only \$1,273 75. The commissioners exhibit evidence of overpayment under the head of education and labor to the amount of \$895 86.

Your committee would observe that the commissioners' estimate of the value of tobacco, iron, and steel is purely arbitrary. The treaty provides for its delivery in kind and not its commutation, and the exhibit of the commissioners shows regular payments of the exact quantity stipulated in the treaty from and after the year 1840, and some of the previous years. But if your committee were to admit that the absence or displacement of appropriate vouchers for payments which the law required to be made 30 or 40 years ago, sufficient to establish the alleged indebtedness for the whole amount of \$13,245 09, it will be found, as we proceed, to be more than covered by excessive or overpayments to said Indians, under other heads.

Your committee would observe, in relation to the \$1,000 which the treaty stipulates may be used in the purchase of a section of land of Nancy Burnett, that it is a private claim of the said Nancy, payment of which was made conditional by the treaty, and your committee have no evidence that there was any actual breach of the agreement. And in relation to the annuity of \$100 to Topenebe, your committee would observe that it was a private claim, and, even if not paid, would not be owing to the Pottawatomie nation.

The next item mentioned by the commissioners, \$25,721 99, is said to have originated under the treaty of January 2, 1830, providing for the payment of \$16,000 permanent annuity, and 50 barrels of salt annually. The permanent annuity of \$16,000 a year, for 31 years, up to January, 1861, would amount to \$496,000, of which the commissioners' exhibit indicates the payment of only \$471,956 35, leaving a deficit of \$24,043 65.

Your committee would observe that the exhibit of the commissioners indicates the regular payment of this annuity up to 1846; and afterwards, the regular payment, from year to year, of only \$14,412 50, and during 1850 an additional sum of \$2,000, thus showing a deduction of \$1,587 50 per annum from that year (1846) forward, which is explained by reference to the action of the Indian Office in paying to a band of the Pottawatomie nation residing in Michigan, who did not remove west with their brethren, the sum of \$1,587 50 per annum, as provided by supplemental article of the treaty of September 26, 1833, (Statutes at Large, vol. 7, p. 445,) so that in fact there was an overpayment to the Pottawatomie nation under this head of nearly \$2,000, which will more than cover the alleged deficiency under the head of salt. And your committee deem it not improper to remark in this connection that an

equitable construction of said treaty and supplement would seem to have required that this payment of \$1,587 50 per annum to the Michigan band of Pottawatomie Indians should have commenced ten or twelve years earlier; that during this period the Pottawatomie Indian nation west was overpaid \$1,587 50 per annum, or in the aggregate not less than \$15,875.

The next item, \$5,529 50, claimed by said commissioners to be due, arises under the third article of the treaty signed October 20, 1832, and proclaimed January 21, 1833, which provides among other things for the payment of an annuity of \$15,000 a year for twenty years, all of which, according to the exhibit of the commissioners, was regularly paid, except for the years 1837-'38, during which years the vouchers seem to be absent for \$5,129 50; the remainder of the deficiency is part of the annuity of Alexander Robinson.

The next item, \$39,716 89, claimed by the commissioners to be due, arises under the treaty signed October 26, 1832, proclaimed January 21, 1833, which among other things provides for an annuity of \$20,000 a year for twenty years. From the exhibit of the commissioners it will appear that this annuity was overpaid to the amount of \$5,598 90, but the commissioners allege that said Indians were entitled, under the head of farming utensils, &c., to a disbursement of \$99,379 and have received only \$60,420 71.

Your committee are of the opinion that there is no warrant in the treaty for this specific claim of \$99,379. The article of the treaty under which this claim is made, is as follows:

ARTICLE 5. The United States agree to provide for the Pottawatomies, if they shall at any time hereafter wish to change their residence, an amount, either in goods, farming utensils, and such other articles as shall be required and necessary, in good faith, and to an extent equal to what has been furnished any other Indian tribe or tribes emigrating, and in just proportion to their numbers.

It will be seen that the quantity of goods, utensils, &c., was to be ascertained by the Government by estimating the relative quantity which had been given to other Indians under similar circumstances, giving a wide range for the exercise of a discreet judgment; and your committee have no evidence of any error in the interpretation of this provision, or in its execution.

The next items of \$28,442 02, claimed to be due under article five of the treaty signed October 26, 1832, proclaimed January 21, 1833, for outfit; and \$62,590 for expenses of removal of 1,138 self-emigrating Indians; the said article is quoted above. The commissioners say (page 10) that the 1,138 Indians who removed themselves received an outfit of only \$12,607 50, but that they were entitled to \$41,050 42, because certain emigrating Choctaws had received an outfit costing proportionally that amount. They also state, on same page, that the 4,792 Pottawatomie Indians removed by the Government cost \$55 per capita, and allege that the self-emigrating Indians were entitled to an equal amount per capita for traveling expenses.

Your committee are of the opinion that there is nothing in the treaty warranting the payment of any part of this claim, but that if anything were due it would be payable to the individual Indians who removed themselves and not to the nation at large.

The commissioners exhibit in the schedule, page 30, an allegation of overpayment to the Pottawatomie Indians under treaties proclaimed January 21, 1833, and February 21, 1835, amounting to \$18,093 29, which will more than cover all actual deficiencies under the various heads referred to in the commissioners' report, except such as have been otherwise explained.

And as your committee are unable to find that anything was justly due to said Indians, and unpaid at the date mentioned in the supplemental report of the commissioners of January 22, 1869, nothing could be justly due as interest.

Your committee have not included in the foregoing analysis \$39,000 paid to the Michigan band of Pottawatomies under joint resolution of July 28, 1866, (Stat. L., vol. 14, p. 37,) which this law directs to be deducted from moneys held by the government for said Pottawatomie nation in this final settlement with their Michigan brethren, but the most of which, your committee are informed, was erroneously paid to the Pottawatomie citizen Indians.

That some errors have occurred in execution of the various treaties made between the United States and the Pottawatomie Indians, numbering more than thirty and covering a period of more than sixty years, need not be denied; but a careful and intelligent examination of all of these accounts will show great liberality on the part of the Government in dealing with these children of the forest, and payments largely in excess of the strict requirements of treaty stipulations.