

4-9-1872

Report : Petition of the Pottawatomies

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IN THE SENATE OF THE UNITED STATES.

APRIL 9, 1872.—Ordered to be printed.

Mr. BUCKINGHAM made the following

REPORT:

[To accompany bill S. 944.]

The Committee on Indian Affairs, to whom was referred the petition of the Pottawatomie Indians remaining in Michigan and Indiana for the payment of annuities due them, submit the following report :

In the year 1795, and at various times, the Government of the United States has made treaties with the Ottawa, Chippewa, and Pottawatomie Indians, in which they were formally recognized as distinct nations uniting in the same treaties, but recently they have been known as the United Nation of Pottawatomies, and since 1846 as the Pottawatomie Nation.

By the provisions of the several treaties the Indians ceded lands to the Government, and the Government paid for the same in other lands, in money, and in goods, and pledged annuities—some for a short, and some for a long period.

On the 26th of September, 1833, a treaty was made by which the nation ceded to the United States about 5,000,000 acres of land lying on the western shore of Lake Michigan, for which the Government gave and pledged a satisfactory consideration. A part of the nation did not at the time agree to the treaty, but the next day, being the 27th day of September, 1833, those who had declined and were known as the chiefs and head-men of said united nation of Indians, residing upon their reservations of land lying in the Territory of Michigan, south of Grand River, entered into a treaty supplementary to that which had been executed the previous day, by which they became parties to the main treaty upon terms specified in the supplemental treaty; one of which permitted them to remove to Northern Michigan, and declared that in case of removal they should be entitled to share in all annuities payable under former treaties.

The Commissioner of Indian Affairs, in a letter addressed to the Secretary of the Interior, dated November 15, 1862, said that the main tribe moved to their new homes west of the Mississippi, and the Catholic party to the northern portion of Michigan. This is evidence that they complied with the condition upon which they were to share in the annuities due the nation. The nation was permitted to remain on the lands they ceded to the Government, until 1836, and received all their annuities there, of which these bands undoubtedly received their proportion. After the removal of the nation, the Government made repeated appropriations, and paid many of the annuities to the Pottawatomie Nation

west of the Mississippi, while the bands in Michigan received no part of the same.

The Commissioner of Indian Affairs in 1843 recognized their claim to a portion of annuities granted to the nation under the treaties of July 20, 1829, and September 27, 1833, and paid the sum of \$1,587 50 annually as their proportion of the same from 1843 until and including the year 1865. The Commissioner undoubtedly overlooked annuities pledged in other treaties which are evidently as obligatory as those under which he paid.

An act of Congress approved March 2, 1861, directed the Secretary of the Interior to examine and report to Congress what amount, if any, was then due to the Chippewa, Ottawa, and Pottawatomie Indians residing in Michigan, under and by virtue of the treaties of July 29, 1829, September 26, 1833, and the articles supplementary thereto, and under the treaty of the 5th and 19th of June, 1846, with the Pottawatomie Nation of Indians, and also to report whether there is any money or property heretofore payable to said Pottawatomie Nation made, under and by virtue of the treaty of October 26, 1832, and other treaties, which has not been appropriated and paid; and if any, what amount.

In compliance with the requirements of that act, the Secretary reported under date of December 19, 1862, that, based upon the construction given by the Indian Office to the several treaties, there was due the Pottawatomie Nation \$160,540 48 in cash, besides tobacco, iron, steel, and salt, and that he had no reasons to doubt the statement or the construction given by the Commissioner to the treaties.

He also says that no payments were made the Michigan band under the provisions of the treaty of the 27th of September, until 1843, and adds, "that the band which by the supplementary treaty was permitted to remain in Michigan must be regarded as a part of the Pottawatomie Nation. They are entitled to receive *per capita* their proportion of the annuities and other payments provided for in the several treaties with the nation, to the same extent they would have been if they had gone west with the tribe." "To determine the amount due them it is necessary to ascertain the number in Kansas at the date of the several payments, and the number of those of the band who were by the supplementary treaty permitted to remain in Michigan, and of their descendants at the same period."

The Secretary transmits a report of the Commissioner of Indian Affairs in which that officer states, that from the pay-rolls it appears that the Indians residing in Michigan participated in the benefits of nearly all the treaties from 1795 to the time of their separation in 1836.

Upon this basis he shows a balance of \$73,112 50 due the bands residing in Michigan, by virtue of the provisions of the supplementary treaty.

He also makes a second statement, in which he shows that if the bands are entitled "to participate in all the provisions contained in the treaty of September 26, 1833," (as may be claimed if we look only to the language quoted from the supplementary treaty of September 27, 1833,) "they are entitled to \$49,217 50 from former cash annuities, and to \$16,685 for interest received on money invested in stocks for educational, agricultural, and other purposes, and to \$33,407 50 for interest due on a fund of \$643,000, the avails of a sale of land in Iowa, made under the treaty of June, 1846," making the sum of \$99,310, besides an interest remaining in the fund.

In looking at the circumstances of the main nation, and of the Michigan band, and the object which each desired to accomplish, it is evident

to your committee that, by the treaty of September 26, 1833, the main nation ceded to the United States all their interest in lands in Illinois and Michigan, for which they agreed to receive \$500,000, to be applied for different purposes—an annuity of \$14,000 per year for twenty years, and 5,000,000 acres of land west of the Mississippi River, and to remove to the same within three years; also, that the Michigan bands, by the supplementary treaty, ceded to the United States all their interest in lands described in the main treaty, together with certain sections of land which had been reserved to them by former treaties, for which they were paid a consideration separate from that paid to the nation.

After the supplementary treaty had been executed another provision was annexed, as follows: "As since the signing of the treaty a part of the band residing on the reservations in the Territory of Michigan have requested, on account of their religious creed, permission to remove to the northern part of the peninsula of Michigan, it is agreed that in case of such removal the just proportion of all annuities payable to them under former treaties, and that arising from the sale of the reservation on which they now reside, shall be paid them at L'arbre Croche."

This provision was evidently a relinquishment of all claims "to participate in the provisions" of the main treaty of September 26, and gave the bands a right only to a portion of annuities under former treaties, and to the consideration then pledged for their reservations.

Your committee are therefore of the opinion that both the nation and the Michigan band executed the treaties of the 26th and 27th of September, 1833, for the purpose of making a complete separation of all pecuniary interests, except in annuities, due the nation under former treaties, that each party might go their own way, one west of the Mississippi and the other to Northern Michigan.

If this is a correct construction of the treaty and its supplement, it is evident that the Indians of Michigan have no claim to annuities arising under the main treaty of September 26, 1833, nor to any portion of the consideration paid for lands then ceded, nor to the proceeds arising from the sale of land lying west of the Mississippi. This construction is also a bar to the claim which the memorialists now make for payment of the lands alienated by the first section of the supplemental treaty. The \$100,000 was the consideration given for that land.

In examining the several treaties, the committee find that by the one of June 7, 1803, the United States engaged to deliver yearly, and every year, a quantity of salt not exceeding 150 bushels.

By the treaty of October 26, 1826, the United States stipulated to provide for the support of a blacksmith at some convenient point, to appropriate for the purpose of education the annual sum of \$2,000, so long as Congress might think proper, to build a mill at Tippecanoe River, to support a miller, and to pay annually 160 bushels of salt, all of which therein specified were to have been paid by the Indian agent at Fort Wayne.

By the treaty of September 20, 1828, the United States agreed to furnish the Pottawatomie tribe annually with a specified amount of tobacco, iron, and steel, with a blacksmith for 15 years, with 3 laborers for a part of each year for ten years, and to appropriate \$1,000 annually, to be applied for the purposes of education, so long as Congress should think the appropriation would be useful.

Other treaties have similar provisions.

Others reserved sections and tracts of lands for particular persons and bands which have since been ceded to the United States, and the consideration paid to the parties for whom they were reserved.

In the judgment of your committee the memorialists are not entitled to any part of the payments made for lands so reserved, nor for any annuities paid to chiefs and other individuals, nor are they entitled to any annuities for educational purposes which are restricted to the pleasure of Congress, nor to any which were pledged for the establishment of blacksmith-shops, for iron and steel, for mills, millers, and laborers. These were for local objects in which each individual might receive benefit only as he should resort to such localities, and participate in them in common with the entire nation.

But when, as in one instance, another treaty was afterward ratified, by which the Government agreed to pay a specified annuity in money instead of performing the stipulations referred to above, such annuity being made susceptible of subdivision and distribution, gave your memorialists a title to their just proportion.

The annuity of \$1,587 50 paid the Michigan Indians from 1843 to 1865, was regarded by the commissioners as their just proportion of an annuity of \$16,000, pledged by the treaty of 1829, and of the \$2,000 made payable annually by the supplementary treaties of September 27, 1833. Whereas, in the judgment of your committee, as expressed in their construction of this and the several treaties, they are entitled to the entire annuity of \$2,000.

On the 28th of July, 1866, Congress passed an act directing the Secretary of the Interior "to pay the Chippewa, Ottawa, and Pottawatomie Indians of Michigan, in pursuance of an agreement and compromise made with the Pottawatomie Nation, so named and designated in the treaty of 1846 with the United States, the sum of \$39,000, in full of all claims in favor of said Michigan Indians, either against the United States or said nations of Indians, present, past, or future, arising out of any treaty made with them, or any band or confederation thereof, and the annuity now paid them is to be restored and paid to said nation for the future."

On examination, it does not appear that the Michigan Indians were parties to that treaty, or that the treaty had any reference to them; and it is difficult for your committee to see how two interested parties can justly unite and deprive a third party of interests to which he is entitled by previous treaties which they have entered into with him. Nor do they understand how, in accordance with the principles of law or justice, the Government can determine that a partial fulfillment of treaty stipulations shall bar those with whom the treaties have been made from claiming the amount stipulated. There is evidence that the Michigan Indians received this appropriation under a protest, and claimed that it did not discharge the Government from all pecuniary obligations to them; to which conclusion the committee have also arrived.

The committee believe that all annuities had been paid up to and including the year 1835, and they determine the amount which has become due since that year, and apportion it to the memorialists and to the nation in proportion to their numbers at each semi-decade. They have, however, made no distinction between the value of annuities payable in silver and those payable in currency.

The number which makes up the nation west of the Mississippi is determined by the receipt-rolls on file in the Second Auditor's office of the Treasury Department, and the number which make up the Michigan Indians is determined by like rolls for the years 1843 to 1866, inclusive.

Previous to 1843 Government officers recognized their number as being 250, and by affidavits it is shown that a census was taken in 1871 which makes their number 233.

Affidavits show that in 1841 twenty-three of the Michigan band removed to Indiana, and that their number increased to eighty-nine in 1871. No allowance is made for any residing in that State prior to 1841, and as there has evidently been a gradual increase in their numbers since that date, the increase has been apportioned to each semi-decade.

The following exhibit is made in accordance with the construction given to all treaties as herein set forth, and shows the amount due the memorialists :

Treaty.	Annual amount.	Time.	Amount due in 1836.		Amount due first semi-decade, to 1841.		Amount due second semi-decade, to 1846.		Amount due third semi-decade, to 1851.	
					Yrs.		Yrs.		Yrs.	
Aug. 5, 1795	\$1,000	Perpetual...	\$1,000	5	\$5,000	5	\$5,000	5	\$5,000	
Sept. 30, 1809	500	do	500	5	2,500	5	2,500	5	2,500	
Oct. 2, 1818	2,500	do	2,500	5	12,500	5	12,500	5	12,500	
Aug. 29, 1821	5,000	20 years	5,000	5	25,000	Exp.				
Oct. 16, 1826	2,000	22 years	2,000	5	10,000	5	10,000	1	2,000	
Sept. 20, 1828	2,000	Perpetual...	2,000	5	10,000	5	10,000	5	10,000	
Sept. 20, 1828	1,000	20 years	1,000	5	5,000	5	5,000	5	1,000	
July 29, 1829	16,000	Perpetual...	16,000	5	80,000	5	80,000	5	80,000	
Oct. 20, 1832	15,000	20 years	15,000	5	75,000	1	15,000	Exp.		
Oct. 26, 1832	20,000	do	20,000	5	100,000	5	100,000	5	100,000	
Oct. 27, 1832	15,000	12 years	15,000	5	75,000	2	30,000	5		
June 17, 1846	300	Perpetual...						5	1,500	
Total.....			80,000		400,000		270,000		214,500	

Treaty.	Annual amount.	Time.	Amount due fourth semi-decade, to 1856.		Amount due fifth semi-decade, to 1861.		Due sixth semi-decade, to 1866.		Due seventh semi-decade, to 1871.		Due in 1872 for one year.	
			Yrs.		Yrs.							
Aug. 5, 1795	\$1,000	Perpetual...	5	\$5,000	5	\$5,000	\$5,000	\$5,000	\$1,000			
Sept. 30, 1809	500	do	5	2,500	5	2,500	2,500	2,500	500			
Oct. 2, 1818	2,500	do	5	12,500	5	12,500	12,500	12,500	2,500			
Aug. 29, 1821	5,000	20 years										
Oct. 16, 1826	2,000	22 years										
Sept. 20, 1828	2,000	Perpetual...	5	10,000	5	10,000	10,000	10,000	2,000			
Sept. 20, 1828	1,000	20 years										
July 29, 1829	16,000	Perpetual...	5	80,000	5	80,000	80,000	80,000	1,600			
Oct. 20, 1832	15,000	20 years										
Oct. 26, 1832	20,000	do										
Oct. 27, 1832	15,000	12 years										
June 17, 1846	300	Perpetual...	5	1,500	5	1,500	1,500	1,500	300			
Total.....				111,500		111,500	111,500	111,500	22,300			

THE POTTAWATOMIE INDIANS.

Years.	Indians west of the Mississippi.	Indians in Michigan and Indiana.	Total number of Indians.	Amount due the nation.	Per capita.	Amount due the bands.
1836.....	3,840	250	4,090	\$80,000 00	\$19 56	\$4,890 00
1841.....	3,390	273	3,663	400,000 00	109 20	29,811 60
1846.....	2,231	269	2,500	270,000 00	108 00	29,052 00
1851.....	3,914	287	4,201	214,500 00	51 05	14,651 35
1856.....	3,181	281	3,462	111,500 00	32 20	9,048 20
1861.....	2,142	304	2,446	111,500 00	45 58	13,856 32
1866.....	2,202	317	2,519	111,500 00	44 26	14,030 42
1871.....	2,202	322	2,524	111,500 00	45 60	14,683 20
1872.....	2,202	322	2,524	22,300 00	8 83	2,844 87
Add full annuity under treaty September 27, 1833, \$2,000 for 19 years.....						132,867 96
						38,000 00
There were paid the memorialists from the year 1843 to 1863 inclusive, 21 years, \$1,587 50 per annum.....						170,867 96
In 1864.....						\$33,337 50
In 1865.....						1,237 50
In 1866, in accordance with public act.....						3,900 00
						75,162 50
Balance due memorialists.....						95,705 46
Annuity of \$2,844 87 capitation, at 5 per cent. per annum, equals.....						56,897 50
Due to make final settlement.....						152,602 96