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## COUNSEL FEES IN OSAGE LAND SUITS.

MARCH 13, 1878.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MARTIN I. TOWNSEND submitted the following as the

### VIEWS OF THE MINORITY :

The undersigned members of the Committee on Indian Affairs dissent from the report of the majority of the committee in favor of paying Black, Shannon, Lawrence, and others for professional services as lawyers in certain actions brought by the United States against the Leavenworth, Lawrence and Galveston Railroad Company and others, for the purpose of ascertaining in whom the title to certain lands within the State of Kansas vested, out of what is called the Indian civilization fund. These men rendered service in these actions, not under the retainer of the United States, or that of the Indians, but under the retainer of certain settlers upon lands in Southern Kansas. But the position of this matter will be best seen by a short statement of the acts of the United States Government and others in relation to the lands in question.

On the 3d of March, 1863, the Congress of the United States, by an act of that date, made a grant of part of the lands in question to the State of Kansas for railroad purposes. On the 26th day of July, 1866, the Congress of the United States made a further grant of lands to the State of Kansas for the same purposes. The two grants in terms covered the lands in question. It will not be disputed but that these lands were all, at the two dates last aforesaid, wholly in the possession of the Osage Indians, and that the title of the Indians to them had never been extinguished. The United States, in a word, had granted what they did not own, and had no justification for pretending to own. The State of Kansas granted these lands to the Leavenworth, Lawrence and Galveston Railroad Company.

After this the United States concluded a treaty with the Osage Indians, which was proclaimed January 21, 1867, by which treaty they, the Osage Indians, granted all these lands to the United States, and in consideration thereof the United States agreed to place to the credit of the Osages the sum of \$300,000, to be disposed of as in the treaty provided, and further agreed to survey all the lands, and, after paying the expense of such survey, to deduct the amount of such expense and said \$300,000 from the net proceeds of the sale at \$1.25 per acre and place the remainder of the proceeds of said lands "*in the Treasury of the United States to the credit of the civilization fund, to be used under the direction of the Secretary of the Interior for the education and civilization of the Indian tribes* residing within the limits of the United States."

By an act of Congress of April 10, 1869, these lands were opened for sale, and were ordered to be sold as our other lands are sold. There was immediately a great rush of emigrants and settlers to these lands,

and in a short time a very large number of farms were purchased and paid for and the certificates were forwarded to Washington preparatory to the issue of patents. At this point the railroad company raised the question before the Secretary of the Interior whether the title to all these lands was not vested in them by the acts of Congress and of the State of Kansas. The railroad was heard and the settlers were heard by able counsel, and at great length, before the Secretary of the Interior, who eventually decided that the title was in the railroad company, and he thereupon revoked the certificates of sale granted to the settlers. A great excitement immediately sprang up in Kansas. A great many counselors were employed; a great many actions were brought; and finally, for the purpose of effectually determining where the title really rested, the United States brought action against the railroad company.

The settlers, not satisfied with the counsel whom the government had provided to argue their causes in the courts, bargained with the gentlemen in question to obtain their aid to assist the United States district attorney and Attorney-General in presenting the cause of the United States in that action. The action was finally argued and decided by the Supreme Court of the United States, the counsel named assisting on the argument.

The Supreme Court, by a majority, held that the United States had failed in both the attempts made to grant away that which we did not own, and that the title had remained in the Osages, until transferred by treaty, and that the United States had a title still, which we could transfer to the settlers.

The report of the majority now proposes to take some forty or fifty thousand dollars from the fund for civilizing the Indians to pay the assistant counsel for their services in the action specially referred to. And why? Why take this money from the Indians? Have the Indians done any wrong? Were they parties to the action? Was any act of the Indians, good or bad, at issue in the action? On the contrary, the difficulties which arose were all caused by the United States in attempting to convey lands to which the United States had no title which by law or treaty we could convey.

Having called attention to the facts of the case, the undersigned content themselves with an unqualified dissent from the proposition to thrust our hands among the treasures of the Indians and take out some forty to fifty thousand dollars of their moneys, solemnly pledged to the purposes of Indian civilization, with which to pay assistant counsel to other parties, in an action in which the Indians were not represented, and which was brought to get rid of difficulties created by the grossly wrongful acts of the United States.

MARTIN I. TOWNSEND.  
A. M. SCALES, *Chairman*.  
T. M. GUNTER.  
CHAS. E. HOOKER.