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Citizenship in the Indian nations

48TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1307.

CITIZENSHIP IN THE INDIAN NATIONS.

APRIL 15, 1884.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany bill H. R. 6659.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 4057) to authorize the Secretary of the Interior to create a commission to try and dispose of claims for citizenship in the Cherokee, Choctaw, Creek, Chickasaw, and Seminole Indian nations, having had the same under consideration, respectfully submit the following report:

This bill, as clearly indicated by its title, is intended not only to deal with the most important privilege known to the law, but also involves property interests of great value, inasmuch as the right of citizenship carries with it a joint interest in the funds and public domain belonging to these Indians.

The Creek, Choctaw, and Cherokee tribes therein named appeared before your committee by their chiefs or headmen and other duly chosen representatives and opposed the bill upon two grounds, viz: (1.) That it contravenes treaty stipulations with the Government of the United States, and (2), also, because of the unfairness which they say characterize its provisions and the hardships imposed thereby.

Your committee has deemed it sufficient to consider the measure mainly in relation to and as it affects the guarantees contained in said treaty stipulations.

If the reasons urged by the last three-named nations hold good as to them, the same reasons are equally cogent as to the other nations named in the bill. Article 13 of the Cherokee treaty, ratified July 27, 1866, provides, "that the judicial tribunals of the" (Cherokee) "nation shall be allowed to retain *exclusive* jurisdiction in all civil and criminal cases arising within their country in which members of the nation by nativity or adoption shall be the only parties, or where the cause of action shall arise in the Cherokee Nation."

Article 12 of same treaty, in the 3d clause thereof, provides that "the general council" (of the said nation) "shall have power to legislate upon matters pertaining to the intercourse and relations of the Indian tribes and nations and colonies of freedmen resident in said Territory, * * * and the administration of justice between members of different tribes of said Territory, and persons *other than Indians and members* of said tribes or nations."

Article 26 of same treaty provides that "the United States shall guarantee to the people of the Cherokee Nation *quiet* and *peaceable* possession of their country."

Article 6 of treaty of 1835 provides that "they shall be protected

against interruptions and intrusions from citizens of the United States, who may attempt to settle in the country without their consent."

The treaty ratified with the Choctaw and Chickasaw Indians June 28, 1866, by the fourth clause of article 8 provides that the general assembly of said Indians "shall have power to legislate upon all subjects and matters pertaining to the intercourse and relations of the Indian tribes in said Territory, * * * and the administration of justice between members of the several tribes of the said Territory and persons other than Indians and members of said tribes or nations."

The eighth clause of the same article declares "that the Choctaws and Chickasaws also agree that a court or courts may be established in said Territory with such jurisdiction and organization as Congress may prescribe, *provided that the same* shall not interfere with the local judiciary of either of said nations."

The fifteenth article of the treaty concluded between the United States and the Creeks and Seminoles in 1856 provides that—

> So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof regulating trade and intercourse with the Indian tribes, the Creeks and Seminoles shall be secured in the *unrestricted right of self-government and full jurisdiction over persons and property within their respective limits*, excepting, however, all white persons, with their property, who are not by adoption or otherwise members of either the Creek or Seminole tribes.

The foregoing extracts from the various treaties existing in full force between the Government and the Indians named in said bill are pertinent, in the estimation of your committee, in determining what report should be made as to this bill, which provides for the establishment of a commission by the Secretary of the Interior, with full jurisdiction to determine who shall be entitled to citizenship in said nation, and from whose decision there can be no appeal to any court or other power.

It will be noted that by the terms of this bill, not only is the decision final and conclusive in granting this franchise, which, in any single case, has a pecuniary value of many thousands of dollars by reason of a joint interest being appurtenant thereto in the annuity funds and public domain belonging to said Indians but claimants who have or may have *only a supposititious* right and no Indian blood, have a voice in the selection of the commission. And when the commission is organized it is provided by the bill that it may hold its sessions either in the Indian Territory *or any of the adjacent States.*

The evidence before your committee shows that the said Indian nations have established tribunals for the purpose of determining the very questions which are intended to be adjudicated by this novel commission, and that persons with even the thirty-second part of Indian blood, or with any right whatsoever as citizens, with great facility establish such rights before said Indian tribunals. And that indeed the said Indians cheerfully accord these rights whenever based upon the slightest plausible grounds.

Your committee think, however, that the language of the Supreme Court of the United States in Mackey *et al. vs.* Coxe (18 Howard, J., 102 *et seq.*), in construing the treaty rights of the Cherokees, applies equally to the treaties with the other nations. The court in that case said:

> By the national council their laws are enacted, approved by their executive, and carried into effect through an organized judiciary. * * * This organization is not only under the sanction of the General Government, but it guarantees their independence, subject to the restriction that their laws shall be consistent with the Constitution of the United States and acts of Congress which regulate trade and intercourse with the Indians. * * * They are not only within our jurisdiction, but the faith of the nation is pledged for their protection.

It would seem clear that the proposed bill is framed in utter disregard of the aforesaid treaties, and if a moral sense of obligations would not restrain such legislation, at least it is beyond the constitutional power of Congress to sanction legislation which so palpably violates treaties made in pursuance of the Constitution. Much might be said about the unheard of jurisdiction, organization, and process which is intended to be given to this commission in support of the second ground of objection urged against the bill by the Indians whose rights are to be thus "tried and disposed of," but that would seem an endless and superfluous undertaking.

For the foregoing reasons, your committee would report back said bill with a recommendation that the same do not pass.

Your committee would therefore recommend the following (H. R. 6659) as a substitute for said House bill 4057.

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