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Pottawatomie Indians.

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POTTAWATOMIE INDIANS.

MAY 8, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

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

REPORT:

[To accompany H. R. 10098.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 4545) to adjust and pay to the citizens' band of Pottawatomie Indians certain claims they have against the United States, having had the same under consideration beg leave to submit the following report:

The first section of the original bill refers to what may be due said Indians as interest or otherwise on investments made in the bonds of the States of Maryland and Indiana or other securities arising from the treaty of 1833.

The second section of the bill provides for a report from the Secretary of the Interior showing the amount due said Indians under the third article of the treaty of October 16, 1826, the second article of the treaty of September 20, 1828, and the fourth article of the treaty of October 27, 1832, which relates to school funds, etc.

The third section of the bill requires the Secretary of the Interior to report the amounts due said Indians for expenses incurred by Pottawatomie delegates in making treaty of June 5 and 17, 1846.

The fourth section requires the Secretary of the Interior to pay to the said Indians the sum of \$48,897.95, amount found due said Indians by the supplemental report of the commission appointed by the President under Senate amendment to the tenth article of the treaty of August 7, 1868.

This bill having been referred by your committee to the Indian Office for report, that office, after a careful investigation, reports that under the first section of the bill there is due said Indians the sum of \$2,100 (see report hereto attached). Under the second section of the bill the said office reports that, under the various articles of the treaty referred to in said section, the sum of \$5,000 was to be appropriated annually to these Indians for school purposes during the pleasure of Congress; and that said sum had been regularly appropriated up to the year 1875, after which no estimates had been sent to Congress; that the amount due said Indians under said treaties up to and including the fiscal year ending June 30, 1891, would be \$80,000; and that inasmuch as these Indians have been removed to the Indian Territory, and have no other school fund out of which to educate their children, said office recommends that said arrears be re-instated, and that hereafter the annual appropriation of \$5,000 be made (see report).

Under the third section of the bill, there being no records in their office showing the expenses of the Pottawatomie delegates, no report is made.

Under the fourth section of the bill the office recommends the payment of the \$48,897.95, as recommended in the supplemental report of the Commissioner, which supplemental report is herewith appended. The report of the Indian Office, herein referred to, is also appended to this report.

Your committee, after a careful consideration, recommend the payment of the three items herein referred to, the first of \$2,100 being simply the amount due on the \$1,000 bond held in trust for said Indians, as stated in said report, and that inasmuch as these Indians number between 1,500 or 2,000 souls and have taken their lands in severalty, which are inalienable for twenty-five years, which means that they must remain where they are for at least that number of years, and having no other school fund out of which to sustain schools, your committee agree with the Indian Office and think it far better to carry out this long-neglected treaty with these people than to appropriate money independent of the treaty to provide schools for them.

The third item of \$48,897.95, as found due by the supplemental report of the commissioners (see report) is so infinitely just that your committee recommend its prompt payment. This same item has been several times favorably reported by this committee, and at the second session of the Fiftieth Congress passed the House without criticism or comment.

Therefore your committee recommend a substitute covering these three several amounts, and recommend that it do pass.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., April 7, 1890.

SIR: This office is in receipt of a communication from Hon. B. W. Perkins, chairman House Committee on Indian Affairs, dated the 18th ultimo, inclosing H. R. 4545, entitled "A bill to adjudicate and pay to the Citizen band of Pottawatomie Indians, certain claims they have against the United States."

The chairman, in said communication, states that "the second section of the inclosed bill authorizes the Secretary to ascertain the amount due under the articles of the treaty therein named. Upon examination you will find that they provide for a school fund for the Pottawatomies during the pleasure of Congress. The object of this bill is to restore the arrears that are due under that treaty. What we desire is your opinion as to policy of restoring the arrears and continuing the appropriation under the various treaties mentioned as a school fund for these Indians, inasmuch as they have no school fund whatever. Also have the minutes of the treaty between these Indians and the others of June 17, 1846, examined, and see if the minutes do not provide for the payment of the delegates to the convention. What we want to know is what the minutes say about refunding the expenses of the Indian delegates to that treaty. The Indians [say] that in the treaty their expenses were to be paid and the minutes should show."

The bill enacts as follows: "That the Secretary of the Interior be, and he is hereby, authorized and directed, without unnecessary delay, to ascertain the amount due to the Citizen band of the Pottawatomie Indians from the United States as interest or otherwise on investments made in the bonds of the States of Maryland and Indiana or other securities arising from the treaty between the United States and the Pottawatomie Indians concluded September 26, 1833, and proclaimed February 21, 1835, or any other treaty with said Indians."

* * * * *

"SEC. 2. That the Secretary of the Interior be, and he is hereby, authorized and directed to ascertain the amount due the Citizen band of Pottawatomie Indians under the third article of the treaty of October 16, 1826, the second article of the treaty of September 20, 1828, and the fourth article of the treaty of October 27, 1832, from the

year 1875, and that said amount, when so ascertained, less whatever sums may be legally and equitably due the delegate or delegates of said Indians * * * shall be duly credited to said Citizen band of Pottawatomie Indians on the books of the Treasury Department as an educational fund held in trust for said band of Indians by the United States, and the interest on said amount so credited to said Indians, at the rate of 5 per cent. per annum, shall be annually expended by the Secretary of the Interior for the education of said band of Indians, in such manner as to him may seem best.

"SEC. 3. That the Secretary of the Interior be, and he is hereby, authorized and directed to ascertain the amount due the Citizen band of Pottawatomie Indians as expenses of Pottawatomie delegates as appears from the minutes of the treaty of June 5 and 17, 1846, and pay the same, etc.

"SEC. 4. That the Secretary of the Interior is hereby authorized and directed to pay to the Pottawatomie Indians the sum of \$48,897.95, less whatever sums may be legally and equitably due the delegates, * * * being the amount found due said Indians by the supplemental report of the Commission appointed by the President of the United States under the Senate amendment to the tenth article of the treaty with said Indians of August 7, 1868."

In reply to the call of the committee I have the honor to state that while information is requested only as to the second and third sections of the bill, an examination has been made for data and information on all four sections, and the following is submitted as the result of the examination, namely:

"SECTION 1. The trust fund ledgers of this office have been examined, and it is ascertained that all interest has been paid on investments made for the benefit of the Pottawatomies with the exception of interest on a \$1,000 bond of the State of Indiana.

"During the session of Congress of 1857 and 1858, one 5 per cent. Indiana bond of \$1,000, held in trust for the Pottawatomie Indians, was handed to the Hon. G. N. Fitch to be used as memoranda before the Senate Committee on Indian Affairs. Dr. Fitch subsequently informed the Department that it was mislaid and he was unable to find it. The Department has never been able to recover said bond and it has since been treated as abstracted.

"The interest on account of the Fitch bond has since been appropriated by Congress up to and including the interest due July 1, 1868." (See Annual Report of Commissioner of Indian Affairs for 1869, page 487.) No interest has been appropriated on this amount since July 1, 1868; therefore there is due the Pottawatomies interest from July 1, 1868, to June 30, 1890—a period of twenty-two years—amounting to \$1,100, and the face of the bond, \$1,000, aggregating the sum of \$2,100, under section 1 of the bill.

Section 2. Under article 3 of the treaty of October 16, 1826 (7 Stat., 269), the United States agrees "to appropriate for the purposes of education the annual sum of \$2,000 as long as the Congress of the United States may think proper, to be expended as the President may direct."

Under article 2 of the treaty of September 20, 1828 (7 Stat., 318), the United States declared that "\$1,000 per annum shall be applied for the purposes of education as long as Congress may think the appropriation may be useful."

Under article 4 of the treaty of October 27, 1832 (7 Stat., 401), "the United States agree to appropriate, for the purpose of educating Indian youths, the annual sum of \$2,000 as long as the Congress of the United States may think proper, to be expended as the President may direct."

Under the three above treaty provisions the annual sum of \$5,000 has been appropriated by Congress, upon estimates submitted by the Indian Office, up to and including the fiscal year ended June 30, 1875; on and after which fiscal year the item was left out of the estimates. In view of the fact that the Citizen band located in the Indian Territory are totally destitute of school funds, I am of the opinion that this appropriation should be restored, and recommend that the aggregate amount due for the sixteen years ending June 30, 1891, amounting to \$80,000, be appropriated, and that said sum, less amount due the delegates, be expended under the direction of the Secretary of the Interior in the erection of school buildings and support of schools for the Citizen and Prairie bands, in the proportion named in the agreement between said bands, dated July 18, 1873, viz, $\frac{1480}{1480}$ thereof for the Citizen band $\frac{780}{1480}$ thereof for the Prairie band.

Under section 3, the Secretary of the Interior is directed to ascertain the amount due the Citizen band as their proportion of expenses of Pottawatomie delegates, as appears from the minutes of the treaty of June 5 and 17, 1846.

In regard to this item, I have to state that the records of this office fail to show that the minutes or journal of the commissioners who made the treaty were ever filed in this office.

In June 1846, the commissioners, Messrs. T. P. Andrews, Thomas H. Harvey, and Gideon C. Matlock, addressed a letter to this office from Council Bluffs, in which they

stated that the original of the treaty had been sent by express to Washington and inclosed a duplicate thereof, with the further statement that another duplicate, together with the journal of the commission, would be handed to the Commissioner by Mr. Matlock, the secretary of the commission, when he reached Washington. The records of this office fail to show that Mr. Matlock filed the said journal, nor can the same be found in the files of this office.

Section 4 of the bill provides that the Secretary of the Interior shall pay to the Pottawatomie Indians the sum of \$48,897.95, less sums that may be due delegates, being amount found due said Indians by the supplemental report of the commission appointed by the President of the United States under the Senate amendment to the tenth article of the treaty with said Indians, dated August 7, 1868.

Under the act approved March 2, 1861 (12 Stat., 207), the Secretary of the Interior was directed to examine and report upon the money and property due the Pottawatomie nation under the treaty of October, 1832, and all other treaties. The then Secretary of the Interior performed this duty and reported that he found due to the Pottawatomie nation \$160,540.48, and certain quantities of tobacco, iron, steel, and salt.

The amount due the nation remained open and unsettled until the treaty of 1868 (Stat. 15, 536). By the tenth article of that treaty, as originally agreed upon, it was provided "that the sum of \$164,584, reported by the Secretary of the Interior on the 19th day of December, 1862, in pursuance of an act of Congress approved March 2, 1861, and recommended to be paid, shall be paid to said tribe."

The Senate amended said treaty by striking out the above clause, and provided for the appointment of two commissioners, to be named by the President, who should examine the claims of the Pottawatomie nation and report their judgment in the premises for the action of Congress.

In accordance with the provisions of this article, the President appointed said commission, and, as a result of their investigation, they reported that there was due to the Pottawatomie nation the sum of \$178,953.43.

By a supplemental report they awarded interest on \$160,540.48, at 5 per cent. from December 19, 1862, the date of the Secretary's report under the act of 1861, for six years, one month, and three days, amounting to \$48,897.95, as equitably and justly due said nation.

By act approved March 2, 1869, Congress appropriated the above sum of \$178,953.43, with interest at 5 per cent. from the date of award, approved January 28, 1869, leaving the sum of \$48,897.95 unappropriated. This latter sum is the item mentioned under section 4 of the bill, and which sum has been several times recommended to be appropriated by this office.

I inclose herewith the letter of the chairman of the committee and inclosure.

Very respectfully,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

REPORT (SUPPLEMENTARY) OF THE COMMISSIONERS APPOINTED TO EXAMINE THE CLAIMS OF THE POTTAWATOMIE INDIANS.

WASHINGTON, D. C., *January 22, 1869.*

SIR: The undersigned commissioners, appointed by the President, under the Senate amendment to the tenth article of the treaty with the Pottawatomie Indians, August 7, 1868, beg leave to present the following supplementary report to that of January 18th instant, which we have heretofore had the honor of communicating to you:

As intimated in the previous report, the purpose of the present is briefly to express our views in regard to a claim for interest on the sum of \$160,540.48, said specified sum having been awarded to be due the Pottawatomies by the Committee of Claims of the House of Representatives, on or about the 19th day of December, 1862.

It is not our intention to discuss the legality of this claim. Members of Congress, many of whom are learned and eminent lawyers, are presumed to be familiar with the precedents which will govern their decisions in the present case.

However much opinions may vary in regard to the strict legality of this claim, we have no doubt of its justice.

We take the broad and general ground that every debt is unquestionably due from the moment it is recognized by the debtor, and that said debtor, from such time forward, by using the amount of said indebtedness for his own advantage and aggrandizement, deprives the creditor of his just right in doing the same with the amount of said indebtedness.

Again, as men of honor are most sensitive to their obligations in their intercourse with the weak and unprotected, so should an enlightened nation guard with the most scrupulous care and accord the most liberal construction to the rights of those for whom they are the exclusive guardians.

The largest proportion of these claims have been due for thirty years.

We do not propose to allow interest for such period, but since the time when the debt was officially recognized as aforesaid, on the 19th of December, 1862.

The interest on the aforesaid sum of \$160,540.48, at 5 per cent., from December 19, 1862, to January 22, 1869, six years, one month, and three days, would be \$48,897.95, and we do hereby award the said sum to be equitably and justly due the Pottawatomies for interest.

We have the honor to be, sir, very respectfully, your obedient servants,

CHARLES ROWLAND,
STEPHEN D. MILLS,
Commissioners.

Hon. O. H. BROWNING,
Secretary of the Interior, Washington, D. C.

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