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VARIOUS TRIBES OF INDIANS IN THE INDIAN TERRITORY.

JULY 26, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany H. R. 11552.]

The Committee on Indian Affairs, to whom was referred the bill H. R. 345, having had the same under consideration, respectfully submit the following report:

The substituted bill, herein submitted, provides for the recovery of the claim as made in the original bill, if the decision or decree of the Court of Claims shall find that the Shawnees, as well as the Delawares and freedmen, are lawfully claiming.

Prior to the year 1866 the Cherokee Nation of Indians claimed and possessed a tract of country, in the Indian Territory, bounded on the north by the State of Kansas, on the east by the States of Missouri and Arkansas, and on the south by the Choctaw, Creek, and Seminole Nations of Indians.

On the 19th day of July, 1866, the Cherokee Nation made and entered into a treaty with the United States, and among other things the contracting parties stipulated and provided in article 15: (1) That the United States may settle civilized Indians, friendly with the Cherokees and adjacent tribes, on unoccupied lands east of the 96th degree west longitude in the Cherokee Nation; (2) on such terms as may be agreed upon by the tribes and the Cherokees and approved by the President of the United States, with the provision that the tribes settling should abandon their tribal organizations and pay into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country; and on compliance the Indians settling shall be incorporated into and ever after remain a part of the Cherokee Nation, "equal in every respect with native citizens."

Article 16 of this treaty provides that the United States may settle friendly Indians in any part of the Cherokee country west of the 96th degree west longitude, to be taken in compact form and conveyed in fee-simple to each of the tribes.

Article 9 of this treaty provides that all freedmen who were liberated by voluntary act of former owners or by law, as well as free colored persons who were in the country at the commencement of the rebellion, and are now residents in the Cherokee Nation or who may return in six months, and their descendants, shall have all the rights of native Cherokees.

On the 7th day of June, 1869, the Shawnees made an agreement with the Cherokee Nation, under the authority of the aforesaid fifteenth article, yielding and paying to the Cherokee Nation \$5,000 of their perpetual annuities, and \$50,000 in cash. For this payment of money the Cherokees agreed to receive the Shawnees into the Cherokee Nation on the unoccupied lands east of the ninety-sixth degree west longitude, in the Cherokee Nation, Indian Territory, and that they shall be incorporated into and ever after remain a part of the Cherokee Nation on equal terms in every respect, and with all the privileges and immunities of a native citizen of the Cherokee Nation. "Stipulating that the Shawnees who shall elect to avail themselves of the provisions of this agreement shall register their names and permanently locate in the Cherokee country within two years from the date of this agreement; otherwise they would forfeit all rights under this agreement."

This agreement was approved by the President, on the 9th day of June, 1869, in the manner as is authorized by the aforesaid fifteenth article. And, to wit, 900 Shawnees complied with the provisions and conditions of this agreement, moved and settled in the Cherokee Nation.

On the 8th day of April, 1867, the Delaware Indians, made and concluded an agreement with the Cherokee Nation, under the aforesaid article 15, of the treaty of 1866. In said agreement it is provided (1) that the Cherokee Nation will sell to the Delawares, a quantity of lands east of the ninety-sixth degree of west longitude in the Cherokee Nation, in aggregate equal to 160 acres for each individual Delaware who had been enrolled February 18, 1867, who should elect to remove to the "Indian Country." Names could be added by the Delaware council within a month after the signing of the agreement. (2) The Delawares agree to pay to the Cherokees for the land \$1 per acre; upon compliance with the stipulations and conditions of the agreement, the Delawares were to be incorporated into the Cherokee Nation, with the same rights and immunities and the same participation in the national funds as native Cherokees. And children thereafter born of such Delawares shall be in all respects regarded as native Cherokees.

The agreement was ratified by the National Committee June 15, 1867; and, to wit, fourteen hundred Delawares moved into the Cherokee Nation under the authority of this agreement.

Referring to the freedmen claiming rights under the ninth article of the said treaty, it ascertained that the census and roll recently taken, under the recent act of Congress, shows that there are over five thousand persons.

From the time of making and entering into the aforesaid articles of the treaty, and the agreements, up to May 19, 1883, the Shawnees, Delawares, and freedmen were accepted and recognized by the Cherokee Nation as Cherokee citizens, with all the rights, benefits, and immunities of native Cherokees, as provided and obligated by the aforesaid treaty and agreements.

About this time the Cherokee Nation received from the Government \$300,000, appropriated by Congress out of funds due under appraisalment of Cherokee lands west of the ninety-sixth degree west longitude. This money the Cherokee legislative council directed by an act to be paid out per capita to Cherokees by blood only in the Cherokee Nation.

On July 5, 1883, the Cherokee Nation leased, rented, or granted to an association of persons, who are United States citizens, a permit to occupy and graze all of the vacant land belonging to the Cherokee Nation west of the ninety-sixth degree west longitude, or west of the Arkansas River in the Cherokee Nation. This lease was made to run for

five years, at a rental of \$100,000 per year. The act of the Cherokee national council authorizing this lease provided and promised that when \$300,000 was paid into the Cherokee national treasury, the amount should be paid out per capita as the council should direct. In May, 1866, this amount was paid into the Cherokee national treasury, and the Cherokee national council passed an act requiring the Cherokee national treasurer to pay the said money out per capita to Cherokee citizens by blood and descent only, in the Cherokee Nation. This action deprived the Shawnees, Delawares, and freedmen out of their share and portion of this money. This payment was \$15.50 per capita.

At the same session of this council an act was passed and approved construing the rights of the Shawnees, Delawares, and freedmen. By this act the intention of the Cherokee Nation is clearly shown that the Cherokee Nation will not allow the Shawnees, Delawares, and freedmen to ever participate in the distribution of or the allotment of their lands west of the Arkansas River in the Cherokee Nation.

The justification and defense the Cherokee Nation set up for their acts and these violations are as follows: (1) Because the amount paid by the Shawnees, Delawares, and freedmen is not adequate or equivalent under the provisions of the treaty; (2) because the lands west of the ninety-sixth degree west longitude, belonging to the Cherokee Nation, was set off, appropriated, and diverted for a specific purpose, before these agreements were entered into.

This position of the condition of these people is by the committee regarded as serious and calculated to keep up and open contentions and hinder and obstruct the progress of these people; it is deemed best to provide a plan to settle the status of these people in the country, and their claims to their rights, by sending the matters of dispute to the Court of Claims, and this plan is agreed to by the Cherokee delegates as well as the Shawnees.

The original bill provided for an appropriation to pay the Shawnees for the defaulted payment of 1886, out of Cherokee funds, as was provided in the act of October 19, 1888, but the committee find that the money paid out to the Cherokee citizens at the time was money derived from the leasing of the lands west of the Arkansas River, for grazing purposes, and that the Departments and Congress do not recognize the right of the Cherokee Nation to lease the said lands, and the lessees of these lands have been ordered to vacate and remove from and off the lands by the 1st of October, 1890, therefore the committee conclude it proper and justice to all to send the whole question to the courts for a proper and a final decision.

Strike out all of the original bill and insert the following bill as a substitute for the original bill:

A BILL for the relief of the Cherokee, Shawnee, and Delaware Indians and the Cherokee freedmen, in the Cherokee Nation, Indian Territory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That full jurisdiction is hereby conferred upon the Court of Claims, subject to an appeal to the Supreme Court of the United States as in other cases, to hear and determine what are the just rights at law or in equity of the Shawnee and Delaware Indians, who are settled and incorporated into the Cherokee Nation, Indian Territory, east of ninety-six degrees west longitude, under the provisions of article fifteen of the treaty of July nineteenth, eighteen hundred and sixty-six, made by and between the United States and the Cherokee Nation, and articles of agreement made by and between the Cherokee Nation and the Shawnee Indians June seventh, eighteen hundred and sixty-nine, approved by the President June ninth, eighteen hundred and sixty-nine, and articles of agreement made with the Delaware Indians April eighth, eighteen hundred and sixty-seven; and also of the Cherokee freedmen, who

are settled and located in the Cherokee Nation under the provisions and stipulations of article nine of the aforesaid treaty of eighteen hundred and sixty-six.

SEC. 2. That the said Shawnees, Delawares, and freedmen shall have a right to begin and prosecute a suit or suits against the Cherokee Nation and the United States Government to recover from the Cherokee Nation all moneys due and unpaid to the said Shawnees, Delawares, and freedmen, which the Cherokee Nation have before paid out, or may hereafter pay, per capita, in the Cherokee Nation, and which was, or may be, refused to and deprived in payment to the said Shawnees, Delawares, and freedmen by the Cherokee Nation out of any money or funds which has, or may be, paid into the treasury of the Cherokee Nation, Indian Territory, derived from the sale, leasing, or rent for grazing purposes on Cherokee lands west of ninety-six degrees west longitude, which has been or may be appropriated and directed to be paid out per capita by the acts passed by the Cherokee council, and for all moneys, lands, and rights which shall appear to be due to the said Shawnees, Delawares, and freedmen under the provisions of the aforesaid articles of the treaty and articles of agreement.

SEC. 3. That the said suit or suits may be brought in the name of the principal chief or chiefs of the said Shawnee and Delaware Indians, and for the freedmen in the name of the chairman or president of a committee which the said freedmen shall select and send in a name to the Secretary of the Interior; and the said suit or suits shall be brought on an estimated amount of money which shall be sufficient to cover the demands or obligations due to the said Shawnees, and Delawares, and freedmen, respectively, interest and cost added and included. And the exercise of such jurisdiction shall not be barred by any lapse of time heretofore, nor shall the rights of such Indians be impaired by any ruling or determination upon such rights heretofore made, or acts passed and approved by the Cherokee national council and approved by the principal chief of the Cherokee Nation. Suits may be instituted within twelve months after the passage of this act, and the law and practice and rules of procedure in such courts shall be the practice and law in these cases; that copies of petitions filed in the case at the commencement of the suit shall be served upon the Attorney-General of the United States and on the principal chief in the Cherokee Nation by the marshal of the district court for the Indian Territory; and that the costs of the said suits shall be borne by the United States and the amount so paid by the United States shall be repaid out of the funds which may be available and belonging to the said Shawnee, Delaware, and freedmen in the said Treasury of the United States, and the Attorney-General shall designate and appoint from the Department of Justice a person who is competent to defend the said Cherokee Nation and the United States. And the said Shawnees, Delawares, and freedmen may be represented by their attorneys and counsel. And the court is hereby authorized to decree the amount contracted for such attorneys and counsel fees, not to exceed ten per centum of the amount recovered, and order the same to be paid to the attorneys and counsel of the said Shawnees, Delawares, and freedmen; and all judgments for any sum or sums of money which may be ordered or decreed by such court in favor of the Shawnees, Delawares, and freedmen, and against the Cherokee Nation, shall be enforced by the said court or courts against the said Cherokee Nation by execution mandamus, or in any other way which the said court may see fit to proceed against the Cherokee Nation to enforce the orders, judgments, and decrees: *Provided*, That all attorney's fees provided for under this act shall be paid by the parties contracting therefor.

And the committee recommend that the substituted bill do pass.