

2-17-1891

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Recommended Citation

H.R. Rep. No. 3852, 51st Cong., 2nd Sess. (1891)

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REIMBURSING THE WESTERN MIAMI INDIANS.

FEBRUARY 17, 1891.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany H. R. 13660.]

The Committee on Indian Affairs, to whom was referred Mis. Doc. No. 83 in relation to reimbursing the Western Miami Indians, generally known as Miamis of Kansas, for money and lands improperly taken from them, submit the following report:

A treaty was made in November, 1840, with the Miami tribe of Indians, who then resided in the State of Indiana, by which it was stipulated that they would remove from west of the Mississippi River to the then Territory of Kansas, and the United States agreed to cede to them a tract of land supposed to contain 500,000 acres in exchange for their lands in Indiana. By the terms of the treaty it was provided that certain Indians, specifically named, on account of age and for other reasons, might remain in Indiana and receive their shares of annuities there. The same provision was made for other Indians, also specifically named, by joint resolutions passed by Congress in 1845 and 1850.

In June, 1854, in this city, another treaty was made with the Miami tribe of Indians, by which it was stipulated, among other things, that they would reconvey to the United States all the land ceded to them by the treaty of 1840, except 70,000 acres, which were to be retained by them for a permanent home and for the exclusive use and benefit of those who resided on the lands in Kansas. The money to be paid for the lands, so reconveyed to the United States, was stipulated to be paid in installments to the Indians on the ceded lands in Kansas, who were known as the tribe proper; and other sums of money, due under treaties prior to 1854, were to be divided between the tribe in Kansas Territory and those residing in Indiana, as agreed upon between themselves.

A list was carefully made of the Indians entitled to share in the lands, guaranteed to them by the treaty of 1854, for their permanent homes in Kansas Territory, and in the money provided for by said treaty.

Under the provisions of an act of Congress passed June 12, 1858, the Secretary of the Interior, in October of that year, took from the funds set apart for the Western Miamis by the treaty of 1854, and without their consent, and in violation of the terms of the treaty, the sum of \$18,370.89, and paid it to 68 persons (to which number 5 persons were afterward added), but who did not emigrate west with the tribe or reside there, and who had no rights under the treaty as decided by the

Court of Claims in their findings of fact hereinafter referred to. Under said act the Secretary also allotted to the same 68 persons (to whom 5 were afterward added) 200 acres of land each, amounting in the aggregate to 14,533.38 acres. Said selections and allotments were approved by the Secretary of the Interior in October, 1859, and the lands so allotted carried, upon approval by the Secretary, a fee simple title.

These lands were so taken from the tribal reservation and allotted to said 73 persons without consultation with the tribe and without the consent of the chiefs, and in violation of the treaty, as also found by the Court of Claims. Said 73 persons were then placed on the Indiana Miami roll, where they remained until 1867, when they were stricken off under an opinion of the Attorney-General that they were not entitled to share in the funds of the Indiana Miamis. (12 Atty. Genl. Opinions, p. 236.) They then made an effort to get on the Western Miami roll, and by act of March 3, 1873, Congress directed the Secretary of the Interior to enroll them with the Western Miamis, if in his opinion they were so entitled under treaty stipulations. The Secretary decided that it was clear that only those who emigrated west, and continued to reside there, were entitled to the lands and annuities guaranteed by the treaty of 1854, and that the 73 persons who had been stricken from the Indiana Miami roll were not entitled to share in the lands and annuities of the Western Miami Indians.

Under an act passed May 15, 1882, the Secretary of the Interior was directed to obtain the opinion of the Attorney-General as to the proper distribution of the proceeds of the lands in Kansas, and the Attorney-General held that only those who emigrated west and resided on the lands were entitled to them or their proceeds. (17 Atty. Genl. Opinion, p. 410). In 1884 the Western Miami Indians employed counsel, with the approval of the Commissioner of Indian Affairs and the Secretary of the Interior, and a petition was presented to Congress asking that the Western Miami Indians be reimbursed for the money and lands so taken from them. The petition and accompanying papers were referred to the Court of Claims, under the provisions of the act of March 3, 1883, known as "The Bowman Act". The court, after due deliberation, has reported its findings of facts as follows, to wit:

FINDINGS OF FACT.

I.

In compliance with the treaty of 1840, above cited, most of the Miami tribe of Indians removed to Kansas in the year 1846. A large number of the tribe, besides those who had special permission under the said treaties and acts of Congress to remain in Indiana, did not emigrate with the tribe, but remained in Indiana and adjacent States and between the dates of such removal and the treaty of 1854 the annuities due the tribe were divided. One part was distributed among the Western Miamis, or those who resided on the ceded lands in Kansas, and the other part was distributed among the Miamis of Indiana.

II.

In June, 1854, soon after the treaty, the Commissioner of Indian Affairs, in consultation with the head men of the Indiana portion of the tribe, revised and corrected the list of those remaining in Indiana and who were entitled to a distribution of the fund to be paid to the Indiana Miamis, which constituted a list of 302 persons, and which is referred to and made a part of the amendment to the treaty above referred to.

III.

Under the act of 1858 the Secretary of the Interior, in the month of October, 1858, took from the funds set apart for the Western Miamis, and without their consent, the sum of \$18,370.89, and paid out the same to 68 persons (to which 5 persons were afterwards added) who were decided by the Indian Department to have been of partial Miami blood. This payment was made from the following funds then in the possession of the United States:

(1) From a balance remaining of the seventeenth and twentieth installments, per second article of the treaty of November 28, 1840, being the proportion of the Miamis of Kansas of \$12,500, per fourth article of the treaty of June 5, 1854.....	\$2, 679. 76
(2) Part of the fifth of six equal installments to the Miamis residing on the ceded lands, for purchase of former perpetual and other annuities and relinquishment of claims, per fourth article of treaty of June 5, 1854.....	15, 691. 13
Total.....	18, 370. 89

And stipulated in said article to be paid to the Miamis residing on the ceded lands

IV.

Under the same act the Secretary of the Interior allotted to said 68 persons (afterwards increased to 73) 200 acres each out of the 70,000 acres reserved to the Miamis by the treaty of 1854, amounting in the aggregate to 14,533.38 acres. Said selections and allotments were reported to the Commissioner of Indian Affairs on the 18th of July, 1859, and approved by the Secretary of the Interior October 7, 1859. The lands allotted to said 73 persons were so allotted without consultation with the tribe and without the consent of the chiefs obtained therefor.

V.

The persons so admitted to participate in said payment of money and allotments of land were then placed upon the roll of the Miamis of Indiana and received the annuities in common with the latter until their names were stricken from such roll under the opinion of the Attorney-General in 1867 (12 Atty. Genl. Op., p. 236). *These persons did not emigrate to the West with the tribe, nor did they reside on the ceded lands in Kansas prior to such allotments, but remained in the Eastern country, and it is not shown that these persons, most of whom were stricken from the list of the Miamis of Indiana in 1854, as above stated, were of Miami blood.*

The reasonable value of the lands so allotted to said 73 persons in November, 1859, the date of the approval of the Secretary of the Interior, was an average of \$3 per acre, amounting in the aggregate to \$43,600.14.

BY THE COURT.

Filed January 5, 1891.

A true copy.

Test, this 9th day of January, A. D. 1891.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

The court finds that the sum of \$18,370.89, stipulated in the treaty of 1854 to be paid only to those who resided on the ceded lands in Kansas, was taken from their tribal fund without their consent and paid to 73 persons who had never emigrated west.

The court also finds that 14,533.38 acres of land out of the 70,000 acres reserved for the Miamis of Kansas, by the treaty of 1854, as their exclusive property, were allotted to said 73 persons in 1859, without consultation with the tribe and without the consent of the chiefs. And it further finds that it was not shown by the evidence that said 73 persons were of Miami blood, and that the reasonable value of the land so allotted in 1859 was \$3 per acre, amounting in the aggregate to \$43,600.14.

It is clear, therefore, that the terms of the treaty of 1854 were violated by the execution of the act of 1858, and that the Western Miami Indians are entitled to be reimbursed.

The next inquiry is to what extent the United States is bound to make good the losses of the Western Miamis. To pay them simply the amount taken from them in 1859 does not reimburse them for the wrongful act of the Government. The United States was acting in the twofold capacity of guardian and trustee to these Indians, and was bound by all the obligations imposed by law and morals to discharge the trust it assumed fairly and justly to them. These Indians had been on friendly terms with the United States for nearly a century, and had given no trouble to the Government. On the contrary, they had manifested a disposition at all times to yield to the wishes of the United States in the management of their tribal affairs. They gave up their lands in Indiana, and emigrated west, because the Government desired it. By the treaty of 1854 they relinquished to the United States four-fifths of their lands, and retained a comparatively small tract for their reservation, which by a solemn treaty was guaranteed to them as a permanent home. Out of this reservation was carved a large body of land, without the consent of the tribe and clearly in violation of the treaty, and given to other persons not entitled to it.

The United States, also holding in trust their money, diverted over \$18,000 without their consent, and gave it to other persons not entitled to it. Any guardian or trustee so acting would be clearly liable for both principal and lawful interest, and the United States should not seek to escape a like responsibility and liability.

An Indian tribe can not be charged with laches, as it can not employ counsel, or appeal to the Government for any relief, except by the consent of the Indian Office. It was therefore the duty of that office, as their guardian, charged with the care of the Indians and their rights, to have presented the facts to Congress for relief, especially after being advised of the law by the Attorney-General in 1867, followed by the decision of the Secretary in 1873, above referred to.

Your committee recommends the allowance of interest at the rate of 4 per cent. per annum, which is less than the legal rate, and less than that stipulated in Indian treaties where the Government holds the funds of the Indians.

The precedents are numerous where the United States has paid interest, and there can not possibly be a case presented imposing a stronger obligation upon the United States to pay interest than this one of the Western Miamis.

The committee therefore recommends the passage of the bill accompanying this report.