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THE WESTERN MIAMI INDIANS.

Letter from the Assistant Clerk of the Court of Claims, transmitting a copy of the findings filed by the court in the case of The Western Miami Indians against The United States.

JANUARY 10, 1891.—Referred to the Committee on Indian Affairs.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, January 9, 1891.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings filed by the court in the aforesaid cause, which case was referred to this court by the Committee on Indian Affairs, House of Representatives, under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

HON. THOS. B. REED,
Speaker of the House of Representatives.

[Court of Claims. Congressional Case No. 1343. The Western Miami Indians vs. The United States.]

At a Court of Claims held in the city of Washington on the 5th day of January, A. D. 1891, the court filed the following statement of case and findings of fact, to wit:

STATEMENT OF CASE.

The claim or matter in the above-entitled case was transmitted to the court by the Committee on Indian Affairs of the House of Representatives on the 21st day of February, 1887.

Messrs. Embry & Merriman appeared for claimants, and the Attorney-General, by E. P. Dewees, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The case having been brought to a hearing on the 8th day of December, 1890, the court upon the evidence and after considering the briefs and arguments of counsel on both sides finds the facts as herein stated:

Preliminary to and as explanatory of the following findings, reference is had to the following treaties between the United States and the Miami tribe of Indians, and acts of Congress relating to said tribes, to wit:

- (1) Treaty of November 6, 1838 (arts. 10 and 14, 7 Stat., 569).
- (2) Treaty of November 28, 1840, 7 Stat., 583 (arts. 5, 7, and 8, and additional art. 12), 585.
- (3) Treaty of June 5, 1854, and the amendment thereto (10 Stat., 1093; art. 1, 2, 3, and 4, and amendment).
- (4) Section 3 of the Indian appropriation act of 1858 (11 Stat. 332).
- (5) Act of Congress March 3, 1873, 17 Stat., 631, and the action of the Secretary of the Interior thereupon, as per letter of instruction of date May 9, 1873, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, May 9, 1873.

SIR: Referring to your letter addressed to this Department on the 1st instant; and to mine addressed to you on the 3d, I have to call your attention to the following:

By the fourth section of an act approved March 3, 1873, to abolish the tribal relations of the Miami Indians, and for the other purposes, the Secretary of the Interior is required, in ninety days from the passage of the act, to cause a census to be taken of all the Miami Indians entitled to a share in all the reserved lands and moneys set apart by the treaty between the United States and the Miami Indians, dated June 5, 1854 (Stats., vol. 10, page 1093), for that part of the tribe known as the Western Miamis, including in said census, "those persons of Miami blood or descent for whom provision was made by the third section of the act of June 12, 1858, if in the opinion of the Secretary of the Interior the said Indians are entitled to be so included under treaty stipulations; but in such census none shall be included unless justly entitled according to the provisions of said treaty."

This devolves upon the Secretary of the Interior the duty of determining whether said census shall include those persons of Miami blood for whom provision was made by the third section of the act of June 12, 1858 (Stats., vol. 11, 332).

The third section of the act of 1858 authorized the Secretary of the Interior to pay such persons of Miami blood as have been heretofore excluded from the annuities of the tribe since the treaty of 1854, and whose names are not included in the supplement to said treaty, their proportion of the tribal annuities from which they have been excluded, and he was also authorized and directed to enroll such persons upon the pay list of said tribe and to cause their annuities to be paid in future. The Secretary was also authorized to cause to be located for such persons 200 acres of land each out of the tract of 70,000 acres reserved by the second article of the treaty of June 5, 1854, to be held by such persons by the same tenure as the locations of individuals are held which have been made under the third article of said treaty.

A proviso attached to the amendment to the fourth article of the treaty of 1854 (Stats., vol. 10, page 1099) declares that no person other than those embraced in the corrected list agreed upon by the Miamis of Indiana in the presence of the Commissioner of Indian Affairs in June, 1854, comprising 302 names as Miami Indians of Indiana, and the increase of the families of the persons embraced in said corrected list, shall be recipients of the payments, annuities, etc., hereby stipulated to be paid to the Miami Indians of Indiana.

Under the third section of the act of June 12, 1858, there were added to the list of Miami Indians of Indiana, referred to in the proviso just quoted, sixty-eight names, and these remained upon such list and received their proportion of the annuities of Indiana until and including the year 1866, when they were dropped from said list, under the opinion of the Attorney-General, dated September 20, 1867 (Att'y Gen'l Opin., vol. 12, p. 296), to the effect that they were not properly included under the treaty.

The question now presented for consideration is whether these persons are entitled by treaty stipulations to participate in the proceeds of the sale of the lands reserved to the Miami tribe by the treaty of 1854 and authorized to be sold by the first section of the act of March 3, 1873.

The treaty of June 5, 1854, purports to be made by George W. Maupenny, on the part of the United States, and certain persons therein named, on the part of and representing the "Miami tribe" of Indians. It is also stated in the preamble that certain Miami Indians, resident of the State of Indiana, were present and assented to the treaty. In various parts of the treaty the Miami Indians in what is now Kansas are recognized as the Miami tribe, and it is clearly inferable, from certain sections of the treaty, that the Indians remaining in Indiana were not regarded as members of the tribe proper.

The first section of the treaty reserves for the use of the members of the "Miami tribe," as I think, 70,000 acres for their future homes, and also a section of 640 acres for school purposes, to be selected and assigned to the tribes.

The second section provides that each individual or head of a family of the Miami tribe now residing on said land shall be entitled to 200 acres, etc.

This section provides for the manner of selecting the land so reserved, and in certain cases directs it to be done by the chiefs of the tribe; they are also to select the 640 acres reserved for school purposes, and then it is provided that the residue of the 70,000 acres, after settling individuals as aforesaid, shall be selected in a compact body contiguous to the individual reservations and be held as the common property of the tribe. It is also declared that the selections herein provided for shall be reported to the agent of the tribe.

It is also provided that when controversies arise between individuals which can not be settled by the parties, the difficulty should be decided by the chiefs of the tribes, subject to appeal to the agent, whose decision should be final.

The third section of this treaty provides that, in consideration of the cession therein before made, the United States agrees to pay the "Miami tribe" of Indians the sum of \$200,000 in the manner therein set forth.

It seems to me manifest that a clear distinction is made by this treaty between the Miami tribes and certain Indians who had failed to accompany the tribe west of the Missouri, and continued to reside elsewhere, and that none are included as members of the tribe except those who had accompanied the chiefs of the tribe west of the Missouri, and that the benefits to be derived from the reservation of 70,000 acres for their future homes and their annuity or annuities guaranteed by the third article of the treaty were secured to the members of the tribe of Miamis, as herein defined and explained.

The sixty-eight persons, therefore, who were, under the act of June 13, 1858, added to the list of Miami Indians of Indiana are not entitled to any share in the proceeds of the lands that are to be sold under the first section of the act of March 3, 1873; nor are they entitled to any of the annuities which, by the treaty of 1854, are guaranteed to the Miami tribe of Indians.

I have, therefore, to direct that those persons of Miami blood or descent for whom provision was made by the third section of the act of June 12, 1858, be not included in the census which is to be made under the fourth section of the act of March 3, 1873 (U. S. Stats., 17, p. 632), and you will instruct Superintendent Hoag to take such census accordingly.

The superintendent should further be directed in taking the census to make two lists, one containing the names of all the Indians entitled to the benefits of the act of March 3, 1873, who may elect to become citizens of the United States, and their minor children, the other the names of all who elect to remain under the care of the United States and to unite with the Wea, Peoria, Kaskaskia, and Piankeshaw Indians, in the Indian Territory, according to the provisions of a contract made January 15, 1872, between the Western Miami Indians of Kansas and said Wea, Peoria, and Kaskaskia and Piankeshaw Indians.

You will cause instructions for the guidance of Superintendent Hoag in the performance of the duties thus devolved upon him to be made out and submitted to this office for approval.

Very respectfully,

C. DELANO,
Secretary.

(6) Act of Congress of May 15, 1882, and the opinion of the Attorney-General thereupon (17 Atty. Genl. Op., 400).

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, 18 4.....	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.