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Report : Claim of the Mo-kaw-ho-ko Band of Sac and Fox Indians

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IN THE SENATE OF THE UNITED STATES.

MAY 18, 1892.—Ordered to be printed.

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

REPORT:

[To accompany S. 702.]

The Committee on Indian Affairs, to whom was referred the bill (S. 702) for the relief of the Mo-kaw-ho-ko band of Sac and Fox Indians of the Mississippi, having considered the same, respectfully report:

By the third article of the treaty of November 3, 1804, the United States agreed, in consideration of the cession of land made by said treaty, to deliver to the Sac and Fox tribes—

Yearly and every year goods suited to the circumstances of the Indians of the value of \$1,000 (\$600 of which are intended for the Sacs and \$400 for the Foxes), reckoning that value at the first cost of the goods in the city or place in the United States where they shall be procured. (Rev. Ind. Treat., 737, 738.)

By the treaty of October 21, 1837, in consideration of another cession by the Sacs and Foxes, the United States agreed, among other things—

To invest the sum of \$200,000 in safe State stocks, and to guarantee to the Indians an annual income of not less than 5 per cent, the said interest to be paid to them each year in the manner annuities are paid, at such time and place, and in money or goods, as the tribe may direct: *Provided*, That it may be competent for the President to direct that a portion of the same may, with the consent of the Indians, be applied to education or other purposes calculated to improve them. (Rev. Ind. Treat., 752, 753.)

By the treaty of October 11, 1842, in consideration of a cession of all their lands west of the Mississippi, the United States agreed "to pay annually to the Sacs and Foxes an interest of 5 per cent upon the sum of \$800,000," besides other provisions. (Rev. Ind. Treat., 754.)

All these treaties, providing for annuities in perpetuity, remain in force, and annually Congress appropriates \$51,000, according to the terms of the three treaties aforesaid, to the Sacs and Foxes of the Mississippi; but \$1,500 of the amount is required to be set apart for the payment of a physician and the purchase of medicine.

The treaty originally made February 18, 1867, but amended and the amendments accepted September 2, 1868, and promulgated October 14, 1868, between commissioners on the part of the United States and five chiefs of the tribe of Sac and Fox Indians of the Mississippi, on the part of said Indians, "and duly authorized thereto by them," so the treaty declares, it was agreed among other things that the Sacs and Foxes should cede certain lands, being substantially all their rights in the lands they held under previous treaties, and take a new home in the Indian country south of Kansas; and, besides many articles of specific

provision for their benefit, and for adjustment of points of controversy, the twenty-first article of the treaty provided that—

The Sacs and Foxes of the Mississippi, parties to this agreement, being anxious that all the members of their tribe shall participate in the advantages to be derived from the investment of their national funds, sales of lands, and so forth, it is therefore agreed that, as soon as practicable, the Commissioner of Indian Affairs shall cause the necessary proceedings to be adopted, to have such members of the tribe as may be absent notified of this agreement and its advantages, and to induce them to come in and permanently unite with their brethren, and that no part of the funds arising from or due the nation under this or previous treaty stipulations shall be paid to any bands or parts of bands who do not permanently reside on the reservation set apart to them by the Government in the Indian Territory, as provided in this treaty, except those residing in the State of Iowa; and it is further agreed that all money accruing from this or former tribes (treaties) now due or to become due said nation shall be paid them on their reservation in Kansas; and after their removal, as provided in this treaty, payments shall be made at their agency on their lands as then located: (Rev. Ind. Treat., 772, 773.)

The band for whose benefit the bill under consideration was introduced declined to submit to this treaty, and refused to go to the reservation provided in the Indian Territory, but remained in Kansas until the year 1866, when they were removed, with the aid of a small body of cavalry, by Inspector Bannister.

Their share of the annuities mentioned under these treaties was not paid to them during the time, from 1868 to 1886, that they thus remained in Kansas, except that their share for the two years preceding removal was set aside for them to assist them in establishing homes when they should be removed according to the purpose of the Department.

This bill claims that this band is entitled to their share of the annuities provided in the earlier treaties, notwithstanding the agreement in the treaty of 1868. But your committee is of the opinion that the treaty of 1868 must be regarded as obligatory upon the whole tribe. The United States dealt with them as with a *quasi* nation, in accordance with previous usage, and the treaty of 1868 ought to be as well regarded obligatory upon the entire Sac and Fox nation as the previous treaties, made in a similar manner, are regarded as obligatory upon the United States in favor of that nation. It can not, therefore, matter that Mo-kaw-ho-ko refused to sign for his band the treaty of 1868. They were, as part of the nation, bound by what the constituted authorities of the tribe engaged for the entire tribe; and having chosen to disregard the engagement of the tribe, and the general desire of the tribe, that all its members should live on the territory provided for them in the Indian country, must accept the consequences stipulated to attend that refusal.

It appears that by reason of the payments they have received since their removal to the reservation in the Indian Territory they are in no condition of necessity to require special consideration.

Hereto appended is a letter from the Secretary of the Interior, with an accompanying communication from the Commissioner of Indian Affairs, to which reference is made.

Your committee recommend that the bill be indefinitely postponed.

DEPARTMENT OF THE INTERIOR,
Washington, March 28, 1892.

SIR: I have the honor to acknowledge the receipt of your communication of 12th instant, and accompanying bill, S. 702, "for the relief of the Mo-kaw-ho-ko band of Sac and Fox Indians of the Mississippi."

In response thereto I transmit herewith copy of a communication of 22d instant from the Commissioner of Indian Affairs, to whom the matter was referred.

The history of Mo-kaw-ho-ko's band is set out in the report of the Commissioner. They were a roving band of trespassers, who for fifteen years refused to go to the Indian Territory, and at last the Department was compelled to remove them there with the aid of the Army.

As this band refused to remove to the Indian Territory and receive their share of the moneys, which could only be paid to those who personally resided there, it is my opinion that the bill should not pass, but if it is determined that Mo-kaw-ho-ko's band must be paid \$71,045.40 for refusing to comply with the treaty of 1868, that the United States, and not the Sac and Fox Indians, pay the amount.

Very respectfully,

JOHN W. NOBLE,
Secretary.

Hon. W. F. VILAS,
U. S. Senate.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, March 22, 1892.

SIR: I have the honor to be in receipt by your reference, for report, on the 14th instant, of a communication from Hon. Wm. F. Vilas, United States Senate, dated the 12th instant, inclosing Senate bill 702; "for the relief of the Mo-kaw-ho-ko band of Sac and Fox Indians of the Mississippi."

The Senator requests that the Department will cause to be transmitted to him, as a subcommittee of the Committee on Indian Affairs, all the particulars of information necessary to an understanding of this case, so far as the same may be had in this office or in the records and papers of the Department, and also requests your opinion in regard to the merits of the bill and of its details.

The bill recites that—

"Whereas by the treaty proclaimed the 14th day of October, 1868, between the United States of America and the Sac and Fox Indians of the Mississippi, provision was made for the removal of said nation from the State of Kansas to the Indian Territory, and by article twenty-one of said treaty it was provided that, with a view to enabling all the members of said nation to participate in the benefits accruing from said treaty, no part of the funds arising from or due the nation under said treaty or previous treaties should be paid to any bands not residing permanently on their reservation in the Indian Territory, and that after their removal payment should be made at their agency in said territory; and

"Whereas the Mo-kaw-ho-ko band of Sac and Fox Indians were allowed by the Government of the United States to remain in Kansas until or about the year 1886, when they were removed to their reservation in the Indian Territory, and after said treaty no payment of the funds accruing to them under prior treaties was made to said band until the year 1885, but their proportionate share of said funds during said period, amounting to the sum of \$71,045.40, was paid to and distributed among the other bands of said Sac and Fox Indians, in contravention of the terms and purposes of said treaty: Therefore,

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and there hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of \$71,045.40, to reimburse said Mo-kaw-ho-ko band of Sac and Fox Indians of the Mississippi, which sum shall be disbursed by the Secretary of the Interior; and the said sum of \$71,045.40 shall be deducted, in ten annual installments, from the moneys hereafter becoming due to the several other bands of Sac and Fox Indians, among whom the said proportionate share of the Mo-kaw-ho-ko band was heretofore distributed, and shall be covered into the Treasury of the United States."

In reply to the call of the committee I have to state as follows: Under article 21 of said treaty it is provided as follows:

"The Sacs and Foxes of the Mississippi, parties to this agreement, being anxious that all the members of their tribe shall participate in the advantages to be derived from the investment of their national funds, sales of land, etc., it is therefore agreed that as soon as practicable, the Commissioner of Indian Affairs shall cause the necessary proceedings to be adopted to have such members of the tribe as may be absent notified of this agreement and its advantages, and to induce them to come in and permanently unite with their brethren, and that no part of the funds arising from or due the nation under this or previous treaty stipulations shall be paid to any band or parts of bands who do not permanently reside on the reservation set apart for them by the Government in the Indian Territory, as provided in this treaty, except those residing in the State of Iowa, and it is further agreed that all moneys accruing from this or former treaties, now due or to become due to said nation, shall be paid to them on their reservation in Kansas, and after their removal, as provided in this treaty, payment shall be made at their agency on their lands as then located."

Mo-kaw-ho-ko refused to sign this treaty, and when the main body of Indians were removed to the Indian Territory in November, 1869, he and his band refused to go, and remained in Kansas.

An Indian agent and superintendent of Indian Affairs repeatedly visited this band and tried to induce them to join their brethren in the Indian Territory, but they persistently refused to be removed.

In May, 1886, an agent investigated their condition and they were found in very destitute circumstances, camping upon lands belonging to the whites, who were very much annoyed by their presence. These facts having been reported to the Department, United States Indian Inspector Bannister was instructed to remove them to the Indian Territory, which was accomplished with the assistance of a small body of cavalry in November, 1886.

For two years prior to their removal their share of the annuities due the tribe at large was set aside for them for the purpose of assisting them when removed to their homes in the Indian Territory. After their removal they were enrolled and the annuity reserved for them was distributed per capita, and since that date they have participated in all payments.

Under article 21 of the treaty above quoted, the Department was prohibited from paying to any band (except those in Iowa) any portion of the Sac and Fox moneys, unless they resided at the agency, and it has always been held by the Department and this office that Mo-kaw-ho-ko's band of Sacs and Foxes, having refused to remove to the Indian Territory, there was nothing in the treaty that implied an obligation of the United States to reserve any portion of said moneys for absentees until their removal.

In case it should be decided by Congress that Mo-kaw-ho-ko's band of Sacs and Foxes of the Mississippi is entitled to its share of the \$51,000 annually paid to the tribes named, notwithstanding the fact that they refused to comply with the treaty of 1868, and remove to the Indian Territory, and that this office erred in not reserving such share until their removal, I would respectfully submit the following statement of their account:

The annual appropriation for the Sacs and Foxes of the Mississippi is \$51,000. Under the decision of the Secretary of the Interior, there is to be deducted from this sum annually, before any division is made between the different bands, for—

Schools	\$5,000.00
Support of their national government.....	5,000.00
Pay of physician and purchase of medicine	1,150.00
Total.....	11,150.00

Leaving the sum of \$39,850 to be divided.

The number of Indians of Mo-kaw-ho-ko's band removed to the Indian Territory is 93; the total number of all Sacs and Foxes of the Mississippi is 830; Mo-kaw-ho-ko's band would therefore be entitled annually to ninety-three eight hundred and thirtieths of \$39,850, or \$4,459.50.

If Congress decides that the Department erred, under section 21 of the treaty of 1868, in dividing the above sum annually between the Sacs and Foxes of the Mississippi in the Indian Territory, and those in Iowa, to the exclusion of those in Kansas, and that their share should have been reserved, then those in the Indian Territory and Iowa have been overpaid annually in the sum of \$4,459.50, or, from the fiscal year 1870 up to and including the fiscal year 1884, for fifteen years, the sum of \$66,892.50.

In addition, there has been paid by the United States to the Sacs and Foxes, from May, 1873, to the end of the fiscal year 1887, the sum of \$44,700.58 as interest on their trust fund, being proceeds of their lands, of which amount there would be due to Mo-kaw-ho-ko's band ninety-three eight hundred and thirtieths, or \$5,008.60, less \$855.70 paid them in May, 1887. The total amount overpaid the Sacs and Foxes in the Indian Territory and in Iowa and due Mo-kaw-ho-ko's band, if they were entitled to have their share retained for any length of time and until they removed to the Indian Territory, would therefore be \$71,045.40.

If Congress decides that this sum is due Mo-kaw-ho-ko's band from the other Sacs and Foxes of the Mississippi, and provides for payment of that debt by these Indians, I recommend that no larger charge than \$7,000 per annum be made until the debt is paid.

The letter of Senator Vilas and inclosure is returned herewith.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.