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Mo-kaw-ho-ko Band of Sac and Fox Indians of the Mississippi

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MO-KAW-HO-KO BAND OF SAC AND FOX INDIANS OF THE
MISSISSIPPI.

DECEMBER 12, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany H. R. 9832.]

The Committee on Indian Affairs to whom was referred the bill (H. R. 5216) for the relief of the Mo-kaw-ho-ko band of Sac and Fox Indians of the Mississippi, have carefully examined the same, and report as follows:

The record shows that on October 14, 1868, the Sac and Fox Indians of the Mississippi, who were then on a reservation in the State of Kansas, entered into a treaty with the United States (Rev. Ind. Tr., 767), by which they ceded their lands in Kansas and agreed to remove to a reservation in the Indian Territory. Chief Mo-kaw-ho-ko and his band refused to assent to the treaty, regarding it as a violation of prior treaty stipulations, and accordingly an amendment was added by the Senate, now article 21 of the treaty, which provided in regard to absentee Indians as follows:

To induce them to come in and permanently unite with their brethren, 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.

Mo-kaw-ho-ko and his band were removed to the Territory by the United States immediately after the treaty, but were permitted to leave it again, which they did in a few days. They returned to Kansas where they remained until 1886, when they were again removed to the Territory and have permanently resided there since. Contemporaneously with the treaty, Secretary Browning ruled that the above clause authorized their share of the funds to be withheld until they should permanently reside in the Territory, and their share of the funds was so withheld by him and by his successors, Secretaries Cox and Delano. In 1871 the Secretary of the Interior, at the suggestion of the Indian agent, and with a view to inducing the Mo-kaw-ho-ko band to return to the Territory, notified Mo-kaw-ho-ko that their share of the funds would thereafter be paid to those of the tribe who were on the reservation, and directed him to go there and receive his share. The Mo-kaw-ho-ko band refused to do so, and thereafter and until the year 1885 their share of the annuities was paid over to the other bands of the nation. This was done without any other order than the one above mentioned, and without any considerate ruling on the subject by the

Secretary of the Interior. In 1886 Secretary Lamar again ruled that their share of the annuities was properly withheld until they became permanent residents in the Territory.

The object of the present bill is to reimburse the Mo-kaw-ho-ko band in the amount of money which has thus been diverted from them, deducting the sum from the share of the annuities hereafter becoming due to the other bands. The bill appears to be modeled upon the act of Congress of January 18, 1881 (21 Stat., 315), in which Congress pursued a similar course in respect to certain absentee Winnebago Indians who had been deprived of their share of annuities by the Interior Department.

We are entirely satisfied of the justness of the claim of this band and with the nature of the relief proposed by the bill. We think that the contemporaneous construction of the above-quoted clause of the treaty of 1868 was clearly correct, and that the purpose of the United States was none other than the execution of a policy which has obtained for many years, and which is exhibited in a number of treaties, of withholding their share of the funds from absentee or otherwise contumacious Indians, but of not forfeiting it. There is no express language in the treaty of 1868 declaring a forfeiture, and it is clear, as a matter of construction, under the decisions of the Supreme Court, that it should not be interpreted to work a forfeiture. This is particularly true in respect to the annuities which have been annually appropriated for the Sac and Fox Indians of the Mississippi since 1868, and which arise under prior treaties, namely, those of November 3, 1804, October 21, 1837, and October 11, 1842 (7 Stat., 85, 540, 596), all of which were made with the entire nation.

It is evident that the United States could not legally forfeit the share of the funds of the Mo-kaw-ho-ko band arising under these prior treaties by an article of the treaty of 1868, to which they were not consenting parties, and it follows that the treaty of 1868 should not be so construed. Even if it were so construed, there is no time fixed by the treaty within which the Mo-kaw-ho-ko band were required to remove to the Indian Territory. In this respect said treaty differs materially from a similar provision in a treaty with the Sacs and Foxes of July 9, 1860 (Rev. Ind. Tr., 766), in the treaty of March 23, 1861, with the Winnebagoes, and in the treaty of May 28, 1863, with the Kickapoos. As these last-mentioned treaties fixed a specified time within which absentees should rejoin their tribes, it is a reasonable conclusion that the purpose of the treaty of 1868 was different, and that the Mo-kaw-ho-ko band by their permanent removal to the Territory in 1886 brought themselves fully within the provisions of the treaty.

The Commissioner of Indian Affairs, in reporting upon this bill, states that the amount due the Indians under their claim is \$71,045.40, and recommends that it be not deducted to an amount exceeding \$7,000 annually.

To make the bill conformable to his report, we have prepared a substitute, and very cordially recommend its passage.