2-13-1897

# Claim of Sisseton and Wahpeton Bands of Sioux or Dakota Indians

54TH CONGRESS, 2d Session. SENATE. DOCUMENT No. 126.

# CLAIM OF SISSETON AND WAHPETON BANDS OF SIOUX OR DAKOTA INDIANS.

FEBRUARY 13, 1897.—Ordered to be printed.

Mr. PETTIGREW presented the following

**BRIEF AND ARGUMENT BY C. A. MAXWELL, ATTORNEY FOR CLAIMANTS, IN THE MATTER OF THE CLAIM OF THE SISSETON AND WAHPETON BANDS OF SIOUX OR DAKOTA INDIANS FOR BALANCE OF ANNUITIES DECLARED FORFEITED BY THE ACT OF CONGRESS APPROVED FEBRUARY 16, 1863, BEFORE THE COMMITTEES ON INDIAN AFFAIRS OF THE SENATE AND HOUSE OF REPRESENTATIVES.**

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: In the matter of the claim of the Sisseton and Wahpeton Bands of Sioux or Dakota Indians for the restoration of the balance of their annuities which were declared forfeited and confiscated by the act of Congress approved February 16, 1863 (12 Stat. L., 652), I desire to submit what follows for your careful and favorable consideration:

## THE FACTS.

### TREATY OF JULY 23, 1851, WITH THE SISSETON AND WAHPETON INDIANS. (10 STAT. L., 949.)

By the treaty of July 23, 1851, with the Sisseton and Wahpeton bands of Sioux Indians, as consideration for the cession of certain lands therein described, the United States agreed to pay to said Indians the sum of $1,665,000, out of which certain payments were to be made as therein specified, and the balance, to wit, the sum of $1,360,000, was to remain in trust with the United States, and 5 per cent interest thereon paid annually to said Indians for the period of fifty years as therein provided, commencing July 1, 1852, the said interest amounting to $68,000 per annum.

The third article of said treaty, setting apart a reservation for said Indians, was stricken out by the Senate in the ratification of said treaty, and by the amendment thereto the United States agreed to pay said Indians at the rate of 10 cents per acre for the lands included in the reservation provided for in that article, the amount, when ascertained, to be added to the trust fund provided by the fourth article. It was ascertained that the reservation thus to be paid for contained 1,120,000 acres, and at the rate of 10 cents per acre amounted to $112,000, yielding an annual interest of $5,600, which was provided for by an item in the act of August 30, 1852 (10 Stat. L., 52), making a total interest of $73,600 due these Indians annually for the period of fifty years from July 1, 1852.

TBEATY OF AUGUST 5, 1851, WITH THE MEDAWAKANTON AND WAHPAKOOTA BANDS OF SIOUX (10 STAT. L., 954).

By the treaty of August 5, 1851, with the Medawakanton and Wahpakoota bands of Sioux, as consideration for the cession of certain lands therein described, the United States agreed to pay said Indians the sum of $1,410,000, out of which certain payments were to be made as therein specified, and the balance, to wit, $1,160,000, was to remain in trust with the United States, the interest thereon at the rate of 5 per cent per annum and amounting to $58,000 per annum to be paid said Indians for the period of fifty years, commencing July 1, 1852.

The third article of this treaty, setting apart a reservation for said Indians, was stricken out by the Senate in the ratification of the treaty, and by the amendment thereto the United States agreed to pay to said Indians at the rate of 10 cents per acre for the lands included in that reservation, the amount to be added to the trust fund provided by the fourth article of the treaty. It was ascertained that the reservation thus to be paid for contained 690,000 acres, and at 10 cents per acre amounted to $69,000, which was provided for by an item contained in the act of August 30, 1852 (10 Stat. L., 52) yielding an annual interest of $3,450, and making a total interest of $61,450 due these Indians annually for the period of fifty years from July 1, 1852.

AREA OF LANDS CEDED.

The land ceded to the United States by the Indians under these two treaties lies in the States of Iowa, Minnesota, and the Dakotas (mostly in Minnesota), and covers an area of 50,875 square miles or 32,560,000 acres of the choicest lands in said States, a tract of country a little larger in extent than the State of Alabama and but little less than the State of Arkansas.

For this vast and magnificent territory the Indians, after deducting the payments provided for in the treaties, were to receive interest at the rate of 5 per cent per annum on the balance, computing the land at the paltry and insignificant sum of 10 cents per acre.

THE OUTBREAK OF 1862.

In the fall of 1862 the Medawakanton and Wahpakoota bands, with whom the treaty last above named, of August 5, 1851, was made, inaugurated an outbreak and massacre in the State of Minnesota. As has been seen these bands were a separate subdivision of the great Sioux Nation, living under separate and other treaty relations with the United States, and occupying other and distinct reservations from that of the Sisseton and Wahpeton bands.

THE SISSETON AND WAHPETON BANDS WERE NOT PARTIES TO THE OUTBREAK AND MASSACRE OF 1862.

During that outbreak, the history of which it is not necessary to state here, the Sisseton and Wahpeton bands not only preserved their obligations to the United States, and freely periled their lives to rescue the residents of the vicinity, and in obtaining possession of white women and children made captive by the hostile bands, but 250 of them served in the Army of the United States and fought against their brethren. The loyalty, friendship, and patriotism of these people will be referred to further on in this paper.

THE ACT OF FEBRUARY 16, 1863.

Congress, by the act of February 16, 1863 (12 Stat. L., 652), declared all treaties with the Sisseton and Wahpeton and Medawakanton and Wahpakoota bands and all lands in Minnesota and all annuities and claims forfeited; said forfeiture being made, as stated in the act, in consequence of the war waged by said bands against the white settlers in Minnesota, and this forfeiture included the lands and annuities of the Sisseton and Wahpeton bands, notwithstanding the fact that they were not parties to that outbreak and massacre, but the steadfast and loyal friends of the Government at the time of its greatest need. No discrimination was made between the loyal and patriotic Sisseton and Wahpetons, having separate treaty stipulations, and the hostile Medawakantons and Wahpakootas, living under other treaty stipulations. The innocent were made to suffer equally with the guilty.

THE LOYALTY, PATRIOTISM, AND SERVICES OF THE SISSETON AND WAHPETON INDIANS, AND THE UNJUST PROVISIONS OF THE ACT OF 1863.

The Commissioner of Indian Affairs, in his annual report for the year 1866, pages 46, 47, says:

A thorough examination of the whole matter relating to these Sioux resulted in the deliberate conviction that as a people they (the Sissetons and Wahpetons) had not been treated fairly or with just discrimination by the Government, and the forfeiture of their annuities had been a measure uncalled for and unjust to a large number of people who had not taken part in the outbreak of 1862.

In his letter of April 20, 1866, to the Secretary of the Interior, the Commissioner said:

It is apparent that this outbreak took place at first among the lower bands (the Medawakanton and Wahpakootas), and that the upper bands (the Sissetons and Wahpetons) for the most part refused to take part in it. * * * Many of those who felt no inclination toward hostilities feared that the vengeance of the whites would fall upon them as a portion of the tribes, and fled to the northward, leaving their homes (Id. 225). Many of these men have, for the past three years, been homeless wanderers, and actually suffering from want; a very poor return for services rendered to the whites at the risk of their lives. The Government, as it has acknowledged by several enactments, owes these people a debt of gratitude, and has not discharged that debt, but has deprived them of their share of the property and income of their people, by act of 1863, abrogating all treaties. (Id. 226.)

In his letter to the Secretary of May 18, 1866, the Commissioner says:

In this speedy suppression of the outbreak many friendly Indians acted as scouts and otherwise rendered good service. They never committed any acts of hostility. * * * They have remained friendly while compelled to a vagabond life for three years by the indiscriminate confiscation of all the land and property of their people. * * * The amount for which they sold their large tract of land—being in 1862 over $5,000,000—was forfeited and immense damage done to their property by the troops and captive camp in the fall of the year. The crops belonging to the farmer Indians were valued at $125,000, and they had large herds of stock of all kinds, fine farms and improvements. The troops and captives, some 3,500 in number, lived upon this property for fifty days. (Id., 230-31.)

General Sibley, in a letter dated July 13, 1878, says:

I have the best reason for knowing that as a general rule the chiefs and headmen of these divisions not only had no sympathy with those of their kindred who took part in the massacre, but exerted themselves to save the lives of the whites then in the country, and joined the forces under my command as scouts, and rendered signal and faithful service in my campaigns against the hostile Sioux, and subsequently in guarding the passes to the settlements against raiding parties of their own people. I have always regarded the sweeping act of confiscation referred to as grossly unjust to the many who remained faithful to the Government and whose lives were threatened and their property destroyed as a result of that fidelity.

Having been in command of the forces which suppressed the outbreak, and punished the participators in it, I became necessarily well informed as to the conduct of

the bands and individuals who took part for or against the Government during the progress of the war; and I have repeatedly, in my official capacity, called the attention of the Government to the great injustice done the former class by including them in the legislation which deprived them of their annuities.

Bishop Whipple, in a letter dated December 26, 1877, says:

I believe that there were many of the Lower Sioux who showed great heroism in opposing the hostile. It was to such men as Tacopi, Wakeanwashta, Wabasha, Wakeantowa, and others we owe the deliverance of the white captives. So far as I know and believe, there were hundreds among the Upper and Lower Sioux who were not at any time hostile to us. They were in the minority and overborne by the fierce warriors of hostile bands. I have not the slightest doubt that we not only owe the lives of the rescued captives to the Sioux who were friendly, but our immunity from Indian wars since is due to the wisdom of Gen. H. H. Sibley in employing these friendly scouts to protect our borders. I appreciate your efforts to secure justice to our friends, even if they have red skins.

United States Indian Agent Charles Crissey, in his letter of August 26, 1882, to the Commissioner of Indian Affairs, in touching upon this subject says:

I am convinced that these claims as presented are just and equitable, and that there is justly due said Indians all the moneys and annuities from which they were deprived by the act of Congress entitled "An act for the relief of persons for damages sustained by depredations and injuries by certain bands of Sioux Indians," approved February 16, 1863 (12 Stat., 652), and this because the said Indians did remain faithful to the United States, and did assist in subduing the outbreak, protecting the white people, and also in carrying on war against their own people (the hostile bands).

In fact, the records of the Interior Department and War Department are full of evidence as to the loyalty, patriotism, and services of these people, consisting of reports from army officers, Indian agents, missionaries, and others.

TREATY OF FEBRUARY 19, 1867 (15 STAT., 505).

The preamble of this treaty recites as follows, viz:

Whereas it is understood that a portion of the Sisseton and Wahpeton bands of Sioux Indians, numbering from 1,200 to 1,500 persons, not only preserved their obligations to the Government of the United States during and since the outbreak of the Medawakanton and other bands of Sioux in 1862, but freely periled their lives during the outbreak to rescue the residents of the Sioux Reservation and to obtain possession of white women and children made captives by the hostile bands, and that another portion of the Sisseton and Wahpeton bands, numbering from 1,000 to 1,200 persons, who did not participate in the massacre of the whites in 1862, fearing the indiscriminate vengeance of the whites, fled to the great prairies of the Northwest, where they still remain; and

Whereas Congress, in confiscating the Sioux annuities and reservations, made no provision for the support of these, the friendly portion of the Sisseton and Wahpeton bands, etc.; and

Whereas the several subdivisions of the friendly Sisseton and Wahpeton bands ask, through their representatives, that their adherence to their former obligations of friendship to the Government and people of the United States be recognized, and that provision be made to enable them to return to an agricultural life, etc.: Therefore, etc.

The Commissioner of Indian Affairs, in a letter to the Secretary of the Interior, dated March 22, 1888, upon the subject of certain legislation then pending for the relief of the scout portion of the Sisseton and Wahpeton bands, and after making a detailed statement of the funds of the four bands arising under the two treaties of 1851, and subsequent appropriations made for removal, damages sustained by white settlers, etc., says:

In reference to the foregoing account of moneys paid to and on account of the several bands of Sioux mentioned in the proposed bill (H. R. 6464), I can not refrain from saying that, in my estimation, the legislation based upon it would, perhaps,

perpetuate and make irremediable a great wrong which has been perpetrated upon the Sisseton and Wahpeton bands, who have been unfortunately classed with the other named bands, the Medawakanton and Wahpakoota. To make this clear the following statement of facts seems necessary: At the time of the outbreak of the Lower Sioux, composed of the two bands last mentioned (the Medawakanton and Wahpakoota), in Minnesota, in 1862, the first-named two bands (the Sisseton and Wahpeton, called also the Upper Sioux), were living on separate reservations, lying partly in Minnesota and partly in Dakota, secured to them by separate treaties, under which they were entitled to an annuity of $73,600 for fifty years, beginning July 1, 1852. Twelve installments had been appropriated * when, in 1862, the other bands (the Medawakanton and Wahpakoota) organized an outbreak and massacre of white settlers in the vicinity of the reservation occupied by the friendly Sissetons and Wahpetons. By act of Congress, February 16, 1863, in which the outraged feelings of the country, as well as its indiscriminating wrath, found expression, all treaties with the four bands were abrogated, their lands in Minnesota and their funds were confiscated, although part of the Sisseton and Wahpeton bands remained loyal and enlisted in the Army.

In 1867 the Government, having been convinced that a great wrong had been done in the case of the Sisseton and Wahpeton bands, who not only refrained from hostilities, but had periled their lives in defense of the whites and in delivering a large number of captive women and children who had been captured by the hostiles, appointed a commission to treat with these bands. This treaty, concluded February 19, 1867, in its preamble recites the fact that the act of February 16, 1863, had wronged these bands, and the third article, "for and in consideration of the faithful services said to have been rendered by them," and "in consideration of their confiscated annuities, reservations, and improvements" set apart for the scouts and their families the Traverse Lake Reservation; and the fourth article for the others, who fled from the hostiles to the North, the reservation of Devils Lake. This has been held to be in full satisfaction for the wrong done these Indians, and is cited as an estoppel and admission on their part that full compensation had been received by them. But what did we give them by this treaty as a reward for their faithful services in which they had imperiled their lives; and in compensation for their annuities, which were confiscated; and for their crops, which our troops consumed, valued at $120,000; and for their valuable lands in Minnesota, from which they were driven; and for the right of way for roads through their lands in Dakota?

What was the valuable consideration given to which we refer as compensation for all their loss and wrong? Simply the reservations in Dakota on which they live, which were theirs already. It will be seen from the statement submitted herewith that they have received more than they would have been entitled to receive under the abrogated treaty of 1851.† But a glance at the items composing the accounts discloses the fact that this is because these bands are charged with support given the hostile bands and with damages inflicted by them. It is necessary to remember that a few of the hostile bands joined the friendly ones and furnished scouts who served with the others, and the purpose of the bill doubtless is to compensate these as well as the others. By thus mentioning these with the others, these others are held responsible for all that has been paid to and on account of the hostile bands.

The Commissioner, in this letter, after the most careful and thorough investigation and consideration, finds that of the various amounts appropriated up to that time for or on account of the four bands the sum of $616,086.52 is chargeable to the Sisseton and Wahpeton bands,

* Nine of which had been paid. (See House Report No. 1953, Fiftieth Congress, first session.)

† This is an error. It will be seen by reference to the statement referred to that—

First. All the charges therein are against the four bands.

Second. No portion of the amounts appropriated to pay damages sustained during the outbreak of 1862, awards to Indians, deficiencies, removals, etc., should be charged against the Sisseton and Wahpeton bands

Third. The $800,000 appropriated to pay for lands under the agreement of 1872 should not be charged against these people. That was the consideration for the cession of certain lands in Dakota described in the treaty of 1867, which were not covered by the confiscation act of 1863, and has no connection whatever with the lands and annuities under the treaty of 1851. It was a separate and distinct transaction, and should have been omitted entirely from the statement.

Fourth. In the Commissioner's statement $1,500,000 is charged as the share of the Santee Sioux (Medawakanton and Wahpakootas) under the treaty of 1868 with the great Sioux Nation, to which they were parties. No portion of this sum is chargeable to the Sisseton and Wahpeton bands.

and he recommends "that these bands be relieved from the stigma which has been unjustly put upon them as being hostile because a few of their young men joined the hostiles, and that they shall be so far restored to their rights under the treaties and agreements abrogated that they shall receive during the remaining thirteen years, during which they are entitled to it, the full one-fourth of their annuities." (That is, the one-fourth of all the annuities of the Sisseton and Wahpeton bands.)

PARTIAL RESTORATION HAS BEEN MADE.

The Government of the United States having become convinced that a great and shameful wrong had been done these loyal and patriotic people, partial restitution has been made to them.

An agreement was entered into with the Sisseton and Wahpeton bands on December 12, 1889, which was ratified by act of Congress, approved March 3, 1891. (26 Stat. L., 1037.) By article 3 of this agreement the amount of the annuities due such of the scouts or those who served in the Army during the outbreak of 1862 as resided upon the Sisseton and Wahpeton, or Lake Traverse, Reservation, one-fourth of the whole amount of the confiscated annuities was restored to them and continued at the rate of $18,400 per year to the date of the expiration of the treaty of 1851.

The act of March 3, 1891, ratifying said agreement, appropriated $376,578.37, to be paid to the Sisseton and Wahpeton bands; and to the scouts and soldiers of the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands who were not included in the class as parties to said agreement the sum of $126,620, the said sum to be in full settlement of all claims they (the scouts and soldiers) may have for unpaid annuities under any and all treaties or acts of Congress up to June 30, 1890, making a total of $503,198.37.

By items contained in the Indian appropriation acts of March 3, 1893 (27 Stat. L., 624), and March 2, 1895 (28 Stat. L, 889), the aggregate sum of $79,733.30 was appropriated to pay the scouts, etc., who were not parties to the agreement of 1889 the balance due them up to the expiration of the treaty of 1851.

Under the agreement of 1889 the scouts are entitled to $18,400 per annum up to July 1, 1902, the date of the expiration of the treaty of 1851, and that sum has been annually appropriated up to the present time and will be continued to be appropriated until July 1, 1902. Therefore, under the agreement of 1889 and subsequent acts of Congress (with the $18,400 per year yet to be appropriated up to July 1, 1902), that portion of the confiscated annuities of the Sisseton and Wahpeton people to which the scouts are entitled has been provided for as follows, viz:

| | |
|---|---|
| Amount appropriated by act of— | |
| March 3, 1891 | $503,200.00 |
| March 3, 1893 | 30,666.66 |
| March 2, 1895 | 49,066.64 |
| $18,400 per year from 1890 to 1902 (11 years) | 202,400.00 |
| Total | 785,333.30 |

If to this be added the sum of $616,086.52, found chargeable to the Sisseton and Wahpeton bands by the Commissioner of Indian Affairs in his letter to the Secretary of the Interior of March 22, 1888, and forwarded by the Secretary of the Interior with his letter of March 24, 1888, to the chairman of the Committee on Indian Affairs of the House

of Representatives (House Report No. 1953, Fiftieth Congress, first session), and the nine payments of $73,600 made prior to the outbreak of 1862, aggregating $662,400, we have a total of $2,063,819.82, chargeable against the gross amount of the annuities of the Sisseton and Wahpeton bands arising under the treaty of 1851; or to state the case differently, at the time of the outbreak of 1862, nine of the fifty annual payments provided for by that treaty had been made, leaving forty-one payments to be provided for. Since that time there has been appropriated for the benefit of these two bands the sum of $1,401,419.82. But the Indians claim the $616,086.52 charged to them as set forth in the House report above referred to should not be charged against them. By the illegal and unconstitutional confiscation of their annuities by the Government they were compelled to a vagabond life, and it became absolutely necessary to make small appropriations to keep them from actual starvation. If their annuities had not been wrongfully diverted and taken from them this necessity would never have arisen. It was by no fault or overt act on their part that brought about a condition among them which forced Congress to make appropriations at various times to relieve their actual wants. But it was the fault of the United States, resulting from the sweeping confiscation act which brought about this state of affairs, and the Government can not afford to charge against these innocent people the result of its own wrongs.

Again, the Sisseton and Wahpeton bands owned a very large tract of country in Dakota, described in article 2 of the treaty of 1867, which was not included in or covered by the confiscation act of 1863 (75 Stat. L., 505). By that treaty there were two reservations set apart for these Indians, within the country so owned by them, one at Lake Traverse and the other at Devils Lake.

In view of certain cessions made by the Indians in article 2 of said treaty, it was agreed by amended article 6 that certain sums, in the discretion of Congress, should be appropriated from time to time, and at various times appropriations were made aggregating $467,457.25, and which is included in the $616,086.52 chargeable against said Indians, as stated by the Commissioner of Indian Affairs in his letter to the Secretary of the Interior of March 22, 1888. (House Report No. 1953, Fiftieth Congress, first session.)

On September 20, 1872, an agreement was entered into with these Indians whereby they ceded all the lands described in article 2, of the treaty of 1867, except the reservations of Lake Traverse and Devils Lake, for the sum of $800,000, to be paid in ten equal annual installments. This agreement was confirmed by act of Congress of February 14, 1873 (17 Stat. L., 456).

About 13,000,000 acres were ceded to the Government by this agreement, for a consideration of about 6 cents per acre, and if to this be added the sum of $467,457.25, appropriated under the amended sixth article of the treaty of 1867, and for which, as specified in the treaty, the Indians gave other valuable considerations, the price would be about 10 cents per acre. As has been seen, none of the funds arising under the foregoing transaction have any connection whatever with the annuities arising under the treaty of 1851. They all arose under treaties and acts of Congress relating to lands owned by these people in Dakota, and which were not included in the confiscation act of 1863. The Indians, by the treaty of 1867, and the agreement of 1872, made certain concessions and gave up a large tract of country containing about 13,000,000 acres, as consideration for what they received under that treaty and that agreement, and in no sense of reason or justice

can any portion thereof be charged against the annuities arising under the treaty of 1851. They were separate and distinct transactions, having no relation whatever to each other, but, as stated in the letter of the Commissioner of Indian Affairs above referred to, this has been done and the amount received under the treaty of 1867 is included in the $616,086.52, charged by him against the annuities of these Indians arising under the treaty of 1851.

By every rule of justice and equity, and by the fundamental principles enunciated by the courts in cases of this character, these people are entitled to interest on the amount of their annuities withheld from them by the Government. The decisions of the courts bearing on this subject may be found printed as an appendix to House Report No. 2544, Fifty-second Congress, second session.

The following is quoted from that report, page 3, as being applicable in every particular to the case now under consideration:

> The general rule that the Government, being ready at all times to pay its obligations, should not be liable for interest, is a correct one, but there are many exceptions, as the history of legislation will show. This case is clearly an exception, for the Government was acting in a fiduciary capacity and violated its trust, as it has admitted, by diverting from the *cestui que trust* the property specifically named in the treaty. The liability of the Government comes clearly within the rule laid down by Parsons (Par. Contr. 2, 380), "where it is that money ought now to be paid and ought to have been paid long since, the law in general implies conclusively that for the delay in the payment of the money the debtor *promised* to pay *legal* interest." It is the universal rule between man and man, which the courts always enforce, and the Government is bound by a like liability and responsibility.
>
> In the case of Erskine *v.* Van Arsdale (15 Wallace, p. 75), Chief Justice Chase said that "where an illegal tax has been collected, the citizen who has paid it and has been obliged to bring suit against the collector is, we think, entitled to interest in the event of recovery from the time of the illegal exaction." This was a suit against the Government. A similar case was that of Cochran et al. *v.* Schell, collector, etc. (17 Otto, p. 625.)
>
> The cases are numerous where Congress has recognized the duty and liability of the Government to pay interest, and has made provisions by law for its payment.

The interest at the rate of 5 per cent per annum on the confiscated annuities of these people, being the rate allowed them under the treaty of 1851, amounts to the sum of $3,168,480, and this, on every ground of justice, equity, good faith, and fair dealing, they ought to have. But they make no claim to this enormous sum. They will be satisfied if the principal sum is restored to them.

In the above calculation the $126,620 appropriated by the act of March 3, 1891; the $30,666.56 appropriated by the act of March 3, 1893, and the $49,066.64 appropriated by the act of March 2, 1895, is charged against the Sisseton and Wahpeton bands. It will be observed that the acts referred to required the several amounts to be paid to the scouts, etc., of the Sissetons, Wahpetons, Medawakantons, and Wahpakootas. The amount thereof paid to the scouts, etc., of the latter two bands should be charged against them and not against the Sisseton and Wahpetons, and should be deducted from the gross charges in the above statement against them.

### THE ACT OF CONGRESS OF FEBRUARY 16, 1863, IS UNCONSTITUTIONAL.

It is hardly necessary for me to state that the act of 1863 is unconstitutional, and would be so declared by any judicial tribunal.

There is no power vested in the Congress of the United States to interfere with or destroy vested property rights secured by treaty or otherwise.

> Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political. (Holden *v.* Joy, 17 How., 247; Wilson

*v.* Wall, 6 Wall., 89; Insurance Co. *v.* Canter, 1 Pet., 542; Doe *v.* Wilson, 23 How., 461; Mitchell et al. *v.* United States, 9 Pet., 749; United States *v.* Brooks et al., 10 How., 460; the Kansas Indians, 5 Wall., 737; 2 Story on the Constitution, 1508; Foster et al. *v.* Neilson, 2 Pet., 254; Crews et al. *v.* Burcham, 1 Black., 356; Worcester *v.* Georgia, 6 Pet., 562; Blair *v.* Pathkiller, 2 Yearger, 407; Harris *v.* Barnett, 4 Black., 369.)

Mr. Webster, in speaking of the obligation of a treaty, in his opinion on Florida land claims arising under the ninth article of the treaty of 1819 between the United States and Spain, said:

A treaty is the supreme law of the land. It can neither be limited, nor modified, nor altered. It stands on the ground of national contract, and is declared by the Constitution to be the supreme law of the land, and this gives it a character higher than any act of ordinary legislation. It enjoys an immunity from the operation and effect of all such legislation. (Opinion quoted in Senate Report No. 93, Thirty-sixth Congress, first session.)

As a matter of fact the act of 1863 was hasty and ill considered. It was passed at a time when the country was startled, excited, and alarmed by the acts of the hostile bands, and Congress was not informed or did not take notice of the fact that the Sisseton and Wahpeton Indians did not take part in the outbreak of 1862, but were the loyal and steadfast friends of the Government and rendered the most valuable and patriotic service during all that period, but unjustly and unwisely classed these people with the hostile bands and thus perpetrated upon them a gross and shameful wrong without parallel in the history of any civilized Government.

It is a fact, which the record of the Government will substantiate, that in all the various Indian wars since the foundation of our Government there has never been a single instance where the Indian participants were punished by the confiscation of their lands and annuities. Even the Five Civilized Tribes, who made treaties with the Southern Confederacy and were in open hostility to the Government of the United States, were not disturbed in their rights of lands and annuities, notwithstanding the fact that by the act of July 5, 1862 (12 Stat. L., 528), it was provided—

That in case where the tribal organization of any Indian tribe shall be in actual hostility to the United States, the President is hereby authorized, by proclamation, to declare all the treaties with such tribe to be abrogated with such tribe, if, in his opinion, the same can be done consistently with good faith and legal national obligations.

As a matter of fact, the President, seeing that "good faith and legal national obligations" would be violated by the exercise of the authority vested in him by that act, never issued the required proclamation.

The Sisseton and Wahpeton people never committed an overt act against the Government of the United States before, during, or since the outbreak of 1862, but at all times have been its most loyal and steadfast friends, and at all times have rendered it the most patriotic and faithful service.

Before concluding I want to again refer to the treaty of 1851 as showing how these poor and untutored children and wards of the Government have been overreached.

As has been seen, the four bands, by the two treaties of 1851, ceded to the United States a territory covering more than 32,000,000 acres of land, at the rate of 10 cents per acre. Of this vast area the Sisseton and Wahpeton bands ceded 17,770,000 acres for a total consideration of $1,177,000, of which amount the sum of $305,000 was to be paid out for certain purposes in the treaty specified, and the balance, $1,472,000,

which includes the $112,000 added by Senate amendment to the third article of said treaty, was—

to remain in trust with the United States, and five per cent interest thereon to be paid annually to said Indians for the period of fifty years, commencing the first day of July, eighteen hundred and fifty-two (1852), which shall be in full payment of said balance, principal and interest, the said payment to be applied under the direction of the President, as follows, to wit:

Now, if we estimate the 17,770,000 acres ceded by these people under the treaty of 1851 at $1.25 per acre, the minimum price at which Government land is sold, we have the sum of $22,212,500, and if we calculate simple interest on that sum at the rate of 5 per cent per annum, the rate allowed the Indians, and for the period of fifty years limited in the treaty, we have the enormous sum of $55,531,250—quite a handsome speculation and profit on the investment made by the Government. But the worst feature of this treaty and the one doing the most wrong to these people is that part of the third article thereof, above quoted, which provides that the interest for fifty years on the amount which the United States agreed to pay these people as consideration for the lands ceded by them shall be in full payment of the consideration money, as well as the interest thereon. Now, if justice should be done these people and their rights restored to them under the treaty of 1851, the consideration named therein as placed in trust with the United States, amounting to $1,472,000, and which the Indians at the time the treaty was made were given to understand belonged to them and have ever since so understood it, will, in less than six years, go to the United States, and the Government will have both the land and the consideration agreed to be paid to the Indians therefor.

I am at a loss to understand how anyone with the least sense of honesty, fair dealing, and good faith could take such an advantage of these poor and ignorant people, who at the time were entirely unacquainted with the white man's ways and in entire ignorance of the English language and the meaning of its phrases.

## CONCLUSION.

What a travesty on justice, honor, and good faith it would be for this great Government of the United States to say to these people:

You were loyal; you were patriotic; you served in the Army of the United States at the time of the Government's greatest need; you sacrificed home and espoused the cause of the United States and fought against your own brethren; you risked your lives in rescuing white women and children made captives by the hostile bands; your crops and stock were taken to subsist the Army in which you battled for the rights of the Government, but as a penalty for all this loyalty, patriotism, heroism, self-sacrifice, and services the Government will confiscate all your lands and annuities secured to you by solemn treaty stipulation; you shall suffer all this because your sense of justice and right, your patriotism and fidelity to the Government did not permit you to join the hostile bands, your brethren, in the massacre of 1862.

We do not believe that your sense of justice and honor will permit you to take this view of the matter, but that in the consideration of it you will adopt that broader, more humane, more just, and more dignified policy which should be adopted by a great Government toward an inferior and wronged people, who, while owing it no allegiance, were second to none of our best citizens in loyalty, patriotism, and devotion to our Government at the time of its greatest need.

We believe that in dealing with the rights of these people you will deal with them as you would deal with the rights of other persons, according to the contract made with them, bearing in mind that the

United States occupies to these claimants the relation of guardian to ward, and that the Government in its fiduciary capacity is bound to protect their interests as scrupulously and with as much care and fidelity as a private individual acting in that capacity would be obliged to do.

The Sisseton and Wahpeton people do not appeal to you on the ground of sympathy. They do not ask equity, but demand justice. They ask the restoration to them of that which is legally theirs under the Constitution and laws of the United States, secured and guaranteed them by solemn treaty stipulations, the supreme law of the land, and of which they have been wrongfully, unjustly, arbitrarily, shamefully, and unconstitutionally deprived.

In the course of divine dispensation many of these devoted people who rendered such valuable and patriotic service to the Government of the United States have passed to the stillness of the grave. Let those who still survive receive your benediction of justice before they pass to "that undiscovered country from whose bourn no traveler returns," and by your act of simple justice let the descendants of those who have gone beyond the river as well as those who still remain retain that faith in the Government and be imbued with that spirit of patriotism, self-sacrifice, and devotion so faithfully and gloriously manifested by their fathers.

Let this great Government do this simple act of justice and right this great wrong which this long-suffering and patriotic people have so long and patiently endured, and to that extent relieve itself of the stigma of a "century of dishonor," so graphically, so pathetically, and so truthfully told by Helen Jackson, and thus remove a shameful blight from our national escutcheon, the fair name of our country, and our boasted civilization, honor, and integrity.

Very respectfully,

C. A. MAXWELL,
*Attorney for Claimants.*

---

FARIBAULT, *December 26, 1877.*

Hon. J. B. SANBORN:

In reply to your request asking my views as to the claim of certain friendly Sioux for their just share in the annuities confiscated by the United States Government, I reply:

The Sioux massacre was largely due to the neglect and wrongs which these Indians received from those who had them in charge. They had sold the Government 800,000 acres of land, for which they were to receive payment. It was agreed that no money should be paid on account of the claims against them unless such claims were approved by the Indians in open council. No such council was ever held. Whatever councils were held were held with a few interested chiefs. The school funds were wasted. After six years and an expenditure of $18,000, I do not know of a person who has learned to read. The Indians came to the payment in time and waited two months, hungry and starving. The traders refused credit, and told the Indians that they would only receive part payment; that a part of their annuities were taken for claims. I think the warrants in the Indian Department will show that a part of the money sent in August for the payment was taken from other funds belonging to these Indians. I make no apology for the wicked leaders of the outbreak. They were fiends and showed no mercy to either age or sex.

I believe that there were many of the Lower Sioux who showed great heroism in opposing the hostile. It was to such men as Taopi, Wakeanwashta, Wabasha, Wakentowa, and others we owe the deliverance of the white captives. So far as I know and believe, there were hundreds among the Upper and Lower Sioux who were not at any time hostile to us. They were in the minority and overborne by the fierce warriors of the hostile bands.

I have not the slightest doubt that we not only owe the lives of the rescued captives to the Sioux who were friendly, but our immunity from Indian wars since is due to the wisdom of Gen. H. H. Sibley in employing these friendly scouts to protect our borders.

I appreciate your efforts to secure justice to your friends, even if they have red skins. If I may be pardoned a suggestion, I believe that if you could secure a commission of such men as General Sibley and Dr. Daniels, the proofs would be ample to satisfy all good men of the justice of their claim.

I will be glad to give you any information in my power.

Yours, faithfully, H. B. WHIPPLE.

---

[House Report No. 1953, Fiftieth Congress, first session.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 6464) for the relief of certain Sisseton and Wahpeton Sioux Indians who served in the armies of the United States against their own people, respectfully report the following statement of facts, as set forth in the letters of the honorable Secretary of the Interior and from the honorable Commissioner of Indian Affairs, together with letters from General Sibley and Bishop Whipple, who were personally acquainted with the facts herein set forth; also a letter from Sarah Goodthunder to Bishop Whipple, which makes its own unexpressed but most pathetic plea for the relief asked for in this bill for those who lost everything in their devotion to the whites, and who have so long suffered from the wrongs we have inflicted upon them.

We also give a detailed statement of the obligations we were under to these people and of the manner in which they were cruelly deprived of these rights, and respectfully submit that the remedy proposed in this bill is not what strict justice demands. The bill submitted by the Department as a substitute for bill H. R. 6464 we have amended so as to include as beneficiaries of this act with those who served as scouts in the armies acting against the Sioux, members of the same bands who were at the time of the outbreak serving in the armies of the United States in the war of the rebellion. We also think that the bill should be so amended as to provide for twenty-seven annual payments, and not for twenty-five as recommended by the Department; for the payments of 1862 and 1863 were never made to them, the outbreak occurring in August of 1862, before the money, which was on the road for the purpose, reached the reservation, and that appropriated for the year 1863, before the outbreak occurred, was covered back into the Treasury, so the amount appropriated for the payment of these scouts and soldiers should include their pro rata share in the payments due for those two years, which would be $36,800.

We recommend that the bill so amended do pass.

---

DEPARTMENT OF THE INTERIOR,
*Washington, March 24, 1888.*

SIR: I have the honor to acknowledge the receipt of your communication of 15th ultimo, inclosing, with request for information, H. R. 6464, "For the relief of certain Indians who served in the armies of the United States against their own people when at war with the United States, and of their families and descendants from the operation of certain acts of Congress passed to punish hostile Indians."

In response thereto I transmit for your information a copy of a report of the 22d instant from the Commissioner of Indian Affairs, to whom the matter was referred, wherein he gives a brief history of the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands of the Dakota Sioux Indians, whose treaties were abrogated, and the lands, annuities, and claims declared forfeited by the act of February 16, 1863 (12 Stat., 652), on account of the outbreak, and massacre of whites in Minnesota, in the fall of 1862, by parties of said Indians; furnishes information of record showing the friendly attitude towards the whites and the good conduct at that time by parties of the Sisseton and Wahpeton bands, and the valuable services rendered by some of them in the service of the United States as scouts, etc.

The report presents a statement of annuities provided for under the abrogated treaties amounting to a total annual sum of $150,050, of which $15,000 was payable forever and the remainder for fifty years; that prior to the abrogation of the treaties twelve installments of the annuities had been paid, from 1851 to 1863, leaving thirty-eight installments payable on all annuities, except the $15,000 payable forever, amounting in the aggregate for all, for the period of fifty years, to the sum of $5,701,900; that since the abrogating act of 1863 there has been paid, under laws and a subsequent treaty, for and on account of all these bands of Sioux Indians, the total sum of $4,813,064.54, leaving a balance of $888,835.46; that there has been received, in addition to the foregoing, on account of the proceeds of sales of their lands in Minnesota and Dakota, the sum of $889,081.90, of which $811,845.11 has been expended for the benefit of the Santee Sioux and Sioux of Lake Traverse and Devils Lake, leaving a balance to their credit of $77,236.79.

The report further shows that the share of the Sisseton and Wahpeton bands in the $150,050 annuity payment was $73,600, all of which was limited to the period of fifty years; that twenty-five installments from 1863 to 1888 would amount to $1,840,000, from which should be deducted the total amount expended for or on account of said two bands since 1863, $616,086.52, leaving a balance of $1,223,913.48; that the scouts and their families of the Sisseton and Wahpeton bands constitute one-fourth of the number of those Indians, and that theretore their proportion of the last-named sum would be $305,978.37, and for their benefit he recommends an appropriation of that sum in a bill which he has prepared and which is herewith submitted as a substitute for House bill 6464, stating that the second section of the latter bill is impossible of execution, as no accounts with the individual Indians have been or are kept.

The bill recommended by the Commissioner as a substitute for the House bill 6464 contains a provision for the annual appropriation of $18,400, for the period of thirteen years from July 1, 1889, as the share of the annuities of the Indians for whose benefit this legislation is proposed, to which they would be entitled had their treaties not been abrogated.

Very respectfully,

WM. F. VILAS,
*Secretary.*

CHAIRMAN COMMITTEE ON INDIAN AFFAIRS,
*House of Representatives.*

---

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
*Washington, D. C., March 22, 1888.*

SIR: By your reference of the 16th ultimo, for report, I have the honor to be in receipt of a communication from the chairman of the House Committee on Indian Affairs, inclosing House bill 6464 "For the relief of certain Indians who served in the armies of the United States against their own people, when at war with the United States, and of their families and descendants, from the operation of certain acts of Congress passed to punish the hostile Indians."

The bill enacts that the provisions of the act of Congress entitled "An act for the relief of persons for damages sustained by reason of depredations and injuries by certain bands of Sioux Indians, approved February 16, 1863," shall not extend to any individual Indians of the said Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands of the Dakota or Sioux Indians who, in the war following the outbreak of said bands in August, 1862, enrolled themselves and entered into the military service of the United States as scouts, and as such served against said hostile Indians thereafter in said war, under the direction and command of Brig. Gen. Henry H. Sibley or other commanding officers of the United States forces in the district of Minnesota during said war, and that the Secretary of the Interior be, and hereby is, authorized and directed to carry into effect as to the Indians who so enrolled and served as scouts, together with the members of their respective families who remained friendly to the whites and within the lines of the Federal Army, all the provisions of the treaties of July 25, 1851, and August 5, 1851, and June 9, 1858, in the same manner and to the same extent as if the act of February 16, 1863, had never been passed.

Section 2 provides that, in stating the accounts under said treaties with said individual Indians, there shall be deducted from the aggregate amount found due them, respectively, all such sums as may have been paid over to such Indian or Indians on any account whatever by the United States, except on account of actual services rendered to the United States between the 16th day of February 1863, and the date to which said account is stated.

In order to understand the object of the legislation proposed by this bill it is necessary that a brief history of the four bands named, and of the sums guarantied to them under their several treaties, should be detailed for the information of the Department and the House Committee on Indian Affairs.

| | |
|---|---|
| Under treaty of September 29, 1837 (7 Stats., 539), with said Indians, the sum of $300,000 were set aside to draw interest at 5 per cent per annum, yielding an interest annually forever of | $15,000 |
| By treaty of July 23, 1851 (10 Stats., 949), with the Sisseton and Wahpeton bands, as a consideration for the cession of lands, a trust fund was created, amounting to $1,360,000, yielding an interest of 5 per cent per annum for fifty years | 68,000 |
| By the Indian appropriation act of August 30, 1852 (10 Stats., 52), in accordance with the Senate amendment to said treaty, the sum of $112,000 was added to said trust fund, yielding an annual interest of | 5,600 |

By treaty with the Medawakanton and Wahpakoota bands of Sioux, dated August 5, 1851 (10 Stats., 954), as a consideration for cession of lands, a trust fund was created amounting to $11,600,00, yielding an annual interest of (to be paid for 50 years) ..... $58,000

By the Indian appropriation act of August 30, 1852 (10 Stats., 52), in accordance with Senate amendment to said treaty, the sum of $69,000 was added to said trust fund, yielding an annual interest of ..... 3,450

Total annuity ..... 150,050

Owing to the outbreak and massacre in Minnesota in the fall of 1862 Congress, by act approved February 16, 1863 (12 Stats., 652), declared all treaties with said bands abrogated, all lands in Minnesota, annuities, and claims forfeited, and provided for a commission to ascertain and report upon claims for losses, and authority was given to the Interior Department to set apart 80 acres of land to such Indians as had exerted themselves to save captive whites. By the act of March 3, 1863 (12 Stats., 819), it was provided that a tract of good agricultural land should be set apart, outside of the limits of any State, sufficient for 80 acres to each member of the four bands who were willing to adopt the pursuits of agriculture; that their former reservation should be surveyed and sold, and the proceeds invested by the Indian Department for the benefit of said Indians, and that Indians who had exerted themselves to save the lives of whites should each have 80 acres of land on which the improvements were situated.

Under the provisions of this act of Congress the four bands named were removed from Minnesota and are now located at the Santee Agency, Nebr., and at the Sisseton and Devil's Lake agencies, in Dakota.

On the 19th day of February, 1867 (Stats., 15, p. 505), a treaty was entered into with the Sisseton and Wahpeton bands of Sioux Indians, which recites as follows:

"Whereas it is understood that a portion of the Sisseton and Wahpeton bands of Santee Sioux Indians, numbering from 1,200 to 1,500 persons, not only preserved their obligations to the Government of the United States during and since the outbreak of the Medawakanton and other bands of Sioux, in 1862, but freely periled their lives during the outbreak to rescue the residents on the Sioux Reservation, and to obtain possession of white women and children made captives by the hostile bands, and that another portion of said Sisseton and Wahpeton bands, numbering from 1,000 to 1,200 persons, who did not participate in the massacre of the whites in 1862, fearing the indiscriminate vengeance of the whites, fled to the great prairies of the Northwest, where they still remain; and

"Whereas Congress, in confiscating the Sioux annuities and reservations, made no provision for the support of these, the friendly portion of the Sisseton and Wahpeton bands," etc.; and

"Whereas the several subdivisions of the friendly Sisseton and Wahpeton bands ask, through their representatives, that their adherence to their former obligations of friendship to the Government and people of the United States be recognized, and that provision be made to enable them to return to an agricultural life, etc.; Therefore, a treaty has been entered into at Washington City, this 19th day of February, 1867," etc.

Under article 2 of this treaty, the said bands cede to the United States the right to construct wagon roads, railroads, mail stations, etc., over and across the lands claimed by said bands, including their reservation thereinafter designated.

Under articles 3 and 5: For and in consideration of the cession above mentioned, and in consideration of the faithful and important services said to have been rendered by the said bands, also in consideration of the confiscation of all their annuities, etc., a tract of land was set aside for a permanent reservation, beginning at the head of Lake Traverse, etc., to be apportioned in tracts of 160 acres to each head of a family.

Under amended article 6: In consideration of the destitution of said bands of Sisseton and Wahpeton Sioux, resulting from the confiscation of their annuities and improvements, it is agreed that Congress will, in its own discretion, from time to time, make such appropriations as may be deemed requisite to enable said Indians to return to an agricultural life, to establish and support local and manual labor schools, to employ mechanical and other teachers, and to improve farms, etc.

Under this article of the treaty there has been appropriated for these bands the sum of $467,457.25.

As hereinbefore stated, these bands were to receive annually for fifty years the sum of $150,050. At the time of the outbreak in 1862, twelve installments of annuity had been appropriated, leaving unappropriated thirty-eight installments of $150,050, aggreating the sum of ..... $5,701,900.00

Since the date of the act of February 16, 1863, the following sums have been appropriated for the support of these bands and to pay for damages to citizens, etc.:

12 Stats., 652. For damages ..... $100,000.00
12 Stats., 784. For removal, etc ..... 50,016.66

| | | |
|---|---|---|
| 13 Stats., 172. For deficiencies, etc | $113,043.40 | |
| 13 Stats., 92. Award for damages | 928,411.00 | |
| 13 Stats., 92. Award for damages | 241,963.00 | |
| 13 Stats., 427. For award to Indians | 7,500.00 | |
| 13 Stats., 180. For support | 100,000.00 | |
| 13 Stats., 559. For support | 100,000.00 | |
| 14 Stats., 279. For support | 100,000.00 | |
| 14 Stats., 514. For support | 100,000.00 | |
| Under treaty of 1867: | | |
| 15 Stats., 217. For support (D. L.) | 15,000.00 | |
| 15 Stats., 217. For support (L. T.) | 30,000.00 | |
| 15 Stats., 217. For support (L. T.) | 7,457.25 | |
| 15 Stats., 221. For support (L. T.) | 50,000.00 | |
| 15 Stats., 315. For support, both bands | 60,000.00 | |
| 16 Stats., 26. For survey of reservation | 45,000.00 | |
| 16 Stats., 88. For support | 10,000.00 | |
| 16 Stats., 353. For support | 50,000.00 | |
| 16 Stats., 354. For support | 50,000.00 | |
| 16 Stats., 563. For support | 75,000.00 | |
| 17 Stats., 183. For support | 75,000.00 | |
| | 2,308,391.31 | |
| 18 Stats., 167. Add amount paid to Sisseton and Wahpeton and Santee Sioux of Lake Traverse and Devil's Lake, under agreement made by commissioners appointed under act of June 7, 1872, with said bands for the relinquishment of their claim to or interest in land described in second article of treaty of February 19, 1867 | 800,000.00 | |
| 15 Stats., 635. Add amount paid to the Santee Sioux Indians of the four bands named, under treaty with the different tribes of Sioux, dated April 29, 1868, for twenty years, say, $75,000 per annum (*which, under article 10, is in lieu of all annuities under former treaties*). | 1,500,000.00 | |
| 18 Stats., 47. Add amount appropriated to pay creditors of said bands, by act approved May 16, 1874 | 70,000.00 | |
| 19 Stats., 549. Add amount appropriated for relief of Hans C. Peterson, by act approved March 3, 1877 | 2,283.92 | |
| 23 Stats., 344. Add amount expended of the sum of $100.000 appropriated by act approved March 3, 1885, to pay creditors of said Indians prior to the massacre of 1862 | 42,991.50 | |
| | 4,723,666.73 | |
| Add amounts expended for support of said bands at Sisseton and Devils Lake for the fiscal year 1884 | 15,934.60 | |
| The fiscal year— | | |
| 1885 | 15,933.86 | |
| 1886 | 15,588.22 | |
| 1887 | 11,717.63 | |
| 1888 | 12,000.00 | |
| For the Medawakanton band in Minnesota, fiscal year 1885 | 9,442.50 | |
| For same band, for 1887 | 8,781.00 | |
| | | $4,813,064.54 |
| Balance | | 888,835.46 |

In addition to the aggregate sum of $4,813,064.54, expended as shown above, there has been received from the sale of their lands in Minnesota and Dakota the sum of $889,081.90, of which amount the sum of $811,845.11 has been expended for the benefit of the Santee Sioux and Sioux of Lake Traverse and Devils Lake, leaving a balance to their credit of $77,236.79.

In stating the foregoing account, under bill 6464, this office dealt with the four bands mentioned in said bill, in common, but it is claimed that relief is only sought for those members of the Sisseton and Wahpeton bands, their families, and descendants who enlisted as scouts in the U. S. Army (none of the other bands did so enlist), and who were under treaty entitled to an annual sum of $73,600 for fifty years, of which twelve installments had been appropriated, leaving thirty-eight installments due when the act of confiscation of February 16, 1863, was passed. Of the different amounts appropriated in the foregoing statements, the scouts claim only

their share of the $467,457.25 appropriated under article 6 of the treaty of February 19, 1867, should be charged against them, as the other charges were for payment of damages arising from the massacre in 1862, and for feeding the Indians after the confiscation of their annuities, and while the scouts and families were at Fort Wadsworth in the employ of the Government. This office, however, is of the opinion that they should be charged, in addition to their share of the $467,457.25, with their share of the $70,000 appropriated May 16, 1874 (Stat. 18, page 47), and of the $42,991.50 used from the $100,000 appropriated March 3, 1885 (Stat. 23, page 344), as these amounts were used to pay debts prior to the massacre. They should also be charged with their share of the amounts appropriated by Congress as a gift from 1884 to 1888, inclusive, amounting to $35,637.77, making total amount to be charged against the Sisseton and Wahpeton band of $616,086.52.

The bill as submitted provides in section 2: "That, in stating the accounts under said treaties with said individual Indians, there shall be deducted from the aggregate amount found due them respectively all such sums as may have been paid over to such Indian or Indians on any account whatever by the United States, except on account of actual services rendered to the United States between the 16th day of February, 1863, and the date to which said account is stated."

This provision is impossible of execution, as no accounts with individual Indians are kept or can be kept, and I have prepared an amended bill, as will hereafter appear.

In reference to the foregoing account of moneys paid to and on account of the several bands of Sioux mentioned in the proposed bill (H. R. 6464), I can not refrain from saying that, in my estimation, legislation based upon it would, perhaps, perpetuate and make irremediable a great wrong which has been perpetrated upon the Sisseton and Wahpeton bands, who have been unfortunately and cruelly classed with the other named bands, the Medawakanton and Wahpakoota.

To make this clear the following statement of facts seems necessary:

At the time of the outbreak of the Lower Sioux, composed of the two bands last named, in Minnesota, in 1862, the first-named two bands, called also the Upper Sioux, were living on separate reservations, lying partly in Minnesota and partly in Dakota, secured to them by separate treaties, under which they were entitled to an annuity of $73,600 for fifty years, beginning July 1, 1852. Twelve installments had been appropriated, when, in 1862, the other bands organized an outbreak and massacre of white settlers in the vicinity of the reservation occupied by the friendly Sissetons and Wahpetons.

By act of Congress, February 16, 1863, in which the outraged feelings of the country, as well as its indiscriminating wrath, found expression, all treaties with the four bands were abrogated, their lands in Minnesota and their funds were confiscated, although part of the Sisseton and Wahpeton band remained loyal and enlisted in the Army.

In 1867 the Government, having been convinced that a great wrong had been done in the case of the Sisseton and Wahpeton bands, who not only had refrained from hostilities, but had periled their lives in defense of the whites and in delivering a large number of captive women and children who had been captured by the hostiles, appointed a commission to treat with these bands. This treaty, concluded February 19, 1867, in its preamble recites the fact that the act of February 16, 1863, had wronged these bands, and the third article, "for and in consideration of the faithful services said to have been rendered by them," and "in consideration of the confiscation of their annuities, reservations, and improvements," sets apart for the scouts and their families the Traverse Lake Reservation; and the fourth article, for the others, who fled from the hostiles to the north, the reservation of Devils Lake. This has been held to be in full satisfaction for the wrong done these Indians, and is cited as an estoppel, and admission on their part that full compensation has been received by them. But what did we give them by this treaty as a reward for their faithful services in which they had imperiled their lives; and in compensation for their annuities, which were confiscated; and for their crops, which our troops consumed, valued at $120,000; and for their valuable lands in Minnesota, from which they were driven; and for the right of way for roads through their lands in Dakota, which they ceded to us? What was the valuable consideration given to which we refer as compensation for all their loss and wrong? Simply the reservations in Dakota on which they live, which were theirs already. It will be seen from the statement submitted herewith that they have received more than they would have been entitled to receive under the abrogated treaty of 1851. But a glance at the items composing the accounts discloses the fact that this is because these bands are charged with support given the hostile bands and with damages inflicted by them. It is necessary to remember that a few of the hostile bands joined the friendly ones and furnished scouts who served with the others, and the purpose of the bill doubtless is to compensate these as well as the others. By thus mentioning them with the others, these others are held responsible for all that has been paid to and on account of the hostile bands.

It would be impossible at this late day to separate their accounts, but I think the following proposition will satisfy those for whose benefit legislation is sought:

Let us agree to class all these bands as hostile at the time of the outbreak, concede that their lands and funds were justly confiscated, but those who were in the service in the Army as scouts, as appears from the records of the War Department, should be classed as our friends, and should be exempted from the act of confiscation. If we multiply the amount of their annuities ($73,600) by the number of years that have elapsed (twenty-five), we have the gross sum of $1,840,000. From this subtract the amount which has been appropriated for the whole number after the confiscation act, amounting to $616,086.52, which leaves $1,223,913.48. The scouts and their families constitute one-fourth of those who would have received this, and their share, therefore, would be $305,978.37.

I recommend that a bill be passed appropriating this sum of money to be paid to those whose names appear on the rolls of the Army as scouts, their families and descendants, or their legal representatives; and that these bands be relieved from the stigma which has been unjustly put upon them as being hostile because a few of their young men joined the hostiles, and that they shall be so far restored to their rights under the treaties and agreements which were abrogated that they shall receive during the remaining thirteen years during which they are entitled to it the full one-fourth of the amount of their annuities.

I inclose a draught of a bill, which I recommend be substituted for House bill No. 6464, referred for report, and return also letter from Committee on Indian Affairs, House of Representatives, with accompanying papers.

Very respectfully,

J. D. C. ATKINS, *Commissioner.*

The SECRETARY OF THE INTERIOR.

S. Doc. 126——2