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Letter from the Secretary of the Interior, communicating a report of the commissioners appointed under the 13th article of the treaty between the United States and the Senecas and mixed Senecas, Shawnees, and other Indians, concluded February 23, 1867, to ascertain and report the amount of money due by the United States to the Wyandott Indians

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LETTER

FROM

THE SECRETARY OF THE INTERIOR,

COMMUNICATING

A report of the commissioners appointed under the 13th article of the treaty between the United States and the Senecas and mixed Senecas, Shawnees, and other Indians, concluded February 23, 1867, to ascertain and report the amount of money due by the United States to the Wyandott Indians.

MARCH 19, 1869.—Referred to the Committee on Indian Affairs and ordered to be printed;

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 17, 1869.

SIR: The 13th article of the treaty between the United States and the Seneca and mixed Senecas, Shawnees and other Indians, concluded in this city on the 23d of February, 1867, authorizes and directs the Secretary of the Interior to appoint three persons whose duty shall be to ascertain and report to the department the amount of money, if any, due by the United States to the Wyandott Indians under existing treaty stipulations, and the items mentioned in Schedule A, appended to the treaty.

Commissioners were accordingly appointed. On the 2d instant they submitted a report to the Commissioner of Indian Affairs, from which it appears that they have concluded their investigations on all matters, except those relating to depredations on Wyandott property; and they were of opinion that their inquiries in regard to such depredations could be more successfully prosecuted in Kansas than in this city. Instructions were given to them accordingly by my predecessor on the 26th ultimo to proceed to Kansas to complete the investigation.

I do not deem it proper to await the completion of the work of the commissioners, and, pursuant to the terms of the treaty, have the honor to submit a copy of the report herewith for such action as Congress may deem necessary in the premises.

Very respectfully, your obedient servant,

J. D. COX, *Secretary.*

Hon. SCHUYLER COLFAX,

Vice-President of the United States and President of the Senate.

WASHINGTON, D. C., *March 2, 1869.*

SIR: The commissioners appointed in accordance with the Senate's amendment of the 13th article of the Treaty of the 23rd of February, 1867,

with the Senecas, and other Indians, "to ascertain and report to the department the amount of money, if any, due by the United States to the Wyandott Indians, under existing treaty stipulations, and the items mentioned in Schedule A appended to that treaty," have had the same under consideration, and, after a full investigation of all matters embraced therein, except item *seven* of Schedule A, respectfully submit the following report:

By the 6th article of the treaty of January the 31st, 1855, (see Statutes at Large, volume 10, page 1,162,) in consideration of the Wyandott nation agreeing to relinquish and release the United States from all annuities, school moneys, &c., as well as from all other claims or demands whatsoever as a nation, arising under any treaty or transaction between them, the United States agreed to pay the Wyandott nation the sum of three hundred and eighty thousand dollars, to be equally distributed and paid to all the individuals and members of the said nation, in three annual instalments, payable in the month of October, commencing in the year one thousand, eight hundred and fifty-five.

According to this stipulation, each of the annual instalments amounted to \$126,666 66; and the last clause of said 6th article of said treaty provides that "such part of the annuity under the treaty of 1842 as shall have accrued, and may remain unpaid at the date of the payment of the first of the above mentioned instalments, shall then be paid to the Wyandotts, and be in full and final discharge of said annuity."

According to a statement of the Commissioner of Indian Affairs, now before us, it appears that "such part of the annuity" was paid in October, 1855; and we are of the opinion that said payment was in full and final discharge of the annuity due under the treaty of 1842. But as the payment of less than one-half of the first instalment, under the treaty of 1855, was made in October, 1855, and the entire balance of said first instalment was not paid until October, 1856, and as successive payments were all equally deferred, we have considered it just and proper to allow interest, at the rate of six per cent. per annum, on all these deferred payments; which, being carefully calculated and added to the small balance of principal due, amounts to *eleven thousand six hundred and twelve dollars, (\$11,612,)* on the 4th of March, 1869.

By the 7th article of the treaty of 1855 it is provided that "the sum of \$100,000, invested under the treaty of 1850, together with any accumulation of said principal sum, shall be paid over to the Wyandotts in like manner, with the \$380,000 mentioned in the next preceding article, but in two equal annual instalments, commencing in one year after the payment of the last instalment of the said above mentioned sum."

The first instalment, therefore, of this \$100,000 was payable in October, 1858, and the second in October, 1859. By the statement of the Commissioner of Indian Affairs, now before us, it appears that the government did not pay these instalments in money, but in lieu thereof delivered to the Wyandotts, (who received them under protest,) on the 13th of May, 1859, \$52,000 in Tennessee six per cent. bonds; \$1,000 in Missouri six per cent. bonds; \$594 53 in United States six per cent. bonds, and on the 24th of March, 1860, \$53,000 in Tennessee five per cent. stock.

By evidence now before us it is shown that the Wyandotts sold the stocks first delivered to them, (on the 13th of May, 1859,) at the highest market price, for \$38,407 50, being \$11,592 50 less than the first instalment due the previous October. This loss, together with interest thereon at six per cent. per annum for 10 years, amounting to \$18,547, we consider justly due to the Wyandotts.

By similar evidence it is shown that the Wyandotts sold the stocks last delivered to them, (on the 24th of March, 1860,) at the highest market price, for \$41,870, being \$8,130 less than the second instalment due the previous October. This loss, together with interest thereon at six per cent. for nine years, amounting to \$12,620, we also consider justly due.

We have therefore allowed the above sum of \$11,592 50, and the sum of \$8,130, with interest on each, to reimburse them on account of losses sustained by the investment of their funds by the government in the above mentioned depreciated stocks, and which were received at the time under protest by the Wyandotts.

On examination of the books in the Indian Bureau we find on the 30th of June, 1864, there was transferred to the surplus fund \$2,089 50, which stood credited to the Wyandotts by appropriation in fulfilment of treaty stipulations under the following heads :

Annuity.....	\$1,329 98
Blacksmith.....	363 25
Education.....	125 00
Improvements.....	271 28
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Total.....	2,089 51
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These appropriations should have been paid on the ratification of the treaty of January 31, 1855, and are now due with interest from that time, amounting to \$3,844 69.

By the fourth article of the treaty of January 31, 1855, with the Wyandotts, it is stipulated that, "none of the lands thus assigned and patented to the Wyandotts shall be subject to taxation for a period of five years from and after the organization of a State government over the territory where they reside."

The authorities of the then Territory of Kansas construed this provision of the treaty to mean that, though these lands were to be exempt from taxation for five years *after* the establishment of a State government, yet they were taxable up to the time such State government should be so formed, and accordingly taxed the lands, for the years 1859 and 1860, to the amount of \$11,703 56, as is shown by the statement of Byron Judd, the treasurer of Wyandott county, Kansas, (in 1859 and 1860,) where these lands are situated.

From a statement of the Commissioner of Indian Affairs, and from the affidavit of John T. Cochran, who made the treaty under the direction of the Commissioner, there can be no doubt that the spirit and intent of the foregoing stipulation was, that the Wyandotts should be exempt from taxation *from the date of said treaty until five years after the formation of the State government.* Justice therefore requires that the \$11,703 56 paid by the Wyandotts to the territorial government for taxes, in 1859 and 1860, should be refunded to them, with interest at six per cent., from the time of payment on the 26th of January, 1864, to the 4th of March, 1869, the whole amounting to \$14,582 62.

By the 14th article of the treaty of February, 1867, it is stipulated that the sum of \$5,000 shall be paid to the Wyandotts to enable them "to establish themselves in their new home," which sum, never having been paid to them, is still due under said treaty.

The foregoing sums we consider justly due to the Wyandotts from the United States, to wit:

A.—Interest on deferred payments.....	\$11,612 00
B.—Loss on sale of bonds May, 1859, with interest.....	18,547 00

Loss on sale of bonds March, 1860, with interest	\$12, 620 00
C.—Money heretofore appropriated in fulfilment of treaty stipulations, but transferred to the surplus fund	3, 844 69
D.—Taxes unjustly collected by the Territorial government of Kansas, in 1859 and 1860, to be refunded, with interest.	14, 582 62
E.—Grant of \$5,000 for Wyandotts to establish themselves in their new home	5, 000 00
Total	<u>66, 206 31</u>

In addition to the foregoing, your commissioners have had before them the claims of various parties of the Wyandotts, (under act of Congress of June, 1834,) for losses by depredations committed upon their property between the years 1847 and 1863, amounting, in the aggregate, to \$34,342 50.

Many of these claims are not sustained by any testimony whatever, and where testimony is furnished it is not sufficient to warrant us in allowing the claims.

It is the opinion of the commissioners that these claims should not be allowed until their validity can be more fully established by evidence taken upon the ground where these depredations are said to have been committed.

All the papers in our possession upon which the foregoing report has been based, and marked respectively A, B, C, D, and E, with the same marginal reference to the items above allowed, are herewith returned.

In support of item D will be found an abstract (so marked) taken from the records of the Indian Bureau.

In support of item E the 14th article of the treaty made with the Senecas and other tribes on the 23d day of February, 1867, is referred to, and a copy of said treaty is filed.

All of which is respectfully submitted.

JAMES H. EMBRY,
 JULIUS A. FAY,
 JAMES P. TAYLOR,
Commissioners.

Hon. N. G. TAYLOR,
Commissioner of Indian Affairs.