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Ely Moore and Daniel Woodson.

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ELY MOORE AND DANIEL WOODSON.

FEBRUARY 28, 1894.—Committed to the Committee of the Whole House and ordered to be printed.

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

REPORT:

[To accompany S. R. 8.]

The Committee on Indian Affairs, to whom was referred the joint resolution (S. R. 8) authorizing the Secretary of the Interior to cause settlement of the accounts of Special Agents Ely Moore and of Daniel Woodson, under the treaties of May, 1854, with the Delaware and with the united tribe of Wea, etc., Indians, beg leave to report:

That the report of the Commissioner of Indian Affairs of June 19, 1885, to the Secretary of the Interior, relative to the accounts of these special agents, and to the construction put by the Supreme Court of the United States on the treaties with said Indians on March 3, 1884 (110 U. S., p. 688), shows the following facts:

(1) That in October, 1856, Ely Moore, deceased, was appointed a special register and superintendent to sell at Fort Leavenworth, Kansas Territory, the *eastern* portion of the Delaware trust lands, under the treaty of May 6, 1854 (10 Stats., 1048); and that on May 15, 1857, he was appointed a special register and superintendent to sell at Paoli, Kansas Territory, in the Indian reservation, the trust lands of the united tribe of Wea, etc., Indians, under the treaty of May 30, 1854 (10 Stats., 1082); and that on May 15, 1857, Daniel Woodson was appointed a special receiver and superintendent to sell at Osawkee, Kansas Territory, the *western* portion of the Delaware Indian trust lands, under the treaty of May 6, 1854.

(2) That on January 19, 1861, Daniel Woodson, special receiver and superintendent of the sale of the *western* portion of the Delaware trust lands, "rendered to the honorable Acting Secretary of the Interior" an account for the expenses of the sale of the trust lands, in which he charged 1 per cent commissions on all of the moneys derived from the sale thereof. On the same day his account was referred to the Commissioner of Indian Affairs for report.

On January 28, 1861, the Hon. A. B. Greenwood, Commissioner of Indian Affairs, reported to the Acting Secretary of the Interior on these claims as follows:

In reference to this class of claims I will state that the impartial judgment of the Office of Indian Affairs has ever been that they are just and should be paid. * * * The authority for compensating these agents was found in the treaties and not elsewhere.

(3) That the Commissioner recommended 1 per cent commissions on all of the Indian trust moneys be allowed and paid.

(4) That "on May 8, 1861, the honorable Secretary of the Interior decided and directed the Commissioner of Indian Affairs to allow each of the special registers and receivers, four in all, who superintended the sales of the Delaware and Wea, etc., Indian trust lands 1 per cent commissions" on a part of the moneys received by them from the sales of these trust lands.

(5) That the Supreme Court of the United States in construing these treaties, in case No. 216 of the United States, plaintiff in error, *v. The Special Receiver and Superintendent of the Sale of the Eastern Portion of the Delaware Trust Lands, at Fort Leavenworth, Kans., and of the Indian Trust Lands of the United Tribe of Wea, etc., Indians at Paoli, Kans.*, in its opinion said:

* * * By express provision in the treaties the expenses incurred by the United States in making the sales were to be paid from the proceeds. This clearly implied the payment of a reasonable compensation for the services of those employed to carry the trust into effect.

And that it was not part of the duties of these special agents, as officers of the Land Department, to sell the lands or receive payment therefor. The moneys paid for the Indian lands were trust moneys, not public moneys. The employment was for a special service in connection with a special trust assumed by the United States for the benefit of certain Indian tribes, in which express provision was made for the payment of expenses. In legal effect the appointment was an agency for the sale of lands for the Indians. The duties to be performed were to be of a different character and at a different place from those of the Land Office.

(6) That the court ordered judgment to be entered for this special receiver and superintendent for the sale of the *eastern* portion of the Delaware trust lands at Fort Leavenworth, and of the Wea, etc., trust lands, under the finding marked G of the special verdict; that is to say, for \$14,541.78, as of June 13, 1879, the date of the verdict, the judgment to draw interest from that date."

(7) That paragraphs 14 and 15 in the special verdict in the case of said special agent, defendant in error in said suit, fully quoted in said report, shows that the court "did allow him 1 per cent commissions on all of the moneys received by him as a reasonable and fair compensation," and that only 4 special agents were employed to sell the trust lands. *One of them has been fully paid principal and interest due to him as found by the Supreme Court of the United States on March 3, 1884.*

(8) That "the laws governing the Indian Bureau, in the settlement of this class of claims, are the act of August 7, 1882 (22 Stats., p. 345), and the act of January 9, 1837 (R. S., secs. 2093 and 2094)." The question was submitted to the Attorney-General for his opinion, which was given on July 7, 1885, that it required legislation by Congress to authorize a further and final settlement of these accounts. In addition to the Report No. 819 of the Fiftieth Congress, referred to by the Assistant Secretary of the Interior in October, 1889, the Fifty-second Congress favorably reported House bill 3323, by Report No. 880, on March 28, 1893, for the settlement of the accounts of Moore and Woodson, but said bills were not reached on the calendar, hence the delay in the settlement of the accounts of these special agents.

(9) That the act of June 9, 1892 (27 Stat., 768), shows that provision has been made for the final settlement of the accounts of one or the other of the four special agents, and that the accounts of Ely Moore, deceased, and of Daniel Woodson remain to be finally settled, as provided for by Senate joint resolution No. 8.

(10) The Acting Secretary of the Interior in letter dated October 17, 1889, relative to the accounts of Moore and Woodson before your committee, states that, "in view of the opinion of the honorable Attorney-General that no valid ground exists for reopening the accounts of the claimants," no action whatever should be taken by the Executive Departments, *without legislation providing therefor*, and as it is understood that a measure for the relief of the claimants was presented to the first session of the Fiftieth Congress, and that a bill (H. R. 2263) was referred to a committee, which committee rendered a report, No. 819, that the claimants should look to the legislative branch of the Government for the relief they seek, and not to the Department.

Senate joint resolution No. 8 was fully investigated by the Senate Committee on Indian Affairs, and the result of that investigation is shown by the amendment made by said committee to said joint resolution and passed by the Senate, authorizing the settlement of the accounts of these two special agents, in which they are to be allowed on settlement the principal sum found by said committee to be due to each of them, exclusive of interest. The resolution carries no appropriation, but simply directs the settlement of the accounts of Moore and Woodson and limits the auditing officers to the allowance of the principal amount due them. The Commissioner of Indian Affairs, in letter of January 30, 1894, states that there is no objection to the passage of a law authorizing payment of the principal and accrued interest due these people and that he would be pleased to have these long-standing accounts settled.

Your committee therefore favorably report Senate joint resolution No. 8 as a substitute for H. R. joint resolution No. 33 and recommend its passage.