8-6-1894

Frank Murphy and others.

53D CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1373.

FRANK MURPHY AND OTHERS.

AUGUST 6, 1894.—Laid on the table and ordered to be printed.

Mr. CURTIS, of Kansas, from the Committee on Indian Affairs, submitted the following

ADVERSE REPORT:

[To accompany H. R. 3552.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 3552) entitled "A bill to carry into effect the order of the Secretary of the Interior," etc., have had the same under consideration and submit the following unfavorable report:

The legislation proposed by this bill authorizes and directs the honorable Secretary of the Interior to enroll Frank Murphy and others as members of the Sac and Fox of the Missouri tribe of Indians, their membership to relate back to March 26, 1890.

The honorable Secretary of the Interior, to whom the said bill was referred by your committee for examination and report thereon, approved the recommendation of the honorable Assistant Attorney-General of the United States, and returned the bill to your committee without recommendation under date of March 7, 1894, as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., March 7, 1894.

SIR: I am in receipt of the departmental reference of February 27, 1894, being H. R. 3552, entitled "A bill to carry into effect the order of the Secretary of the Interior," etc., with request to be advised as to what reply should be made to the Committee on Indian Affairs, House of Representatives.

In response thereto, I have the honor to state that it appears from a report of the honorable Commissioner of Indian Affairs, accompanying your reference, that on July 26, 1887, the Indian Office recommended that the application of Frank Murphy and the other persons named in the bill for enrollment as members of the Sac and Fox of Missouri tribe of Indians, should be rejected and authority given under the law for the removal of said "applicants from the reservation."

Said recommendation was approved by the Department on the 27th of July, 1889. Afterward, an investigation of the matter was had through a special agent of the Indian Office, upon whose report and the recommendation of the Indian Office the departmental action of July 27, 1889, was rescinded, and on the 28th day of March, 1890, the enrollment of the said parties as members of the Sac and Fox of Missouri tribe of Indians was authorized. This order is evidently the one the bill recites and refers to in its preamble as having been made on the 26th day of March, 1890.

Thereafter a petition, signed by United States Senators Dawes, Plumb, and Ingalls, Representatives Perkins and six other members of Congress, was presented to the Indian Office asking it to recommend that said authority be suspended, and the right of the applicants to enrollment as members of said tribe of Indians be again investigated.

The attorney representing these Indians also submitted a paper, purporting to have been signed by the adult members of the said tribe, protesting against the enrollment of the parties named in this bill as members of their tribe.

Based upon this petition of Senators and Representatives, the protest of the members of the tribe, and the recommendation of the Indian Office, the Department, on

May 10, 1890, again suspended action in the matter, and directed a full investigation of the claim of these persons to membership in said tribe. Under this order the claim of these parties to be admitted to citizenship, or enrollment as members of said tribe, has been investigated, and voluminous testimony has been taken by Indian inspectors under departmental direction.

On the 2d day of April, 1891, the Indian Office recommended, on the testimony taken in the case, that the Department recall and cancel its authority for the enrollment of these persons, given on March 28, 1890; since that time other testimony has been taken, and the matter has been pending on said report and all of the testimony and record in the case.

The matter received consideration by my predecessor, and since I came into office I have given it careful consideration, in connection with other important cases involving some questions similar to those involved in the Murphy case, to which the bill refers. (*See* my opinion sent to you September 28, 1893, on which it does not appear that action by you has yet been had.)

The second preamble in this bill is not borne out by the record, and the fourth preamble, which recites that "Whereas said order appears to be just and proper," summarily determines the justice and propriety of claims of the Murphys to membership in said tribe in their favor.

The legality, justice, and propriety of their claims to be admitted as members of said tribe are the material questions to be determined, and it was for the purpose of determining these questions that the voluminous testimony was taken upon which their rights and the rights of the tribe can be determined by the Department and justice done to all concerned in due course of business.

While it is within the power of Congress to pass the bill, and while the wisdom and propriety of its passage are questions for Congress alone to pass upon in considering it, under all the facts and circumstances I could not conscienciously recommend its passage.

Therefore I respectfully recommend that the bill in question, with the report of the Commissioner of Indian Affairs thereon, be returned to the committee of the House of Representatives on Indian Affairs without recommendation.

Very respectfully,

JOHN I. HALL,
Assistant Attorney-General.

The SECRETARY OF THE INTERIOR.

Approved.

HOKE SMITH,
Secretary.

The evidence presented before your committee was to the effect that the Murphy claimants are not related by blood to the Sac and Fox tribe, and the report of George W. Gordon, U. S. special Indian agent, to the honorable Commissioner of Indian Affairs, under date of September 23, 1889, together with the report of Benj. H. Miller, U. S. Indian inspector to the honorable Secretary of the Interior, under date of December 15, 1890, fully sustains the claim of the Indians that the applicants are not related by blood to their tribe, and strongly recommends that their claim to membership be not allowed, and that the applicants be removed from the reservation.

Your committee believe that the said tribe of Indians should have the right to determine who shall share with them their tribal rights and benefits.

The said Sac and Fox of Missouri Indian tribe have filed with your committee a remonstrance protesting against the passage of this bill, as follows:

POTTAWATOMIE AND GREAT NEMAHA INDIAN AGENCY,
Sac and Fox of the Missouri Reservation, June 24, 1894.

The COMMITTEE ON INDIAN AFFAIRS,
U. S. House of Representatives, Washington, D. C.

GENTLEMEN: The undersigned members of the Sac and Fox of the Missouri tribe of Indians, assembled in open council on their reservation, and being a full representation of the membership of said tribe, view with alarm the legislation now pending before your committee, whereby certain persons, members of the Murphy

family, seek to obtain membership with our tribe against our wishes; the said legislation being embraced in bill H. R. 3552, Fifty-third Congress, first session.

We hereby enter our unanimous protest against the passage of this unjust measure, claiming, as we do, the sole right to decide who shall become members of our tribe; we not only claim this right because the lands and funds of the tribe are ours, but, we claim the right by all former usage, the United States having recognized our authority to decide the question for ourselves in every other instance; and, further, we claim the right by treaty stipulation to exclude these applicants from membership. Under the authority of the seventh article of our treaty with the U. S. Government, concluded March 6, 1861, and proclaimed March 26, 1863, these applicants are debarred from justly claiming membership with our tribe, by reason of not having returned to the reservation within "six months" after the date of the treaty.

As we have just been accorded the rights of citizenship, may you foster that feeling of liberty and justice within us by only justly legislating for us.

WA-PE-KO-NIAH (his x mark).
PE-A-TAL-A-QUA (his x mark).
THOMAS CONNELL (his x mark).
EDMORE ROUBIDEAUX (his x mark).
WAH-KO (his x mark).
JOHN ROUBIDEAUX (his x mark).
DAN. GREEN.
WILLIE CONNELL.
WILLIE DEROIN.
ROBBIE HERRICK (his x mark).
THOMAS HERRICK (his x mark).
MARY KOSHIWAY.
IDA KOSHIWAY.
WAH-KE-CHE-ME.
CHARLEY KOSHIWAY.
SALLIE DORIAN.
ELIZA GOMESS.
Mrs. PEA-TAL-A QUA (her x mark).
Mrs. CONNELL (her x mark).
KE-KO-NA (her x mark).
MARY WAH-PE-KO-NIAH (her x mark).
KAH-PAH-HAN-O-QUA (her x mark).
WAH-SA-MO-QUA (her x mark).
ANNIE ROUBIDOUX (her x mark).
MUTCH-E-WE-NA (her x mark).
JESSIE WAH-PE-KO-NIAH (her x mark).
CHE-KE-CHA (her x mark).
WILLIAM ALLEY (his x mark).

Witnesses to marks and signatures:
JOHN D. LASLEY.
GEORGE W. LECLERE.

I, Mary Koshiway, acting as interpreter for the Sac and Fox of the Missouri tribe of Indians, on their reservation, in open council, this 24th day of June, 1894, do hereby certify that I have correctly and fully interpreted to them the instrument of writing hereinbefore set forth, relating to a protest against the admission of certain persons belonging to the Murphy family to membership with the tribe, and that they fully understood the contents and meaning thereof, and that I witnessed their signatures thereto.

MARY KOSHIWAY,
Interpreter.

Your committee find that the claim made by the tribe in the above petition against the said bill is substantiated by the following letter from the Commissioner of Indian Affairs:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, September 21, 1893.

SIR: The petition of the Sac and Fox, and the Iowa Indians under your charge, to be allowed to adopt certain persons into membership in their respective tribes, do not fully comply with my instructions of 2d July last and are not quite satisfactory as evidence on which this office can act intelligently, for the reason that no interpreter certifies that the Indians signing thoroughly understood what they were doing.

The names of all persons who are proposed for adoption are not given, nor the relationship of the members to the heads of the various families; nor is your own certificate attached to the petitions to the effect that they are the acts of each tribe in open council and done in full accord with the rules governing adoptions, as expressed in my letter above noted.

If either of the persons who are proposed for adoption are objectionable, or would probably be an injury to your agency, you should counsel your Indians against adopting them. Although they may be, as you say, related by blood, you will observe by article 7 of the treaty of 1861 that they can not demand as a right a share in any benefits due these tribes by the Government unless they or their ancestors were permanently united to their respective tribes within at least six months after said treaty was completed. You should remind your Indians of this, and that they need not adopt these people unless they choose.

I will return this petition referred to for completion as indicated.

Respectfully,

H. PRICE,
Commissioner.

H. C. LINN,
Pottawatomie, etc., Agency, Kans.

It will be seen from the above letter that the honorable Commissioner of Indian Affairs recognized the right of the tribe to decide who should share with them their tribal benefits.

Your committee recommend that the said bill do not pass.

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