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55TH CONGRESS, 3d Session. SENATE. REPORT No. 1441.

ANNUITIES OF CERTAIN SIOUX INDIANS.

JANUARY 5, 1899.—Ordered to be printed.

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

REPORT.

[To accompany Mr. Pettigrew's amendment to H. R. 11217.]

The Committee on Indian Affairs, to whom was referred the amendment intended to be proposed by Mr. Pettigrew to the bill (H. R. 11217) making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1900, and for other purposes, beg leave to submit the following report thereon:

This subject has on several occasions heretofore been most thoroughly and carefully considered by your committee, and various favorable reports made thereon; besides, the Senate has authorized the printing of three separate and comprehensive documents relating thereto. (Senate Reports Nos. 1362 and 1384, Fifty-fourth Congress, second session; Nos. 4, 9, 533, and 605, Fifty-fifth Congress, first session; Senate Documents No. 126, Fifty-fourth Congress, second session, and Nos. 10 and 30, Fifty-fifth Congress, third session.)

Notwithstanding these very thorough investigations and reports by your committee, it has been said:

First. That the Sisseton and Wahpeton people were disloyal and engaged in the Sioux outbreak of 1862, and therefore that the confiscation of their annuities by the act of 1863 was a just and proper measure; and

Second. That by reason of gratuitous appropriations by Congress they have received at the hands of the Government more than their confiscated annuities would amount to, and that they have been munificently treated by the Government—better, in fact, than any other tribe of Indians with which the Government has had dealings.

Your committee will, as briefly as possible, discuss these contentions.

During that outbreak of 1862, 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. These facts have been, officially and otherwise, so many times and so fully demonstrated and proved beyond peradventure of question that your committee ought not take up the time in discussing them, and would not if it were not for the fear that some who are not familiar with the history of the case may have formed an erroneous opinion as to the loyalty of these people. It is a matter of fact, which the records of the Government will substantiate, that the Sisseton and Wahpeton bands of Sioux Indians never committed an overt act against the Government of the United States before, during, or since the outbreak of 1862, but at all times and under the most trying and exasperating circumstances have been its most loyal and steadfast friends, and at all times have rendered it the most patriotic and faithful service.

The Commissioner of Indian Affairs, speaking upon this subject in his Annual Report for the year 1866, pages 46 and 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.

On page 227 of the same report the Commissioner says:

> As giving much valuable information in regard to the feeling and wishes of these Indians, and aiding in the foundation of a just judgment as to the proper disposition of these bands, I herewith transmit copies of two papers, marked E and F, being a petition from their chiefs, dated December, 1861, and a letter from Rev. Mr. Riggs, formerly missionary among them. If, as the information at hand appears to justify, we are to trust in the friendly disposition of these people, their location near Fort Wadsworth would be a wise measure and a protection to the frontier settlements, and I recommend that proper instructions be sent to the treaty commissioners in regard to the point to be fixed upon for their residence.
>
> But there are 600 to 800 people of these bands at or near Fort Wadsworth in great want, while they are able to earn their living and willing to do so if they can be furnished with implements and seeds, and measures should be taken to provide them with these necessaries in time for the spring work. They will till the ground for this season, at all events, to such extent as is possible, near Fort Wadsworth, and I trust that some means will be provided for enabling them to do this to advantage.

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. * * * 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.

General Sibley, who had command of the United States troops during the outbreak, 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.

Charles Crissey, United States Indian agent, in a letter dated August 26, 1882, says:

SIR: I am convinced that these claims as presented are just and equitable, and that there is justly due the 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. L., 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, serving all the way from three to five years as scouts under General Sibley and receiving no pay a part of the time.

For this fidelity they were punished and now seek redress, which in all moral certainty they are entitled to—not only because of the dollars and cents of which they have been deprived, but as a matter of honest, square dealing between the Government and its servants.

The House Committee on Indian Affairs, in Report No. 1953 of the Fiftieth Congress, first session, says:

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.

The preamble to the treaty of 1867 recites that—

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, 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.

In fact, the records of both the Interior and War Departments abound in evidence showing the loyalty, patriotism, and services of these people, consisting of reports from army officers, Indian agents, missionaries, and others.

Can or will anyone undertake to controvert the statement of General Sibley, who was in command of the United States troops during the outbreak and for years afterwards; or the statement of that grand old man, Bishop Whipple, who has devoted his whole life and energy to the civilization, Christianization, and advancement of the Indian race, and who was personally present and cognizant of all the facts and circumstances connected with that outbreak; or the official statement of the head of the Indian Bureau, who was charged with the duty of investigating and reporting the cause of and every fact and circumstance connected in any way with the outbreak? Your committee think not, for every official letter, every official document, and every statement from every source bearing upon the subject confirms the fact of the loyalty, patriotism, and heroic services of these people. It has never been questioned, officially or otherwise.

Your committee will now proceed to discuss the second contention. In order to do so it will be necessary to go back and recite some historical facts, and in so doing will endeavor to show that these people have been overreached in every transaction with the Government.

In the year 1851, and prior thereto, the Sisseton and Wahpeton bands and the Medawakanton and Wahpakoota bands of Sioux Indians owned a very large tract of country within the now States of Iowa, Minnesota, and Wisconsin. In July of that year two separate treaties were made, one with the Sisseton and Wahpetons and the other with the Medawakantons and Wahpakootas, by the terms of which there were ceded to the United States 32,000,000 acres of land.

By the treaty with the Sisseton and Wahpeton bands, 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 land 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.

The ceded country contains an area of 17,770,000 acres, and at 10 cents per acre amounted to a total consideration of $1,777,000. Of this amount the sum of $305,000 was paid out for certain purposes specified in the treaty, and the balance, $1,472,000, was "to remain in

trust with the United States, and five per centum 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, 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," etc.

Now, if we estimate the 17,770,000 acres ceded by the treaty of 1851 (for which the Government agreed to pay 10 cents per acre) at $1.25 per acre, the minimum price of Government land, we find as the result the sum of $22,212,500, and deducting therefrom the $305,000 cash paid out under the treaty and the fifty installments of $73,600 each, amounting in the aggregate to $3,985,000, we find the Government the gainer in this transaction in the sum of $18,227,500. But this is not the worst feature of this treaty and the one doing the Indians the most wrong and injustice. By reference to the fourth article of said treaty it will be observed that the United States agreed to pay to said Indians the consideration therein named, $1,665,000, which was augmented to the sum of $1,777,000 by the amended third article of said treaty.

But this agreement on the part of the Government to pay was never carried out and was never intended to be. The ignorance of the Indians was taken advantage of and a subsequent article inserted in the treaty providing that the payment of the interest on the principal sum for the period of fifty years should be in full payment of both the principal and interest. Of the consideration agreed to be paid to the Indians, the sum of $1,472,000 was to remain in trust with the United States, and the interest, $73,600 annually, was to be paid to the Indians. But by a subsequent article inserted in the treaty they were never to have the money agreed to be paid them for their lands, a most outrageous and unconscionable transaction. This sum, $1,472,000, added to the $18,227,500 already shown to have resulted to the benefit of the Government by reason of the difference in the price paid for the lands and the minimum price of public lands, makes a total of $19,699,500 profit to the Government under the treaty of 1851. The Government, when the treaty was ratified, took the land and, at the end of fifty years, takes the consideration agreed to be paid the Indians therefor, a great and monstrous wrong without parallel in the history of any civilized government, and for which by every reason of justice and fair dealing full reparation should be made.

A provision was inserted in the amended third article of the treaty of 1851 which reads as follows:

> It is further stipulated that the President be authorized, with the assent of said bands of Indians, parties to this treaty, and as soon after they shall have given their assent to the foregoing *article* as may be convenient, to cause to be set apart by appropriate landmarks and boundaries such tract of country without the limits of the cession made by the first (2d) article of the treaty as may be satisfactory for their future occupancy and home: *Provided*, That the President may, by the consent of these Indians, vary the conditions aforesaid if deemed expedient.

Under the authority therein vested in him the President so far varied the conditions of said Senate amendment as to permit said bands to remain on the lands originally set apart for them by the third article of the treaty, and no "tract of country without the limits of the cession" was ever provided for them.

Matters thus ran along until the act of July 31, 1854 (10 Stat., 326), wherein the President was authorized "to confirm to the Sioux of Minnesota forever the reserve on the Minnesota River now occupied by them, upon such conditions as he may deem best."

The President took no direct action to confirm said reservation to these Indians as authorized by the act, and finally a treaty was entered into with them on June 19, 1858 (12 Stat., 1037), by article 1 of which the lands on the south side of the Minnesota River were set apart as a reservation for these bands, and by article 2 it was agreed to submit to the Senate the question as to whether they had title to the lands within the reservation, and if so, what compensation should be allowed them for that part thereof lying on the north side of the Minnesota River; whether they should be allowed a specific sum therefor, and if so, how much, or whether the same should be sold for their benefit. Similar provisions were incorporated in the treaty of June 19, 1858, with the Medawakanton and Wahpakoota bands. (10 Stat., 1031.)

Under date of June 27, 1860, the Senate—

Resolved, That said Indians possessed a just and valid right and title to said reservations, and that they be allowed the sum of 30 cents per acre for the lands in that portion thereof lying on the north side of the Minnesota River, exclusive of the cost of survey and sale or any contingent expenses that may accrue whatever, which, by the treaties of June, 1858, they have relinquished and given up to the United States.

It was further resolved that all persons who had in good faith settled and made improvements on lands within said reservations, believing them to be Government lands, should have the right to preempt 160 acres; and in case such settlement had been made on lands reserved for the Indians by article 1 of the treaty on the south side of said river the assent of the Indians was to be obtained. (12 Stat., 1042.)

It was ascertained that the reservation of the Sisseton and Wahpeton bands lying north of the Minnesota River contained an area of 560,600 acres, which, at 30 cents per acre, the price fixed by the Senate resolution, amounted to $170,880. It was also ascertained that the reservation of the Medawakanton and Wahpakoota bands lying north of the Minnesota River contained an area of 320,000 acres, and at the price fixed by the Senate resolution amounted to $96,000, and these two amounts were appropriated by items contained in the Indian appropriation act of March 2, 1861. (12 Stat., 237.)

By the act of March 3, 1863 (12 Stat., 819), the President was authorized and directed to assign and set apart for the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands a tract of unoccupied land outside the limits of any State sufficient in extent to enable him to assign to each member of said bands 80 acres of good agricultural land. By sections 2 and 3 of said act the lands set apart for these four bands of Indians by article 1 of the two treaties with them of 1858 were to be surveyed and appraised, and thereafter to become subject to preemption at the appraised value thereof, etc., and section 4 provides the manner of disposing of the proceeds derived therefrom.

Here again the Government had the advantage over the Indians to the extent of the difference between 30 cents per acre and $1.25 per acre, the minimum price of public lands, that difference being $529,870.

SISSETON AND WAHPETON LANDS IN DAKOTA.

After the cession of lands in Iowa and Minnesota and Wisconsin by the treaty of 1851, the Sisseton and Wahpeton bands still owned a vast region in Dakota. By article 2 of the treaty of February 19, 1867 (15 Stat., 505), the boundaries of the country so owned by these bands were described and defined, and within which country two reservations were

set apart (articles 3 and 4), one at Lake Traverse, containing an area of 918,780 acres, and the other at Devils Lake, containing an area of 230,400 acres. By this treaty these Indians made certain valuable concessions to the United States, in consideration of which those residing upon the Lake Traverse Reservation (article 6) were to have $750,000 in cash and $30,000 annually thereafter forever, and those residing upon the Devils Lake Reservation (article 7) were to have $450,000 in cash and $30,000 annually thereafter forever. The said two articles, and all others up to and including article 14, all of which made valuable concessions to the Indians, were stricken out by the Senate and others inserted imposing hard conditions, in violation of the treaty as made, and as thus amended it was sent back for their ratification. These Indians, by reason of the unconstitutional and unjustifiable confiscation of their annuities by the act of 1863, and the loss of their crops, stock, and improvements, were broken in spirit, destitute, and starving.

By their friendship to the whites and services to the Government during the outbreak they had incurred the hatred of the other tribes of Sioux, and therefore dared not go west into Dakota, where game was plenty, and hunt for food and clothing, but were obliged, owing to this condition of affairs, to accept whatever was offered, and so accepted the amendments to the treaty imposed by the Senate. This treaty, as amended, left it discretionary with Congress to make such appropriations from time to time as might be found necessary, and at various times appropriations were made aggregating $379,741.29, not as any part of the annuities under the treaty of 1851, but as consideration for concessions made by the Indians in the treaty of 1867. If the treaty as made had been faithfully carried out by the Government, these people would have received up to the present time a sum aggregating more than $3,000,000, and this would have in a measure compensated them for their lands and annuities, of which they were illegally and wrongfully deprived by the act of 1863.

Congress having made no appropriations under the treaty of 1867 in any way commensurate with the valuable concessions made by the Indians *in that treaty*, it would be a most flagrant and palpable injustice to attempt to make the small appropriations made thereunder—also a charge against the annuities arising under the treaty of 1851—thus taking double credit for that which was but a trifling consideration for what the Government received in the first instance, the reservations therein mentioned and set apart being, as above stated, designated from lands which at the time belonged to the Indians.

AGREEMENT OF 1872.

By the act of Congress of June 7, 1872 (17 Stat. L., 281), it was made the duty of the Secretary of the Interior to examine and report to Congress what title or interest the Sisseton and Wahpeton bands of Sioux Indians have to any portion of the lands mentioned and particularly described in the second article of the treaty made and concluded with said bands on the nineteenth day of February, eighteen hundred and sixty-seven, and afterwards amended, ratified, and proclaimed on the second day of May of the same year, or by virtue of any law or treaty whatsoever, excepting such rights as were secured to said bands of Indians by the third and fourth articles of said treaty as a permanent reservation, and whether any, and if any, what, compensation ought, in justice and equity, to be made to said bands of Indians, respectively, for the extinguishment of whatever title they may have to said lands.

In pursuance of the authority contained in that act, Messrs. M. N. Adams, W. H. Forbus, and J. Smith, jr., were constituted a commission to make the required examination. This commission, after the most thorough investigation, reached the conclusion that these Indians owned the lands in question, having the ordinary Indian title thereto, the fee

being in the United States. The report and findings of the commission may be found printed in the Annual Report of the Commissioner of Indian Affairs for the year 1872, page 118.

As showing that the Government understood the consideration named in the treaty of 1867, as amended, to be for concessions made by the Indians in that treaty, and so informed the Indians, reference is had to the report of the commissioners who negotiated the agreement of 1872 for the cession of the lands described in and admitted to belong to the Indians by that treaty, and which agreement I shall presently refer to. At a council held with the Indians the commissioners said:

> You have already disposed of your rights, so far as railroads and other improvements are concerned, by the treaty of 1867. This necessarily brings into the country a large number of whites, and it must necessarily be overrun by a large immigration of whites in the future. * * *
>
> That justice may be done to all, payments are to be divided according to the number on each reservation. The gross amount which the commissioners have thought would be enough is about $800,000, insuring a large amount yearly, until you will be beyond the need of anything from anyone. * * *
>
> This amount, if accepted by you, *is in addition to what may be appropriated by Congress, in accordance with article 6 of the treaty of 1867, to enable you to become self-sustaining.*

It will thus be observed that the Government understood the appropriations made in pursuance of the treaty of 1867 and the amount agreed to be paid by the agreement of 1872 were to be in full consideration for the lands ceded by the latter. It was so understood by the commissioners, and they so informed the Indians. The $800,000 named in the agreement of 1872 were to be "in addition" to appropriations under the treaty of 1867, and both together were to be the consideration for the cession of about 11,000,000 acres of land by the agreement of 1872.

It must have been so considered and so treated by the present Secretary of the Interior, for in his report, found printed in Senate Doc. No. 68, Fifty-fifth Congress, second session, "Statement No. 12," the account under both the treaty of 1867 and the agreement of 1872 are considered as closed. In fact, considering the circumstances and history of the case, no other conclusion could be reached.

Having reached the conclusion that the Indians owned the lands in question, the commission proceeded to negotiate for the extinguishment of their title thereto, with the result that an agreement was entered into with them on September 20, 1872, by the terms of which the Indians ceded all their right, title, and interest in and to all the land and territory particularly described in article 2 of the treaty of 1867, as well as all other lands in Dakota, except the two reservations set apart by articles 3 and 4 of said treaty, the consideration agreed to be paid for said cession being $800,000. This consideration was reached, as stated by the commission in its report, by estimating the ceded territory at 8,000,000 acres and placing the value thereof at 10 cents per acre. The said agreement was transmitted to Congress by the Secretary of the Interior under date of December 2, 1872, and may be found printed in House Ex. Doc. No. 12, Forty-second Congress, third session.

By an item contained in the Indian appropriation act approved February 14, 1873, Congress ratified said agreement, with the exception of so much thereof as was included in paragraphs third, fourth, fifth, sixth, seventh, eighth, and ninth, subject to ratification by the Indians (17 Stat., 456). The agreement, as amended, was ratified by the Indians and finally confirmed by an item contained in the Indian appropriation act of June 22, 1874 (18 Stat., 167). The consideration named in said

agreement has all been appropriated by Congress and expended for the benefit of the Indians as in said agreement provided.

It is claimed that there are several million acres more embraced within this cession than the number of acres estimated in the agreement. But, be that as it may, for the purpose of the point we want to make we will take the 8,000,000 acres, as estimated in the agreement. The price paid the Indians for their lands was 10 cents per acre, making $800,000, while the acreage given, estimated at $1.25 per acre—the minimum price of public land—amounts to $10,000,000, making a difference of $9,200,000 in favor of the Government, so that in the various transactions with these Indians up to 1872 the Government received benefits amounting to $29,429,370 more than the amount paid the Indians for their lands. In the year 1866, six years prior to the agreement of 1872 with the Sissetons and Wahpetons, the Government entered into separate treaties with the Creeks and Seminoles, under which 30 and 15 cents per acre was paid to said Indians, respectively, for the lands therein ceded. The lands so ceded are no better, in fact, not so valuable, as those ceded by the Sissetons and Wahpetons by the agreement of 1872, but the Government having been convinced that an injustice had been done the Creeks and Seminoles by their treaties of 1866, Congress, in 1889, made appropriations to pay them the difference between the amount agreed upon in the treaties and $1.25 per acre, the minimum price of public land, deducting 20 cents per acre for surveys, etc. In this connection it should be borne in mind that the Creeks and Seminoles entered into treaties with the Southern Confederacy and were in open hostilities against the United States, a large majority of them serving in the Confederate Army.

Now, why are not the loyal and patriotic Sissetons and Wahpetons entitled to as generous treatment as those who were in open hostility to the Government? Why should this discrimination be made in favor of the disloyal and against the loyal? Why should not the same rule of justice and fair dealing be adopted toward the loyal and patriotic Sissetons and Wahpetons that was meted out to the disloyal Creeks and Seminoles? Why should a premium be placed upon disloyalty and a penalty attached to loyalty and patriotism? Is there any reason, in justice and equity, why the Sissetons and Wahpetons should not now be paid the difference between that paid them, or agreed to be paid them, per acre for the various cessions made by them and $1.25 per acre, the minimum price of public lands, deducting 20 cents per acre for surveys, etc., as was done in the Creek and Seminole cases?

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. They have always fared better and been treated with more consideration than those who have remained loyal and steadfast.

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.

As before shown, 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.

And why should they not be treated as fairly and with as much consideration as those who have been in open hostility to the Government? Why should they be thus discriminated against?

AGREEMENT OF DECEMBER 12, 1889.

An agreement was entered into on December 12, 1889, with that portion of the two bands residing upon the Lake Traverse Reservation, in South Dakota, which agreement was ratified by an item contained in the Indian appropriation act approved March 3, 1891. (26 Stat., 1037.) By this agreement said Indians ceded to the United States the surplus lands within their reservation at rate of $2.50 per acre. It was found that, after deducting the aggregate area of allotments previously made and of additional allotments provided for in the agreement, there remained 679,920 acres, which, at the price per acre named in the agreement, aggregated the sum of $1,699,800. This amount was appropriated by the Indian appropriation act of March 3, 1891, and "placed in the Treasury of the United States to the credit of said Sisseton and Wahpeton Indians (parties to said agreement); and the same, with the interest thereon at 5 per cent per annum, shall be at all times subject to appropriation by Congress, or to application by the President, for the education and civilization of said bands of Indians or members thereof." (26 Stat., 1038.)

By virtue of the authority vested in the President by that act there has been paid out to the Indians of the Lake Traverse Reservation, parties to the agreement of 1889, the sum of $199,800, leaving a balance of $1,500,000 still to their credit in the Treasury as the proceeds from sale of their surplus lands.

By article 3 of said agreement the amount of the annuities due such of the scouts, or those who served in the Army during the outbreak of 1862, and their families as resided upon the Sisseton and Wahpeton or Lake Traverse Reservation—one-fourth of the whole amount of the confiscated annuities arising under the treaty of 1851—was restored to them and continued, at the rate of $18,400 per year, to the date of the expiration of the said treaty of 1851.

By act of March 3, 1891, ratifying said agreement, the sum of $376,578.37 was appropriated to be paid to the Sisseton and Wahpeton bands, parties to the agreement of 1889, said sum being that portion of the confiscated annuities arising under the treaty of 1851 to which the scouts and soldiers and their families were entitled as per the terms of said agreement. The same act made an appropriation of $126,620 to be paid to the scouts and soldiers of the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands who were not included in the class of beneficiaries under said agreement, the total appropriation being $503,178.37, which, when paid, was to be in full settlement of all claims that the class of persons on whose account the appropriation was made (that is, the scouts and their families, being one-fourth of the whole amount of annuities due under the treaty of 1851) may have for unpaid annuities under any and all treaties or acts of Congress up to June 30, 1890.

By items contained in the Indian appropriation act of March 3, 1893

(27 Stat., 624), and March 2, 1895 (28 Stat., 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 time of 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 up to July 1, 1902. Therefore, under the agreement of 1889, and the subsequent acts of Congress referred to (with the $18,400 per annum 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.

Before leaving this branch of the question your committee wants to invite attention to the report of the Secretary of the Interior on this subject, found printed in Senate Doc. No. 68, Fifty-fifth Congress, second session, in order to show how at variance with the facts the contention is that these people have received more than their confiscated annuities amount to.

In his statement No. 12, a debit and credit statement, found on page 21 of the document, the Secretary charges these Indians with every cent ever appropriated for them or in their behalf, and gives them credit with amounts due under treaties, etc., and in order to balance the account he places in the credit column the sum of $1,034,971.92, made up of certain items alleged to be overcredits, not, however, including any portion of their annuities confiscated by the act of 1863; and yet, in his statement No. 13, he finds the unpaid installments of annuities arising under the treaty of 1851 amount to $2,721,432.36.

It will be observed that in statement No. 12 the Indians are charged with $1,699,800, placed to their credit under the agreement of 1889, while they are credited with only $1,522,164.15 on the same account, the difference, $177,635.85, being an alleged overcredit under the agreement of 1889, but this difference should not be charged against the Indians, as it has been refunded to the Government.

In the third item from the bottom of the debtor side of statement No. 12 the Indians are charged with $889,354.74, of which amount the sum of $636,328.96 is charged against these Indians as their share of the amount appropriated to pay settlers for damages sustained by reason of the outbreak of 1862. As the Sissetons and Wahpetons were not engaged in that outbreak, but were the loyal and steadfast friends of the Government, this sum should not be charged against them. But suppose we take the statement as made to be correct, what is the result? As before stated, every cent ever appropriated for or on behalf of these Indians is charged against them in that statement, and all that it is possible to find them overcredited with is the sum of $1,034,971.92, so that if that amount be deducted from the sum of $2,721,432.36, found due them by the Secretary under the treaty of 1851, we still have a balance of $1,686,460.44 in favor of the Indians. But the amount charged to them as one-half the amount paid to settlers for damages should not be charged against them, nor should the sum of $177,635.85, alleged to have been overcredited to them on the books of the Treasury, that sum having been refunded to the Government.

These figures are referred to and recited for the purpose of showing the absolute absurdity of the contention that the Indians have received more in the way of gratuities than their confiscated annuities amount to. I think I have demonstrated to any unprejudiced mind the fact

that, in every instance, the Indians have not only given a new, full, and ample quid pro quo, but that in every transaction, except perhaps the agreement of 1889, they have been overreached and inadequately compensated for cessions made and benefits conferred by them.

Besides all this the Government took $120,000 worth of their crops and stock to subsist our troops during the outbreak, for which no remuneration has ever been made.

MEMORANDA RELATING TO THE CLAIM OF THE MEDAWAKANTON AND WAHPAKOOTA BANDS OF SIOUX INDIANS, BY REV. JOHN EASTMAN.

Under the treaty of 1837 these Indians were entitled to $15,000 per annum forever, and under the treaty of 1851 they were entitled to $61,450 for fifty years, beginning July 1, 1852. At the date of the confiscation act of 1863 the sum of $133,449.20, arising under the two treaties, was to their credit in the Treasury (p. 7, S. Doc. No. 67, Fifty-fifth Congress, second session). Appropriations of the $15,000 per annum under the treaty of 1837 were made up to and including the fiscal year 1864, and appropriations were made also up to the fiscal year under the treaty of 1851—12 installments in all under the latter treaty, leaving 38 installments of $61,450 to be provided for, amounting to $2,335,100, to which should be added the sum of $133,449.20 to their credit at the date of the act of 1863, making a total of $2,458,549.20 under that treaty up to July 1, 1902, the date of its expiration.

There is also due, under the treaty of 1837, 34 annual installments of $15,000 from July 1, 1864, to July 1, 1898, amounting to $510,000, making a total unpaid installments under the two treaties of $2,978,549.20. The account with these Indians under the two treaties named and various transactions had with them since the act of 1863 is as follows:

Dr.		Cr.	
To amount provided for by treaty of 1830	$40,520.00	By amount due, treaty of 1830	$40,520.00
To amount of annual installments of interest, under treaty of 1837, up to July 1, 1864	1,091,000.00	By annual installments of interest, under treaty of 1837, up to July 1, 1864	1,091,000.00
To annual installments of interest, under treaty of 1851, to July 1, 1864	1,227,400.00	By annual installments of interest, treaty of 1851, to July 1, 1864	1,227,400.00
To value of land ceded, treaty of 1858	96,000.00	By 34 installments, $15,000 each, treaty of 1837, from July 1, 1864, to July 1, 1898	510,000.00
To value of lands in Minnesota	219,692.54	Additional principal	300,000.00
To amount under act of March 2, 1889	180,317.62	By 38 installments of $61,450, treaty of 1851, from July 1, 1864, to July 1, 1902	2,335,100.00
To amount expended under treaty of 1868	1,818,955.75	By amount in Treasury, credit of Indians, treaties of 1837 and 1851, at date of act of 1863	133,499.20
		By amount due for land treaty of 1858	96,000.00
		By value of lands in Minnesota	219,692.54
		By act of March 2, 1889	180,317.62
		By amount due under treaty of 1868	1,818,955.75
	4,673,885.91		7,952,435.11
			4,673,885.91
Balance due			3,278,549.20

It will be observed, by reference to page 20 of Senate Document No. 67 of the Fifty-fifth Congress, second session, the Secretary of the Interior finds that there are unpaid annuities arising under the two treaties, 1837 and 1851, amounting to the sum of $3,052,792.83. (Statement No. 11.)

It will also be observed, by reference to his "General account," on the same page, that he finds an overcredit to the Indians in the sum of $1,077,814.55, not taking into consideration the unpaid installments of annuities arising under the said two treaties.

To make up that sum he charges the Indians with $636,328.96, paid out for depredations, being one-half the amount paid, the other half being charged to the Sisseton and Wahpeton bands, and which forms the principal item going to make up the amount contained in his statement No. 5, found on page 18 of said document. This amount should not be charged against the Indians. Neither should the other items going to make up that statement, one-half of which is charged to these Indians and the other half to the Sissetons and Wahpetons, because the removal and subsistence of the Indians was made necessary by the wrongful and illegal act confiscating their annuities, and which necessity would never have arisen but for that act, because their own funds would have been used for that purpose, and the Government can not afford to take advantage of its own wrongdoing and charge these people with these amounts, especially so when in justice and equity and by every rule of law, as between man and man, these people are entitled to interest on the amount of the annuities withheld from them since 1863.

But admitting the erroneous conclusions arrived at by the Secretary to be correct, and taking his own statement, what is the result? He finds (statement No. 11, page 20 of said document) that the unpaid annuities arising under the two treaties amount to $3,052,792.83, and taking from this the sum of $1,077,814.55, alleged to be overcredited to the Indians (statement No. 10), we have $1,974,978.28 still due, according to this official statement of the Secretary. If we add to that amount the sum of $636,328.96 paid for depredations, and which should not be charged to the Indians, we have a total of $2,611,307.24 due after deducting the amount paid for removal, subsistence, etc.

A provision was inserted in the amended third article of the treaty of 1851, which reads as follows:

> It is further stipulated that the President be authorized, with the assent of said bands of Indians, parties to this treaty, and as soon after they shall have given their assent to the foregoing *article* as may be convenient, to cause to be set apart by appropriate landmarks and boundaries such tract of country without the limits of the cession made by the first (2d) article of the treaty as may be satisfactory for their future occupancy and home: *Provided*, That the President may, by the consent of these Indians, vary the conditions aforesaid if deemed expedient.

Under the authority therein vested in him the President so far varied the conditions of said Senate amendment as to permit said bands to remain on the lands originally set apart for them by the third article of the treaty, and no "tract of country without the limits of the cession" was ever provided for them.

Matters thus ran along until the act of July 31, 1854 (10 Stat., 326), wherein the President was authorized "to confirm to the Sioux of Minnesota forever the reserve on the Minnesota River now occupied by them, upon such conditions as he may deem best."

The President took no direct action to confirm said reservation to these Indians as authorized by the act, and finally a treaty was entered into with them on June 19, 1858 (12 Stat., 1037), by article 1 of which

the lands on the south side of the Minnesota River were set apart as a reservation for these bands, and by article 2 it was agreed to submit to the Senate the question as to whether they had title to the lands within the reservation, and if so, what compensation should be allowed them for that part thereof lying on the north side of the Minnesota River; whether they should be allowed a specific sum therefor, and if so, how much, or whether the same should be sold for their benefit. Similar provisions were incorporated in the treaty of June 19, 1858, with the Sisseton and Wahpeton Indians. (10 Stat., 1031)

Resolved, That said Indians possessed a just and valid right and title to said reservations, and that they be allowed the sum of 30 cents per acre for the lands in that portion thereof lying on the north side of the Minnesota River, exclusive of the cost of survey and sale or any contingent expenses that may accrue whatever, which by the treaties of June, 1858, they have relinquished and given up to the United States.

It was further resolved that all persons who had in good faith settled and made improvements on lands within said reservations, believing them to be Government lands, should have the right to preempt 160 acres; and in case such settlement had been made on lands reserved for the Indians by article 1 of the treaty, on the south side of said river, the assent of the Indians was to be obtained. (12 Stat., 1042.)

It was ascertained that the reservation of the Sisseton and Wahpeton bands lying north of the Minnesota River contained an area of 560,600 acres, which, at 30 cents per acre, the price fixed by the Senate resolution, amounted to $170,880. It was also ascertained that the reservation of the Medawakanton and Wahpakoota bands lying north of the Minnesota River contained an area of 320,000 acres, and at the price fixed by the Senate resolution amounted to $96,000, and these two amounts were appropriated by items contained in the Indian appropriation act of March 2, 1861. (12 Stat., 237.)

By the act of March 3, 1863 (12 Stat., 819), the President was authorized and directed to assign and set apart for the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands a tract of unoccupied land outside the limits of any State sufficient in extent to enable him to assign to each member of said bands 80 acres of good agricultural land. By sections 2 and 3 of said act the lands set apart for these four bands of Indians by article 1 of the two treaties with them of 1858 were to be surveyed and appraised, and thereafter to become subject to preemption at the appraised value thereof, etc., and section 4 provides the manner of disposing of the proceeds derived therefrom.

Here, again, the Government had the advantage over the Indians to the extent of the difference between 30 cents per acre and $1.25 per acre, the minimum price of public lands, that difference being $304,000.

The Government entered into separate treaties with the Creeks and Seminoles in the year 1866, under which 30 and 15 cents per acre was paid to said Indians, respectively, for the lands therein ceded. The lands so ceded are no better than, in fact not so valuable as, those ceded by the Medawakantons and Wahpakootas by the agreement of 1851 and 1858; but the Government having been convinced that an injustice had been done the Creeks and Seminoles by their treaties of 1866, Congress in 1889 made appropriations to pay them the difference between the amount agreed upon in the treaties and $1.25 per acre, the minimum price of public land, deducting 20 cents per acre for surveys, etc. In this connection it should be borne in mind that the Creeks and Seminoles entered into treaties with the Southern Confederacy and were in open hostilities against the United States, a large majority of them serving in the Confederate Army.

Now, your committee asks, why are not the Medawakanton and Wahpakoota bands entitled to as generous treatment as those who were in open hostility to the Government? Why should not the same rule of justice and fair dealing be adopted toward the Medawakanton and Wahpakoota Indians that was meted out to the Creeks and Seminoles?

Is there any reason, in justice and equity, why the Medawakantons and Wahpakootas should not now be paid the difference between that paid them, or agreed to be paid them, per acre for the various cessions made by them and $1.25 per acre, the minimum price of public lands, deducting 20 cents per acre for surveys, etc., as was done in the Creek and Seminole cases?

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. They have always fared better and been treated with more consideration than those who have remained loyal and steadfast.

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.

LOSS OF PROPERTY SUSTAINED BY THE INDIANS.

Your committee deems it proper to give an account of the destruction of property upon the reservations, and in this will be as particular as the limits of this report will allow—not so particular as desired, but sufficiently so to convey a clear general idea of the matter. Agent Galbreath in his report on the outbreak of 1862 says:

> All the dwelling houses (except two Indian houses), stores, mills, shops, and other buildings, with their contents, and the tools, implements, and utensils upon the upper reservation (Sisseton and Wahpeton) were either destroyed or rendered useless. After a careful estimate I place the loss sustained upon the upper reservation at the sum of $125,000.
>
> On the lower reservation (Medawakanton and Wahpakoota) the stores, shops, and dwellings of the employees, with their contents, were destroyed entirely, and most of the implements and utensils and some of the Indian houses (eight, I believe, worth, with their contents, about $5,000) were also destroyed or rendered useless. The mills and all the rest of the Indian dwellings were left completely unharmed by the Indians.
>
> The new stone warehouse, although burned out as far as it could be, needs only an expenditure of a few hundred dollars to make it as good as ever. I put this loss at $375,000. If, however, no attention is paid to the standing and uninjured houses and mills, they, too, may be taken as destroyed—lost to all practical purposes—as I feel almost certain that such will be the case. I therefore estimate the entire loss at the lower agency in buildings, goods, stock, lumber, supplies, fences, and crops at not less than $500,000. Thus on the reservations alone we find a direct loss of about $1,000,000, and most of this is to be placed to the account of the United States as trustee of the Indians. Indeed, I much doubt whether $1,000,000 will cover the loss.
>
> An estimate of the growing crops has already been given. I now present an estimate of their value on the reservations.

LOWER SIOUX.

25,625 bushels corn, at 80 cents	$20,500
32,500 bushels potatoes, at 50 cents	16,250
13,500 bushels turnips, at 20 cents	3,700
Beans, peas, pumpkins, squashes, and other vegetables	8,000
Total Lower Sioux	48,450

UPPER SIOUX.

27,750 bushels corn, at $1	27,750
37,500 bushels potatoes, at 75 cents	28,125
20,250 bushels turnips, at 30 cents	6,075
Beans, peas, pumpkins, squashes, and other vegetables	9,000
Total Upper Sioux	70,950
Add Lower Sioux	48,450
Total	119,400

CONSTITUTIONALITY OF THE ACT OF 1863.

There is still another phase of this question, and a very important one, and that is the question of the constitutionality of the act of 1863, confiscating the annuities of these people.

Now, your committee makes the broad statement, without reservation and without fear of contradiction, that, so far as the Sisseton and Wahpeton bands are concerned, the act of 1863 is unconstitutional, absolutely and without qualification, and, in their opinion, it is also unconstitutional as to the other two bands, the Medawakantons and Wahpakootas, because the outbreak of 1862, though terrible in the extreme, and for which your committee have no extenuating circumstances to plead, did not constitute treason as defined by the Constitution.

As has been seen, the Sissetons and Wahpetons were loyal and steadfast during the outbreak of 1862, serving in our Army and otherwise rendering the most heroic and valuable services to the Government under the most trying circumstances, never having committed an overt act, and therefore the act of 1863, if otherwise constitutional, is unconstitutional as to these two bands, because it confiscated the property of an innocent people, who committed no act which warranted declaration of forfeiture. This fact is too apparent to need discussion.

TREATIES ARE THE SUPREME LAW OF THE LAND.

By article 6, clause 2, of the Constitution, treaties are declared to be the supreme law of the land, and it has been universally held by the courts that 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.)

There is no exception to this rule, unless it be in the case of treason.

ORDINANCE OF 1787.

Before referring to and proceeding to discuss the articles of the Constitution bearing upon the questions at issue, your committee want to invite attention to the provisions of the ordinance of 1787, which was adopted prior to the adoption of the Constitution. It is provided in the third article of that ordinance, as one of the irrevocable clauses thereof, that—

The utmost good faith shall always be observed toward the Indians; their land and property shall never be taken from them without their consent, and in their property rights and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress, but laws founded in justice and humanity shall from time to time be made for preventing wrongs being done to them, and preserving peace and friendship with them. (1 Stat., 50.)

This article was intended by our forefathers as the Indian's magna charta, but it has never been carried out or observed by the United States in fact or in theory. How grossly and shamefully it has been violated in the present case is shown by the record. The act of 1863 took the property of an innocent, inoffensive, patriotic, and loyal people "without their consent" and without just provocation or consideration. Was that a law "founded in justice and humanity?" Is it thus that "in their property rights and liberty they never shall be invaded or disturbed?" Is this the manner in which "the utmost good faith shall always be observed toward them?" Is it thus that laws shall be passed "for preventing wrongs being done them and preserving peace and friendship with them?" Is it thus that these people shall be punished for the noble impulses which actuated them in breaking away from their ancient and hereditary customs and joining the United States troops and fighting against their brethren, and rescuing women and children made captive by the hostiles? Is this a fitting reward for their magnificent services to the Government and to the people of Minnesota at the time of their greatest peril and need?

Now, what constitutes treason, and were the participants in the outbreak of 1862 guilty of that offense?

Article 3, section 3, clause 1, of the Constitution declares that—

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. (United States *v.* The Insurgents, 2 Dall., 335; United States *v.* Mitchell, 2 Dall., 384; Ex parte Ballman, and Swartwout, 4 Cr., 75; United States *v.* Burr, 4 Cr., 469.)

Section 5331 of the Revised Statutes provides that—

Every person owing allegiance to the United States who levies war against them, or adheres to their enemies, giving them aid and comfort, within the United States, or elsewhere, is guilty of treason.

It will be observed that there are three things essential to constitute the crime of treason:

First. There must be a levying of war against the United States, adherence to their enemies, or giving them aid and comfort.

Second. No person can commit the crime of treason who does not owe *allegiance* to the United States; and

Third. There must be a judicial determination of the fact that the overt act was committed.

The outbreak of 1862 did not constitute treason within the meaning of the Constitution, because it was not a "levying of war" against the United States, etc. To constitute a "levying of war" there must be an assemblage of persons with force and arms to overthrow the Government. (4 Sawyer, 457.) The outbreak of 1862 was not a war levied against the United States. In fact, none of our Indian wars have been levied against the United States within the meaning of the Constitution, but have merely been outbreaks against the whites in retaliation for some wrong, real or fancied, and no punishment for such acts has ever been declared, either in the Constitution or by Congress.

Again, no person can commit the crime of treason who does not owe allegiance to the United States. These Indians at the time of the outbreak were not citizens of the United States and owed them no allegiance, and, consequently, could not commit treason.

While Congress may, under the Constitution, prescribe any punishment for the crime of treason, even forfeiture and death, that body has no power vested in it under the Constitution to enforce the penalty. Forfeiture of property and rights can not be adjudged by legislative acts, and confiscation without judicial hearing after due notice would be void as not being "due process of law. Nor can a party by his misconduct so forfeit a right that it may be taken away from him without judicial proceedings in which the forfeiture shall be declared in due form." (Cooley Const. Law, 4550; 38 Miss., 434; 24 Ark., 161; 27 Ark., 26.)

In the act of July 17, 1862, to suppress insurrection, to punish treason and rebellion, to seize and confiscate property of rebels, and for other purposes (12 Stat., 389), Congress was very careful to observe its limited power under the Constitution, and conferred upon the courts the power to judicially determine and declare forfeiture.

We have now seen that the outbreak of 1862 did not constitute treason within the meaning of the Constitution, nor within the meaning of section 5331 of the Revised Statutes; that the Indians, owing no allegiance to the United States, could not commit the crime of treason, and that the forfeiture of their annuities was without "due process of law."

But the act of 1863 is unconstitutional on other grounds. The tenth section of article 1 of the Constitution, clause 1, declares that no State shall pass any law impairing the obligation of contracts.

While the Constitution does not inhibit Congress from passing such a law, it has been held that such legislation is against the principles of our social compact and opposed to every principle of sound legislation. (Walker *v.* Leland, 2 Pet., 646; Colder *v.* Bull, 3 Dall., 386; Sturges *v.* Crowninshield, 4 Wheat., 206; Ogden *v.* Saunders, 12 Wheat., 269; Federalist, No. 44.)

A treaty is a contract and, in the case under consideration, the contract was fully executed on the part of the Indians by surrendering to Government the title and possession to the land ceded, and was execu-

tory on the part of the United States to the extent of the unpaid portion of the consideration named therein. Upon the ratification of the treaty the right of the Indians to the balance of the consideration became determined, fixed, and absolute. It was an ascertained debt for the purpose of ultimate payment and satisfaction as in the treaty provided, and, as before stated, there was no power vested in Congress under the Constitution to devest those rights. Where a law is in its nature a contract and absolute rights have vested under it, a repeal of the law can not devest those rights. (Fletcher *v.* Peck, 6 Cranch, 87.)

Again, in the present case, the United States assumed to act as trustee and in a fiduciary capacity, and should be held to as strict an account toward the cestui que use and to act as scrupulously and with as much care as a private individual acting in that capacity would be required to do. But here is a case in which the cestui que trust appropriates to its own use the funds and property of the cestui que use, a proceeding unheard of in legal jurisprudence and one which would not be tolerated for a moment between private individuals. The act of 1863 is unconstitutional,because it is an ex post facto law.

Article 1, section 9, clause 3, of the Constitution declares that "No bill of attainder or ex post facto law shall be passed." (Fletcher *v.* Peck, 6 Cr., 87; Ogden *v.* Saunders, 12 Wh., 213; Walson et al. *v.* Mercer, 8 Pet., 88; Carpenter *v.* Commonwealth of Pennsylvania, 17 How., 456; Lock *v.* New Orleans, 4 Wall., 172; Cummings *v.* The State of Missouri, 4 Wall., 277; Ex parte Garland, 4 Wall., 333; Drenham *v.* Stiffe, 8 Wall., 595; Klinger *v.* State of Missouri, 13 Wall., 257; Pierce *v.* Carskadon, 16 Wall., 234; Holden *v.* Minnesota, 137 U. S., 483; Cook *v.* United States, 138 U. S., 157.)

Now, what constitutes an ex post facto law? A statute which would render an act punishable in a manner in which it was not punishable when it was committed is an ex post facto law. (6 Cranch, 138; 1 Kent, 408.)

A law to punish acts committed before the existence of such law, and which acts had not been declared crimes by preceding law, is an ex post facto law. Every law that makes an act done before the passing of the law, and which was innocent when done—that is, for which no punishment had been previously prescribed by law—and prescribes a penalty therefor, is an ex post facto law. (3 Story Const., 212.)

As has been seen, the outbreak of 1862 was not treason within the meaning of the Constitution nor within the meaning of section 5331 of the Revised Statutes. There has never been a law passed by Congress prescribing a punishment for participants in an Indian outbreak or an Indian war, and neither the Constitution nor Congress has ever defined any species of crime for such acts, and consequently, applying the rules of interpretation laid down by the courts, the act of 1863 in an ex post facto law, and therefore unconstitutional.

Now, suppose we admit, for the sake of argument, that the outbreak of 1862 was treason within the meaning of the Constitution and that the four bands were actually engaged in hostilities, what is the result of the act of 1863?

The second clause of section 2 of article 2 of the Constitution declares that—

> The Congress shall have power to declare the punishment for treason, but no attainder of treason shall work corruption of the blood or forfeiture except during the life of the person attained. (Bigelow *v.* Forest, 9 Wall., 339; Day *v.* Micon, 18 Wall., 156; Ex parte Lang, 18 Wall., 163; Wallach *v.* Van Riswick, 92 U. S., 202.)

Under this provision of the Constitution Congress may, as before

stated, prescribe any form of punishment for the crime of treason, even forfeiture and death, but if forfeiture be declared the Constitution expressly and explicitly limits it to the life of the person attained. In no other case is power delegated to Congress to declare forfeiture, nor is Congress vested with power to carry into effect a forfeiture constitutionally declared. But here we have an act which is not only an ex post facto law, and which impairs the obligation of a contract, but is in effect a bill of attainder and declares a forfeiture beyond the limit prescribed by the Constitution, and by that act Congress assumes judicial functions not delegated to it by the Constitution and carries that forfeiture into effect, which forfeiture not only extends to those engaged in the outbreak, but to their descendants ad infinitum—a proceeding wholly unconstitutional.

This subject might be enlarged upon, but sufficient has been said to show that the act of 1863 is unconstitutional in its relation to the Sisseton and Wahpeton bands, and to the Medawakanton and Wahpakoota bands as well.

Of those actually engaged in the outbreak many were killed, some 39 were hung, and most of the remainder fled to Canada, where they afterwards remained and where their descendants now are. From the best information obtainable, it is not believed that 50 of those actually engaged in the outbreak are now residing within the United States.

If the act of 1863 be constitutional and the outbreak constituted treason, then under the Constitution it can only apply to such of those as were actually engaged in open hostilities and who are still alive and residing in the United States, but as to the descendants of those who are deceased the act has lapsed by constitutional limitation, and the rights of the parties have become vested. These rights are theirs by right, by law, in equity by the provisions of the Constitution, and can only be withheld from them by the arbitrary and unconscionable refusal of Congress to enact the necessary legislation to make them effective.

The bill in its present shape excludes from its benefits such of the Indians as are not residents of the United States, and, as suggested during the last session by the Senator from Wisconsin (Mr. Spooner), it can be so amended, if thought best, as to exclude from its benefits all persons who were actually engaged in the outbreak, though it seems to your committee that they have been punished enough.

Now, your committee wants to appeal to Senators to come forward and do at least partial justice to these people, not on the ground that the act of 1863 is unconstitutional, though that is sufficient reason, but that it worked a great, unconscionable, and unpardonable wrong and hardship on an innocent, patriotic, and faithful people in return for their loyalty and friendship and the gallant services rendered the Government and the people in Minnesota in the hour of their greatest need and peril.

The Government, as stated by the Commissioner of Indian Affairs in his letter to the Secretary of the Interior of April 20, 1866, "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;" and again in his letter to the Secretary of March 22, 1887, wherein he says:

> A great wrong has been perpetrated upon 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 were captured by the hostiles.

Your committee does not expect the Government to do full justice to

these people for what they suffered by the unjust and illegal confiscation of their annuities. By every rule of justice and equity, and by the fundamental principles enunciated by our highest judicial tribunals, these people are entitled to interest on the amount withheld from them by the Government, and damages besides; but they do not ask this. The Government can never compensate them for their self-sacrifice, their heroism, and loyal services during the outbreak, the value of which can not be estimated in dollars and cents, but we can do them a modicum of justice and at the same time relieve our Government from a stigma of dishonor by restoring to them the balance of their confiscated annuities.

We should at least be honest and act in good faith toward an inferior and wronged people who, while owing no allegiance, were second to none of our best citizens in patriotism, loyalty, and devotion to our Government, and who, by might and not by right, were made to suffer all these years for no wrong done. We should bear in mind that the Government occupies toward these people the relation of guardian to ward, as cestui que trust and cestui que use, and that acting in that fiduciary capacity we are bound, not only legally and equitably, but by the law of good conscience, to faithfully and scrupulously give an account of our stewardship.