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Report No. 442.

[To accompany bill H. R. No. 374.]

HOUSE OF REPRESENTATIVES.

CLAIMS AGAINST THE OTTOWA, CHIPPEWA AND POTTAWATOMIE INDIANS.

MARCH 30, 1848.

Mr. McILVAINE, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to whom were referred the petitions of John B. Chapman, Aline Coquilliard and others, citizens of Michigan and Indiana, praying for the payment of their claims as audited by General William B. Mitchell, who was appointed a commissioner, by the government of the United States, for that purpose, report:

By the treaty of Chicago, made on the 26th November, 1833, with the united nation of Chippewa, Ottawa and Pottawatomie Indians, and the supplementary articles thereto, concluded on the following day, the said Indians ceded to the United States all the lands which they then held in the States of Michigan and Illinois, for certain considerations therein named, being an equivalent in land, west of the Mississippi, and money, to be applied agreeably to the stipulations of the treaty.

By the second article of the treaty, it is provided "that the said Indians are to remove from all that part of the land now ceded, which is within the State of Illinois, immediately on the ratification of this treaty, but to be permitted to retain possession of the country north of the boundary line of the said State, for the term of three years, without molestation or interruption, and under the protection of the laws of the United States."

This treaty does not appear to have been ratified until February, 1835. The attention of the government was called to the provisions of the treaty by the Hons. Isaac E. Crary and John Nor-

vell, in their letters of 1st January, 1840, addressed to Hon. J. R. Poinsett, Secretary of War, in these words: "We have the honor to invite your attention to the present condition of the united nation of the Chippewa, Ottawa and Pottawatomie Indians, residing south of Grand river, in the State of Michigan, who ceded their lands to the United States by the article supplementary to the treaty made at Chicago, in the State of Illinois, on the 26th day of November, 1833. By the third article of the articles supplementary, said Indians were to remove from the reservations therein ceded, within three years from the date of the treaty, to the tract of country west of the Mississippi river, to be assigned to them by the President of the United States.

"We are aware that various efforts have been made, on the part of the United States, to carry into effect the stipulations of this treaty, and that they have, from time to time, been resisted by the Indians. We, however, consider that the time has come when they ought not longer to remain in their present situation. The land which they owned has been brought into market, large portions of it sold, and especially those which were occupied as planting grounds.

"Reduced to want, and, in some instances, almost to starvation, these Indians have no way of supporting themselves but by depredations upon the property of the whites; and these have become so frequent as, in many cases, to endanger the peace of society, and even the lives of the Indians themselves." * * * *

In February, of the same year, the Secretary of War addressed the following letter to General Brady, of the United States army, then at Detroit:

WAR DEPARTMENT, *February 26, 1840.*

SIR: The period having arrived when, in the opinion of the President, the execution of the treaty of Chicago with the united nation of Chippewa, Ottawa and Pottawatomie Indians, ratified on the 21st February, 1835, shall no longer be delayed, you are hereby instructed to take all the necessary measures for carrying it into full effect in the course of this year, and at such time within that period as shall be deemed most fitting and convenient. You will avail yourself of the services of the citizens residing in that region of country, who possess influence over the tribes, or any portion of them, in order to induce the Indians to enroll themselves for emigration, and peaceably to rejoin their brethren of the united nation already settled in the west. But, at the same time, you will neglect no military precautions which may seem to you expedient to enforce your negotiations, and to secure the success of the operation with which you are charged.

It is understood that the nation is indebted to citizens residing in that region of country, and it is the intention of the department to take measures for the payment of those debts out of their annuities. A proper person shall be sent to examine and adjudicate these claims, and certificates shall be given to the creditors of the Indians, payable upon the removal of the tribes to the west,

to which location the fourth article of the treaty confines such payments.

A map of the country which is the theatre of your operations is transmitted herewith; and if you think it necessary to have a more minute and detailed account of it, competent officers shall be sent to perform that duty, as soon as the season will permit them to take the field.

J. R. POINSETT.

Brevet Brigadier General HUGH BRADY,
Detroit, Michigan.

In another letter to the same, dated March 14, 1840, the secretary adds: "when the instructions to you of the 26th ultimo, for the removal of the Chippewa, Ottawa, and Pottawatomie Indians, were prepared, it was intended to embrace in them the Pottawatomes of Indiana. Upon looking at those instructions, however, they seem to extend only to the united bands who made the treaty of Chicago. The others, known as the Pottawatomes, have by various treaties ceded their lands, and by the same instruments are required to remove. Their number has been variously estimated, but it is thought it cannot be very large.

You will please to regard the order of the 26th ultimo as extending to them."

In accordance with the determination of the President, as expressed in the letter of the Secretary of War to General Brady, of February 26th, General W. B. Mitchell, of Indiana, was appointed "a commissioner to examine claims of citizens of the United States against the Ottowas, Chippewas, and Pottawatomes, and the Pottawatomes of Indiana, and of these Indians against the former." (Letter of Secretary of War to General M., April 30, 1840.) And on the same day instructions were issued by the Commissioner of Indian Affairs to General Mitchell, in the following letter:

DEPARTMENT OF WAR,
Office of Indian Affairs, April 30, 1840.

SIR: I have the honor to transmit a letter from the Secretary of War, appointing you a commissioner to examine claims of citizens of the United States against the Ottowas, Chippewas, and Pottawatomes, and the Pottawatomes of Indiana, and of the latter against the former; and in anticipation of your acceptance of the trust, proceed at once to communicate the instructions of the department for the execution of your duties in that capacity.

In the treaty of the 26th of September, 1833, with the Ottowas, Chippewas, and Pottawatomes, they agreed to remove to the country set apart for them, west of the Mississippi, the boundaries of which were defined "as soon as conveniently can be done;" "to remove from all that part of the land now ceded, which is within the State of Illinois, immediately on the ratification of this treaty," being "permitted to retain possession of the country north of the boundary line of said State, for the term of three years." And by various treaties, made with the Pottawatomes in 1836 and 1837,

they obligated themselves to remove west of the Mississippi "within two years." The department having been able, thus far, to procure but a partial compliance with these stipulations, has instructed Brigadier General Hugh Brady, of the army, to see that they are fully carried out the present season.

That the creditors of the Indians, and the Indians themselves, may not be subjected to loss by this measure, it was determined to institute the commission which you have been selected to fill, to decide upon the claims of the respective parties against each other. General Brady, whose station is at Detroit, and General Samuel Milroy, sub-agent at Delphi, will be advised of your appointment, and requested to aid you as far as may be in their power. It will be proper for you to confer with them as to the places and times where and when your duties should be discharged, and the length of the notice proper to be given. To fix upon these will be the first step proper to be taken, and the suggestions of these gentlemen will be of great service to you.

In the execution of the first branch of your duties, (the adjustant of claims *against* the Indians,) you will require the respective creditors to deposit with you transcripts of their claims, exhibiting names, dates, articles, prices, and the original consideration of each claim. If notes or obligations, purporting to be signed by any of the Indians, shall be presented to you for allowance, you will inquire into the original consideration, and the circumstances under which they may have been signed. No such note or obligation will be received as evidence of a debt, unless the indebtedness shall be satisfactorily shown. If original books and entries cannot be produced, their loss and destruction must be proved. The sale of spirituous liquors to Indians being prohibited by the laws of the United States, no item of charge on that account will, under any circumstances, be allowed. You will prepare a roll of all the claimants, specifying the amount claimed by each, the places of residence or trade, the time when the debt was incurred, the kind of merchandise or other articles, the amount admitted by you to be justly due, and the amount rejected. You will carefully record all the evidence in each case, and transmit it, with the affidavits themselves, if in that form, with the roll of claimants, and with the grounds of your decision, to this office. The accompanying printed copy of a report on similar claims against the Pottawatomies, will give you a clear idea of the manner in which your own should be prepared.

Your examination cannot be too scrutinizing into the merits and justice of every claim. If it be against an individual Indian, he should be called before you, and each item in the account should be explained to him, and his assent or dissent to it acquired and obtained, if practicable. If it be against a tribe or band, as such, the account should be explained in like manner to the chiefs and headmen, and their acknowledgment or denial taken. To this extent, I have no doubt, Indian testimony should be received; the weight it should have, you must determine, after considering the character, general intelligence, and means of information of the

witness. The moral duty of paying every just claim should be pressed upon the Indians; and, in receiving their statements, you will bear in mind the danger arising on the one hand from a disposition to evade an obligation, and on the other from the exercise of improper influences by any of the claimants. When your report shall have been received and approved, you shall be advised and authorized to issue certificates according to the enclosed form, payable, on their surrender to this office, at the points where the debts were contracted.

The number of claims on the part of the Indians against the whites will probably be comparatively small; but their investigation will perhaps be more difficult than that of the class first noticed. The circumstances are such, too, that no specific instructions can be given. It will be your duty to ascertain and report to this office all just claims, that measures may be taken to secure substantial justice to the Indians. You will bear in mind the great disadvantages under which they labor in prosecuting their demands against the whites, and that you, as the organ of the government, and in the exercise of its guardian care, are bound to protect and aid them in the collection of their just dues. Hence, in your examination, you will favor the Indian claimants, at the same time taking care to do no wrong to the adverse party. I have great confidence in your discretion and judgment, which will dictate to you the best method of securing the important object in view. In cases where mutual claims exist between the same parties, you will strike a balance, and give the certificate for the amount to the real creditor. Your report on this branch of the trust committed to you, will be prepared in the same form as on the first, and consist of similar documents, with the alterations which the reversed and unequal situation of the parties require, and your own good sense will dictate.

No certificates need be issued to the Indian creditors; but the department will, on the receipt of your report, take such measures as may be in its power to collect the amount, and provide for its remittance to the sub-agents west, for payment to the respective claimants.

T. H. C.

General Wm. B. MITCHELL,
Pulaski, Elkhart county, Indiana.

In obedience to his instructions, General Mitchell entered forthwith upon the execution of the duties assigned him, and communicated the result of his labors in the following report:

WASHINGTON CITY, January 28, 1841.

Report of William B. Mitchell, commissioner on the part of the United States on claims presented against the Pottawatomie, Ottowa, and Chippewa Indians, and of those Indians against citizens of the United States.

SIR: Immediately on the receipt of my appointment by the Secretary of War, and your letter of instructions of the 30th April last,

I commenced the performance of the duties assigned me in investigating and adjusting claims against the Ottawa, Chippewa, and the Pottawatömie Indians, and, also, the claims of those Indians against citizens of the United States.

The great number of claims, their intricacy, and the extent of country traversed for the purpose of obtaining testimony and a proper understanding of such matters as were essential to an investigation of this kind, have necessarily deferred the completion of this service to a later period than was at first anticipated. Many of the claims presented contained several items, all of which requiring minute and critical examination; and imposing an amount of labor proportionate to the magnitude of claims so numerous and diversified in character.

It is to be regretted that the moral obligations which impose the usual restraints of common justice in the ordinary transactions amongst men are too frequently lost sight of in the trading intercourse between the citizens and the Indians. The advantages of education and cultivated intellect, trained to a particular pursuit, are brought to bear directly upon the interests of the Indians, whose habits of life and recklessness of disposition disqualify them, in a great measure, from competing, on terms of equality, with *professional traders*. So far as circumstances would admit exertions have been made to guard the interests of the party most liable to imposition.

In many instances, no doubt, just claims may have been disallowed for want of proper testimony being produced to sustain them. It is probable that the greatest complaint will arise from an effort to comply with general instructions, or requiring items to be exhibited in support of each claim. In many instances, charges against the Indians are kept on slips of paper, in the manner of bills, and upon settlement, notes are taken for the balance due, without specifying items, while the paper containing them is either delivered to the Indians or in some way lost. It is seldom that proof of consideration of notes thus taken can be satisfactorily made, and, under the operation of my instructions, cannot be allowed.

I have, in two or three instances, allowed interest on *money* paid to the Indians as acts of justice to the claimants; but in no case have I allowed interest on account of goods sold upon the supposition that a trader always provides for this contingency by the prices charged for the articles sold. It is equally clear, that if the Indian has *money* to pay for articles purchased, he can procure them at a reduction of price equal to the interest.

That class of claims designated as "depredations" has presented many difficulties from the deficiency of testimony, particularly where larcenies are charged against the Indians, such as stealing horses, hogs, and cattle. It is seldom that such proof can be adduced as would legally establish the facts charged in such manner as to produce a verdict or conviction in a court of justice. In some cases the Indians have acknowledged the depredations, and justify their conduct on the plea of necessity. In a majority of

these cases no allowance can be made, as in many of them no doubt exists but that white men have committed the thefts which are now charged upon the Indians. No allowance has been made on any claim for depredations, except when positive proof has been made, the acknowledgment of the Indians taken, or other satisfactory evidence exhibited to dissipate all doubt as to their guilt.

In every case, where it was practicable, the nature and amount of each claim has been explained to the Indians, and their statements taken. This has, however, in but few instances, enabled me to arrive at correct conclusions; for, although they might acknowledge indebtedness, it was but seldom they could enumerate items or amounts.

There is another class of claimants, and, perhaps, not the least meritorious, who, from want of education, cannot keep books, but mark down amounts in *tallies*, and when payments are made obliterate a corresponding number of marks. They, as a matter of course, must present their accounts in *bulk*, and rely on such testimony as they may be able to produce, and upon their general and uniform character as dealers.

There have been several claims presented, by persons who have long resided among the Indians, for affording them subsistence under circumstances of great necessity. The kind feelings of these claimants towards the Indians have been very freely acknowledged, and much solicitude expressed, that a reasonable remuneration should be made. But, as most of those persons are connected, by marriage, with the Indians, and have received many evidences of gratitude by the stipulations of different treaties, I am compelled to disallow a large portion of these claims.

Many complaints have been made by the Indians and half-breeds, against citizens of the United States; but the difficulty which results from their inability to identify individual trespassers, has prevented them from furnishing such information as would lead to the detection or punishment of the offenders.

The most important of these claims are for frauds practiced upon the Indians in the disposal of reservations, as provided for in the several treaties. These complaints are numerous in the vicinity of the Wabash; and, although no testimony has been offered me which would lay the ground of any definite action in relation to them, yet, it would not be forestalling public opinion to say, that in several instances, it is believed, they are well founded.

Among the greatest evils which result to the Indians in the liquidation of their debts, is, the acknowledgment of joint liability on the part of the tribe, or nation, for the separate debts of each individual, as it naturally leads to a recklessness in contracting debts, and deprives those who would, under different circumstances, be disposed to practice economy, from being able to exercise it beneficially for themselves. To this cause may be traced, not only the large amount of their debts, but much of the idleness which prevails among them, in the vicinity of a civilized community.

All charges against Indians either for liquor, or vessels to contain it, have been disallowed.

The time of appointment, and the necessity of removing the Pottawatomies east of Lake Michigan, during the present year, has prevented me from bestowing any attention to claims west of the lakes. This circumstance will render it necessary that immediate action be had on those claims.

All of which is respectfully submitted.

WM. B. MITCHELL,
U. S. Commissioner, &c.

HON. T. HYRTLY CRAWFORD,
Commissioner of Indian Affairs.

Accompanying this report is a schedule of all the claims presented by American citizens against the Indians, amounting to two hundred and ninety-nine cases, all of which are separately explained, and the decision given thereon.

In communicating this report to the Secretary of War, the Commissioner of Indian Affairs says, in reference to these claims: "Of those alleged to be owing by Indians to whites, the aggregate was very large, amounting to \$248,459 81; of which claims, making the sum of \$93,989 11, were allowed. The investigation of them by the commissioner appears to have been conducted with a close scrutiny into their correctness and justice. His discussions, in the main, were made in accordance with his instructions, and the intentions of the department; but there are some exceptions to this remark, which I proceed to notice." Here follows an enumeration of the cases which he recommends shall be rejected, amounting to \$10,716 29. Whereupon, the Secretary of War confirmed the report of the commissioner in the following terms:

WAR DEPARTMENT, March 3, 1841.

The report of the commissioner is confirmed, save in the cases recommended to be rejected by the Commissioner of Indian Affairs, in all whose recommendations I concur, except that in the case of Rev. S. Bernier, whose claim is allowed.

The class of cases embracing goods sold since the organization of the commission is allowed, as such, and so are the depredation claims and allowances.

There can be no objection to issue certificates to the claimants for the sums allowed, provided they bear on their face the condition and terms of payment; a proper proportion of the annuities belonging to the emigrants to be applied annually to the discharge of these claims.

J. R. POINSETT.

No certificates were issued, however, and the matter appears to have rested here until the following January, when the then Secretary of War ordered as follows:

JANUARY 13, 1842.

I consider the claims which are the subject of the report of the Commissioners of Indian Affairs, within referred to in the decision of Mr. Poinsett, substantially disposed of by that decision, and the following directions are given for the purpose of executing it: Certificates of the amount of indebtedness by each Indian, specifying the name of the creditor, to be issued by General Mitchell, in a form to be prescribed, and declaring that, on producing to the agent charged with the payment of annuities, satisfactory evidence of the assent of the debtor that the debt shall be satisfied out of his annuity, such agent will be authorized to apply such annuity accordingly, in portions not exceeding one-fifth in each year.

An exception to the above is to be made in favor of those creditors who furnished goods to the Pottawatomies at the time of their emigration, at the request of the agent of the government, and the Indians, and with their implied assent that the amount should be satisfied out of their funds. In this class of cases the certificates need not require the assent of the debtor, but a portion of his annuity, not exceeding one-fifth, may be applied in each year to the discharge of the amount specified in the certificate.

In respect to the claim of the Rev. S. A. Bernier, allowed by Mr. Poinsett, it may be paid by deducting, in each year, one-third of its amount from the total of the annuities payable to the band for whom the services were rendered, and paying it to him or his attorney. The allowed claims for depredations, where the offender is unknown, should be deducted from the aggregate of the annuities, in portions of one-third in each year, as in the case last mentioned.

Interest cannot be allowed, being contrary to the long established usage.

J. C. SPENCER.

On the 9th of February following, General Mitchell was again appointed by the Secretary of War, to carry out the above decision; and in the instructions given him by the Commissioner of Indian Affairs, he was required "to take up each case of indebtedness by each Indian, and ascertain how much he owes to each of his creditors; upon ascertaining which, you will execute a certificate in conformity with the enclosed form and hand it to the creditor for his further action, by obtaining the assent of the Indian to its payment, which being satisfactorily proved, will entitle him to payment by the agent out of the annuity due to such individual Indian, in a proportion not exceeding one-fifth in any one year; this part of the decision, you will observe, applies to the class of debts contracted before the preparation for emigration.

In the second class, or those which were contracted at the time of emigration, the assent of the Indian is not required to entitle the creditor to payment, as there was an implied assent when the Indian contracted the debt; the proportion to be paid in these cases is also restricted to one-fifth of what may be due the Indian in any one year.

A third class is for depredations which are considered as properly chargeable upon the annuity of the whole tribe, if the individual depredator cannot be ascertained, and where the offender is unknown, will be deducted by the agent from the aggregate annuity, in sums not exceeding one-third of the claims in each year, after the consent of the Indian depredator or of the tribe is obtained, as the case may be."

The commissioner does not appear to have ever performed the duty here assigned him. Nor does it appear that anything further has been done towards the liquidation of these claims by the department.

From the foregoing it will appear that the object of the government, in providing for the adjustment of these claims, was, to procure a peaceful removal of the Indians from whom they were due, from the lands which they had ceded to the United States, to the place set apart for them west of the Mississippi:

That it was intended that they should be paid out of the annuities due the Indians under the treaty of cession:

That the accounts of the claimants were rigidly examined and correctly adjusted, and were approved by the Secretary of War.

That the order for the issuing of certificates to the claimants was not given for more than a year after the Indians, from whom they were due, had been removed west of the Mississippi, and then in terms and under conditions which would render them not only utterly useless, but could not have been anticipated by the claimants when they submitted their accounts for settlement, as they were assured by the then Secretary of War, Mr. Poinsett, through Gen. Brady, that "a proper person shall be sent to examine and adjudicate these claims, and certificates shall be given to the creditors of the Indians, payable upon the removal of the tribes to the west."

It could not have been contemplated by any of the parties that the further assent of the indebted Indians should be obtained than that which was given in the settlement of their accounts, as the commissioner was instructed, that if a claim was "against an individual Indian, he should be called before you, and each item in the account should be explained to him, and his assent or dissent to it acquired and obtained, if practicable." And the commissioner in his report, says: "In every case where it was practicable, the nature and amount of each claim has been explained to the Indians, and their statements taken." Nor is it to be supposed that these claimants would have surrendered their hold upon their debtors, and accepted the promise of the government, had they have known that they would be obliged to incur the expense of a journey to the Indian country, which would, in many cases, exceed the amount of their claim, and upon the uncertainty of finding their debtors, or obtaining their endorsement if found.

Again, the whole amount of annuities payable to these Indians, under the treaty of cession, is three hundred and twenty thousand dollars, (\$320,000,) to be paid in twenty annual instalments of sixteen thousand dollars (\$16,000) each. By the decision of Mr. Secretary Spencer, but one-fifth of this amount (\$3,200) can be ap-

plied to the payment of these claims in any one year. So that supposing these debts to be equally distributed amongst the whole of the Indians embraced in the treaty, it would require more than twenty-five years to liquidate the whole amount of the award. But if, as is probable, these debts are due only by a part of these people, and their ratable proportion of the annuity only could be applied to the payment of their debts, the period of final payment would be still further extended.

In view of these facts—seeing that the government has assumed the *settlement* and *payment* of these claims, and has failed to secure their payment, whilst it has deprived the claimants of all possibility of redress against their original debtors—the committee are of opinion that they should be paid out of the treasury of the United States, and report a bill accordingly.