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Treaty with New York Indians

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IN THE SENATE OF THE UNITED STATES.

MAY 3, 1870.—Ordered to be printed.

Mr. BUCKINGHAM submitted the following

REPORT.

The Committee on Indian Affairs, to whom was referred a treaty between the United States and the several tribes and bands of Indians residing in the State of New York, concluded at the council house, Cattaraugus reserve, New York, the 4th of December, 1868, respectfully report :

By the treaty concluded with the New York Indians, December 4, 1868, which is now presented to the Senate for consideration, the Indians surrendered to the United States all claims severally and in common to land west of Missouri, and all right and claim to be removed thither, and for support after removal, and all other claims against the United States under the treaty between the United States and the New York Indians, concluded January 15, 1838, and with the Senecas concluded May 20, 1842, except their rights to the reservation then occupied by them.

In consideration of which the United States agreed to pay and invest \$320 for each and every person entitled to the benefits of the treaty of January 15, 1838; the amount to be determined by a registry of all the Indians parties to this treaty residing in New York, and those who reside elsewhere but belong to those tribes, and all who are not upon reservations or permanently connected with other tribes, and who may elect to become registered within one year from the time of ratification of the treaty.

The treaty provides for paying and investing the money which may be appropriated by Congress, and authorizes the Secretary of the Interior to sell to white persons who occupy lands in Kansas, such lands as have been allotted to New York Indians at \$1 25 per acre, and to pay the proceeds thereof, being \$400, to each Indian, or their representatives, upon proof of their identity, within two years from the ratification of the treaty.

It also authorizes the Secretary of the Interior to appoint a commissioner to ascertain the losses which members of the tribes entitled to participate in the stipulations of the treaty of January 15, 1838, have sustained in consequence of being driven from their possessions in Kansas, and to report the same to Congress. It also gives Indians of mixed blood all the rights of full bloods of the tribes to which they belong.

Under date of February 7, 1870, the Onondagas, Senecas, and Cayugas, in a communication addressed to the honorable Commissioner of Indian Affairs, represent that the treaty concluded by them on the 4th of December, 1868, by Walter J. Irwin, a commissioner on the part of the United States, failed to award justice to their people; that the terms of surrender and relinquishment contained in the treaty were assented to

by them under fear that if they were not accepted as presented by the Commissioner no adjustment of their rights would be secured, and at the time they reserved the right to appeal to the Senate for justice denied by the Commissioner, and they now submit a statement by their counsel, and ask that the treaty be ratified with the amendments substantially therein asked for.

The councillors of the Seneca nation, through their president, state that at a meeting held by them upon the Cattaraugus reservation January 26, 1870, they had the aforesaid treaty under consideration, and they now represent that several articles in the treaty were detrimental to their interests; that in the hurry of the Commissioner to rush the treaty through, sufficient time was not given to consider the effect and bearing of the several articles, and that they fear that the first article of the treaty contains provisions which release the United States from all liabilities in the payment of annuities prior and subsequent to the treaty concluded January 15, 1838, and of the treaty concluded with the Senecas on the 25th of May, 1842. They therefore ask an amendment to this article in order to remove all ambiguity, as well as other amendments substantially like those asked for by the attorneys of the several tribes.

By the first article the Indians release all claims against the United States under the treaties of 1838 and of 1842.

By the treaty of January 15, 1838, the United States agree to pay all such annuities as shall properly belong to the Indians, and the question is whether the present treaty releases these annuities. The Indians now claim that their release was not intended to include and did not include annuities. The Hon. N. G. Taylor, Commissioner of Indian Affairs, in a letter upon this subject, addressed to Senator Ross, April 1, 1869, says: "It is not intended that the first article of the pending treaty should cut off annuities payable under former treaties, or release the government from the payment of any moneys now held in trust for the benefit of any of the tribes, parties to the pending treaty. By the provisions of said article the Indians relinquish all claims under former treaties, but this would not include moneys held in trust for them by the United States."

To prevent misunderstanding the Indians ask that the first article of the treaty may be amended by adding the words, "nor shall the government be discharged from the payment of any annuities payable under treaties prior to 1838, or the payment of moneys now held in trust for the benefit of any such Indians"

The Indians also ask that the second article of the treaty, which gives to each person entitled to participate in the beneficial provisions of the treaty \$320, be amended so as to give each \$393. They base their claim upon the ground that the United States, in a treaty with the Tonawanda band of Senecas, concluded November 5, 1857, agreed to pay that sum to each member of that band, and in so doing the United States recognized their right to the value of three hundred and twenty acres of land for each member of the tribes, and to the proportionate share of each to the \$400,000 appropriated to aid in their removal. Under that treaty the Tonawanda band received \$73 85 each more than will be paid to each member of other tribes under the provisions of the present treaty. The commissioner who negotiated the pending treaty refused to recognize the right of the Indians to any part of the \$400,000, because the treaty provided that those Indians who should not accept and remove within five years, or such other time as the President might appoint, should forfeit all interest in the lands. As a matter of fact,

the President never appointed any time for their removal, nor has the government ever made an appropriation to aid in their removal, except the sum of \$20,477 50, appropriated in 1843 to aid in the removal of two hundred and fifty of their number.

The last paragraph in the third article in the pending treaty provides that the Secretary of the Interior shall have authority to set apart so much of the appropriation as he may think proper to be expended by him in the payment of liabilities which have been incurred by the Indians, parties to the treaty, such payment to be authorized by the Indians and to be made in the discretion and with the approval of the Secretary.

On the 26th of January, 1870, a council was held by the councillors of the Seneca nation of Indians, in the county of Erie, in the State of New York, at which it was resolved to earnestly appeal to the President of the United States to have the above proviso stricken out.

Under date of the 1st of February last, the Onondaga chiefs, with Senecas of Cattaraugus and Alleghany reservations, addressed a letter to the Hon. Ely Parker, Commissioner of Indian Affairs, saying that they had learned that the Onondagas at Onondaga Castle had employed attorneys to prosecute their claims for lands against the government, for which they were to receive twenty-five per cent. of the amount obtained; that they feared that such a proportion of the amount justly due them would be withheld by said attorneys whom they had never employed, and they ask to be excluded from such payments.

Under date of the 27th of March last, the council of the Alleghany reservation represented to the Hon. George Barker that the Seneca council in January last passed a resolution praying the Senate to strike out one article in the treaty, which provides that a certain sum should be set apart for the payment of the public debt of the several tribes; that said resolution was the last act of the council before adjournment; that the next day the councillors of the Alleghany reservation became convinced that the council had erred, and signed a paper requesting the president not to send the resolution to Washington, and that the action, so far as the Alleghany councillors are concerned, was under a misapprehension of the case.

The Oneidas, Senecas, Cayugas, St. Regis, and Onondagas, by their chiefs, assembled on the 6th day of April, instant, and the Oneida chiefs assembled on the 8th instant, express a desire to have the treaty ratified with the provision for paying their debts as it now stands in the treaty.

The agents claim that they have been engaged about eleven years in prosecuting these claims for the Indians; that they have paid out large sums of money in their efforts to secure the rights of the Indians; that if it shall be left altogether with the Indians they will be in danger of losing their labor and the money which they have paid out, and that it will be safe for the Indians to leave the matter with the Secretary of the Interior as provided in the treaty.

It is also proposed to add another article to the treaty, by which the Secretary of the Interior shall, before he invests the amount appropriated by Congress, set apart an amount to be used by him in providing homes, and locating and establishing thereon Indians, who are entitled to the beneficial provisions of this treaty, who have no permanent homes, provided that the amount so set apart and used shall not exceed the pro rata share of the Indians for whose benefit such division shall be made.

In order to judge of the propriety of ratifying the pending treaty,

we should examine the title which the New York Indians have to the lands which they propose to relinquish, and for which payment is required of the government.

By a treaty between the United States and the Menomonee Indians, concluded December 26, 1817, which purports to be a treaty of peace, the Indians confirm to the United States all and every cession of lands previously made between them and the British, French, and Spanish governments within the limits of the United States or their Territories; also all and every treaty, contract and grant heretofore concluded between the United States and them, and placed themselves under the protection of the United States government.

But on the 18th of August, 1820, the Menomonees unite with the Winnebagoes, and cede to the Six Nations and others a tract of land on the Fox River, for which they were paid \$500 in cash, and promised \$1,500 in goods in one year. On the 23d of September, 1822, a treaty was made ceding other lands, principally to the New York Indians, for which they paid \$1,000 in goods, and promised to pay \$2,000 in addition. The President approved these treaties between the different Indian nations, and authorized the lands to be held in the same manner as they were held by Indians who previously owned them.

Much difficulty having arisen between the Menomonees, Winnebago and New York Indians, in relation to the boundaries of the lands lying west of Lake Michigan, the parties agreed to leave the whole matter to the President of the United States; and in the treaty concluded February 8, 1831, between the United States and Menomonees, the Menomonees protested that they were under no obligations to recognize any claim of the New York Indians to any portion of their country; that they received no value for the land claimed by these tribes, yet, at the solicitation of the President, and in consideration of \$20,000, which the United States promised to pay, they agreed that such part of the land described may be set apart as a home to the several tribes of New York Indians who may remove to, and settle upon, the same, within three years from the date of the treaty, and stated in the treaty that it was intended for a home for the same tribes of New York Indians who may be residing upon the lands at the expiration of three years from the date of the treaty, and for no others.

It is also provided that if any lands remain unoccupied by any tribe of the New York Indians, such portions as would have belonged to the United States shall revert to the United States.

On the 27th October, 1832, the New York Indians, in a treaty with the United States, say that, to settle a dispute between them and the Menomonees, they believe that the terms stated in the agreement are the best that could be obtained from the Menomonees, and they are compelled by a sense of duty and propriety to say that they accept the same, by which they evidently had reference to a treaty concluded that day between the Menomonees and the United States, by which the grant to the New York Indians was restricted to five hundred thousand acres.

September 3, 1836, the Menomonees again cede to the United States the residue of the lands sold to the Six Nations in 1821, and lands ceded to the Six Nations and others in 1822, and all lands owned by them. The Six Nations assented to this agreement, and requested that the treaty be carried into effect.

By a treaty between the United States and the New York Indians, concluded January 15, 1838, the New York Indians relinquished to the United States all lands at Green Bay, except a tract upon which a part of the New York Indians then resided, for which the United States set

apart, west of the Missouri, as a permanent home for all the New York Indians who had no permanent home, one million eight hundred and twenty-four thousand acres of land, being three hundred and twenty acres for each member of the tribe, and agreed to appropriate \$400,000, to be applied, from time to time, to aid in removing to their homes, and in supporting themselves for the first year after their removal; to assist them in education, and in being taught to cultivate their lands, in erecting mills, purchasing domestic animals, farming utensils, and acquiring a knowledge of the mechanic arts. But it was agreed that those who did not accept and remove within five years, or such other time as the President might appoint, should forfeit all interest in the lands.

In view of these facts the committee are of the opinion that no right to lands in Wisconsin and west of Missouri was ever vested in the New York Indians, except the right of occupancy; that an equivalent for the amount paid by them to the Menomonees for lands in Wisconsin was received by those who removed to and settled upon those lands; that the Indians who never removed to the lands set apart for their permanent residence in Wisconsin, and who never removed to and became located on lands set apart for them west of Missouri, did not comply with the requirements of the treaties, and are not entitled to any interest in the lands nor to their proceeds. Also, that the treaty concluded with the Tonawanda band, November 5, 1857, authorized the payment of moneys to the members of that band, to which they had no claim under former treaties, and should not be regarded as a precedent by which the government should be bound or guided. They therefore report adversely upon the ratification of the treaty.