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Amendment to Indian appropriation bill

55TH CONGRESS, 1st Session. } SENATE. { REPORT No. 47.

AMENDMENT TO INDIAN APPROPRIATION BILL.

APRIL 5, 1897.—Ordered to be printed.

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

REPORT.

[To accompany Mr. DAVIS's amendment to H. R. 15.]

The committee have made a careful investigation and examination of the facts pertaining to the proposed modification and amendment of section 27 of the "Act making appropriation for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1892, and for other purposes" (26 Stat. L., pp. 1038, 1039), and find and ecommend as follows, viz:

First. That at the time Wisconsin was admitted as a State and the Territory of Minnesota organized all the land in Minnesota east of the Big Sioux River and south of the country occupied by the Chippewas was Indian country, occupied by the Sisseton, Wahpeton, Medawaukanton, and Wapakoota bands of Sioux Indians, and that in July and August, 1851, the United States concluded treaties with said four bands of Sioux, whereby, among other things, the United States obligated itself to pay interest at 5 per cent per annum for the period of fifty years, commencing July 1, 1852, on two funds, one of $1,360,000 and the other of $1,160,000, which together constituted the consideration paid by the United States for the cession by the Indians of all their lands described in said treaties, which constituted by far the greater part of the land included in the present State of Minnesota. (10 Stat. L., pp. 945 to 955, inclusive.) Both parties to these treaties fulfilled generally all the treaty stipulations and agreements thereof until the 18th day of August, 1862.

Second. On the last-mentioned day the said bands of Indians as such bands violated the provisions of said treaties requiring them to remain at peace with the United States and the citizens thereof, and made a most savage and brutal war upon the citizens of the United States, killing more than 800 of the unarmed and defenseless, besides killing and wounding many officers and soldiers of the Army. Congress thereupon, by an act approved February 16, 1863, abrogated and annulled said treaties so far as they imposed any future obligations upon the United States, and forfeited said 5 per cent annuities on the sums specified in said treaties. (12 Stat. L., p. 652.)

Third. At the time of said outbreak in August, 1862, many of the arms-bearing population of said bands were in the military service of the United States in the volunteer regiments organized in Minnesota, and many of them took up arms against their own people and were organized into companies of scouts under Gabriel Renville and other

Indian leaders selected by Gen. Henry H. Sibley, commanding the United States forces operating against the hostile Indians, and rendered constant and effectual services against their own people until peace was restored. (House Report No. 1953, Fiftieth Congress, first session.)

Fourth. The soldiers and scouts of these bands, so rendering service in the armies of the United States, and observing all the stipulations and obligations of all treaties previously entered into between these bands and the United States, sustained the same punishment and suffered the same losses under the said act of February, 1863, that were imposed upon the hostile Indians guilty of murder and all other crimes, so far as their property rights were concerned, and had received no relief on account thereof prior to the 3d day of July, 1877, except some slight advantages, specified in a treaty between the United States and Sisseton Indians, concluded May 2, 1867 (15 Stat. L., pp. 505–511), whereby the United States agreed to protect these scouts and soldiers and their families in a portion of their country that had never been ceded to the United States, and made some other slight provision for their support. Neither their farms on the old reservation on the Minnesota River nor their annuities were restored.

Fifth. Soon after the 1st of July, 1877, Gabriel Renville, then head chief of the Sissetons, and several subordinate chiefs, who had served in the armies of the United States under Gen. H. H. Sibley, accompanied by General Sibley and others of their friends among the whites in Minnesota, went to the law office of John B. & W. H. Sanborn, practicing attorneys at St. Paul, Minn., and made application to General Sanborn and his firm to prosecute their equitable claim against the United States for the recovery of the annuities and other property swept away from them while in the military service of the United States by the act of Congress aforesaid, approved February 16, 1863. This application resulted in negotiations between the Indians and the friends accompanying them and the said John B. Sanborn, and the result of said negotiations was a contract in writing, dated on or about July 3, 1877, obligating said Sanborn to "prosecute said claim with reasonable diligence and ordinary skill," and obligating said Indians to pay out of the sums collected thereon 33 per cent of the amount collected. Two hundred and twenty-two of these scouts and soldiers, most of them heads of families, and of large families, made separate and independent contracts of like character and obligations with said Sanborn, representing the great body of the Indians of the four bands who bore arms in the armies of the United States, while their bands were carrying on the war inaugurated August, 1862, and continuing to about the 1st day of January, 1865. (See pp. 747, 748, Senate Ex. Doc. No. 18, Fifty-second Congress, second session.)

Sixth. The Honorable Secretary of the Interior and the Honorable Commissioner of Indian Affairs failed to indorse their approval on said contracts, or any of them prior to September 19, 1882. And under the statute they remained void till so approved. On that day said 222 contracts received the approval of the Commissioner of Indian Affairs and of the Secretary of the Interior (see pp. 748, 749, Senate Ex. Doc. No. 18, Fifty-second Congress, second session), and for the first time became valid in law, if the modifications were accepted by claimant, which was done. In thus approving the contracts, the Honorable Commissioner of Indian Affairs and the Honorable Secretary of the Interior reduced the compensation to be paid for the services required to be performed under the contract by said Sanborn to 10 per cent on all

sums collected. (See p. 749, Ex. Doc. No. 18, aforesaid.) This change was communicated to said attorney October 19, 1882, by the Honorable Commissioner of Indian Affairs, in a letter containing the following language:

> In order that the contracts may he valid it is necessary that General Sanborn should file his acceptance of the modification of the rate of compensation.

Thereafterwards, on the 25th day of October, 1882, the said modifications were accepted by the said Sanborn in a written communication to the Honorable Commissioner of Indian Affairs, and thereupon became valid contracts from that date. Prior to that time, by the terms of our statute, they had been absolutely void.

Seventh. Immediately after the contracts thus became valid the said attorney commenced the prosecutions of the claims of said Indians and continued the prosecution with vigor and skill until the claims were allowed by the Commissioner of Indian Affairs and the Secretary of the Interior, March 24, 1888. (See House Report No. 1953, Fiftieth Congress, first session.) Money has been appropriated by Congress from time to time to pay the claims of the Indians thus prosecuted and recovered, commencing with the $376,578.37 appropriated by the twenty-seventh section of the Indian appropriation bill approved March 3, 1891, together with $18,400 annually since that time, making in the aggregate recovered and already paid, $468,578.77, with six more installments of $18,400 each recovered in the prosecution of said claim and remaining to be paid, making $110,400 more, or an aggregate sum of $578,978.77, to the scouts and soldiers on the Sisseton Reservation who are parties to the agreement.

Eighth. After the claim of the scouts and soldiers had been prosecuted to its allowance in the Interior Department, and before the money had been appropriated to pay the amount then due on December 12, 1889, the United States entered into a treaty with the Sisseton Indians whereby, among other things, the "United States stipulated and agreed to pay to the Sisseton and Wahpeton bands of Dakotas or Sioux Indians, parties hereto, per capita, the sum of $342,778.37, being the amount found to be due certain members of said bands of Indians, who served in the armies of the United States against their own people when at war with the United States, and their families and descendants, under the provisions of the fourth article of the treaty of July 23, 1851." (See article 3 of the treaty, p. 1037, 26 Stat. L.) The effect of this provision of the treaty, and of section 27 following the same, was to divert the money due on the claim, which had been prosecuted by the attorney and allowed to certain members of said bands of Indians, to all the Indians residing on the Sisseton Reservation, per capita, who are parties to the agreement, and its payment made to depend on residence, instead of loyalty and military service. Many of those who had come upon the reservation as the result of marriage relations, family ties, and family connections were from that class of Indians who were hostile to the United States in the war of 1862, and entitled to no consideration from the United States, and that provision of the treaty and section 27 were assented to by the United States on grounds of public policy alone, it seeming to be unwise to create two classes of annuitants on the same reservation. That portion of those Indians who had been active in the employment of General Sanborn, and in the prosecution of the claim, and were scouts and soldiers proper, paid him according to their agreement, but there were issued against the funds he recovered to the Indians residing on the Sisseton Reservation 376 checks, 10 per cent of which amounted to $22,296.35,

that did not pay to him said 10 per cent, or any other sum, failing and refusing to pay on different grounds; some on the ground that they were not scouts and soldiers, and that the money had been given them directly by Congress, or the United States, and that the fee should be paid by the United States; others, that more than twelve years had elapsed from the date of the contract of employment, although it was then less than ten years from the time the contract had been made valid, according to the notice given by the Department October 19, 1882, to General Sanborn. (Pp. 760, 761, Senate Ex. Doc. No. 18, Fifty-second Congress, second session.)

In attempting to carry into effect the provisions of section 27 of the act of March 3, 1891 (pp. 1038, 1039, U. S. Stat. L.), by the Secretary of the Interior, the question arose upon all the aforesaid facts as to what the construction should be of the words "And are yet in force," as used in said twenty-seventh section, the question depending wholly upon the date from which the contracts commenced to run. The words in the contract are, "This agreement and power shall run and continue and remain in full force for the term of twelve years." The literal date of the contracts was July 3, 1877. The date of the modification and approval of the contracts by the Commissioner of Indian Affairs and the Secretary of the Interior was September 19, 1882, and the acceptance of the modifications by the claimant, October 25, 1882, at which time the Department then ruled they became valid. The date of the allowance of the claim by the Department was the 24th day of March, A. D. 1888, and the date of the appropriation of the money to pay the claim by Congress was March 3, 1891, and the date of the payment of the same to the Indians was during the summer and autumn of 1891. As the question whether the contracts and powers were still in force depended upon the date when the twelve years that the claimant was to have to prosecute the claim commenced to run, a conflict of opinion arose in the Department as to whether or not the contracts were yet in force. The Assistant Attorney-General on duty in the Interior Department decided that the twelve years commenced to run from the date when the contracts became valid, instead of the literal date of the contracts, and hence that they were in force. This question was referred to the Attorney-General, who, on account of the precedents of the Department of Justice, recommended that it be referred to the Court of Claims, acting in such cases as an advisory board only to the Secretary. The case and question were so referred. All parties in interest introduced evidence in the court, and the court held upon the evidence that the claimant had performed all the terms and conditions of the contracts to be performed by him, but that the doctrine of relation applied to the case, and hence that its approval, modification, and acceptance by Sanborn related back to the literal date, July 3, 1877, and that the claimant had a little less than seven years in which to prosecute the claim, instead of twelve, according to the literal terms of the contract. The claimant sought an appeal, but the Court of Claims held that its jurisdiction in such a case did not extend to entering judgment, and hence that an appeal would not lie, and in this view was sustained by the Supreme Court of the United States. The Secretary of the Interior decided not to act adversely to this expressed view of the Court of Claims, and after the services were rendered withheld the compensation that the same Department had determined on October 19, 1882, and previously before they were rendered should be paid therefor. (See p. 750, Senate Ex. Doc. No. 18, Fifty-second Congress, second session.)

The claim was one of the most difficult to establish and recover of any

that can possibly exist against the Government, and was informally rejected several times and formally rejected once. It was prosecuted by the claimant with the greatest persistency, and, as the result shows, with the greatest success, the Indians receiving as the result of the service the allowance of a claim of $578,978.37. To secure this result they had employed on express contracts one of the oldest and largest practitioners at law in the West and an attorney with more familiarity with the laws and treaties pertaining to Indian affairs than any other in the country. The Indians and the Interior Department had fixed his compensation. He relied upon the contracts and action of the Department, and spent a vast amount of time and large sums of money in the prosecution of the claim, and it illy comports with ordinary justice for the Department and the United States to say before the services were rendered that 10 per cent of the money recovered be paid as compensation and after they have been rendered—and this fact has been determined by one of its own courts—to say that no compensation shall be paid.

If the United States has diverted the amounts recovered to other uses, the same should go charged with an equitable lien that should be paid by the United States. If the amount recovered has been applied to the payment of the particular persons for whom it was recovered, then the compensation should be paid according to the contracts.

We therefore recommend that section 27 of the act of March 3, 1891 (pp. 1038, 1039, U. S. Stat. L.), be so amended that the date of the contracts therein referred to be the time when the contracts became valid in fact and in law, so that the claimant could proceed to prosecute the claims thereunder, as decided by the officers of the Interior Department at that time, and that the amount due the claimant be stated upon that basis, and that a sufficient sum to pay the claim, when so ascertained, be appropriated out of any funds belonging to the Sisseton and Wahpeton Indians in the Treasury, and that the amount so paid be charged against the individual Indians who have paid nothing on account of the compensation due the claimant for the prosecution of said claim.

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