

MIAMI INDIANS OF INDIANA.

JANUARY 28, 1890.—Recommitted to the Committee on Indian Affairs and ordered to be printed.

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

REPORT:

[To accompany bill H. R. 253.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 253) to reimburse the Miami Indians of Indiana for money improperly withheld from them, submit the following report:

In 1854 the United States made a treaty with certain Indians known as the Miamis of Indiana, whereby it was agreed that certain persons belonging to said tribe, then residing in Indiana, should receive certain annuities and lands.

It was further expressly agreed that the number of persons thus residing was 302; and their names were at the time, by the United States officials, enrolled, in accordance with the terms of the treaty, in a list known as the "corrected list," made in the presence of and approved by the Commissioner of Indian Affairs then in office.

It was further expressly agreed that no persons other than these 302, together with the increase of their families and such other persons as should be received into tribal relation with them "by the consent of the said Miami Indians of Indiana, obtained in council, according to the custom of the Miami tribe of Indiana" (see book of Indian Treaties, p. 516), should be entitled to any portion of said annuities and lands.

It is admitted by the Attorney-General of the United States, in an official communication to Congress in 1867, as well as in the debates then had in Congress, that "the tribe in council never did, according to their custom, consent to the addition of those names or to their being paid," referring to the names of 73 persons other than the original 302 and the increase of their families, which were placed on the said "corrected list" by the Secretary of the Interior under the act of Congress of June 12, 1858, passed some four years after the treaty was made. (Congressional Globe, second session Thirty-ninth Congress, 1648, 1649.)

Under this act of 1858 the Secretary of the Interior, in October, 1858, placed on said "corrected list" 68 names of persons not received into the tribe, and 5 additional names in November, 1862; so that at that time 73 in all had been added who were not listed when the treaty was made, who had not been received into the tribe by action of its council, and who were not of the increase of the families of the original 302 listed persons. To these 73, who, with the increase of their families, in 1867 amounted to 119 persons, there was paid a ratable proportion of twelve annual payments of the annuities of the said original 302 Miami

Indians, to wit: of the payments for the years 1854-'55 to 1866-'67 inclusive.

The only authority claimed by the United States officials for making these payments, which clearly, not to say ruthlessly, violated the treaty of 1854, was this act of Congress passed in 1858; an act passed without consultation with the 302 listed Indians, and it is admitted upon all hands without their consent express or implied.

It is worthy of note, also, that this act of 1858 was a provision inserted as a Senate amendment in the supplemental Indian appropriation bill of that year. The following is the discussion in the Senate upon which the action was had.

Mr. SEBASTIAN. I offer another amendment as an additional section:

SEC. 7. *And be it further enacted*, That the Secretary of the Interior be, and he hereby is, authorized and directed to pay to such persons of Miami blood as have heretofore been excluded from the annuities of the tribe, since the removal of the Miamis in 1846, and since the treaty of 1854, and whose names are not included in the supplement to said treaty, their proportion of the tribal annuities from which they have been excluded; and he is also authorized and directed to enroll such persons upon the pay-list of said tribe, and cause their annuities to be paid to them in future: *Provided*, That the foregoing payments shall be in full of all claims for annuities arising out of previous treaties. And said Secretary is also authorized and directed to cause to be located for such persons each 200 acres of land, out of the tract of 70,000 acres reserved by the second article of the treaty of June 5, 1854, with the Miamis, to be held by such persons by the same tenure as the locations of individuals are held which have been made under the third article of said treaty.

Continuing, Mr. Sebastian says:

There is no appropriation from the Treasury in this amendment; it is a mere inter-tribal regulation between the Miamis of Indiana and a few families who have been improperly deprived of their annuities. It is to authorize the Secretary of the Interior to arrange and adjust the proportion of annuities among them, annuities already due by treaty.

Mr. HUNTER. Is this on the recommendation of the Department?

Mr. SEBASTIAN. The information is official and comes from the Department. They entertain no doubt as to the improper exclusion of the families mentioned in the amendment, but they do not recommend it. They thought it a matter properly referable to Congress, and the Committee on Indian Affairs report this as proper legislation by Congress.

Mr. FITCH. It is all right.

Mr. HUNTER. Does it commit us to make any appropriation—to take from one tribe to give to another?

Mr. FITCH. They are all the same tribe.

Mr. SEBASTIAN. This simply extends the pay-roll of the Indiana Miamis so as to include a few families who have heretofore been improperly excluded.

The amendment was agreed to.

The foregoing is the whole of the discussion in the Senate when the act of 1858 was passed. (Congressional Globe, first session Thirty-fifth Congress, p. 2822.)

Whether or not the act violated the terms of the treaty of 1854 was not discussed. That it violated this treaty by taking away from the original 302 listed Indians, and the increase of their families, over one-fourth of their lands and annuities, without their consent, without their knowledge, and in direct violation of their solemnly guaranteed treaty rights, was not even remotely hinted at in this slight and brief discussion.

No evidence whatever of any "improper exclusion" of the added Indians was placed before the Senate at that or any other time.

When this amendment came back to the House for concurrence, the debate upon it was and the facts adduced were still more meager, if possible, than when the measure was before the Senate.

There the House, on motion of Mr. J. Glancy Jones, on June 10, 1858,

went into Committee of the Whole House on the state of the Union to consider the Senate amendments to the the supplemental Indian appropriation bill. (Congressional Globe, first session Thirty-fifth Congress, p. 2910.)

The amendment (being act of 1858 under consideration) being in order, the consideration it received was as follows:

Mr. J. GLANCY JONES. Upon examination of the matter it was ascertained that some of the Miami Indians were omitted from the list. The amendment provides that they shall be reckoned in. It brings in a few Indians who were unjustly left out. The Committee of Ways and Means recommend a concurrence. The amendment was concurred in.

This was all the information given to the House. (Congressional Globe, first session Thirty-fifth Congress, pp. 2912, 2913.) Thus did Congress, in violation of the treaty of 1854, and of the rights of the persons to whom the treaty guaranteed them almost without consideration, and certainly without adequate proof, parcel out the moneys and lands of the 302 to those who by that treaty had no possible right to any portion of either land or moneys.

This was all done on the assumption that these 73 added persons had been "improperly excluded" by the treaty of 1854. But if this was so, why were not the 302 given an opportunity to defend against the charge? Surely the truth would have lost nothing by such an investigation. But the charge was not true. At the time of the repeal of this act of 1858, viz, in February, 1867, it was clearly shown that the 73 were not entitled to be listed with the 302 for two reasons: First, They were not of full Miami blood. Second, Their right to annuities and lands rested with the remainder of the tribe, which had chosen to emigrate west of the Mississippi under treaty stipulations with the United States, made in 1846 and 1854, and it was unjust, as well as violative of the treaty of 1854 to list them with the 302. And after a very full discussion Congress repealed the law of 1858 on these grounds. (Congressional Globe, second session Thirty-ninth Congress, pp. 1647, 1650.)

It is also worthy of notice that this repeal was had upon the motion of the Senate, where the mistaken action of 1858 first originated and came in by way of an amendment to the Indian appropriation bill of 1867, first proposed in the Senate (Congressional Globe, second session Thirty-ninth Congress, 1646, 1647). And the discussion in the Senate as to the propriety of the repeal was clear and full, and conclusively shows that the act of 1858 was a clear and palpable violation of the treaty of 1854, and upon the repeal of the law the 73 persons, together with the increase of their families, were dropped from the list and have been paid nothing since 1867.

But this action of Congress was only a partial reparation for the wrong committed by the act of 1858. It only stopped the wrongful payment. It did not make restitution of the lands and moneys wrongfully diverted. It is too late now to correct the wrong as to the lands so taken, for the rights of innocent purchasers have intervened and render that impracticable. But it is not too late to restore the moneys, which have never been refunded.

During most of the years from 1858 to 1867 the 302 strenuously objected to the payments of which they now complain. A bill (H. R. 2099, first session Fiftieth Congress) was introduced into the House by the Hon. George W. Steele, then representing the district in which these Indians reside, and upon his inquiry of the Commissioner of

Indian Affairs on this point while the bill was being considered in committee, he received the following reply and document, viz :

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The undersigned, your petitioners, would, to your honorable body, most respectfully represent that they are Miami Indians, residing in the State of Indiana, and that they and their families and the persons whom they represent are the individuals referred to as the Miami Indians in the Senate amendment to the fourth article of the treaty of the 5th of June, 1854, between the United States and the Miami Indians, and whose names are embraced in the corrected list referred to in said treaty amendment; and your petitioners respectfully call your attention to that provision which stipulates that no person other than those embraced in the corrected list agreed upon by the Miamis of Indiana, in the presence of the Commissioner of Indian Affairs, in June, 1854, comprising 302 names, as Miami Indians of Indiana, and the increase of the families embraced in said corrected list, shall be recipients of the payments, annuities, commutations, moneys, and interests hereby stipulated to be paid to the Miamis of Indiana, unless other persons shall be added to said list by the consent of said Miami Indians of Indiana, obtained in council, according to the custom of the Miami Indians of Indiana.

Your petitioners further show that the Secretary of the Interior, in pursuance of the third section of an act of Congress approved June 12, 1858, entitled "An act making supplementary appropriations 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, 1859," has caused to be added to said list the names of some sixty persons, as we are informed. That the same have been added without our consent and against our wishes, and have been paid out of our moneys. That we conceive that if the section of the act referred to was intended to refer to the Miamis of Indiana, as it is construed by the Commissioner of Indian Affairs, it is in direct violation of said treaty.

Your petitioners, therefore, humbly pray that said third section of the act referred to, or so much thereof as violates their rights and appropriates their money for the benefit of persons whom they do not recognize, may be repealed, and that the moneys heretofore diverted to that purpose may be refunded. And in duty bound your petitioners will ever pray, etc.

Done in council on the 1st day of February, 1859, at the house of Gabriel Godfrey, on the Mississinewa River, Miami County, Indiana.

(Signed with an x mark :)

John B. Bronellitt or Te-quah-yah, Peter Bondie or Waw-pow-pe-tah, Me-shing-ome-sha. Pim-y-tine-aw, Kil-oc-com-ach, La-maw-wah, Shaw-aw-pe-ne-maw, Waw-caw-co-now, Po-con-ge-ah, Len-e-pe-shew-saw, Waw-pe-man-gnaw, Po-can-ge-ah, Ah-toh-a-toh, Pe-me-to-sin-wah, Ke-oh-cat-wah, Shp-pen-do-ciah, Ke-oh-cat-wah, Pa-len-swah, My-ac-gne-ah, Gabriel Godfrey, We-shing Goodboe, So-mile-le-jes-ion, Sho-quang-oh, William Godfrey, Tow-wah-quah-ley.

Hon. GEORGE W. STEELE :

No written protest was filed by Miami Indians at each payment against allowing Indians placed on roll in 1858 to participate in annuities. Several of the agents making payments, however, report that these Indians were objected to.

J. D. C. ATKINS,
Commissioner.

It may be claimed that these Indians occupied the relation of wards to the United States Government, and therefore Congress had the right to pass the act of 1858, notwithstanding it violated the treaty of 1854. As a matter of mere force Congress could so act, but certainly not as a matter of conscience and right. Your committee know of no principle of guardianship which protects the guardian in appropriating the property of one ward to the use of another ward. Besides, these Indians are now and for many years have been resident citizens and voters in the State of Indiana, and were such when the act of 1858 was passed.

As to the amount that should be refunded, your committee fix it at the sum of \$48,072.69; this being the amount as computed by the Interior Department in its communication to Hon. George W. Steele under date of February 14, 1887, as follows:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, February 14, 1887.

SIR: In compliance with your verbal request, I submit the following statement in reference to certain Miami Indians of your State who were, under act of June 12, 1858 (U. S. Stats., 11, p. 332), enrolled with the 302 persons named in the Senate amendment to the treaty of 1854 (U. S. Stats., 10, p. 1099). * * *

Repeated efforts have been made in this office to trace the original 73 persons who were added to the Miami rolls of 1854-'55 through the rolls for the subsequent twelve payments, but owing to the brief manner of enrolling Indians for payment followed some years back, and the frequent changes in the family relations and manner of spelling Indian names, this was found to be impracticable; neither can the 119 persons finally excluded under the opinion of the Attorney-General be traced back for the same reasons, but it is believed that the total amount paid to these 73 or 119 persons named can be arrived at sufficiently close to satisfy all parties by the following method, viz: To find the number who drew a share of this money each year from 1854 to 1867, inclusive, we must first take from the 119 excluded 11 who were born subsequent to the payment of 1867, as appears by the records in this office, which leaves but 108 who actually shared in the payment of 1867 or could have shared in the other payments. To this 108 we add the original 73, making 181, which, divided by 2, gives an average enrollment for the thirteen years of 90½. In the same way we take the amount of one per capita share as the same appears on the rolls for each of the thirteen years in question, viz:

Fiscal year.	Amount.	Fiscal year.	Amount.
1854-'55	\$41.49	1862-'63	\$67.00
1855-'56	55.50	1863-'64	25.00
1856-'57	64.66	1864-'65	25.00
1857-'58	52.11	1865-'66	51.05
1858-'59	43.85	1866-'67
1859-'60	48.71		
1860-'61	28.51	Total	531.19
1861-'62	28.51		

Which, multiplied by 90½, the average number of the 73 or 108 who shared in these payments, gives \$48,072.69 as the total amount so paid, or say, in round numbers, \$48,000, which is no doubt very nearly correct—I should think sufficiently so for Congress to act upon in case it is proposed to pay it or any part of it to the original 302 persons on the corrected list of 1854 and to their descendants. * * *

Respectfully,

J. D. C. ATKINS,
Commissioner.

Hon. GEORGE W. STEELE,
House of Representatives.

Regarding the claim set out in the bill under consideration for attorney fees, claimed to have been paid, your committee are of opinion it should not be refunded. We place this opinion on the ground that in this matter these Indians upon the one hand and the U. S. on the other are by this bill placed in the attitude of litigants before a court of equity. That the act of 1858, under which the payments complained of were made, was regularly, though as we believe mistakenly, passed; yet we are bound to presume it was an honest mistake; and as the fees were incurred principally in securing the legislation by which the 73 persons and the increase of their families were excluded from the roll, we think it should not in equity give the prevailing party the right to recover attorney fees.

Upon the question of interest on the sum herein recommended to be paid your committee think the case one in which interest should not

be allowed. From 1867 to the year 1887 no action was taken by these Indians which invoked the action of Congress upon this particular claim to have these moneys refunded. We think Congress would have refunded the sum due long since if a proper attempt had been made to invoke its aid; but that not having been done, we apply a principle analogous to the statute of limitations as to the interest, and refuse to pay it.

Your committee also think that the bill should be further amended by providing that the acceptance of the sum herein recommended to be paid shall be considered a release of all further claim of any and every kind arising out of this matter. We therefore recommend that the bill be amended as follows:

In line 5, of section 1, immediately after the word "Indiana," insert the words "being 302 persons listed on the corrected list under the treaty of June 5, 1854, and the increase of their families."

Also in lines 5 and 6 of said section 1, strike out the words "ninety-one thousand seven hundred and thirty" and in their stead insert the words "forty-eight thousand seventy-two and sixty-nine one-hundredths."

Also in line 9 change the word "treaties" to "treaty."

Also in lines 9, 10, and 11 of said section 1, strike out the words "or eighteen hundred and fifty-eight, or so much of said sum as may in equity be found to be due to said Miami Indians of said State."

Also add the following proviso to the end of said section 1 as above recommended to be amended, viz:

Provided, That the sum hereby appropriated shall be in full settlement of any and all claims in favor of said Miami Indians, or any of them, arising out of any and all alleged violations of the terms of said treaty of June 5, 1854, on the part of the United States Government.

Also strike out the whole of section 2 of said bill, and in line 1 of section 3 of said bill strike out the figure "3" and insert the figure "2."

And as thus amended we recommend the passage of the bill.