

MISSOURI—EXTENSION OF WESTERN BOUNDARY.

[To accompany bill H. R. No. 381.]

HOUSE OF REPRESENTATIVES, *February 12, 1836.*

On motion of Mr. Ashley,

*Resolved*, That the Committee on Indian Affairs be instructed to inquire whether the Indian title is or is not extinguished to the slip of land lying between the western boundary of the State of Missouri and the Missouri river, and if not to inquire into the expediency of providing by law for its entire extinguishment.

FEBRUARY 26, 1836.

Mr. H. EVERETT, from the Committee on Indian Affairs, made the following

REPORT:

*The Committee on Indian Affairs having had the foregoing resolution under consideration, submit the following report:*

The ultimate object of the resolution, as explained by the mover, is to annex the slip of land to the State of Missouri, whenever the Indian title shall be extinguished. The committee wish to present this to the House, in the outset of their report, as the only consideration that gives importance to the inquiries.

On the 15th July, 1830, a treaty was concluded at Prairie du Chien, between the United States, on the one part, and the confederated tribes of the Sacs and Foxes; the Medawah, Kanton, Wapacoota, Wappeton and Sisseton bands or tribes of Sioux; the Omahas, Ioways, Otoes, and Missourias, on the other part. These tribes were then living on the lands described in the first article of the treaty, and on other lands adjoining on the north. The object of this article was to concentrate them within the boundaries therein described; and, if they contained more land than was sufficient for their support, to enable the United States to locate other tribes within that territory; and for the purpose of effecting the latter object authority was given to the President to allot and assign to each of the resident tribes distinct portions of the territory, and to locate other tribes on the remainder. The slip of land mentioned in the resolution is contained within those boundaries.

The first article is as follows:

"Article 1. The said tribes cede and relinquish to the United States forever, all their right and title to the lands lying within the following boundaries, to wit: beginning at the upper fork of the Des Moines river, and passing the sources of the Little Sioux, and Floyd's river to the fork of the

first creek which falls into the Big Sioux or Calumet river, on the east side; thence down said creek, and Calumet river to the Missouri river; thence down said Missouri river to the Missouri State line, above the Kansas; thence along said line to the northwest corner of the said State; thence to the highlands, between the waters falling into the Missouri and Demoine, passing to said highlands along the dividing ridge between the forks of the Grand river; thence along said highlands or ridge, separating the waters of the Missouri from those of the Demoine to a point opposite the source of Boyer river; and thence in a direct line to the upper fork of the Demoine, the place of beginning. *But it is understood that the lands ceded and relinquished by this treaty are to be assigned and allotted, under the direction of the President of the United States, to the tribes now living thereon, or to such other tribes as the President may locate thereon; for hunting and other purposes.*"

This article does not extinguish the Indian title, but only modifies it. It is not a cession for the use of the United States, but a cession in trust, for the purposes, and for the purposes only, specified in the last sentence of the article: first, for the use of the tribes then living on the lands ceded; secondly, for the use of such other tribes as should be located thereon. The uses of the cession being expressed, all others are necessarily excluded. Though whenever portions of the land should be assigned and allotted to the resident tribes, the immediate parties to the treaty, their right of soil to the residue would be extinguished; yet the trust would remain, and they would be entitled to insist on its execution. The cession guaranties to them an entire community of Indian tribes, and withholds from the United States the power of distracting this community by interposing white settlements between their tribes. This guaranty, necessarily implied from the use expressed, was the basis of the treaty, and inures, not only to the resident tribes parties to it, but to all the tribes that should thereafter be located, on the faith of that treaty.

At the date of the treaty, the Ioways resided in the southerly part of the Territory, between the State of Missouri and the Missouri river, where they yet reside. If any of the other tribes who were parties to the treaty, then resided in that territory, they have since withdrawn from it; and no other tribe has been located upon it.

It does not appear that any assignment or allotment of portions of the ceded territory, has ever been made by the President, as contemplated by the treaty; but that the several tribes and bands have withdrawn within limits fixed by themselves, and which are respected by each other, and have not been objected to on our part, but have at least in one instance been recognized by a treaty, which will be hereafter referred to. With the exception then of the Ioways, there are no tribes now residing on the ceded territory west of the State of Missouri; and from the acts of the tribes, and the acquiescence of the United States, the inference may be fairly drawn, that the United States may now locate any other tribe on all or any part not in the possession of the Ioways; and that for this purpose, the title of the tribes, parties to the treaty, is extinguished. But that for the purpose of appropriating the territory for any other use, the Indian title is not extinguished.

The committee are next directed to inquire into the expediency of providing by law for its entire extinguishment. This involves the questions, whether it can be done consistently with the implied guaranty of the

treaty of 1830 ; in what manner it can be done ; and for what reason it should be done ?

The committee are of opinion that it may be done without violating the guaranty of the treaty. The principle of that guaranty is to preserve the community of Indian tribes entire. It would be violated by interposing white settlements among them. What is now contemplated, is to obtain a relinquishment of a portion on one extreme of their territory, by removing it to ways to such other vacant parts of the ceded land, or such territory of the United States, as they may agree to accept as an equivalent. The spirit of the guaranty is for the security of the contiguous residence of the tribes, and this will not be impaired by the relinquishment proposed. There is nothing in the guaranty that would prevent their acquiring additional territory on one border, and relinquishing for an equivalent on the other ; or indeed, if all the tribes and bands now on the territory should desire it, from ceding the whole, and removing to any other part of the United States territory which should be ceded to them in exchange.

From the principles already advanced, it follows, that the extinguishment of the Indian title to the lands in question, can be effected only by the consent of all the Indian tribes now resident on the ceded territory, whether parties to the treaty or since located upon it, by the act of the Government. The tribes now resident on the ceded lands, are the tribes and bands which were parties to the treaty of 1830, and the united nation of the Chippewas, Otoes, and Pottawatamies, located thereon by the treaties of 1833 and 1834, ratified in 1835.

The assent of the united nation of Chippewas, Otoes, and Pottawatamies, has been obtained. By the treaty of Chicago, concluded with them on the 26th September, 1833, they were to be located on lands, a part of which lay west of the State of Missouri. This treaty was laid before the Senate for ratification at the next session of Congress. (1833-4.) During that session, the subject of annexing the slip of land in question to the State of Missouri, was brought incidentally under the consideration of the Committee on Indian Affairs. In their report, in reference to the boundaries of the western territory, made to the House on the 20th May, 1834, they say, "*The lands between the State of Missouri and the Missouri river, are not included within the western territory. It will be obvious from an inspection of the map, that an outlet through those lands will be necessary to the people of Missouri, and that their convenience will require an extension of their western boundary to that river.*" On the 22d May, two days after the report, the treaty was ratified with an amendment, having the same object in view, viz: "*Provided, that the lands given to the said Indians, in exchange, in place of being bounded in the manner described in the treaty,*" [viz. beginning at the mouth of Boyer's river, on the east side of the Missouri river ; thence down the said river to the mouth of the Raudowny river ; thence due east to the west line of the State of Missouri ; thence along the said State line, to the northwest corner of the State ; thence, &c. &c.] "*be so changed that the first line shall begin at the mouth of Boyer's river, and run down the Missouri to a point thereon, from which a line running due east, will strike the northwestern corner of the State of Missouri ; from that point due east till it strikes the said northwest corner ; thence, &c. &c.*" Thus requiring of the Indians, the relinquishment of that part of their proposed location, which lay west of the State of Missouri.

Immediately after this, the same subject was brought directly before the House of Representatives. During the same session (of 1833-4) a bill had been reported by its Committee on the Territories, "*authorizing the President of the United States, to run and mark the line dividing the territory of the United States from the State of Missouri.*" On the 5th June, 1834, the bill was amended in Committee of the Whole, (and reported as amended to the House) by directing the line to be run from the mouth of the Kansas river, "*up the Missouri river until it shall reach the parallel of latitude which passes through the rapids of the Demoine in the river Mississippi, and from thence to the Mississippi river, &c. &c.*" and by adding the following section :

"SEC. 4. *And be it further enacted, That all that part of the territory of the United States embraced within the boundaries aforesaid, which was not originally included within the State of Mississippi, be, and the same is hereby, attached to, and shall form a part of, the State of Missouri, and the sovereignty, jurisdiction, and laws of the said State shall extend over the said ceded territory, in the same manner, and under the same conditions, as if the same had originally, on the admission of the State of Missouri into the Union, been included within its limits: Provided, That nothing in this act shall be construed to convey to the State of Missouri any right or title to any lands now belonging to the United States.*"

On the same day, these amendments were concurred in by the House, and after being further amended, were postponed, and not again taken up on account of the press of business at the close of the session.

Subsequent to these proceedings, on the 1st October, 1834, the said united nation agreed to the amendment to the treaty proposed by the Senate; and on the 21st February, 1835, the treaty, as thus modified, was definitively ratified. It is obvious from this history of the treaty, that its purpose and object was well understood by all parties; and that no further assent is necessary, on the part of said united nations, to the proposed extension of the western boundary of Missouri.

The assent of the other tribes now residing on the ceded territory is necessary. They have, however, with the exception of the Ioways, no interest in the soil, west of the State of Missouri; they have no pecuniary interest at stake. They have the right to insist that none but Indians of other tribes shall be located on it; but, having had, or rather taken, their portions, have no right to ask any part of it for themselves. It cannot be material to them, whether other tribes are located on their right or on their left. They have, however, a political interest in the extent of country to be assigned to the community of Indians of which they are to be a part; and if their limits without the territory between the State of Missouri and the river Missouri, is not sufficient for such community, they have a right to insist that an equal extent of other adjoining territory shall be substituted for the same purposes, or for the location of such other tribes as the President may think proper to place there, but for no other purpose. It is believed, however, that their remaining limits will be sufficient for the location of all the tribes intended to be removed, and that no substitution of territory will be required.

The Ioways may be considered as having some claim to remain in their present location, and with them a separate arrangement may be necessary. Whether they will remove north of the State of Missouri, or to vacant lands on the other side of the Missouri, should be left to them to determine.

Thus by the assent of the tribes now on the ceded territory, and probably with very little pecuniary consideration, it is supposed that the Indian title to the lands in question, may be extinguished.

The remaining consideration is, whether provision ought to be made by law for its extinguishment.

The only reason on which it can commend itself to the House is, that when the Indian title shall be extinguished, the lands ought to be ceded to, and form a part of, the State of Missouri; and the committee deem this to be a sufficient reason.

When the State of Missouri was admitted into the Union, and its western boundary (a line of longitude) fixed, the expectation was that other States would be formed on its west; as a division between States of the Union, a longitude line was naturally adopted. The use of the Missouri river would have been equally convenient to the people of Missouri, whether it was their border line, or within the territory of another State, where they would have equal rights. Since that period, however, the United States have adopted the policy of locating the Indian tribes on the territory west of the Mississippi, and their location has placed them on the frontier of Missouri; and thus leaving the Missouri river, for about 100 miles, wholly within the Indian country, and accessible to the people of that State only through Indian tribes: tribes who, having a right to make their own laws, may subject the navigation of the river to their own license. The north-west section of Missouri must look to that river as the outlet for their produce. In places, the slip is not more than five miles wide, and, at the greatest width not exceeding, in a direct line, fifty miles. The convenience of the people of that State, in the opinion of the committee, require that this slip of land should, in no event, become a barrier between them and the Missouri river.

Rivers will also be found to be the most convenient boundaries between the Indians and the white people. They do not subject the parties to the petty vexations arising from the uncertainty of the line or from the proximity of possessions; and they will afford protection against the more deliberate trespasses and encroachments of the evil disposed on both sides. In the present case, it is believed the river, as a boundary, will be much preferred by the Indians on the other side of the river, who are equally interested, with the people of Missouri, in having a well defined boundary.

It is not perceived that any well founded objection against the proposed change of boundary can be made. No other State is proposed to be affected by it. The lands proposed to be ceded to Missouri are not to be taken from a territory that is now proposed ever to be included in a State, but from a country set apart for the emigrant and other Indians. It is not intended to affect the pecuniary interests of the United States. The original right of soil is not to be granted to the State of Missouri; after the cession, the property in the lands will remain in the United States, to be disposed of as other public lands. The quantity is estimated on the map at 1,391,600 acres,\* and to be of an average quality; and it is believed it will produce, on sale, a fair equivalent for any lands, or other consideration, that it may be necessary to give for the entire extinguishment of the Indian title. The extent of country to be added to Missouri is not of sufficient magnitude as to excite jealousy on the part of the other States.

\* This is probably an over estimate, by at least one-third. The course of the river is not laid down from actual survey.

The committee being then of the opinion that provision ought to be made for the entire extinguishment of the Indian title to the lands between the State of Missouri and the Missouri river, have instructed their reporter to move an amendment to the bill making Indian appropriations for the Indian Department (No. 70) for an appropriation of two thousand dollars, to enable the President to hold treaties for the purpose of extinguishing the title. They have limited it to this sum, believing that the formal appointment of commissioners would not be necessary; but that the object might be effected by the Indian agent, under the direction of the President.

To carry into effect the ultimate object of the resolution, and to bring the whole subject before the House, the committee report a bill, entitled "A bill to extend the western boundary of the State of Missouri to the Missouri river."

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*Amendment to be moved to the Indian appropriation bill, No. 70.*

"For holding treaties with the Indian tribes, for the purpose of extinguishing the Indian title to all lands lying between the State of Missouri and the Missouri river, two thousand dollars."

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A BILL to extend the western boundary of the State of Missouri to the Missouri river.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when the Indian title to all the lands lying between the State of Missouri and the Missouri river shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the State of Missouri, and the western boundary of said State shall be then extended to the Missouri river: reserving to the United States the original right of soil in said lands, and of disposing of the same. Provided, That this act shall not take effect until the President shall, by proclamation, declare that the Indian title to said lands has been extinguished.*