

ISAAC P. SIMONTON—LEGAL REPRESENTATIVES OF.

[To accompany bill H. R. No. 53.]

DECEMBER 20, 1853.

Mr. MACE, from the Committee of Claims, made the following

REPORT.

*The Committee of Claims, to whom was referred the claim of the legal representatives of Isaac P. Simonton, deceased, report:*

That the annexed statement of Ebenezer M. Chamberlain, and the letters from the Department of the Interior, set forth the facts of this claim. The report made on the 7th of April, 1848, on the claim of T. S. Wendell, by the Committee on Indian Affairs of the Senate, is also annexed.

The committee report, herewith, a bill for the relief of the claimants, and recommend its passage.

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

The undersigned, as agent and attorney of Samuel Simonton, esq., late of Elkhart county, Indiana, now deceased, who was administrator of the estate of Captain Isaac P. Simonton, late of the United States army, deceased, did, on the 20th day of August, 1850, address a letter to the honorable Graham N. Fitch, Representative in Congress from this district, of which the following is a copy:

"DEAR SIR: Allow me, at the earnest solicitation of Samuel Simonton, esq., of this county, to call your attention once more to the claim of his son, the late Captain Isaac P. Simonton, of the United States army, deceased, for the sum of \$800, allowed him in the treaty with the Chippewa nation of Indians, concluded January 14, 1837, and ratified July 2, 1838.

"This claim, the old gentleman assures me, was for money actually loaned by his son (the captain) to one of the chiefs of that nation; but no such argument as this, certainly, can be necessary in a case like this, where, by the express provisions of a solemn treaty with the United States, the debt is admitted, the sum liquidated and absolutely allowed, and the appropriation made (in lands) for its payment. And, in the

same treaty, the United States agree to advance the money to pay it, together with other claims, &c.; the amount for that purpose—\$12,243 75—being first expressly set apart out of the fund created by the sale of the lands, &c.; which lands were to be surveyed in the usual manner, and offered for sale, as other public lands, as soon as practicable, &c.

“This treaty was ratified more than twelve years ago. Is it possible that those lands are not yet in market? or, if so, that they will not sell, ‘as other public lands,’ at \$1 25 per acre? All this, however, is in view of the worst side of the case. The second treaty, (that of December 20, 1837,) as I understand it, only modifies the first, (that of January 14, 1837) relative to this claim, among others, as to the liability of the United States, ‘at that time,’ to advance the *entire amount* appropriated by said treaty for that purpose. (See article third of the second treaty.)

“Is it not, however, clearly contemplated, by article third, that the United States should advance a considerable portion thereof in any event? And, further, is it not equally clear that the United States were to advance the ‘entire amount,’ before the lapse of an unreasonable time, if not realized from sales of the lands? If so, allow me to ask, whether, if this matter were properly presented, and pressed upon the consideration of the government, it would not be considered that the lapse of more than twelve years was a period of time within which it should fulfil its solemn treaty obligations?

“If it were a disputed claim, it would be a different thing; but it is not such an one. Government has both admitted it, twelve years ago, and promised to pay it. Why is it not paid?”

The original of the above letter was, by Mr. Fitch, laid before the Department of the Interior; in reply to which he received the two letters hereunto attached; and which, as part of this memorial, are herewith presented for the consideration of your honorable body.

Your memorialist would add, as a reason for bringing this claim immediately to your notice, before the appointment of an administrator *de bonis non*, for the necessary appropriation, that it was deemed important to have the facts before you, and the necessary investigation and action had, before your attention becomes too entirely engrossed later in this short session with the weightier affairs of the nation. The death of the administrator is recent; and some little time must elapse before his successor can be appointed.

And your memorialist, as in duty bound, &c.

EBENEZER M. CHAMBERLAIN,

*Agent and attorney for the heirs and legal representatives.*

---

DEPARTMENT OF THE INTERIOR,

*Office of Indian Affairs, September 17, 1850.*

SIR: I have had the honor to receive your letter of the 16th instant, enclosing one to yourself from Judge Chamberlain, making inquiry in relation to a claim of Isaac P. Simonton, deceased, for an allowance

made to him in the schedule attached to the treaty of 1837 with the Chippewas of Saginaw.

A similar application was recently made, in another case, by the Hon. Mr. Evans, who received the only reply that could be made, in relation to the case presented by him, which was precisely similar to that of Mr. Simonton. A copy of that reply I enclose, as an answer to the letter of Judge Chamberlain.

Very respectfully, your most obedient,

A. S. LOUGHERY,  
*Acting Commissioner.*

Hon. G. N. FITCH,  
*House of Representatives.*

[The letter of Mr. Chamberlain is herewith returned.]

DEPARTMENT OF THE INTERIOR,  
*Office of Indian Affairs, July 1, 1850.*

SIR: I beg leave, respectfully, to report on the letter from the Hon. George Evans to you, of April 26 last, which was referred to this office on the 29th of the same month.

The papers enclosed by Mr. Evans have reference to the claims of sundry individuals, the payment of which is provided for in the eighth clause of the fourth article of the treaty concluded with the Chippewas of Saginaw on the 14th January, 1837.

According to the terms of the treaty, the claims referred to are to be paid out of the proceeds of the lands ceded by it. Up to the present time, the government has not realized a sufficient amount from the sales to reimburse the advance it made to the Indians; as a consequence, unless Congress shall authorize it, and make the necessary appropriation, this department has no funds applicable to the payment of the claims in question.

A claim of the same character has been paid, under the special legislation of Congress, in favor of the claimant's assignee, viz: Henry D. Garrison. (See Pamphlet Laws, 2d Session 30th Congress, page 134.) The action of Congress was had, on the application of the holder of the claim in the form of a petition; and I find that a report was made upon it from this office to the Hon. John Bell, of the Committee on Indian Affairs of the Senate, on the 14th of January, 1848.

Very, &c.,

A. S. LOUGHERY,  
*Chief Clerk.*

Hon. THOMAS EWING,  
*Secretary of the Interior.*

IN SENATE OF THE UNITED STATES—April 7, 1848.

*The Committee on Indian Affairs, to whom were referred the documents relative to the claim of T. S. Wendell, and the resolution of the 17th of February, 1848, instructing said committee "to inquire into the present condition of the fund arising from the sale of the lands ceded by the treaty of January 14, 1837, with the Saginaw band of Chippewa Indians, which were to be disposed of for their benefit; what measures are required to effect a sale of said lands at an early period, and at a fair price, or whether it may be expedient so to legislate that the lands may at once become the property of the United States, and a fair compensation be made to the Indians for them, and whether, in justice and equity, provision should not now be made, in anticipation of the sale of the lands, or as a part of such compensation if they are taken by the government, for the payment of the class of obligations provided for in said treaty, and embraced in schedule B, which were not provided for, out of the amount advanced by the United States for other obligations and objects provided for in the same treaty," make the following report:*

The claim of T. S. Wendell (but which, from the papers filed, seems to have been assigned by Mah-in-gun, the original holder, to H. P. Garrison) arises out of the treaty of January 14, 1837, being one of the claims in schedule B, in said treaty, and referred to in said resolution, and another treaty, amendatory thereto, of December 20, 1837, with the Saginaw band of Chippewa Indians.—(7 U. S. Statutes at Large, 528, 548.)

The nature of the claim, and the circumstances which have prevented its payment, are so clearly and fully set forth in the letter of the Commissioner of Indian Affairs on a similar claim, (document A, annexed to and made a part of this report,) that no further explanation is necessary. The whole sum stipulated to be advanced in the first instance, omitting certain small annuities for vaccine matter and tobacco, amounted to \$127,243 75, of which \$75,000 have been paid under the direction of the President, leaving \$52,243 75 yet to be paid. The proceeds of the sales of the land sold up to this time amount to \$19,836, and there are about 95,000 acres yet unsold.

By a subsequent treaty of January 23, 1838, it was agreed that "any of said lands remaining unsold at the expiration of five years from the expiration of this treaty, shall be sold for such sum as it will command: *Provided*, That no such sale shall be made for less than seventy-five cents per acre."

Some of the treaties referred to were so clumsily drawn, and so contradictory, that on the suggestion of the Commissioner of Indian Affairs, in his report of 1842-'43, (Senate document No. 1, 1st session 28th Congress, page 267,) Congress, on the 17th of June, 1844, on the recommendation of the Committee on Indian Affairs of the House of Representatives, (House document 27, 1st session 28th Congress,) passed an act explanatory of the treaty of the 23d of January, 1838, providing that said treaty "shall be so construed as to prevent the sales of the land ceded by said treaty for a less sum than two dollars and fifty cents per acre, from and after the 1st day of September, 1843, and

that the minimum price of said lands, from and after that day, shall be two dollars and fifty cents per acre."—(5 U. S. Laws, 680.)

This act not only explains the treaty of 1838, but the last clause of it contains a provision not in any of the treaties, but directly contrary to the provision which stipulates that after a certain time the land ceded should be "sold for such sum as it will command: *Provided*, That no sale shall be made for a less sum than *seventy-five cents per acre*."

This act of 1844 was passed at the request of the Indians, to prevent the sale of the lands ceded at a low rate. It has had the effect of almost preventing the sales entirely. Doubtless Congress and the executive authority of the government have often assumed the power to deal with Indian treaties not as with other treaties, but as laws or propositions or systems of policy that may be changed at the will of the government. The committee see no reason to find fault with such a course. It is, perhaps, founded; in wisdom, and is a necessary consequence of the state of pupillage to the United States in which the Indians stand. But this course of policy brings with it certain responsibilities which the government ought to meet. When these treaties contain stipulations in favor of individuals, any change made by the government depriving them of the benefit of such stipulations, or lessening their value, or postponing the time of their execution, it seems to the committee, may give rise to just claims for indemnity. Was the act of 1844 such an act as this? Did it postpone, or lessen, or destroy the rights of those holding the claims in schedule B, of which the memorialist is one? How is he to get his money, if the land ceded is to be sold at \$2 50 per acre, when so little has been sold after a lapse of so many years?

It may be urged that such claims as are provided for in schedule B, have often been put into Indian treaties, through fraud or for purposes of speculation, and without being founded in justice or equity, and that the practice has now been adopted of not approving such stipulations. No doubt the principle now acted upon is a correct one, but it ought to have a prospective and not a retrospective effect—to be applied to future, but not to past, treaties containing such clauses.

It cannot be ascertained how much these lands will sell for, nor is it known what deduction is to be made for the expenses of the sale under the provisions of the treaty before the net proceeds can be applied to the payment of these claims, but it is not at all probable that enough can be thus raised to pay all these claims.

The question then arises, shall the United States now assume the balance of these claims, say \$52,243 75, that yet remain unpaid? The question is not free from doubt. It was first stipulated that the whole sum should be advanced. Afterwards it was agreed, "that said treaty shall not obligate the United States, *at the present time*, to advance from the treasury the entire amount appropriated to said tribe in the 4th article of said treaty." Do not these terms imply that the money should be paid at such time thereafter, as it should be ascertained that the amount could not be realized from the land? It should be remarked that two sets of the claims set apart by the 4th article of the treaty to be paid were for unascertained demands, but put down at \$50,000, for "the payment of their debts," and "for compensating American

citizens upon whose property this tribe had committed depredations after the surrender of Detroit, in 1812."

If the claim now under consideration should be paid, it would settle the principle only that the claims embraced in the schedule B, which were ascertained at the time of the treaty, should be paid, and which amount to \$12,248 75. The question as to the others unpaid out of the \$75,000 heretofore applied to them, would still remain open, and perhaps would not be demanded until the whole of the land was disposed of and this complex affair closed. The land purchased ought now certainly to be sold at a reduced price, as contemplated by the treaties, as ample time has been allowed for selling it at the higher prices of five, and afterwards of two dollars and fifty cents per acre.

The committee, after all the examination and reflection they have been able to bestow on the subject, are of opinion that the only way in which the obligations of the several treaties can be complied with, and full justice done to the Indians and the claimants in schedule B, is to sell the land ceded at the ordinary price of other public land, and to pay, without further delay, the claim of the memorialist, which is one of them, and report bills accordingly.

---

A.

WAR DEPARTMENT,  
*Office Indian Affairs, January 18, 1847.*

SIR: I have had the honor to receive your note of 6th instant, enclosing the petition of Samuel Simonton, respecting which you desire that I will lay before the Committee on Indian Affairs the facts in the case, and the reasons for not granting him relief in this department.

The petitioner represents that the 4th article of the treaty of 1837, with the Saginaw band of Chippewa Indians, provided that the sum of \$800 should be paid to Isaac P. Simonton out of the proceeds of the sale of the lands ceded by said Indians to the United States; that the said Isaac P. Simonton is dead, and that the petitioner, "as the heir-at-law" of said Simonton, has often "applied to the War Department for said sum of money, but has as often been informed that money to pay the same has not been realized from said lands," &c., &c., and therefore prays Congress to pass an act for his relief.

By the treaty with the Saginaw tribe of the Chippewa nation of Indians of 14th January, 1837, and those amendatory thereto, there was ceded to the United States 102,400 acres of land, for which, according to the terms of the third article, the United States agreed to pay said Indians the net proceeds of the sales, "after deducting the expense of survey and sale, together with the incidental expenses of the treaty." The same article also provides that "a special account of the sales shall be kept at the treasury, indicating the receipts from this source, and after deducting therefrom the sums hereinafter set apart for specified objects, together with all other sums justly chargeable to the fund, the balance shall be invested, under the direction of the President, in some public stock, and the interest thereof shall be annually paid to



the said tribe, in the same manner, and with the same precautions, that annuities are paid."

By the 4th article, "the said Indians hereby set apart, out of the fund created by the sale of these lands, the following sums," and among them this: "For meeting the payment of claims which have been considered and allowed by the chiefs and delegates in council, as per schedule B, hereto annexed, twelve thousand two hundred and forty-three dollars and seventy-five cents." That schedule embraces the name of "J. P. Simonton," and designates to be paid to him the sum of \$800.

By the 5th article, the United States agreed to advance the sums requisite to comply with the terms of the 4th article, but that agreement was modified by the 3d article of the amended treaty of 20th December, 1837, so that "nothing embraced in the fifth article of said treaty shall obligate the United States, at the present time, to advance from the treasury the entire amount appropriated by the said tribe in the fourth article of said treaty; but the President shall have authority to direct such part of the said moneys to be paid for the objects indicated, so far as the same are not hereinafter modified, as he may deem proper: *Provided*, That the whole sum so advanced shall not exceed seventy-five thousand dollars, and the reduction shall be made upon the several items ratably, or in any other manner he may direct: *Provided*, That balance of said appropriations, or any item or items thereof, shall be paid out of the proceeds of the ceded lands, as soon as the fund will permit, and the President may direct."

The sum of \$75,000 was appropriated by Congress, by act of 7th July, 1838, and applied, under the discretionary power vested in the President, to other objects than the payment of claims embraced by schedule B, leaving those claims to be paid out of the ceded lands as soon as the fund would permit.

The reason that the claim represented by the petitioner has not been liquidated by this department is fully stated, when I remark that, at no period since the land was put into market for sale, have the avails thereof been sufficient to reimburse to the government the amount advanced from the treasury.

From information received; on the 16th instant, from the General Land Office, it appears that the whole amount received from the sale of the land, up to 31st December last, is only \$18,405 78; that, of that sum, about \$7,000 is the proceeds of, say, 2,500 acres, which is the quantity sold since January 1, 1845.

The present minimum of the unsold land, amounting to about 96,000 acres, is \$2 50 per acre, and, judging from the small quantity sold at that price, and from the fact that the adjacent public lands are subject to entry at \$1 25 per acre, the probability is that the Indian lands will long remain undisposed of, if the present price be adhered to.

The petition is returned herewith.

Very respectfully, your obedient servant,

W. MEDILL.

HON. JACOB THOMPSON,

*Chairman Committee on Indian Affairs,*

*House of Representatives United States.*