

INDIANS IN MICHIGAN AND INDIANA.

SUPPLEMENTAL MEMORIAL

OF

CERTAIN INDIANS

RESIDING IN

Michigan and Indiana, for relief.

DECEMBER 8, 1874.—Referred to the Committee on Indian Affairs and ordered to be printed.

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

Your memorialists are that portion of the Pottawatomie Nation of Indians which, by the provisions of the treaty of September 27, 1833, were exempted from removal west of the Mississippi River, and are now residing in the counties of Cass, Van Buren, and Berrien, in the State of Michigan, and Saint Joseph County, in the State of Indiana, and by their duly constituted business committee, and attorney, a resident in their vicinity, in these premises would most respectfully represent :

Your memorialists are parties to many treaties and annuities for some 30,000,000 acres of land. (See page 6.)

They were exempted by treaty, from removing west. (See pages 2, 3, 4, 5, 15.)

They have, since 1843 to 1866, been paid on *one* only, when they should have been paid, until now, on *eleven* annuities. (See pages 5 and 6, 19 and 20.)

The part payment made in 1866 was effected by false representations. (See pages 9, 15, and 16.) And it contained no release to the Government. (See pages 10 and 12, 15 and 16.)

The Indians protested six weeks before its passage. (See pages 10, 11, and 12, 15, and 16.) And at the payment. (Pages 10, 11, and 12.)

The Indian agent caused P. O. Johnson to advise them that to accept the \$39,000 would not bar their case for any balance due them. (Pages 11, 12, 13.)

It was but a part payment of a just and acknowledged debt. (Pages 5, 6, 8, 19, 20.)

The Secretary of the Interior and Commissioner of Indian Affairs approve the measure as just. (Page 18.)

Acts appropriating the proper amounts have heretofore passed the

House once, and the present measure has passed the Senate twice. (See page 20.)

They give credits for all sums received, and the amount of the present bill is the sum now due. (Page 20.)

There can be no claim made for restitution by the Kansas people. They have had none of their funds. (See page 14.)

There has not been an adverse report in the case in its history. The references herein made are to original evidence and documents in the hands of the Committee on Indian Affairs of the House of Representatives.

On the 27th day of September, 1833, at Chicago, Illinois, the following treaty was duly made and confirmed by them and the United States, as appears in vol. 7, U. S. Stat. at Large, page 442:

Articles supplementary to the treaty made at Chicago, in the State of Illinois, on the 26th day of September, 1833, between George B. Porter, Thomas J. V. Owen, and William Weatherford, commissioners on the part of the United States, of the one part, and the united nation of Chippewa, Ottawa, and Pottawatomie Indians, concluded at the same place on the 27th day of September, 1833, between the said commissioners on the part of the United States, of the one part, and the chiefs and head-men of said united nation of Indians residing upon the reservations of land situated in the Territory of Michigan, south of Grand River, of the other part.

ARTICLE 1. The said chiefs and head-men cede to the United States all their land situate in the Territory of Michigan, south of the Grand River, being the reservations at Notawasepe, of four miles square, contained in the third clause of the second article, treaty made at Chicago on the 29th day of August, 1821; and the 99 sections of land contained in the treaty made at Saint Joseph on the 19th September, 1827; and also the tract of land on the Saint Joseph River, opposite the town of Niles, and extending to the line of the State of Indiana, on which the villages of Topenebee and Pokagon are situated, supposed to contain about 49 sections.

ART. 2. In consideration of the above cession it is hereby stipulated that the said chiefs and head-men, and their immediate tribes, shall be considered parties to the said treaty, to which this is supplementary, and be entitled to participate in all the provisions therein contained as a part of the united nation; and, further, there shall be paid by the United States the sum of one hundred thousand dollars, (\$100,000,) to be applied as follows.

The remainder of the article, in four clauses, awards \$10,000 to satisfy those who asked for individual reserves; \$25,000 to pay outside debts of the nation; \$25,000 in goods; and \$40,000 in \$2,000 payments for twenty years.

It appears by the article of said treaty, on page 445, that your memorialists are expressly exempted from moving west of the Mississippi, and in expressed terms of the treaty, in the clearest and most positive language, fully guaranteed in the payment of their just proportion of all former annuities, and that arising from the sale of these reserves upon which they were then residing. No force can be gained by lengthy comment upon this article, which reads:

On behalf of the chiefs and head-men of the united nation of Indians who signed the treaty to which these articles are supplementary, we hereby, in evidence of our concurrence therein, become parties thereto.

And as since the signing of the treaty a part of the band residing on the reservations in the Territory of Michigan have requested, on account of their religious creed, permission to remove to the northern part of Michigan, it is agreed that in case of such removal the just proportion of all annuities payable to them under former treaties, and that arising from the sale of the reservation on which they now reside, shall be paid to them at L'Arbre Croche.

The Government was then enforcing the adopted policy of removing the Indians to the far West, beyond our civilization. This treaty was a supplemental treaty to one of the day previous, September 26, found on page 431, same volume. By the treaty of September 26, the main portion of the Pottawatomie Nation, now so called, but then known as the united nations of the Chippewas, Ottawas, and Pottawatomies,

ceded to the United States all their lands held under the common Indian title of occupancy about Chicago, estimated in the treaty at 5,000,000 acres, and agreed to quit possession in three years. The consideration given by the Government was \$850,000 in annuities and various funds, and a tract of land of 5,000,000 acres on the east bank of the Missouri River (above Omaha) to which they were to remove.

Your memorialists were not parties to this treaty of the 26th, for reasons clearly stated in the following evidence :

ROLL NO. 7, AFFIDAVIT NO. 20.

Affidavit of Lathrop M. Taylor, aged sixty-five years : Being duly sworn, states that he has resided in Saint Joseph County, Indiana, since September, 1827, and, during that time, has known and traded with the Indians; he was present at the Chicago treaty in 1833; knew old chief Pokagon and his band, and had for six years.

Before going to that treaty Topenebee and Pokagon bands held a council, and determined they would not sell their reserves, which were in a good hunting and fishing country, and convenient to church and school. Pokagon especially was an ardent advocate of education among his people, and it was resolved in their council that they would not go west and abandon their churches and school privileges.

Pokagon and his band camped a little way out of Chicago; they feared some advantage might be taken of them by the commissioners or land speculators, and, holding another council there, they repeated their determination, and also appointed a committee to watch and kill upon the spot any Indian who should sign any treaty ceding their reserves, &c.

Affiant saw Magosaw armed and watching the door of the commissioners. Upon affiant asking Magosaw what was wrong, he replied, "Topenebee has signed the treaty; he is a traitor to his people; I kill him as he comes out." Affiant notified J. Bertrand, one of the interpreters at the treaty, who approached Magosaw, took him away, promised him a horse and other property, and he signed the treaty.

This and similar transactions made such changes that, on the following day, Pokagon was compelled to sign the treaty. Affiant had an interview with old chief Pokagon, during this time, who was greatly distressed about the turn affairs were taking. Affiant assured Pokagon that the Government was powerful, and was bound to have his reserves, and that he better dispose of them when he could make the best terms.

The old chief spoke feelingly of the friendship of his people toward the Government since the signing of the first treaty; the great amount of land his people had ceded to the Government; the confidence he had entertained that the Government would deal justly with them; the attachment to their reserves, with the advantages of religion, education, and subsistence that they then enjoyed on the hunting-grounds of their people; the earnestness of his manner, when he said, "If I could save the reserves for my children, I would gladly die in defense of their rights before I would sign the treaty ceding the lands of his children and people away;" and he cried like a child when he signed the treaty.

The old chief told affiant at the treaty that it was understood that he and his people were to remain in Michigan, and have their full share of the annuities of that and all former treaties paid to them, without going west.

L. M. TAYLOR.

Subscribed and sworn to before me this 15th day of December, A. D. 1870.

[SEAL.]

GEO. W. MATTHEWS, Clerk.

L. M. Taylor, the above affiant, was a signing witness to the treaty, September 27, 1833; and in his affidavit states that he has no interest in this claim.

By the treaty of September 27, thus forced upon your memorialists, they ceded their common interest to the 5,000,000-acre tract about Chicago, and their cherished tribal reserves, in aggregate as stated in the treaty, 164 sections of the best lands in Michigan, especially the 49 sections just across the Saint Joseph River from the city of Niles, being then very valuable, alone now worth about one and a half million, which they would now own but for this compulsory treaty.

The consideration guaranteed the memorialists by this treaty was \$60,000 in goods; for their debts, &c., \$2,000 annuity for twenty years; permission to remain in Michigan; and their *per-capita* proportion of all annuities due the United Nation under treaties in force prior to September 26, 1833. As this treaty is styled "Articles supplementary to the

treaty of the 26th September," the day previous, the treaty of the 26th is made a *present*, not a "*former*" treaty.

The Government subsequently, by a series of treaties, purchased the tribal reserves and villages of those who entered into the treaty of the 26th, as the following references exhibit, all in vol. 7, U. S. Stat. at L.:

For 4 sections of land	498	Mar. 29, 1836	\$2, 560	June 4, 1836	One year	498
For 36 sections of land	499	May 11, 1876	23, 040	May 25, 1836	In one and two years .	499
For 10 sections of land	500	Apr. 22, 1836	6, 400	May 25, 1836	One year	500
For 3 sections of land	501	Apr. 22, 1836	1, 920	May 25, 1836	One year	501
For 22 sections of land	505	Aug. 5, 1836	14, 080	Feb. 18, 1837	In 1838	505
For 10 sections of land	513	Sept. 20, 1836	8, 000	Feb. 18, 1837	In 1838	513
For 4 sections of land	514	Sept. 22, 1836	3, 200	Feb. 18, 1837	In 1838	514
For 42 sections of land	515	Sept. 23, 1836	33, 000	Feb. 18, 1837	In 1838	515
Total 131 sections.....			92, 200			

Your memorialists were not parties to these treaties; they were all subsequent to 26th September, 1833, hence they make no claim upon them. But the Government, by these treaties, paid \$92,000 for only 131 sections to the Kansas Indians, whereas, by the treaty of September 27, your memorialists only received the promise of \$100,000 for 164 sections of much better land, and have not yet been paid.

The greater portion of those people who signed the treaty of September 26 were removed west of the Mississippi by the military of the United States between 1836 and 1843. All of your memorialists then living were arrested, many of them chained and hauled in wagons, and confined in guarded pens, and only released from removal upon ample proof that they were parties to the treaty of September 27, exempting them from removal, as the following, from among many similar affidavits, fully shows:

Synopsis of affidavits.

ROLL No. 4, AFFIDAVIT No. 9.

STATE OF INDIANA, *Saint Joseph County, ss:*

(Page 1.) Samuel Cottrell, affiant, being duly sworn, says that he is aged sixty-eight years; resided in Saint Joseph County since 1828; was appointed sheriff to organize said county; knew the settlers and Indians; knew the Pottawatomie Indians, and attended their treaties in 1840; assisted in emigrating these Indians; was intimately acquainted with many of the different bands of the same.

(Page 2.) He was employed by Alix Coquillard in removing Indians; as train-conductor Coquillard was paid so much apiece for removing them; many opposed to going; had to hunt them up, and, in many cases, bind them and haul them into camp in wagons.

(Page 3.) It being well understood by all of us that the Pokagon band were exempted from going west by the treaty of 1833, and that fact distinguished them from other bands, and, it being established, was sufficient to cause their release from arrest and removal. This fact has always distinguished them in my memory; that many of said band still reside in this county, and have from 1836 to 1843, and since; that the following list of such, with whom he is personally acquainted, (except a few young children,) are of said band, and residents now of said county.

(Page 4.) The same being carefully prepared by himself, signed by him, and containing the names of 89 parents and children, and that he has no interest in the claim of the same.

(Pages 5, 6, 7, 8, and 9.) List of names, numbering 89 souls. Has no interest in the claim.

SAMUEL L. COTTRELL.

Subscribed and sworn to before me this 18th day of January, A. D. 1872.

[L. s.]

GEO. W. MATTHEWS, Clerk.

ROLL No. 4, AFFIDAVIT No. 13.

STATE OF INDIANA, *St. Joseph County, ss:*

(Page 21.) Hon. Thomas S. Stanfield, (affiant,) being duly sworn, says that he is judge

of Saint Joseph County circuit court; age fifty-five; resided in said county since 1831. Has known Samuel L. Cottrell ever since then, and from the fact of official positions, and being engaged in removing the Indians, no citizen had greater opportunities, &c., with the Indians in their tribal relations.

(Page 22.) Is personally knowing to the truth of many of the facts in Cottrell's affidavit, and believes his statement in detail to be true. I would further say that I know of no man whose statement is entitled to more credit, or more likely to make proper observation of facts, or more accurate in his recollections, or faithful in his testimony. Has no interest in the claim, &c.

THOS. S. STANFIELD.

Attest: A. N. DEACON.

Subscribed and sworn to before me this 19th day of January, A. D. 1872.

[SEAL.]

GEO. W. MATTHEWS, *Clerk.*

ROLL No. 4, AFFIDAVIT No. 11.

STATE OF INDIANA, *Saint Joseph County, ss :*

(Page 13.) Also appears Dr. Jacob Hardman, (affiant,) being duly sworn, says that he is aged sixty-eight years; resided in Saint Joseph County since 1831; was the first practicing physician in said county; knew all the settlers, and was called as physician and surgeon for Indians, and treated old chief Pokagon at his lodge, and became extensively acquainted with his band; kept a book account of his fees with them, and was paid most of them at Chicago treaty in 1833. Has carefully examined Samuel L. Cottrell's affidavit and list of names, and, from his knowledge of the facts, knows the facts are as therein set up, and has no interest in the claim of said band.

JACOB HARDMAN.

Attest: A. N. DEACON.

Subscribed and sworn to before me this 18th day of January, 1872.

[SEAL.]

GEO. W. MATTHEWS, *Clerk.*

ROLL No. 4, AFFIDAVIT No. 12.

STATE OF INDIANA, *Saint Joseph County, ss :*

(Page 17.) E. C. Johnson, aged fifty-seven years, upon his oath, says that he is a resident of St. Jo. County since 1831. But few whites there then. Kne w most of the Indians thereabouts. Knew Pokagon, and many of his band. Knew them to be Pokagon's band, because they were not arrested and taken west of the Mississippi River, and they then numbered some 250, whereas all the other Pottawatomies were compelled to go West by the treaty provisions, and have remained there ever since.

(Page 18.) Many Pottawatomies had to be arrested to be taken West by Alexis Coquilard, who had authority for removing them. Pokagon's band was exempt, and this distinguished them. Affiant was elected and served as sheriff of St. Jo. County from 1856 to 1860. I personally know that when they knew an Indian was of Pokagon's band, they did not arrest him to go West. Knew Samuel L. Cottrell since 1831, and know of no person who has had greater opportunities of knowing about the matters in his affidavit, and have examined his affidavit and list, and know that which is stated relative to the resident Indians is true. Has no interest in the claim, &c.

EVAN C. JOHNSON.

Subscribed and sworn to before me this 18th day of January, A. D. 1872.

[SEAL.]

GEO. W. MATTHEWS, *Clerk.*

Here we have judges and sheriffs of our courts for witnesses, who were not only contemporaries of the facts, but participants in the acts, which must conclusively establish these important facts. (See page 15 hereof.)

The following are the annuities of which your memorialists are entitled to their just per capita proportion in common with the Kansas people. They are the treaties concluded prior to the separation, the "former" treaties to September 26, 1833, wherein your memorialists, in common with the Kansas' people, sold their lands, reserves, and villages, to the Government for the money promised, the just per capita proportion of which the Government, in the treaty of September 27, guaranteed, as trustee, should be paid to them in Michigan, and which has not all been paid, the balance of which they now claim.

The references are to volume 7, United States Statutes at Large.

Date of treaty.	Page of treaty.	Page of annuity.	Annuity.	Time to run.
August 3, 1795	49	51	\$1,000	Forever.
September 30, 1809	113	114	500	Do.
October 2, 1818	185	185	2,500	Do.
August 29, 1821	218	220	5,000	For 20 years.
October 16, 1826	295	296	2,000	For 22 years.
September 20, 1828	317	317	2,000	Forever.
September 20, 1828	317	317	1,000	For 20 years.
July 29, 1829	320	320	16,000	Forever.
October 20, 1832	378	379	15,000	For 20 years.
October 26, 1832	394	395	20,000	Do.
October 27, 1832	399	401	15,000	For 12 years.

To this exhibit must be added the \$2,000 annuity for 20 years of treaty of September 27, 1833, which was made solely with your memorialists, and \$300 annually after 1847, as one of the salt provisions of a treaty prior to 1833, was then commuted in cash, and after that paid as an annuity.

Under the strictly legal and accepted ruling upon the treaty of September 27, 1833, your memorialists are not entitled to participate in any of the moneyed considerations of the treaties with their people, but "*annuities*" of "*former*" treaties; this excludes them from sums of vast amount, as the following will exhibit, which the Kansas people alone can enjoy.

The following sums, as annuities, &c., have been paid, or are due the Kansas Indians for reasons shown in the statement, but were improperly included in making the distribution, in the House report and bill in 1864, but are now by Senate bill and the reports excluded :

\$850,000 of treaty of September 26, 1833	\$850,000
\$850,000 of treaty of June, 1846	850,000
These were improperly included, as these were not treaties " <i>former</i> " to September 26, 1833, which was the treaty of separation.	
\$5,000 educational fund, annually for 30 years, 1836 to 1866, by treaties of 1826, 1828, and 1829	150,000
\$3,440 blacksmith's fund, annually for 30 years, 1836 to 1866, by treaties of 1826, 1828, and 1829	103,200
\$910 for salt, annually, for 30 years, by treaties, 1795, 1826, and 1828	27,300
These last funds were improperly included, because they are not <i>annuities</i> ; they are specific funds, not divisible, or distributed as annuities. The treaty of separation says all " <i>annuities</i> " of former treaties.	
To this sum must be added 5 per cent. per annum on \$643,000, the trust fund of treaty June, 1846, which was \$32,150 for 20 years, 1846 to 1866	643,000
Total	2,623,500

This exhibits the amounts from which the Michigan and Indiana people are by present rulings excluded, and sufficiently explains why the Kansas people resisted the cause in 1860-'66.

This also sheds light on the agreement which the Kansas people urged so strongly. It was their personal interest to release these funds from the claims of the eastern Indians by this agreement. By the treaty dated September 27, 1833, these Indians became separate peoples, with distinct, separate rights, by the treaty. The Government owed each a definite sum. This agreement was not made in the interest of the Government, nor with any intention of releasing the Government from its obligations to the Michigan and Indiana people, nor was the Government in any sense a party to it. The eastern Indians had no right to participate in these funds, and now make no claim to.

So far we have been considering the basis of the case upon the treat-

ies; now we will consider the history of the case, and the payments that have been made.

First. Let it be well understood that the memorialists make no claim for arrearages of any kind prior to 1836, but they assume and confess payment in full up to that time.

In due time, in compliance with their treaty of September 27, 1833, they removed to L'Arbre Croche, near Mackinac, but they were not permitted to remain there. The United States sold them a tract of land in the vicinity of Niles, Mich., near their old villages, paying Government price, \$1.25 per acre, cash, out of the \$60,000 paid them on the treaty 27th September, in 1835, for the same land which they had sold to the Government for about 16 $\frac{2}{3}$ cents per acre for the unpaid promises of the Government.

They received no payment whatever of annuities until 1843, when they were paid \$1,587.50 as their per-capita share of *one* of the former annuities only, and the \$2,000 annuity of September 27, 1833, as the same is fully demonstrated by the following record evidence, furnished by the Department of the Interior to Congress, 2d session 38th Congress, Senate Report No. 111.

Extract from a letter of Robert Stuart, acting superintendent of Indian affairs, dated at Detroit, March 25, 1843, and directed to Hon. T. Hartley Crawford, Commissioner of Indian Affairs.

A delegation of the Pottawatomies, who resided on the reservation in Michigan prior to the treaty held at Chicago in 1843, and who have always refused to emigrate, called upon me a few weeks since to represent their grievances also. They stated that the chief, Pokagon, (father of one of them,) as also several of his band, were Catholics at the time of signing the treaty, and refused to emigrate west, as it would cause them to recede again into barbarism. That permission was granted them by said treaty to settle in Northern Michigan, where they would enjoy the instruction of priests, and receive their proportion of the annuities; that they, in due time, applied to the Ottawas of L'Arbre Croche, near Mackinac, for permission to amalgamate with them, which, owing to the interference of some evil-disposed whites, was refused; that they then purchased lands of the United States, which a portion of them still occupy, (except forty acres appropriated to their mission.) They urgently plead that the Department take their cause into favorable consideration, and allow them a just proportion of the annuities (which are now all paid on the Missouri) according to the stipulation on the 599th and 600th pages of the treaty-book. They say there are from two hundred to two hundred and fifty of their tribe still in Northern Indiana and Michigan. A number of these, as well as the Ottawas, are very desirous of becoming citizens, and there are some hundreds, I have no doubt, worthy of the boon; but how their application will be responded to is another question. I regret the necessity of troubling you with so many questions as have of late been pressed upon me, but the paucity of information left in the office by my predecessor renders it indispensable for me to know what course of policy has or should be adopted.

I am, respectfully, your obedient servant,

ROBERT STUART,
Acting Superintendent Indian Affairs.

The following reply awarded them the \$1,587.50:

OFFICE INDIAN AFFAIRS, *May 17, 1843.*

SIR: My letter to you of the 19th instant informed you of the views of this office respecting the right of the Chippewas of Swan Creek and Black River, yet in Michigan, to participate in the benefits of the annuity due the bands, the whole of which has heretofore been remitted west.

I now reply to the remaining portion of your letter of the 25th March, viz, relative to the Pottawatomies, who claim the privileges granted under the supplemental article to the treaty with the united bands of Chippewas, Ottawas, and Pottawatomies, of September, 1863, which is in the following words:

"And as since the signing of the treaty a part of the band residing on the reservations in the Territory of Michigan have requested, on account of their religious creed, permission to remove to the northern part of the peninsula of Michigan, it is agreed

that, in case of such removal, the just proportion of all annuities payable to them under former treaties, and that arising from the sale of the reservation on which they now reside, shall be paid them at L'Arbre Croche."

By the tenor of this article it would seem that their claim is well founded, and that they are entitled to their numerical proportion of those annuities payable to the tribe under the treaty of 1829, and also under the supplementary article of the treaty of 1833, amounting together to \$18,000. Therefore, estimating the number of the Chicago Indians at 2,834, including the 250 represented by you, the share that would be to the latter would amount to \$1,587.50, or \$6.35 to each in individual. Accordingly that sum will be remitted to you, to be paid out to them as their share of the annuities.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD,
Commissioner.

ROBERT STUART, Esq.,
Detroit, Michigan.

Commissioner Crawford erred as to the number of these Indians, as will be seen by referring to Secretary Delano's letter to Senator Buckingham, of March 27, 1872, where the correct number is determined from the annuity pay-rolls in the Second Auditor's Office as 4,090. (See pages 17 and 19 and 20 hereof.)

He awarded them their per capita proportion of but *one* of the former annuities, when they were as clearly entitled to their just proportion of the eleven "former treaties" exhibited on page 6 hereof.

Regarding this error, the Committee on Indian Affairs of the Senate, in 1865, reported as follows, which is accepted as just and fair, and now only ask that it be faithfully applied to their cause and carried into effect:

While your committee agree with the committee of the other House that Commissioner Crawford, by mistake, failed to carry out the principle adopted by him, by giving them, in fact, their just proportion of all annuities under former treaties, and under the supplemental treaty of Chicago, and that it is just that such principle should now be applied, and that they should now receive their just proportion of annuities under all the treaties in which they had shared, as well as the annuities under the treaty of 1829, and supplemental treaty of 1833, they are at the same time decidedly of the opinion that the only just construction to be given to that supplementary article is that, in case they did not remove with the nation West, they were entitled to share in the annuities only. (See p. 4, Rep. Com. No. 111, Senate, 2d sess., 1865, 38th Congress.)

After this award your memorialists were yet dissatisfied. It is in evidence that they were informed, at the treaty in 1833, that their proportion of the former annuities would be not less than \$5,000 annually.

They visited Washington with varied prospects of success, until, in 1859, they sent Edward Cowles, one of their people, to look after their matters. In 1861 he succeeded so far as to have an act passed directing the Secretary of the Interior to examine their case and report to Congress, which Caleb B. Smith, Secretary of the Interior, made December 19, 1862. (Ex. Doc., 3d sess., 37th Cong., No. 19.)

February 19, 1864, the Committee on Indian Affairs of the House of Representatives reported in favor of the case, awarding \$192,845, (see Report No. 19, 1st sess., 38th Cong., H. R.,) and the same session the House passed an act allowing them that sum. But there were two errors in this report: one was that it included the moneyed benefits of other treaties than "former treaties" to September 26, 1833, and other funds than "annuities," as fully shown on page 16 hereof. This greatly increased the amount over what it should have been, had no other error been included; but the other error was this distribution as calculated upon the supposed existence of 6,180 of these people, when, in fact, as hereinbefore shown, there were but 4,090. This error greatly reduced the amount—nearly to the same extent that the other error increased it.

The Senate, in 1865, as fully stated on page 16, and decision of the

committee quoted on page 8 hereof, corrected the first error by excluding the amounts before improperly included in making the distribution, but failed to correct the other error regarding the number of Indians; 6,180 Indians were used in calculating the distribution, (see page 4, Report No. 111, U. S. S., 2d sess. 38th Cong.,) when there should have been but 4,090, as Delano-Buckingham letters, pages 17, 19, and 20 hereof.

This error reduced their just award on final settlement a little over \$127,000, and it is to correct this grievous mistake made by the Government, and faithfully apply the rulings by which the amount allowed in 1865 and '6 was determined, that your memorialists are now struggling to have accomplished. The correction of this mistake of fact is their present sole effort and hope.

Senate bill 218, present Congress, in fact and effect simply provides for the correction of this mistake of fact, made on the part of the Government, as trustee in the premises, in charge and possession of the facts and funds, and the payment of the true balance now remaining due upon the rulings established in 1865 and '6 in the case.

Payment does not prevent a recovery when made under a mistake of fact. Acts done under a mistake, or ignorance of an essential fact, are voidable and recoverable, both in law and equity. (3 B. Mon. Ky., 510; 9 Pick., 112; 18 Wind., 442; 4 B. Mon., 190; 19 Conn., 548, and citations.

The above rulings in 1865 and '6 were not the results of ex-parte proceedings. The Kansas delegations were here with their experienced attorney, and gave Cowles a most active, relentless, and even vindictive opposition. He was frequently approached with propositions to compromise the case, and finally in April, 1866, he was threatened that unless he signed the proposition presented in writing, that they had it in their power to defeat his case. He was greatly distressed. He was assured that it contained no release to the Government; that by signing it the Indians would lose no rights under the Government treaties. He was allowed no time to confer with his people in Michigan, and, believing these representations, he signed it and reported to his people at once, as shown by the following evidence:

Affidavit of Edward Cowles. Synopsis of affidavit No. 43.

He now resides in (Niles) Berrien County, Michigan. Has received a common-school education. In 1859 he came to Washington to look after their annuities. Was delayed from year to year, and resisted by the delegations and attorneys of the Kansas Indians.

That in 1865 and '6, he was approached by them with propositions to compromise the claim, accompanied by threats that unless he accepted their proposition of \$39,000 they had it in their power to defeat the case entirely. That a paper was presented him to sign in April, 1866. It was represented to him that this paper would not release the Government from paying his people all that it might owe them on the treaties with them.

The Michigan Indians were poor and greatly distressed by debts and mortgages they had incurred, expecting to receive their annuities. They had built churches and school-houses, which they must lose unless they received what was due them from the Government.

That many times on the streets of Washington he was urged by people whom he did not know to accept the proposition; that he became so embarrassed and distressed he hardly knew what to do; that finally, believing the agreement to be what it was represented and appeared to be, he signed it. That he would not have signed it if he had thought it capable of being construed to cut his people off from their just rights under the treaties, and went home as soon as possible and reported what he had done to his people in council.

NOTE.—The remainder of his affidavit concerning the history of the protests, the circumstances of the payment, the representations of Mr.

Johnson and others, is substantially the same as that of Toposh, Simon Pakagon, Francis Pakagon, Augusta, and the Motes, and others.

Cowles was under compulsion at the time of signing this agreement; he was by no means "free to refuse" it. It was obtained by false and fraudulent representations, and was and is in law and fact null and void.

A contract made by a party under compulsion is void, because consent is the essence of a contract, and where there is compulsion there is no consent, for this must be voluntary. (1 Par. on Cont., 392; 1 Blk. Com., 131; 5 Hill, 158; 15 Wend., 321; 5 Cow., 588.)

So cautiously does the law watch over all contracts that it will not permit any to be binding but such as are made by persons perfectly free and at full liberty to make or refuse such contracts. (1 Bay, S. C., 470; 2 ib., 211; Gru. on Ev., 301; 16 Ill., 32; 12 Pick., 7.)

THE COWLES AGREEMENT.

The controversy heretofore existing between certain Chippewa, Ottawa, and Pottawatomie Indians of Michigan and the Pottawatomie Nation of Kansas has been compromised and adjusted, the latter agreeing to pay the former the sum of thirty-nine thousand dollars in full of all claims, past, present, and future, against the tribe arising out of any treaty or otherwise.

Dated Office Indian Affairs, April 11, 186[5]6.

Original on the files of House of Representatives and a certified copy with Committee on Indian Affairs, House of Representatives.

After several councils, on the 14th of June, 1866, the Indians in full council unanimously voted to notify the Government that they would not accept the Cowles agreement or relinquish their annuities or any part of them, and employed attorneys to so notify the proper Department of their action, which was done, as appears from the following evidence in the case:

Baker & Richards's letter to Hon. Charles Upson.

PAW PAW, MICH., June 15, 1866.

DEAR SIR: We are instructed, by the unanimous vote of our Michigan Indians in council at Rush Lake, to address you this note and request you to advise the Department that the Indians will not relinquish their annuities or any part of them.

BAKER & RICHARDS.

Hon. CHAS. UPSON,
House of Representatives, Washington, D. C.

Synopsis of affidavit of John R. Baker.

(Exhibit of letter same as in Upson's affidavit.)

STATE OF MICHIGAN, *County of Van Buren* :

John R. Baker, of Paw Paw, said county, was one of the law firm of Baker & Richards, of same place, and he wrote the above letter to Hon. Chas. Upson, signed the firm name, and duly mailed the same to said Upson.

Sworn to before S. W. Denscombe, notary public.
February 3, 1873.

Synopsis of affidavit of Hon. Charles Upson.

STATE OF MICHIGAN, *Branch County* :

Charles Upson, of Coldwater, said county, in 1866, while in Washington, D. C., as Representative, received a letter from Messrs. Baker & Richards, of which he thinks the annexed paper, marked A, is a true copy. He does not now recollect, but feels confident that he must have informed either the Department or committee of its contents soon after its reception.

Sworn to before David Thompson, United States commissioner, &c.
February 11, 1873.

By this evidence it appears that your memorialists promptly entered their protest by employing attorneys to notify the Government that they would not relinquish their annuities, or any part of them, which was duly forwarded to their Representative in Congress, (thus "bringing it to the ear of the court,") and requesting him as an officer of the Government to so notify the Department. Upson received the protest "some six weeks" before the passage of the act, and believes he gave the notice required. Be that as it may, it matters nothing. The Indians had exercised full diligence, and cannot in law, much less in honor and right dealing, be held liable for any neglect on the part of the officers of the Government, especially under trusteeship. The memorialists had gone into debt to build for themselves two churches and two school-houses, as they are now mostly residing in two parishes, expecting in 1863 and 1864 the large amount to be soon paid them, and in 1866 these debts were endangering their small farms and cherished improvements, as appears from the following evidence :

ROLL No. 10, AFFIDAVIT No. 23.

The Indians had long expected the payment of a large amount, being familiar with the reports of Hon. W. P. Dole, Commissioner of Indian Affairs, and Hon. C. B. Smith, Secretary of the Interior, made in 1862, and believed the amount then reported (\$192,850) would be paid. In view of its early payment they had contracted a large amount of debts for churches and school-houses, &c., and upon hearing of the joint resolution awarding only \$39,000 they held several councils of their people and decided not to accept the \$39,000, fearing it would debar them from prosecuting their just claim for the remainder.

ROLL No. 13, AFFIDAVIT No. 26.

STATE OF MICHIGAN, *County of Cass, ss :*

Extract.

* * * * *, which made it necessary for them to receive it to save their farms from being sacrificed at mortgage sale, and partly from representations then made that their claim would yet be paid in full if said Government should be satisfied that it was just and equitable.

ELIAS S. HOWARD.

Subscribed and sworn to before me this 10th day of January, 1871.

[SEAL.]

CHANCY T. LEE,
*Notary Public, Cass County, Michigan.**Synopsis of affidavit of A. J. Toposh.*

That he was present at several councils of these people held in May and June, 1866. That at a council held immediately before, and at, the payment of the \$39,000, he was requested and authorized, as their interpreter, to make their deliberations known to the agent making the payment. He was instructed to inform him that the Indians could not accept the \$39,000 as payment in full of the large amounts they then knew to be due them by the Government's reports, decisions, and actions, but as they had mortgages on their small farms, church and school property, and threatened with foreclosure and sheriff's sale, being in greatly distressed circumstances, being poor and needy, they would accept the \$39,000, and allow the same as so much paid them on their just claim. That before the payment was made he did faithfully make known the result of the deliberations of the Indians in council, as above set forth, in the presence and hearing of the agent, Mr. Smith, the Indians, and others present. The agent would have no conference with the Indians. That the Indians were advised by friends and counsel, and a Mr. Johnson, who, it was understood, was present to aid

Mr. Smith in the payment in some way by appointment of the Government, that their acceptance of the money could not have any effect to prevent the payment of all just balances due them, as they only accepted it upon the expressed condition of their protests. That this advice of friends, counsel, and Mr. Johnson was freely given and expressed in the presence of the agent, to which the agent made no reply. That under these circumstances and advice, relying upon the laws and facts as thus assured to them, they signed the receipt required by the agent.

Affidavits of Francis Pokagon and Simon Pokagon.

They are sons of old chief Pokagon; have had a partial English education. (Note.—Their testimony is substantially the same, and fully corroborative of the above affidavit of Toposh; referring to Johnson's advice, they say:) The Indians were advised by friends and counsel that a receipt so forced from them, under all its attending facts, could not be held to abrogate the Government treaties, or in any way defeat them in their just claim under said treaties, and such was the statement then and there made before the payment by said Johnson, which advice and assurances were accepted by the Indians as of authority, and the same was given in the presence of said agent, and the same was not in the presence or hearing of the Indians or to their knowledge by said agent in any way modified or disowned, and, relying on this, they signed the required receipt and took the money, said Johnson assisting in the payment, and from our knowledge we don't believe one dollar would have been accepted to this day had the Indians believed or been informed that accepting it would be fatal to their recovering the large balance remaining due them.

Signed and sworn to before Geo. W. Mathews, clerk of Saint Joseph circuit court, February 14, 1873, who certifies that these Indians are intelligent, that the above affidavits were read to them, and signed by them in his presence.

These affidavits are supported substantially by two affidavits of Elias S. Howard, date February 1, 1873, and James Sullivan, date January 10, 1871, of Dowagiac, Mich., being disinterested white witnesses.

STATE OF INDIANA, St. Joseph County, ss :

Seton Moty, Little Seton Moty, Billy Augusta, John Cush-au-wa-Weso Moty, and Francis Williams, all over thirty-six years of age, residing in Michigan. (Note.—These applicants cover the same facts, and fully sustain the preceding affidavit of A. J. Toposh. The first four are members of their business committee.)

Signed and sworn to before George W. Mathews, clerk of St. Joseph circuit court, February 1, 1873.

Testimony of Rev. P. O. Johnson.

STATE OF MICHIGAN, County of Washtenaw, ss :

Personally appeared before me, Andrew J. Sutherland, a notary public in and for said county, one P. O. Johnson, to me personally known, and being by me first duly sworn, upon his oath says that his name is Peter O. Johnson, aged fifty-seven years; that he is a minister of the gospel, now residing in Ann Arbor, said county and State; that he did at the request of the late Richard M. Smith, as Indian agent, accompany him and assist him in making the payment of \$39,000 to the Pottawatomies of Michigan and Indiana at their homes, near Dowagiac, said State, in 1866. Mr. Smith made known to the Indians that he was instructed by the then acting Secretary of the Interior that this was to be their final payment.

At this the Indians were much surprised, and greatly distressed that they were to receive as a final payment only so small a part of what they said the Department of the Interior and the House of Representatives had declared was due them for their lands, and which they seemed to know and believe was due them.

One of their people, Augustine J. Toposh, as the interpreter of their councils, before the payment was made, and in the presence and hearing of Mr. Smith and the Indians, said that the Indians in their councils had instructed him to say to him (Mr. Smith) that in full accord with their written protest, which they had sent to the Hon. Charles Upson and the Department, they could not accept the \$39,000, and relinquish any of their rights under the treaties, but being in great distress, they would accept it only as so much paid on their just demand.

Everything came to a stand-still for the whole day, or nearly so, when Mr. Smith, having known me as a missionary to the Indians since 1843, advised them to counsel with me, as I had intimate knowledge of the treaties and the manner of the Government dealing with them. They acted upon this advice, and after several hours spent in free interchange of thought and feelings, during which they stated their claims

and grievances to me fully, as I understand their language. I advised them to receive the \$39,000 and sign the required receipt upon their protests already made. I also stated to them that I believed, from what I had seen of the dealings of our Government with Indians, that the intention of the Government was not to wrong them, but to deal kindly and justly with them; that I felt sure that if, upon examination of their treaty stipulations, it should be found that there remained any sum, large or small, due them, it would be paid them. The fact of their signing this receipt would not be a bar to their claim, especially so when it could be shown that the mistake was on the part of our Government; and that they were compelled, by reason of debts incurred in anticipation of a much larger sum, long before that, to have the \$39,000 or lose their improvements.

Upon these facts I said to them, "You must or better take the \$39,000 and trust to the Government." I said, "Present your case; justice may be a little slow, but it will come."

After this they quietly accepted the money and signed the required receipt. I am stating these facts from a clear recollection of their occurrence. I have no interest personal whatever in the case of these people.

PETER O. JOHNSON.

Attest:

HIRAM C. WALDRON.
L. ST. LORD

Subscribed and sworn to before me this 3d day of December, A. D. 1874; and I certify that the above Peter O. Johnson is to me personally known to be a person entitled to full faith and credibility.

[L. S.]

ANDREW J. SUTHERLAND,
Notary Public.

Attached to this instrument is the usual certificate of the clerk of the circuit court of said county and State, under the seal of said court, that Andrew J. Sutherland, the above, is a notary public in and for said county. Signed, W. N. Stevens, clerk, by H. C. Waldron, deputy clerk.

By the court, 4 Ohio, 347:

A receipt is *prima facie* evidence of payment, but a receipt acknowledging the reception of ten dollars and acquitting and releasing from all obligations would be a receipt for ten dollars only. (2 Ves., ch. 310; 5 Barn. & Ad., 606; 18 Pick., 325; 1 Ed. Ch., N. Y., 341.)

From the above it appears that the receipt they signed when forced and advised to accept the \$39,000 is, *per se*, no bar to the recovery of the remainder.

This sum was, at most, but a part payment of an ascertained, just, and acknowledged debt, and proven upon the findings of record by the Government.

Part payment is no satisfaction of the debt, even where the creditor agrees to receive a part for the whole, and gives receipt for the whole demand; and a plea of payment of a small sum in satisfaction of a larger is bad even after verdict. (2 Par. on Con., 618; 3 N. H., 518; 11 Vt., 60; 5 Johns., 388.)

Again, these people were, and now are, the *cestui que trusts* of the Government of the United States, which then was and now is their trustee in possession of their funds, and protector of their persons and rights. As a reminder of the rigor of the law by which trustees are held to faithfully discharge their trusts, the following is cited from the books:

Trustees are to faithfully apply the property according to the confidence reposed in them by the *cestui que trusts*. (4 Kent Com., 295; Hill on Trustees, 495, 324; 1 Saunders, N. & T., 6; 3 Blk. Com., 431.)

The continuance of an estate of trustee will be continued or limited to the accomplishment of the purposes of the trust, over the express language of the instrument creating the same. (4 Den., N. Y., 385; 11 B. Mon., Ky., 233.)

Payment must be made of the whole sum, and even where receipt in full has been given for a payment of part of an ascertained sum, it has been held *not to be an extinction of the debt*. (5 Coke, 117; 2 Bar. & Ad., 477; 11 Vt., 60; 26 Me., 88; 9 Johns., 333; 17 ib., 196.)

Upon the most critical examination of the evidence of protest and the circumstances attending the payment, it must be conceded that the

Cowles's agreement, even though it had been properly obtained, and the act in accord with it, was, and remains in law, fully annulled in all legal respects and effects.

The evidence of the Rev. Mr. Johnson, (see page 12 hereof,) which is in his own dictation, a prominent actor and unimpeachable and disinterested witness, should be held alone as sufficient to insure the passage of this measure upon its merits; but he is sustained by the notoriety of the facts, as shown by all the evidence of many others in the case.

In the treaty of September 26, 1833, it was "the wish" of the United States that the Indians signing that treaty should remove west of the Mississippi, and the Indians only agreed to vacate the ceded 5,000,000 acres within three years; but in the treaties of 1836, cited on page 4 hereof, by which the Government purchased their villages and band reserves, they agreed to remove west, which justly makes their portion payable west of the Mississippi; but our people were in no possible manner under any agreement or "wish" to remove; hence, as reported by Hon. S. S. Burdett, as chairman of sub-committee of Committee on Indian Affairs, House of Representatives, Forty-second Congress, in this case, our money is payable in Michigan and Indiana under the original guarantee of the treaties.

"As to the obligation or guarantee contained in this article protecting the annuitants in their just proportion, it must be observed that, as the treaties by which the Government purchased these lands prior to 1833 provided for the payment of the annuities to these annuitants in common with their people in Michigan and Indiana, any act on the part of the Government which permits them, or any part of them, to remain there, continues the original obligation to pay them there, and no new promise or guarantee is necessary from the United States, other than permission to remain, or remaining by permission, which is the same in effect, to keep in full force the original treaty provisions to pay the annuities to these annuitants in Michigan and Indiana."

See pages 2, 4, 5 hereof for evidence of authority for remaining and exemption from removal, and pages 15, 16, where the same is considered.

The Kansas people can make no claim to a refund or restitution of \$39,000, or any other sum, out of any money payable to the memorialists. In 1868 the funds of the Kansas people were begun to be distributed to those citizenizing; it has continued. Their funds are now all or nearly all distributed, and although this \$39,000 was directed to be paid out of their interest-bearing trust-fund, and they had but one such, and although the \$39,000 was paid in 1866, yet in 1868, and at all times subsequent, this trust-fund and all their other funds were represented for appropriation, the appropriations made and money paid to them from and upon amounts full as provided for in the treaties, not one dollar less for the payment made in Michigan in 1866. How and why this is so, where it may be charged, or where credited, is no question here; but one fact is essential to be known: the Michigan and Indiana people have not received one dollar of money that has been charged to, or in any way reduced their funds or payments; hence they have no claim against this case.

See Ex. Doc. No. 290, 2d Sess. 40th Congress, date May 14, 1868.

The necessary exhibit is too large to reproduce here, but it shows these funds are full at that date when \$377,435.77 was appropriated out to make final payment with 600 of the Kansas people.

See also Ex. Doc. 61, part 2, 3d Sess. 40th Cong., dated February 15, 1869.

This document also represents the funds as full, less only the above

appropriation, when \$356,863.53 was appropriated to make final settlement with 674 of the Kansas people.

These funds are now all or nearly all distributed, and the money paid to persons who are now citizens, so that the error, if any, is remediless.

Now to maintain that "the supplemental article of the treaty," as designated by Commissioner Crawford, is not an article of the treaty, that it was not and is not of binding force on the Government, is in effect to maintain that the Government, at the treaty of September 27, 1833, by means of false and fraudulent representations and conduct, obtained vast and valuable landed acquisitions, by falsely pretending to guarantee these people in the payment of large and specific sums of money, thereby depriving them of their last foot of land, and then not only passively by permitting them to remain, but actively, as if to make certain of the success of the fraud, by protecting and maintaining them in remaining, where all the Government's obligations to pay them were invalid and of no legal force or effect. This remedy, and it is the only one here, is worse than the disease. The Government is now only charged with neglect in making the payments pledged; but to plead and sustain the invalidity of this article convicts the Government of the commission and maintenance of a most disgraceful fraud and crime. See p. 9 hereof for evidence.

It has been said that there is no valid basis for this case in the treaty of September 27, 1833; that the Government is not a party, and is not bound by the last-cited provision of that treaty.

In considering this objection it must be remembered that the removal of these Indians west was the principal object of the treaty; that permission to remain could only emanate from the United States as a party.

By virtue of this article they did remain. In effecting the removal of the Indians by military force these annuitants were exempted, and protected in remaining by the United States officers, while all others who could be secured were arrested and taken west by force.

Commissioner Crawford, contemporaneous with the events, speaks of it in his letter to R. Stuart, Indian agent of this agency, as "the supplemental article of the treaty," the article, &c., of full and unquestioned authority and force in the premises.

At all times it has been maintained by the executive and legislative departments of the Government as part of the treaty; was ratified as such by the Senate, and is so printed in the statutes.

Both branches of Congress and the Department of the Interior, after frequent and protracted examinations, have established its authority as an article of the treaty. These annuitants have ever believed it a valid article, and, to test it by adverse supposition, if it be not, then the United States have perpetrated a fraud upon these people, by maintaining them, where its obligations for a valuable consideration are invalid and of no force.

It now seems that it must be held as binding upon both parties as any other article of the treaty, and that in the true interest of both parties.

See committee's report in this case, Indian Committee, House of Representatives, in this case, before cited.

The following is also an extract from the last-mentioned report:

Again, the agreement as signed by the parties and presented as a defense to this case, does not recite that the \$39,000 shall be accepted as any release of claims against the United States, but only as against the tribe, *i. e.*, the Kansas Indians.

This fully reconciles the representations made to Cowles, believing which, he states in his affidavit, he signed it.

It must be noticed in this relation that the tribe owed these annuitants for nothing. They had no claim upon the trust, educational reserve, or funds of the same, as these were created by treaties subsequent to 1833, and including 26th September, 1833, in which it is decided and accepted these annuitants have no claim.

The resolution, as it passed Congress, in addition to the language of the agreement, which is in writing and signed by the parties, recites "*or against the United States.*"

It will not be doubted but that *cestui que trusts*, competent to contract, may, by contract, release the trustee, but that agreement must be clear, specific, and properly obtained. Here we have the agreement in writing signed by the parties; and it certainly cannot be maintained that it even attempts the release of the United States as

trustee, purchasing-debtor, or otherwise, which leaves the joint resolution, as far as the claim of these annuitants is concerned against the Government, entirely foreign to the agreement executed by the parties in the premises.

The joint resolution, vol. 14 United States Statutes, page 370, reads:

To pay the Chippewa, Ottawa, and Pottawatomie Indians of Michigan, in pursuance of an agreement and compromise made with the Pottawatomie Nation, so named and designated in the treaty of 1846 with the United States, the sum of \$39,000, in full of all claims in favor of said Michigan Indians, either against the United States or said nations of Indians, present, past, or future, arising out of any treaty made with them, or any band or confederation thereof, and the annuity now paid them is to be restored and paid to said nation for the future.

The act itself states that it was to carry into effect a compromise and agreement between the memorialists and the Kansas people; and by reference to the Congressional Globe, it appears that this was the only representation made on the floors which secured its hasty passage by both houses on the last two days of the session.

Now, most happily for these unfortunate people, this agreement is in writing, signed by Mr. Cowles and the Kansas delegation, and duly preserved on the file records of the House, and it read:

The controversy heretofore existing between certain Chippewa, Ottawa, and Pottawatomie Indians of Michigan and the Pottawatomie Nation of Kansas has been compromised and adjusted, the latter agreeing to pay the former the sum of thirty-nine thousand dollars in full of all claims, past, present, or future, against the tribe, arising out of any treaty or otherwise.

The purpose of this agreement is manifest. Your memorialists were then claiming their distributive proportion of vast sums to which they had no right. (See page 16, hereof.) It was to release those funds from their claims, and not to release the United States from the treaty obligations with your memorialists, that it was so ardently demanded.

Cowles was assured that by signing it he would not impair the rights of his people upon the treaties to all remaining balances; believing which, he signed it, (see evidence, page 29, hereof,) and the agreement itself sustains those representations. He or his people in no manner and at no time, ever agreed to accept \$39,000 and release their claims against the United States upon the treaties.

The words "either against the United States or" and "and the annuity now paid them is to be restored and paid to said nation for the future," which appear in the act, are not, in fact, in substance or by implication, to be found in the agreement upon which the act declares it is based.

Pending the examination of the case by Senator Buckingham, on the 25th March, 1872, he addressed four letters of inquiry to the Secretary of the Interior, in one of which he inquired the number of Pottawatomie Indians residing in Kansas since 1836, by semi-decades, up to 1866; another, inquiring the number of your memorialists resident in Michigan at the same periods; another, inquiring the amounts paid your memorialists within the same period, and in compliance with what treaties; and a fourth, inquiring whether the treaty of Camp Tippecanoe, October 20, 1832, between the United States and the Pottawatomie "bands of the Prairie and the Kankakee," was regarded as made with the Pottawatomie Nation, or a part of the same known as bands of the Prairie and Kankakee.

The following are the replies:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 27, 1872.

SIR: I have received your four letters dated the 25th instant, asking certain information in reference to the Pottawatomie tribe of Indians of the Prairie and Kankakee

In one you ask for a copy of the report of the Secretary of the Interior, made in compliance with the act of Congress approved March 2, 1861, in relation to the amounts, if any, then due the Chippewa, Ottawa, and Pottawatomie Indians, now residing in the State of Michigan.

I inclose herewith a copy of the report. (See document 19, Ex. Docs., vol. 4, third session Thirty-seventh Congress, herewith.)

Your other letters ask for information not in the possession of this Department, but which can be found, as I am informed, in the office of the Second Auditor of the Treasury.

I therefore addressed to the Second Auditor a letter asking the information for which you call, and I have the honor to transmit herewith the reply of that officer.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Since writing the foregoing, I am informed that the Second Auditor has failed to answer whether the Pottawatomie Nation, or only a band on a particular location, are included in the treaty concluded at Camp Tippecanoe on the 20th October, 1832, which treaty was made with the Pottawatomie tribe of Indians of the Prairie and Kankakee.

I am informed by the Commissioner of Indian Affairs that the construction put upon this treaty includes the Pottawatomie Nation, and that the annuities which have been paid under the provisions thereof have been paid to the nation, and not to any part thereof known as Indians of the Prairie and Kankakee.

I have no doubt that the construction of the treaty at the office of the Commissioner of Indian Affairs is correct.

C. DELANO, *Secretary.*

TREASURY DEPARTMENT,
Second Auditor's Office, March 27, 1872.

SIR: The papers herewith contain the information furnished May 4, 1871, January 12, and February 28, 1872, to W. N. Severance, esq., attorney for Pottawatomes of certain bands, being the same requested by your letter of to-day, modified by suggestions in that of yesterday to you from Senator Buckingham, which last was filed in this office by Mr. Severance.

Very respectfully,

E. B. FRENCH,
Second Auditor.

Hon. C. DELANO,
Secretary of the Interior.

The following exhibits the number of the main nation of the Pottawatomie Indians, (those residing west of the Mississippi,) for the years indicated, as the same appears from the receipt-rolls in the Indian Office:

J. L. Jamison, agent, paid 3,764 persons in 1836.
J. P. Simonton, agent, paid 76 persons in 1836.
A. S. Davis, agent, paid 3,390 persons in 1841.
R. B. Mitchell, agent, paid 2,231 persons in 1846.
J. R. Chenault, agent, paid 3,914 persons in 1851.
G. W. Clark, agent, paid 3,181 persons in 1856.
W. W. Ross, agent, paid 2,142 persons in 1861.
L. R. Palmer, agent, paid 2,202 persons in 1866.

The \$1,587.50 was paid to those Pottawatomes residing in Michigan, in conformity to, and as their proportion of, the treaty of July 29, 1829, and the second article of the supplementary treaty of September 26, 1833, for all the years that the same was paid, excepting for the years 1851 and 1865, in which years the treaty of 1833 is not included.

The payment of the \$39,000 in 1866 was made in conformity to the joint resolution of Congress approved July 28, 1866, vol. 14, U. S. Stat. at Large, page 370.

In 1843 Robert Stuart paid 253 Indians.....	\$1,587 50
In 1844 Robert Stuart paid 269 Indians.....	1,587 50
In 1845 Wm. A. Richmond paid 217 Indians.....	1,587 50
In 1846 Wm. A. Richmond paid 204 Indians.....	1,587 50
In 1847 Wm. A. Richmond paid 244 Indians.....	1,587 50
In 1848 Wm. A. Richmond paid 260 Indians.....	1,587 50

In 1849 Chas. P. Babcock paid 260 Indians.....	\$1,587 50
In 1850 Chas. P. Babcock paid 218 Indians.....	1,587 50
In 1851 Wm. Sprague paid 229 Indians.....	1,587 50
In 1852 Wm. Sprague paid 214 Indians.....	1,587 50
In 1853 Henry C. Gilbert paid 219 Indians.....	1,587 50
In 1854 Henry C. Gilbert paid 236 Indians.....	1,587 50
In 1855 Henry C. Gilbert paid 236 Indians.....	1,587 50
In 1856 Henry C. Gilbert paid 221 Indians.....	1,587 50
In 1857 A. M. Filch paid 229 Indians.....	1,587 50
In 1858 A. M. Filch paid 234 Indians.....	1,587 50
In 1859 A. M. Filch paid 253 Indians.....	1,587 50
In 1860 A. M. Filch paid 236 Indians.....	1,587 50
In 1861 De Wit C. Leach paid 235 Indians.....	1,587 50
In 1862 De Wit C. Leach paid 247 Indians.....	1,587 50
In 1863 De Wit C. Leach paid 246 Indians.....	1,587 50
In 1864 De Wit C. Leach paid 242 Indians.....	1,237 50
In 1865 Richard M. Smith paid 232 Indians: principal, in currency, \$1,587.50; premium, in gold, \$692.24.....	2,279 74
In 1866 Richard M. Smith paid 338 Indians.....	39,000 00

The above shows the number of Pottawatomie Indians residing in Michigan in the years indicated who received the amount as shown thereon, as the same appears from the receipt-rolls on file in the Indian Office.

It should be observed that by treaty of September 27, 1833, (vol. 7, U. S. Stat., page 442,) all the annuities are made payable in specie. The premium was paid, as shown above, in 1865, being 42 per cent., about. No premiums or interest are asked or included in this case, although these two items alone would, in equity, more than equal the present bill. Their demand is simple justice.

Previous to 1872 this measure had been repeatedly examined by the Department of the Interior.

Pending the consideration of this measure by the Committee on Indian Affairs of the House of Representatives of the second session, Forty-second Congress, the Hon. William L. Stoughton, House of Representatives, addressed to the Hon. Secretary of the Interior an inquiry, dated June 3, 1872, inclosing a copy of the above report and bill, stating that a greater portion of the Indians resided in his district, and requesting the recommendation of the Department upon the report and bill, to which the honorable Secretary responded by the following letter and report:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 4, 1872.

SIR: I have the honor to herewith transmit for your information, and in reply to your letter of the 3d instant, in relation to report No. 121, United States Senate, accompanying a bill to provide for the claims of the Pottawatomie Indians residing in Michigan and Indiana, a copy of a report of the Commissioner of Indian Affairs, to whom your letter was referred, wherein he expresses the opinion, which is concurred in by this Department, that the Pottawatomes referred to are justly and equitably entitled to the amount allowed them by said bill.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Hon. WM. L. STOUGHTON,
House of Representatives.

DEPARTMENT OF THE INTERIOR, INDIAN OFFICE,
Washington, D. C., June 3, 1872.

SIR: I have the honor to acknowledge the receipt, by informal reference from the Department, of a communication from Hon. William L. Stoughton, dated this day, inclosing a report submitted by Senator Buckingham, together with Senate bill No. 944, relative to certain Pottawatomie Indians residing in Michigan and Indiana, and requesting the opinion and recommendation of the Department in the matter.

The communication of Mr. Stoughton and inclosures having been submitted for the

views of this office, I have the honor to state that I have examined Senator Buckingham's report and the treaties affecting the claims of said Indians, and am fully satisfied that the Pottawatomies referred to are justly and equitably entitled to the amount allowed them by said report and bill. The papers referred to are herewith returned.

Very respectfully, your obedient servant,

F. A. WALKER,
Commissioner.

Hon. C. DELANO,
Secretary of the Interior.

The Secretary of the Interior, in his report to the House of Representatives, May 14, 1868, reported the following as the perpetual annuities due the Pottawatomies. (See Ex. Doc. No. 290, second session, Fortieth Congress :)

PERMANENT ANNUITIES.

Treaty of August 3, 1795, article 4, (see Statutes at Large, vol. 7, p. 51,) payable in silver	\$1,000 00
Treaty of September 30, 1809, article 3, (Statutes at Large, vol. 7, p. 114,) payable in silver	500 00
Treaty of October 2, 1818, article 3, (Statutes at Large, vol. 7, p. 185,) payable in silver	2,500 00
Treaty of September 20, 1828, article 2, (Statutes at Large, vol. 7, p. 317,) payable in money	2,000 00
Treaty of July 29, 1829, article 2, (Statutes at Large, vol. 7, p. 320,) payable in specie	16,000 00
Treaty of September 20, 1828, (see reference above,) and of June 5 and 17, 1846, article 10, (Statutes at Large, vol. 9, p. 855,) payable in lieu of tobacco, iron, and steel	300 00
Treaty of October 16, 1826, article 3, (Statutes at Large, vol. 7, p. 295,) and of September 20, 1828, and of July 29, 1829, (references as above,) being for blacksmith, iron, steel, &c.	2,820 00
Treaty of July 29, 1829, article 2, (reference as above,) being for salt	437 50
Total amount of permanent annuities	25,557 50

The just per-capita proportion of these, due your memorialists, is \$2,844.87, the same being determined upon their relative numbers in 1866 and 1868, when distribution was commenced.

The following, taken from pages 5 and 6 of the Senate Report No. 121, and Mr. Burdett's report, demonstrates the treaties and sums to which your memorialists are entitled to participate, their per-capita amount, the entire amounts which have been paid them, and the balance remaining due.

The following exhibit is made in accordance with the construction given to all treaties as herein set forth, and shows the amount due the memorialists :

Treaty.	Annual amount.	Time.	Amount due in 1836.	Amount due first semi-decade, to 1841.		Amount due second semi-decade, to 1846.		Amount due third semi-decade, to 1851.	
				Yrs.	\$	Yrs.	\$	Yrs.	\$
Aug. 5, 1795	\$1,000	Perpetual	\$1,000	5	\$5,000	5	\$5,000	5	\$5,000
Sept. 30, 1809	500	do.	500	5	2,500	5	2,500	5	2,500
Oct. 2, 1818	2,500	do.	2,500	5	12,500	5	12,500	5	12,500
Aug. 29, 1821	5,000	20 years	5,000	5	25,000	Exp.			
Oct. 16, 1826	2,000	22 years	2,000	5	10,000	5	10,000	1	2,000
Sept. 20, 1828	2,000	Perpetual	2,000	5	10,000	5	10,000	5	10,000
Sept. 20, 1828	1,000	20 years	1,000	5	5,000	5	5,000	1	1,000
July 29, 1829	16,000	Perpetual	16,000	5	80,000	5	80,000	5	80,000
Oct. 20, 1832	15,000	20 years	15,000	5	75,000	1	15,000	Exp.	
Oct. 26, 1832	20,000	do.	20,000	5	100,000	5	100,000	5	100,000
Oct. 27, 1832	15,000	12 years	15,000	5	75,000	2	30,000		
June 17, 1846	300	Perpetual						5	1,500
Total.....			80,000		400,000		270,000		214,500

Treaty.	Annual amount.	Time.	Amount due fourth semi-decade, to 1856.		Amount due fifth semi-decade, to 1861.		Amount due sixth semi-decade, to 1866.		Amount due seventh semi-decade, to 1871.		Amount due in 1872 for one year.	
			Yrs.		Yrs.							
Aug. 5, 1795	\$1,000	Perpetual	5	\$5,000	5	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$1,000	
Sept. 30, 1809	500	do	5	2,500	5	2,500	2,500	2,500	2,500	2,500	500	
Oct. 2, 1818	2,500	do	5	12,500	5	12,500	12,500	12,500	12,500	12,500	2,500	
Aug. 29, 1821	5,000	20 years										
Oct. 16, 1826	2,000	22 years										
Sept. 20, 1828	2,000	Perpetual	5	10,000	5	10,000	10,000	10,000	10,000	10,000	2,000	
Sept. 20, 1828	1,000	20 years										
July 29, 1829	16,000	Perpetual	5	80,000	5	80,000	80,000	80,000	80,000	80,000	1,600	
Oct. 20, 1832	15,000	20 years										
Oct. 26, 1832	20,000	do	5									
Oct. 27, 1832	15,000	12 years										
June 17, 1846	300	Perpetual	5	1,500	5	1,500	1,500	1,500	1,500	1,500	300	
Total.				111,500		111,500	111,500	111,500	111,500	111,500	22,300	

Years.	Indians west of the Mississippi.	Indians in Michigan and Indiana.	Total number of Indians.	Amount due the nation.	Per capita.	Amount due the bands.
1836	3,840	250	4,090	\$80,000 00	\$19 56	\$4,890 00
1841	3,390	273	3,663	400,000 00	109 20	29,811 60
1846	2,231	269	2,500	270,000 00	108 00	29,052 00
1851	3,914	287	4,201	214,500 00	51 05	14,651 35
1856	3,181	281	3,462	111,500 00	32 20	9,048 20
1861	3,142	304	2,446	111,500 00	45 53	13,856 32
1866	3,202	317	2,519	111,500 00	44 26	14,030 42
1871	3,202	322	2,524	111,500 00	45 60	14,683 20
1872	3,202	322	2,524	22,300 00	8 83	2,844 87
Add full annuity under treaty September 27, 1833, \$2,000 for 19 years						132,867 96
						38,000 00
There were paid the memorialists from the year 1843 to 1863, inclusive, 21 years, \$1,587.50 per annum				\$33,337 50		170,867 96
In 1864				1,237 50		
In 1865				1,587 50		
In 1866, in accordance with public act.				39,000 00		
						75,162 50
Balance due memorialists						95,705 46
Annuity of \$2,844.87 capitation, at 5 per cent. per annum, equals						56,897 50
Due to make final settlement						152,602 96

The bill (S. 944, 2d sess., 42d Cong.,) which passed the Senate appropriated \$152,602.96. This included the amount due up to 1872. The Senate bill No. 218, which passed the present Senate and is now before the House, appropriates \$155,447.83, which includes the whole amount due up to fiscal year ending June, 1874, being one year's annuity, \$2,844.87 more than the former bill.

By the evidence on page 3 hereof, it appears that your memorialists are an intelligent, frugal, industrious, and Christian people, fully competent to manage their own affairs. They are at all times assured by the highest authority of the Government that their cause is just, and are conscious that ultimately it must prevail. They are in want, and have

waited long for their money, diligently and continually urging Congress to enable the Secretary of the Interior to pay them. It has twice passed the Senate, and once the House, and it is most ardently hoped that all future expense and trouble, both to them and the Government, may be avoided by the present bill becoming a law, as they will ever pray.

SIMON POKAGON,

Chairman Business Committee.

W. N. SEVERANCE,

Of South Bend, Ind., Counsel.