

## OSAGE INDIANS.

MARCH 2, 1877.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. W. W. WILSHIRE, from the Committee on Indian Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 3079.]

*The Committee on Indian Affairs, to whom was referred the bill (H. R. 3079) directing the execution of a resolution of the national council of the Osage Indians, after full consideration of the same, submit this as their report:*

The facts upon which the passage of the bill is asked are as follows:

The Osage Indians, being, under treaty with the United States, the owners and occupants of a reservation of 8,000,000 acres of land in the State of Kansas, in 1865 concluded a treaty by which they ceded to the United States, in trust, two-fifths of their lands, to be sold at \$1.25 per acre, and the proceeds to be placed to the credit of the Osages in the United States Treasury, and to bear interest at 5 per cent. per annum. By the same treaty it was further agreed by the United States, that, if the Osages desired it, the balance of their lands should be sold and the proceeds disposed of in the manner agreed upon for the ceded lands.

In 1868, the Osage Nation was induced to conclude a new treaty, by which the treaty of 1865 was abrogated, and all of their land was sold to a certain railroad company for 20 cents per acre, of which sum one cent and a quarter was to be paid in ready money and eighteen and three-quarter cents in the 5-per-cent. bonds of the road. This treaty was approved by the executive officers of the Government, and was reported back favorably by the Indian Committee to the Senate for the approval of that body. Had this treaty passed the Senate, the Osages would have received from the railroad \$2,400,000 less for 8,000,000 acres of land than the United States had agreed to give them for two-fifths of this same land; and this Indian nation, deprived of every acre of its rich inheritance, would have been the owner of \$100,000 in money and \$1,500,000 in 5-per-cent. railroad bonds.

Becoming dissatisfied with this last treaty, the Osages employed two attorneys at law to visit Washington in behalf of the nation, and by all legal means to endeavor to prevent the approval of the treaty of 1868, and, further, to negotiate for the sale of the Osage lands not ceded to the United States by the treaty of 1865 at the highest price that could be had for them. These gentlemen presented themselves at the office of the Commissioner of Indian Affairs as the attorneys of the Osage Nation of Indians, and represented, in behalf of their clients, that the treaty of 1868 was procured through fraud, and therefore should not receive the approval of that officer. They argued the case of their clients before

the Indian Committee of the Senate, where, by showing the totally inadequate price to be paid for the lands by the railroad, and the unnecessary loss to the Osages by the abrogation of the treaty of 1865, and the strong probability that the recent negotiations were tainted with fraud, they succeeded, the chairman of that committee states, "in having time granted them to make a full exhibit on this subject. \* \* \* This delay caused the postponement of final action until the Senate adjourned."

They presented the facts attending the negotiation of this treaty, and the loss that would result to the Osages by its approval, to the President, and asked the withdrawal of the treaty from the Senate. The Commissioner of Indian Affairs, who was present at this interview, states that the President said to the attorneys that the treaty was negotiated by his predecessor, and he would not disturb it unless fraud could be proved in its negotiation; but if this were shown he would withdraw it from the Senate. The Commissioner further says that, at the solicitation of these attorneys, he directed an officer of his bureau to hold a council with the Osages and report on this matter.

This officer having reported against the treaty, Commissioner Parker says:

The matter of this report was laid before the President for his information, and at the request of [the attorneys of the Osages] I had an interview with the President upon the Osage question. Not long after, the treaty was withdrawn from the Senate.

The treaty of 1868 having been recalled by the President, there was reported to the Senate, by the chairman of the Committee on Indian Affairs of that body, a bill by which the United States took the eight million acres of Osage lands at 20 cents per acre; and about the same time the chairman of the Indian Committee of this House reported a bill from his committee, by which the Osages would receive less than 12½ cents per acre for their lands.

The attorneys of the Osages opposed both of these measures, truthfully asserting that under the treaty of 1865 the United States were bound in good faith to sell these lands at not less than \$1.25 per acre, and to place the net proceeds to the credit of the Osages in the Treasury of the United States. Having by their arguments against the House bill convinced the chairman of the Indian Committee that their clients were entitled to the net result of the sales of their lands at \$1.25 per acre, he agreed to an amendment to be offered to the then pending Indian appropriation bill; and on this point that gentleman (the chairman of the Indian Committee of the House of Representatives in 1870) states that he proposed an amendment that met with the approval of the attorneys of the Osages, and in conclusion he says of this amendment:

It was adopted, and became a part of the original bill as it now stands on the statute-book, just as it was agreed upon between [the attorneys of the Osages] and myself.

This amendment, *i. e.*, the twelfth section of the Indian appropriation bill of 1870, disposed of all measures then pending in Congress relative to the Osage lands, and by it the Osage Nation will realize \$10,000,000 for the lands that the treaty of 1868, or the Senate bill heretofore named would have disposed of for \$1,600,000, or the House bill referred to would have taken for \$1,000,000.

The Commissioner of Indian Affairs, in his report on this case to the Secretary of the Interior, of February 12, 1875, says, having reference to the defeat of the treaty of 1868, and of the Senate and House bills, and the adoption of the amendment referred to:

I beg leave to say that, from the best information I can procure, I have no hesitation in admitting that the great gain to the Osages, amounting to over \$8,000,000 in the final sale of their lands, was largely due to the services of [the Osage attorneys].

It appears that these attorneys had, at the time of their employment, a contract with their clients for a contingent fee of one-half of all they succeeded in securing for the Osage lands over and above the \$1,600,000 named in the treaty of 1868; but that having secured \$8,400,000 more than the treaty price, they recognize the fact that their fee was too large, and they accordingly surrendered their contract to the Osages, and asked a fair and reasonable settlement for the services they had performed. Accordingly, a settlement was made between the attorneys and the duly authorized delegates of the Osage Nation, in which the provisions of the original contract are recited, the full performance by the attorneys of their duties under this contract are admitted, and the sum of \$330,000 agreed upon as compensation in full for their services. This paper, being duly executed under seal by the parties, before witnesses, and acknowledged before a judge of a court of record, concludes as follows:

The Secretary of the Interior Department at Washington shall receive said amount of \$330,000 and pay the same over to the party of the first part, [the attorneys,] and their receipt for said amount shall be filed in the proper Department of the Government as a voucher for so much money received by the said Osage Nation.

The Commissioner of Indian Affairs reports to the Secretary of the Interior, on the 8th of July, 1874:

That the Osage chiefs, in general council, in further action upon this settlement, confirmed and ratified the same, with the further understanding that the fees therein named as due said attorneys should be reduced to \$230,000.

The action of the Osage council is embodied in the resolution for the execution of which the passage of the accompanying bill is asked, and is in the following words:

*Resolved by the Osage council, in general council of the chiefs and councilors of the Osage Nation, convened in open council, That the foregoing contract and agreement, entered into on the 8th day of February, 1873, between C. N. Vann and W. P. Adair, of the Cherokee Nation, and Che-su-hun-kah, Black Dog, Wah-tan-in-kah, Major Broke Arm, and others, representing the Osages, be, and the same is hereby, ratified and confirmed, with the understanding that the fees therein of the said Vann and Adair are reduced one hundred thousand dollars, so that the said fees will be two hundred and thirty thousand dollars, instead of three hundred and thirty thousand dollars, the said Vann and Adair consenting to such reduction.*

OSAGE COUNCIL GROUND, OSAGE NATION, June 26, 1873.

It further appears that after the first payment to the attorneys the Secretary of the Interior received a communication, signed by the governor and councilors of the Osages, approving his action in acknowledging their requisition, but adding:

Our nation made this contract in good faith, and we desire it carried out in good faith for the amount it calls for on its face.

This is the last action of the Osage council approving this matter, and it does not appear that it has since, or that the council has ever, taken any action against this debt, except to reduce it \$100,000 by the resolution that awarded the sum that is now demanded.

Upon the presentation of the settlement and resolution of the Osage national council to the United States for payment, the Commissioner of Indian Affairs, finding that they were fully and clearly explained to the Osages by their agent, and were duly executed by the council, approved them, but ordered the payment of only \$50,000, for the reason, as he states in his report of July 8, 1874,

That, in the nature of the case, the services of the attorneys could not have been so arduous or valuable in themselves as to warrant the payment of the full amount offered by the Osages.

This action of the Commissioner was approved by the Secretary of the Interior, and \$50,000 was paid to the attorneys. It is said that this payment was in full of this claim, but there is no receipt or other evidence exhibited to prove this statement. However this may be, it is of no consequence, as the Secretary of the Interior afterward re-opened the case, to allow the attorneys to file further evidence of the value of their services to the Osage Indians.

On the rehearing, the attorneys claimed that the settlement and the resolution of the Osage national council does not make a private contract with Indians, in the meaning of the statute, which the Department was authorized to pay in part only, but that these acts were the formal acknowledgment of a national debt of the Osage Nation, and a requisition for its payment that the Government was by law bound to recognize and execute. This was not admitted by the Secretary of the Interior, who decided that his predecessor, in the payment he had made in this case, had fully compensated the attorneys for all services in this behalf, and, generally, that the practice of paying claims of this character out of Indian trust-funds was a vicious custom, that he would not sanction.

From this decision of the Secretary, the attorneys appealed to Congress, and on this appeal your committee, having found the foregoing facts, are of the opinion that these attorneys were regularly and legally employed by the Osage Indians, and were so recognized by the Departments and by the committees of Congress; that they have performed most valuable services for their clients, and that the two parties have united in a settlement for these service that is, in view of all the circumstances, legal and equitable; that the Osage national council, with a full appreciation of the sum involved, did, in open council, unanimously approve this settlement, and, so far as it had the power, made an appropriation out of the moneys of the nation for the payment of this Osage national debt as finally fixed by the council; that this case does not involve any question as to "private contracts with Indians," regulated by the 403d section of the Revised Statutes, but is to be adjudged solely under the laws regulating the rights and duties of the executive officers of the United States in the auditing and payment of debts contracted by an Indian tribe or nation.

The committee will state, in conclusion, that a delegation of Osage Indians, consisting of the chief of the nation and certain of the chief councilors, being duly authorized by the Osages to act for them in the adjustment of all their business with the United States, including the payment of any and all debts of the nation, appeared before your committee at the final hearing of this case, and, being questioned in regard to it, fully confirmed the statement of facts as above given, and further stated that their people held themselves indebted to the parties named in the sum above indicated, and that they wished to pay it out of the moneys of the Osage Nation now in the Treasury of the United States.

The committee therefore report the accompanying bill, and recommend its passage.