

---

COUNSEL-FEES IN OSAGE LAND-SUITS.

---

MARCH 12, 1878.—Committed to the Committee of the Whole House and ordered to be printed.

---

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

REPORT:

[To accompany bill H. R. 2153.]

*The Committee on Indian Affairs, to whom was referred the bill (H. R. 2153) providing for the payment of counsel-fees in Osage ceded land suits, respectfully submit the following report:*

By treaty between the United States and the Great and Little Osage Indians, proclaimed January 21, 1867, the said Indians ceded certain of their lands to the United States to be surveyed and sold. The proceeds of said lands were to be applied to reimburse the United States for \$300,000 to be advanced to said Indians, and to pay the necessary expenses incident to the survey and sale; the balance of the money realized from the lands, after meeting the foregoing expenses, &c., was to be applied to the "civilization fund," to be used for the civilization and education of Indian tribes generally.

Agreeably to the provisions of the treaty the United States advanced the \$300,000. The Indians removed from the lands and they were duly surveyed, and, by joint resolution of Congress of April 10, 1869 (Statutes at Large, vol. 16, p. 55), were opened for sale and settlement at a price fixed at \$1.25 per acre. The whole amount of the lands proved to be about 960,000 acres. Under the joint resolution referred to, several thousand settlers (2,295) went upon and took possession of portions of such lands.

After they had been some time in possession and had made valuable improvements upon the property, and had paid \$292,545 to the United States, the Leavenworth, Lawrence and Galveston, and the Missouri, Kansas and Texas Railroad Companies claimed all but about one section of the entire tract of 960,000 acres, under grants from the State of Kansas, that State claiming to have acquired its title by grant from the United States by an act of March 3, 1863 (12 Statutes at Large, p. 772), and an act of July 26, 1866 (14 Statutes at Large, p. 289).

The Secretary of the Interior, upon a consideration of the claims of the settlers and the railroad companies, decided in favor of the latter and canceled all the entries filed by the settlers.

Under this decision the government had no way to reimburse itself for the \$300,000 advanced to the Osages, or for the expense of the survey, &c., of the lands. Meantime the settlers, finding themselves likely to

lose their homes, with all the improvements put upon their farms, &c. employed the counsel named in the bill.

The decision of the Secretary was rendered in 1872, and patents were issued to the railroad companies. A large number of actions—some several hundred—were commenced in the Kansas courts. In 1874, at the instance of the settlers and their counsel, the Attorney-General of the United States directed the United States district attorney for Kansas to institute suits in the United States circuit court for that State against the companies, to determine the questions of title and to admit the counsel for the settlers (those named in the bill) to appear and cooperate. Though not by any direct order, yet by a tacit understanding adopted and acted upon, the counsel referred to took almost if not quite the entire charge of all the subsequent proceedings. The contest was pending for several years, and went for final determination to the United States Supreme Court. The result was a reversal of the decision of the Secretary of the Interior and a confirmation to the settlers and the government of the title to the lands. This result saved to the government the \$300,000 it had advanced under the treaty of 1867, and the expenditure it had made in surveying the lands, and saved to the civilization-fund the balance of the proceeds of the land at \$1.25 per acre, which would amount, in all, to nearly or quite \$1,200,000. In fact, it may be urged with something of force that this whole sum was saved to the government direct, since, if the grant to the railroad companies had been allowed to stand, the provisions of the treaty might have been considered as imposing upon the government the obligation to make good to the Osages and to the civilization-fund the full sum at \$1.25 per acre of the 960,000 acres.

And in addition, the settlers would have presented claims for hundreds of thousands of dollars for improvements, &c., put upon the lands upon the faith of the agreement of the government to secure them title by its patents. The failure of the government to meet these demands would have left the settlers absolutely homeless and beggared. The government undertook to give these parties an absolute title, and it was bound to defend them therein. When the patents issued to them were by direction of the Secretary of the Interior canceled, and title decreed to be in the railroad companies and patents actually issued to the latter, the settlers had no other course open to them than to acquiesce or seek their remedy in the courts. They determined, as was their right, to do the latter, and employed able, faithful, and finally successful counsel. If an individual had stood in the relation to them which the government held, they could enforce reimbursement of all their necessary and reasonable costs incurred in defending their title. The government cannot afford to deny them this measure of justice, especially inasmuch as these settlers, in defending their own interests, saved to it, direct, over \$300,000, and to it as trustee for the Indians, about \$900,000 more. The only questions, then, remaining, we think, are, Is the sum asked for counsel-fees unreasonable? and, Out of what fund should the payments be made? In answer to the first we think, in view of the magnitude of the interests in litigation, the large number of actions brought, the intricate questions involved, and the eminent ability with which the protracted contests were conducted to ultimate success, the sums charged for counsel were reasonable and just. In answer to the second proposition, we are of the opinion that as the government acted merely as a trustee for the Indians and held that relation throughout and acted in entire good faith, that the trust itself and not the government should be charged with the expenses rendered necessary to its full and complete execution, and we therefore recommend that the sums severally named for counsel-fees be

paid, as provided in the bill, out of the moneys derived from the sale of the lands.

No sufficient proof has been presented to the committee to warrant the allowance asked to be paid to William Dick, treasurer of the Settlers Protective Association.

Your committee recommend that the bill be amended by adding after the word "sums" in line 6, page 4, the following: *in full for all claims for counsel-fees*, and further by striking out all after line 14 on said page 4, and that the bill as so amended be passed.

○