

1883-53

INDIAN TREATY OF BUFFALO CREEK, NEW YORK.

MARCH 2, 1883.—Referred to the House Calendar and ordered to be printed.

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

REPORT:

[To accompany bill H. R. 7559.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 7559) to provide for a settlement with the Indians who were parties to the treaty concluded at Buffalo Creek, in the State of New York, on the 15th day of January, 1838, for the unexecuted stipulation of that treaty, respectfully report in favor of the passage of the bill for reasons appearing in the accompanying letter of the Commissioner of Indian Affairs.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 9, 1883.

SIR: I am in receipt, by department reference, of a communication from J. R. McCarty, clerk of the Senate Committee on Indian Affairs, dated January 29, 1883, in which he incloses the "Petition of the Six Nations of New York Indians relating to Kansas lands," and states that the "committee will be glad to receive from your department any information or suggestions which you may wish to communicate regarding the subject."

The petition sets forth that by certain treaties between the New York Indians and the Menomonees, the former purchased of the latter certain lands in Wisconsin, which lands were secured to the New York Indians by the treaty between the United States and the Menomonees, concluded February 8, 1831 (7 Stat., 342); and that by the treaty of January 11, 1838 (7 Stat., 550), they ceded the lands in Wisconsin acquired from the Menomonees to the United States, in consideration for which the United States agreed to set apart a tract of country situated west of the State of Missouri, in the Indian Territory, of 1,824,000 acres of land, being 320 acres for each one of said Indians, which lands the said Indians have never received, or the equivalent of land in Wisconsin ceded to the United States.

They ask as relief on account of the above claims that a fund be appropriated sufficient to build a high school for each tribe of said Six Nations and to support the same.

The petition is signed by delegates on behalf of the Senecas, Cayugas, Oneidas, Tuscaroras, and Onondagas.

The history of the negotiations between the New York Indians and the Menomonees and Winnebagoes, and the action of the government in connection therewith, may be found in Senate Ex. Doc. No. 189, Twenty-seventh Congress, second session.

By the treaty of February 8, 1831, between the United States and the Menomonees (7 Stat., 342), the latter, although protesting that they were under no obligations to recognize any claim of the New York Indians to any portion of their country, and that they neither sold nor received any value for the land claimed by these tribes, yet agreed that such part of the lands described as the President might direct might be set apart as a home to the several tribes of New York Indians who might remove and settle upon the same within three years from the date of the agreement.

By a supplemental agreement concluded February 17, 1831 (7 Stat., 346), this limitation was changed so as to require the President to prescribe the time for removal and settlement.

The claim of the Menomonees that they had not received any value from the New York Indians for the lands in Wisconsin does not appear to be well founded. In the treaty between these Indians, August 18, 1821, approved by the President February 9, 1822, the receipt of \$500 is acknowledged, and a receipt, dated September 16, 1822, acknowledges the payment of \$1,500 in goods.

The preamble to the treaty between the United States and the New York Indians concluded January 15, 1838 (7 Stat., 550), recites that, with the approbation of the President of the United States, purchases were made by the New York Indians from the Menomonee and Winnebago Indians of certain lands at Green Bay, in the Territory of Wisconsin, and after much difficulty and contention with those Indians concerning the extent of that purchase, the whole subject was finally settled by a treaty between the United States and the Menomonee Indians, concluded in February, 1831, to which the New York Indians gave their assent on the 17th of October, 1832; that by the provisions of that treaty 500,000 acres of land were secured to the New York Indians of the Six Nations and the St. Regis tribe as a future home, on condition that they all remove to the same within three years or such reasonable time as the President should prescribe; and that the President is satisfied that various considerations have prevented those still residing in New York from removing to Green Bay, &c. In view of which facts the treaty was made.

By the first article of that treaty the several tribes of New York Indians ceded and relinquished to the United States all their right, title, and interest to the lands secured to them at Green Bay by the Menomonee treaty of 1831, except a certain tract reserved.

By the second article the United States, in consideration of the above cession and relinquishment, agreed to set apart as a permanent home for all New York Indians then residing in New York, Wisconsin, or elsewhere, a certain tract of country west of the State of Missouri, containing 1,824,000 acres, being 320 acres for each soul of said Indians as then computed: "To have and to hold the same in fee simple to the said tribes or nations of Indians, by patent from the President of the United States, issued in conformity with the provisions of the third section of the act" of May 28, 1830 (4 Stat., 411). (The section referred to provides that such lands shall revert to the United States if the Indians become extinct or abandon the same.)

By the third article it was agreed that such of the tribes of the New York Indians as did not accept and agree to remove within five years, "or such other time as the President may from time to time appoint, shall forfeit all interest in the lands so set apart to the United States."

By the fifteenth article the United States agreed to appropriate the sum of \$400,000, to be applied from time to time under the direction of the President, in such proportions as may be most for the interest of the said Indians, parties to this treaty, for the following purposes, to wit: To aid them in removing to their homes and supporting themselves the first year after their removal; to encourage and assist them in education and in being taught to cultivate their lands;" &c.

This treaty was proclaimed April 4, 1840. Disputes having arisen under it, growing out of the claims of the Ogden Land Company to the lands in New York, it was modified in some particulars by a treaty with the Seneca Nation, concluded May 20, 1842 (7 Stat., 586), but the modifications do not appear to affect the articles heretofore quoted from.

Contemporaneous history shows that this treaty of 1838 was made, not in the interests of the Indians, but for the benefit of the land company which owned the right of pre-emption in the New York lands, and which, therefore, was anxious to secure the removal of the Indians.

There appeared to be no desire on the part of any considerable number of the Indians to remove, and the idea of the removal of small parties was discouraged by the department.

On the 8th of May, 1845, this office reported to the Secretary of War that a letter had been received representing that a portion of the Senecas, and others of the Six Nations then ready to remove, were exceedingly anxious on the subject, and wished to know whether the United States intended to aid them in their removal.

It was stated that there were some 4,000 Indians in New York; that about 250 of them desired to remove, and that it was not seen what advantage would arise from the removal of this small number. It was recommended that no action be taken, which was approved by the department.

The sum of \$20,477.50 had been appropriated on the 3d of March, 1843, for the removal of New York Indians, this estimate being for 250 persons, and being part of the \$400,000 agreed to be appropriated by the fifteenth article of the treaty.

On the 25th of May, 1845, Dr. Peter Wilson, accompanying a delegation of New York Indians, in a communication addressed to the Commissioner of Indian Affairs,

asked the following question: "Will those who do not remove within that time (five years) forfeit their claims to the western country? This is an important question, and I desire you to answer it in writing." I do not find that any answer was given.

Other representations regarding the removal having been made, this office, on the 12th of September, 1845, offered to appoint Dr. Abraham Hogeboom an agent for the removal of the Indians.

Dr. Hogeboom accepted the appointment, and on the 7th of November, 1845, informed the office that 260 Indians had been enrolled, and that there appeared to be no doubt of the movement taking place. Ten thousand dollars was sent him on the 4th of that month to assist in the removal of the 260 persons.

On the 8th of December, 1845, he was informed that as the lakes and rivers had frozen over the party must not start. It appears, however, that Dr. Hogeboom, notwithstanding the positive instructions of this office, started with a party of about 200 some time in May, 1846, and on the 9th of July, 1846, Agent Harvey reported the arrival of 201 Indians in Kansas. These Indians suffered extremely from destitution and sickness; many of them died, and most of the survivors ultimately returned to New York. No further effort at removal appears to have been made, and only about \$13,000 of the \$20,477.50 was expended. No further appropriation for the removal of these Indians appears to have been made.

It will be observed that these 201 Indians removed after the expiration of the five years fixed in the treaty. No other time for removal appears to have been named by the President.

This appears to be the only organized attempt at emigration ever made, although various parties claiming to be New York Indians settled in Kansas at different times.

The number of those residing there in March, 1859, was reported to be 303, quite a number of them being Canada and Wisconsin Indians not entitled to lands under the treaty of 1838.

June 16, 1860, patents were issued to 32 New York Indians for 320 acres of land each, in Kansas, which is all the land that has been patented under the treaty of 1838.

On the 4th of December, 1868, a treaty was concluded with the New York Indians, by the terms of which they surrendered to the United States all claims severally and in common to lands west of Missouri, and all right and claim to be removed there, and for support after removal, and all other claims under the treaty of 1838, except their rights to the reservation then occupied by them. This treaty was not ratified by the Senate.

Senator Buckingham, in his report (see Report No. 145, Forty-first Congress, second session), took the ground "that no right to land in Wisconsin and west of Missouri was ever vested in the New York Indians, except the right of occupancy; that an equivalent for the amount paid by them to the Monomoneses for lands in Wisconsin was received by those who removed to and settled upon those lands; that the Indians who never removed to the lands set apart for their permanent residence in Wisconsin, and who never removed to and became located on lands set apart for them west of Missouri, did not comply with the requirements of the treaties, and are not entitled to any interest in the lands nor to their proceeds."

A treaty was concluded with the Tonawanda band of Senecas, November 5, 1857 (11 Stat., 735), by which the Indians relinquished all claims under the treaties of 1838 and 1842, in consideration of which the United States agreed to pay and invest the sum of \$256,000 for the said Tonawanda band. This amount is understood to be their pro rata share of the \$400,000 removal fund, and of 320 acres of land each at \$1 per acre.

This treaty, Senator Buckingham says, should not be regarded as a precedent by which the government should be bound or guided, as it authorized the payment of moneys to the members of that band, to which they had no claim under former treaties.

It is true that no rights to lands in Kansas, except that of occupancy, ever rested in the New York Indians (except the thirty-two who received patents), but they were entitled, upon occupying the lands, to receive a patent therefor in fee simple, subject to the proviso that "such lands shall revert to the United States if the Indians become extinct or abandon the same."

The title which they might acquire by occupancy was a base, qualified, or determinable fee, with only the possibility of reversion, and not the right of reversion in the United States, and therefore all the estate is in the Indians (see decision of United States district court for the western district of Arkansas, May term, 1879, United States vs. Ben Reese).

Upon the question of the forfeiture of all rights under the treaty by the failure to remove, I am not so clear as Senator Buckingham appears to have been.

The removal was to take place within five years or such other time as the President might from time to time appoint.

The phrase "or such other time" would seem to mean an extension of time rather than a limitation; that is, that the President might appoint a time for their removal after the expiration of the five years. Permission was given by this office for the re-

removal of a number not less than 250, after the five years had expired. No time was ever named by the President in which the removal must be made or their rights to the land forfeited; nor was any part of the \$400,000 appropriated, except the \$20,477.50 before mentioned. It would seem, therefore, that the United States has not performed all the conditions precedent required by the treaty.

On the other hand, it does not appear that the Indians in any considerable numbers ever manifested a desire or willingness to remove to the western lands, but on the contrary opposed such removal, and in view of the fate of the few who did remove, this unwillingness does not appear strange.

In view of all the facts in the case, I am inclined to the opinion that the petition of these Indians is entitled to some consideration.

Should they now insist upon their right to remove and occupy the lands under the treaty, I do not think that the government could show such a refusal on the part of the Indians, and such a performance of conditions on its part as would release it from the obligations of the treaty.

It is presumed that all the lands ceded to these Indians by the treaty of 1838, except that patented to the thirty-two Indians hereinbefore referred to, has been disposed of under the general laws providing for the disposition of the public domain, and the proceeds thereof covered into the Treasury of the United States. The government, therefore, is not now in condition to fulfill the stipulations of the treaty regarding removal, if required to do so, and the Indians would seem to be entitled to some compensation in lieu thereof.

The relief prayed for does not appear to be excessive, and is not for the benefit of the Indians individually, but for their advantage and improvement as a race.

I think that a due consideration for them as wards of a powerful nation, and a liberal construction of their rights under treaty stipulations, require that the relief asked for should be granted.

I return the petition and inclose a copy of this report.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

Hon. SECRETARY OF THE INTERIOR.