

USE OF PORTION OF YAKIMA RESERVATION FOR RAIL-ROAD PURPOSES.

FEBRUARY 19, 1887.—Referred to the House Calendar and ordered to be printed.

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

ADVERSE REPORT:

[To accompany bill S. 1211.]

The Committee on Indian Affairs, to whom was referred the bill (S. 1211) to accept and ratify an agreement made with the confederated tribes and bands of Indians occupying the Yakima Reservation, in the Territory of Washington, for the extinguishment of their title of so much of said reservation as is required for the use of the Northern Pacific Railroad, and to make the necessary appropriations for carrying out the same, having had the same under consideration, submit the following report:

In this bill is a copy of the agreement referred to, the first eight paragraphs of which read as follows:

Said agreement is in the words and figures following, namely:

“Whereas by section 1 of an act of Congress approved July 2, 1864, entitled ‘An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route’ (13th Statutes at Large, page 365), the Northern Pacific Railroad Company was authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin, thence westwardly by the most eligible railroad route as shall be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude to some point on Puget Sound; and

“Whereas by section 2 of said act Congress granted to said company the right of way for the construction of said railroad and telegraph line to the extent of 200 feet in width on each side of said railroad where it may pass through the public domain, including all necessary ground for station buildings, workshops, depots, machine shops, switches, side-tracks, turn-tables, and water-stations; and

“Whereas by said section 2 Congress provided that the United States should extinguish as rapidly as may be consistent with public policy and the welfare of the Indians, the Indian titles to all lands falling under the operation of this act and acquired in the donation to the road named in the act; and

“Whereas by treaty between the United States and certain confederated tribes and bands of Indians therein designated as the Yakima nation of Indians, concluded at Camp Stevens, Walla Walla Valley, June 9, 1835, duly ratified and proclaimed (12th Statutes at Large, page 951), a tract of land therein described situate in the Territory of Washington, was reserved from the land thereby ceded, for the use and occupation of said confederated tribes and bands of Indians, as an Indian reservation; and

“Whereas by article 3 of said treaty it is provided that ‘if necessary for the public convenience roads may be run through said reservation, and on the other hand the right of way with free access from the same to the nearest public highway is secured to them, as also the right in common with citizens of the United States to travel upon all public highways;’ and

“Whereas the said Northern Pacific Railroad Company did on or about the 20th day of October, 1884, file in the Department of the Interior a certified map showing the

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definite location of its line of railroad through the Yakima Indian Reservation from the presumed southeasterly boundary of said reservation on the right bank of the Yakima River, 8 miles below the mouth of Satass River, to its north boundary near the mouth of Atah-num River, all being in Washington Territory, as definitely fixed and determined in compliance with the several acts and resolutions of Congress relating to the Northern Pacific Railroad, and as approved by the board of directors of said company by resolution passed June 21, 1883; also three several descriptive plats of ground required by said railroad company for station purposes, designated as 'Satass,' 'Toppenish,' and 'Simcoe,' respectively, and severally containing an area of 20.60 acres exclusive of a right of way of 125 feet in width on each side of the center line of said railroad; and

"Whereas the said Northern Pacific Railroad Company now desires to construct its line of railroad through the Yakima Reservation upon the route so designated, and claims the right by virtue of said recited act so to do;

"Now, therefore, in order to fulfill the obligations of the Government in the premises, this agreement made at the Yakima Agency, Washington Territory, this 13th day of January, in the year of our Lord 1885, by and between Robert S. Gardner, United States Indian inspector, on the part of the United States, and the undersigned head chiefs, chiefs, headmen, and delegates of the Yakima and other confederate tribes and bands of Indians resident on the Yakima Reservation, in Washington Territory, and interested in lands hereinafter described, witnesseth:"

While the quotations made herein from the old act of Congress are correct in the main so far as the words are concerned, yet I cannot see why these extracts should be selected from out of the statutes and incorporated as a part of the agreement with the Indians.

Why Indians should be required to sign an agreement with these extracts which have nothing or should have nothing whatever to do with the agreement between the United States and these Indians. We cannot conceive for what purpose they were put in the agreement unless it was for the purpose of having Congress approve them, thereby indirectly extending the time for the construction of the Northern Pacific Railroad under the acts and resolutions referred to. Certainly they are not necessary nor should they have any place in the agreement for the purchase of the right of way to be acquired from those Indians.

The first part of the eighth paragraph of this agreement reads as follows:

Now, therefore, in order to fulfill the obligations of the Government in the premises, this agreement made at the Yakima Agency, Washington Territory, this 13th day of January, 1885.

This shows I think very clearly that the object in putting the first seven paragraphs and the first part of the eighth one in the agreement with these Indians was to first have the Indians sign the agreement, and then for Congress to approve them under an enacting clause of a bill, thereby reviving and recognizing certain obligations of the Government to the Northern Pacific Railroad Company to be in force at this date, which we are of the opinion expired by limitation on July 4, 1879.

Without going into all of the details of the act of Congress approved July 2, 1864 (13 Statutes, page 355), which contains the grant of right of way through public lands and grant of land, &c., said grants, rights, and privileges are by section 8 of said act limited to July 4, 1876. By a resolution No. 34, approved May 7, 1866:

The time for commencing and completing the Northern Pacific Railroad and its branches is extended for two years. (14 Statutes, page 355.)

And joint resolution approved July 1, 1868 (15 Statutes, page 255), which amends section 8 of original act and fixes the time for completion at July 4, 1877, instead of 1876.

It may be held, and we understand it is, that the extension of two years' time, granted by the resolution approved May 7, 1866, would carry two years' extension from the time fixed for completion in section 8, as amended July 1, 1868. This is certainly giving a very liberal construction of the act and resolutions in favor of the railroad company. To this we make no objection, and under this construction the time for the completion of the Northern Pacific Railroad and its branches expired July 4, 1879. While Congress made the Northern Pacific Railroad Company the most liberal offer in the way of lands, right of way, depot grounds, &c., ever offered to any company, the act clearly shows that in order to entitle said company to these lands they must complete the whole line of railroad by July 4, 1879.

As it appears from section 3 of the act making the offer of the lands, &c., the object of the liberal offer was to "secure to the Government safe and speedy transportation of the mails, troops, munitions of war, and public stores at an early day." It appears that the whole line of road contemplated to be built by this company, including the Portland branch, was about 2,270 miles on July 4, 1879. At the expiration of the time allowed for the building under the act and resolutions referred to, they had only completed 531 miles.

It is not claimed that maps of the location of the road through the Yakima Indian Reservation were ever filed in the office of the Secretary of the Interior until about October 20, 1884, more than five years after the expiration of the time allowed said company in which to construct said road. Notwithstanding this, certain provisions of the old act, and the resolutions amendatory thereof, must be copied into the agreement for the Indians to sign, of which they do not know or understand, nor have the provisions referred to anything to do with the proper negotiations between the United States and the Indians for the right of way across the Yakima Indian Reservation.

The Yakima Indians should not be dragged in and made a party to some old acts of Congress that were enacted years ago, in reference to a matter of business between the United States and the Northern Pacific Railroad Company, in which these Indians had no interest, neither did they take any part.

If the Northern Pacific Railroad Company have legal rights under the acts of Congress referred to, why do they not resort to the courts to enforce them, and not try to get them recognized by the poor ignorant Indians by having them first incorporated in an agreement between the United States and the Indians, where they have no right to be placed unless it be for the purpose of having Congress put new life and operative force in them by ratifying the agreement under the enacting title of the bill.

In an agreement between the United States and the Yakima Indians does not seem to me to be the proper place to try the rights of property between the United States and the Northern Pacific Railroad Company, growing out of acts of Congress that the Yakima Indians had nothing whatever to do with, nor is it reasonable to suppose they ever knew but little if anything about it.

In the honorable Secretary's letter of November 17, 1884, to Robert S. Gardner, United States Indian inspector, directing him to proceed to the Yakima Indian Reservation, he says: "The population of the Yakima Indians is estimated at about 3,200." Assuming this estimate to be correct, there should be at least 600 male adult Indians, all of whom are presumed to have equal rights. A majority of that number

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would be 301. The agreement presented for the acceptance and approval of Congress has what purports to be the names of 18 Indians only, and does not show that these 18 had any rights conferred on them by the balance of the tribe to act for them. Attached to this agreement there is what purports to be the certificate of Andrew Riddle, official interpreter. It is as follows:

"I certify that the following agreement was read and explained by me and was fully understood by all of the above-named Indians of the confederated tribes and bands, constituting what are known as the Yakima Indians, before signing, and that the same was signed by said Indians in my presence.

ANDREW ^{his}
X RIDDLE,
mark,
Official Interpreter.

Witnesses:

JAMES McNAUGHT.
R. M. MILROY, *United States Indian Agent.*

How this interpreter, who could not sign his own name, could read and explain this agreement (with certain parts of acts of Congress), so that these Indians could all understand it, we must confess is a riddle that we cannot solve.

However, when we take into consideration that one of the witnesses to this certificate, James McNaught, was at that time attorney for the Northern Pacific Railroad Company, and that one of their land agents, a Mr. Robert Mitchell, was also present, both of whom had left their usual places of business and traveled several hundred miles to be present when this agreement was made, it is not surprising after all to see certain parts of old acts of Congress put in the agreement and to learn that a man who could not sign his name could read and explain them to the Indians so that they fully understood them.

It also appears that this right of way goes through the farms of several Indians, which have been appraised without the Indians interested being allowed any voice in the selection of the appraisers. It also appears that the appraisers have estimated for the value of the land taken and the value of the improvements thereon, but nothing for the damage done to the balance of the tract or farm through which the right of way runs. We submit that it is often the case that the damage to the balance of a farm not taken through which a railroad runs is often much greater than the estimated value of the right of way through the farm. It usually involves the necessity of a large additional amount of fencing, and often many other inconveniences and expenses which are perpetual, which shows very plainly to have been the case in most, if not each one, of the tracts of land through which this railroad runs.

In conclusion, we will say:

First, That the embodying of parts of acts of Congress in reference to the Northern Pacific Railroad Company in the agreement is wrong, and in our opinion was put in for the purpose of having Congress approve the agreement with said parts of acts, with the view of reviving and extending the original offer of right of way, subsidy of lands, &c., for the benefit of the Northern Pacific Railroad Company.

Second. Eighteen male adult Indians do not represent 600 male adults and 2,600 others, all of whom have some rights in the premises.

Third. Private property is to be taken from individual Indians without giving them any voice in the matter, and I believe without just compensation.

Fourth. We consider the certificate of the interpreter attached to the agreement a farce and should carry no weight. While the whole thing looks to us like it was not only intended to get the right of way and other property from the Indians without their consent, it certainly has a strong color of an attempt to revive some old acts of Congress for the benefit of the Northern Pacific Railroad Company.

For the reasons herein stated we recommend that the bill to accept and ratify the agreement be rejected.

