

POTTAWATOMIE AND ABSENTEE SHAWNEE INDIANS.

JANUARY 16, 1891.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany H. R. 11681.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 11681) "to ratify and confirm certain agreements with the Citizen Band of Pottawatomie Indians and the Absentee Shawnee Indians, and to make appropriations for carrying the same into effect," have had the same under consideration and submit the following report:

The bill provides for the ratification of two agreements entered into on behalf of the United States by the Cherokee Commissioners, the first on the 25th day of June, 1890, with the Citizen Band of Pottawatomie Indians; and the second on the 26th day of June with the Absentee Shawnee Indians, all residing on the Pottawatomie Reservation, in Oklahoma Territory, for the relinquishment of their respective rights upon and to said reservation.

The said Citizen Band of Pottawatomie Indians are now, and for more than twenty years have been, occupying a reservation in the Indian Territory (now within the territorial limits of Oklahoma) about 30 miles square, and containing an area of 575,870.42 acres. This tract was selected by said Indians under the provisions of the treaty of 1867, (amended by the Senate July 25, 1868; 15 Stat., 535), in which it was expressed that—

Whereas the Pottawatomes believe it is for the interest of the tribe that a home should be secured for them in the Indian country south of Kansas, while there is yet an opportunity for the selection of a suitable reservation; and

Whereas the tribe has the means of purchasing such reservation from the funds to arise from the sale of lands under the provisions of this treaty, etc.

The selection so made was approved by the Secretary of the Interior on the 9th day of November, 1870.

By the terms of the treaty mentioned it was provided that out of the proceeds of the sales of the lands of these Indians in Kansas the Government should retain and keep an amount sufficient to pay for the Territory reservation, at the price paid by the Government to the Creeks and Seminoles therefor, which was—

From the Creeks, 222,736 acres, at 30 cents.....	\$66,820.80
From the Seminoles, 353,133 acres, at 15 cents.....	52,969.95
Total.....	119,790.75

Subsequently the Government came into possession of \$283,500.50 belonging to these Indians, as their share of the proceeds of the sale of

the Kansas lands. (The Indians had other invested funds in the hands of the Government at the time.) It is claimed by the Interior Department that the \$119,790.75, which was retained by the Government as payment for this reservation (in the Territory), was in fact not so retained, but was paid to said Indians, and that the title to said reservation for that reason never passed. The Indians, on the other hand, claim the amount stipulated was retained, and has ever since been and is still so retained. Thus a question of law was raised as to whether, even if the contention of the Department was correct and said consideration not in fact retained, the title of the Indians would by that fact be in anywise affected, inasmuch as the Government having had the funds in its possession, and acting in the capacity of a trustee, might have retained the amount, and thus perfected the title of the Indians to the lands; that especially in a subsequent transaction between the Government and this band (trustee and *cestui que trust*) the former could not be permitted to profit by its own fault.

Such, in brief, was the legal status of the case when the Commissioners on the part of the United States arrived on the ground to treat for the relinquishment of whatever right the Indians might have. To meet this situation, it was provided in the fourth article of the agreement that \$160,000 should be paid to said Indians, in cash, within four months after the ratification of the treaty; and in addition thereto, that if it should

be ascertained that said Citizen Band of Pottawatomie Indians did purchase and pay the United States for the tract of country above described, in accordance with the provision of the treaty between the United States and said Citizen Band of Pottawatomie Indians, proclaimed August 7, 1868, and that the United States did retain, and yet retains, and shall continue to retain, of said Indians' funds the sum of \$119,790.75 on account of such purchase, then the United States agrees to pay to said Citizen Band of Pottawatomie Indians the additional sum of \$119,790.75.

As the bill, as referred to the committee, contains no provision for determining this question, the committee would recommend an amendment in reference to the provision of the treaty as set out below.

Under the directions of the Interior Department, an allotting agent has been at work upon this reservation for several years, allotting these lands under the general severalty act, and under instructions from the Indian Office has required that all Pottawatomie Indians, except in certain cases where valuable improvements have been made elsewhere, should select their allotments south of what is known as "Little River," a branch of the Canadian that divides the reservation into nearly equal parts, north and south. The Pottawatomies feel that this is a great injustice, and there appearing to be no good reason for such a requirement, an amendment is suggested below, allowing any Pottawatomie not having already been allotted, to make selections of any land within the reservation not already occupied or selected. The time within which allotments were to be taken and completed, under the agreement, was to expire February 8, 1891. As the delay in the ratification of the treaty has made this time too short, an amendment is suggested, by which it is to be extended to thirty days from and after the ratification of the treaty.

As to the Absentee Shawnees, it seems that some time about 1840 they left the main band then located upon the Shawnee Reservation in Kansas, and after roaming and hunting for some time settled down upon some of the country embraced within the limits of this reservation, where they have remained ever since. They were not there by any treaty or Executive order, but the Government has long known of their presence

there. They have been industrious and wholly self-supporting, and during the war were loyal to the United States. They have also been receiving allotments under said severalty act. The Commissioners agreed that they should be paid for the relinquishment of their claims, after taking allotments, \$65,000, which item, and the \$160,000, to the Pottawatomies, make up the amount of the appropriation in the bill.

In conclusion, your committee would suggest that, while the bill carries an appropriation of \$225,000, this is an average price of only 56½ cents per acre, and that, as under the Oklahoma act, this land can not be sold for less than \$1.25 per acre, there will be a profit to the Government on this transaction of \$275,000, or 68¾ cents per acre, and every foot of the land will doubtless be occupied immediately upon the opening of the country to settlement.

Your committee therefore recommend the passage of the bill with the following amendments:

At the end of section 1, line 4, add the following:

*Provided*, That any of said Citizen Pottawatomie Indians who have not yet selected allotments may make such selection anywhere within the thirty mile square in said agreement described, not already selected or occupied, in quantities as therein provided: *And provided further*, That such selections may be made at any time within thirty days after the passage of this act, and not thereafter.

At the end of section 2, after the word "appropriated," in line 6, add the following:

to be paid as in said agreement provided, subject to any lawful and authorized charge upon the same.

Add sections 3 and 4, as follows:

SEC. 3. That full jurisdiction is hereby conferred upon the Court of Claims, subject to an appeal to the Supreme Court of the United States, as in other cases, to hear and determine the question as to whether or not the said Citizen Band of Pottawatomie Indians did purchase and pay the United States for the tract of country in said above agreement described, in accordance with the provisions of a treaty between the United States and the Pottawatomie Indians of Kansas, proclaimed August seventh, eighteen hundred and sixty-eight; and whether or not the United States did retain, and yet retains the sum of one hundred and nineteen thousand seven hundred and ninety dollars and seventy-five cents on account of such purchase, or otherwise, and to hear and determine all questions between said Citizen Band of Pottawatomie Indians and the United States, or between said Citizen Indians and the Prairie Band of Pottawatomie Indians in Kansas, relative to the credits and accounts of said Indians under the various treaties with the United States. The exercise of such jurisdiction shall not be barred by any lapse of time heretofore, nor shall the rights of said Indians be in any way impaired by any ruling or determination upon such question heretofore made. Suit may be instituted in said Court of Claims against the United States, at any time within twelve months after the approval of this act, but not later, on behalf of said Citizen Band, the style of such suit to be "The Citizen Band of Pottawatomie Indians, of Oklahoma Territory, against the United States," said suit to have preference upon the trial dockets of said court. If it shall be found and determined that the said sum of one hundred and nineteen thousand seven hundred and ninety dollars and seventy-five cents, or any part thereof, or any other sum, has been and is yet retained by the United States, to which said Indians have a legal or equitable right, or title, then the amount so found to be due shall be paid to said Citizen Band of Pottawatomie Indians, out of any money in the Treasury not otherwise appropriated, less the fees for the services of the attorney or attorneys of said Citizen Band, in accordance with duly executed and approved contracts therefor, which amount shall be deducted and paid to said attorney or attorneys.

SEC. 4. That the Secretary of the Interior and Secretary of the Treasury shall transmit to said Court of Claims, upon its request, certified copies of all records, documents, and papers that relate in any way to the accounts of said Indians, under the various treaties with said tribe, and shall furnish such excerpts and statements and accounts regarding the same as may be called for during the progress of said suit.