

MIAMI INDIANS.

MAY 12, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany H. R. 111.]

The Committee on Indian Affairs, to which was referred the bill (H. R. 111) to reimburse the Miami Indians of Indiana for moneys improperly withheld from them, submit the following report:

A bill similar to the one under consideration and identical in purpose was favorably reported to the House by this committee, with amendments, in both the Forty-ninth and Fiftieth Congresses, but was not reached for consideration. A bill identical with this bill was introduced in the House of the Fifty-first Congress by the Hon. A. N. Martin, who then, as now, represented in Congress the district in which the beneficiaries reside, and that bill was, by the unanimous voice of this committee in the Fifty-first Congress, reported favorably to the House, with amendments, but it was not reached for consideration.

In the Senate of the Fifty-first Congress a bill almost identical with the first and third sections of the present bill was introduced by the Hon. D. W. Voorhees, which was favorably reported, without amendment, to that body by its Committee on Indian Affairs, and was passed unanimously on December 2, 1890, and on being sent to the House was again favorably reported, with amendments, by this committee and placed upon the calendar, but never reached.

The facts out of which this bill grew, and upon which this and the previous reports above referred to were based, are as follows, to wit:

In 1814 the United States made a treaty with certain Indians known as the Miamis of Indiana, whereby it was agreed that certain persons belonging to said tribe, then residing in Indiana, should receive certain annuities and lands.

It was further expressly agreed that the number of persons thus residing was 302, and their names were at the time, by the United States officials, enrolled, in accordance with the terms of the treaty, in a list known as the "corrected list," made in the presence of and approved by the Commissioner of Indian Affairs then in office.

It was further expressly agreed that no persons other than these 302, together with the increase of their families and such other persons as should be received into tribal relation with them "by the consent of the said Miami Indians of Indiana, obtained in council according to the custom of the Miami tribe of Indiana" (see book of Indian Treaties, p. 516), should be entitled to any portion of said annuities and lands.

It is admitted by the Attorney-General of the United States, in an official communication to Congress in 1867, as well as in the debates then had in Congress, that "the tribe in council never did, according to their custom, consent to the addition of those names or to their being paid," referring to the names of 73 persons other than the original 302 and the increase of their families, which were placed on the said "corrected list" by the Secretary of the Interior under the act of Congress of June 12, 1858, passed some four years after the treaty was made. (Congressional Globe, second session Thirty-ninth Congress, pp. 1648, 1649.)

Under this act of 1858 the Secretary of the Interior, in October, 1858, placed on said "corrected list" 68 names of persons not received into the tribe, and 5 additional names in November, 1862; so that at that time 73 in all had been added who were not listed when the treaty was made, who had not been received into the tribe by the action of its council, and who were not of the increase of the families of the original 302 listed persons. To these 73, who, with the increase of their families, in 1867 amounted to 119 persons, there was paid a ratable proportion of twelve annual payments of the annuities of the said original 302 Miami Indians, to wit, of the payments for the years 1854-'55 to 1866-'67, inclusive.

The only authority claimed by the United States officials for making these payments, which clearly, not to say ruthlessly, violated the treaty of 1854, was this act of Congress passed in 1858, an act passed without consultation with the 302 listed Indians, and it is admitted upon all hands without their consent, express or implied.

It is worthy of note, also, that this act of 1858 was a provision inserted as a Senate amendment in the supplemental Indian appropriation bill of that year. The following is the discussion in the Senate upon which the action was had:

MR. SEBASTIAN. I offer another amendment as an additional section:

"SEC. 7. *And be it further enacted*, That the Secretary of the Interior be, and he hereby is, authorized and directed to pay to such persons of Miami blood as have heretofore been excluded from the annuities of the tribe, since the removal of the Miamis in 1846, and since the treaty of 1854, and whose names are not included in the supplement to said treaty, their proportion of the tribal annuities from which they have been excluded; and he is also authorized and directed to enroll such persons upon the pay list of said tribe, and cause their annuities to be paid to them in future: *Provided*, That the foregoing payments shall be in full of all claims for annuities arising out of previous treaties. And said Secretary is also authorized and directed to cause to be located for such persons each 200 acres of land, out of the tract of 70,000 acres reserved by the second article of the treaty of June 5, 1854, with the Miamis, to be held by such persons by the same tenure as the locations of individuals are held which have been made under the third article of said treaty."

Continuing Mr. Sebastian says:

There is no appropriation from the Treasury in this amendment; it is a mere inter-tribal regulation between the Miamis, of Indiana, and a few families who have been improperly deprived of their annuities. It is to authorize the Secretary of the Interior to arrange and adjust the proportion of annuities among them; annuities already due by treaty.

MR. HUNTER. Is this on the recommendation of the Department?

MR. SEBASTIAN. The information is official and comes from the Department. They entertain no doubt as to the improper exclusion of the families mentioned in the amendment, but they do not recommend it. They thought it a matter properly referable to Congress, and the Committee on Indian Affairs report this as proper legislation by Congress.

MR. FITCH. It is all right.

MR. HUNTER. Does it commit us to make any appropriation—to take from one tribe to give to another?

MR. FITCH. They are all the same tribe

Mr. SEBASTIAN. This simply extends the pay-roll of the Indiana Miamis so as to include a few families who have heretofore been improperly excluded. The amendment was agreed to.

The foregoing is the whole of the discussion in the Senate when the act of 1858 was passed. (Congressional Globe, first session, Thirty-fifth Congress, p. 2822.)

Whether or not the act violated the terms of the treaty of 1854 was not discussed. That it violated this treaty by taking away from the original 302 listed Indians, and the increase of their families, over one-fourth of their lands and annuities, without their consent, without their knowledge, and in direct violation of their solemnly guaranteed treaty rights, was not even remotely hinted at in this slight and brief discussion.

No evidence whatever of any "improper exclusion" of the added Indians was placed before the Senate at that or any other time.

When the amendment came back to the House for concurrence, the debate upon it was, and the facts adduced were, still more meager, if possible, than when the measure was before the Senate.

There the House, on motion of Mr. J. Glancy Jones, on June 10, 1858, went into Committee of the Whole House on the state of the Union to consider the Senate amendments to the supplemental Indian appropriation bill. (Congressional Globe, first session, Thirty-fifth Congress, p. 2910.)

The amendment (being act of 1858 under consideration) being in order, the consideration it received was as follows:

Mr. J. GLANCY JONES. Upon examination of the matter it was ascertained that some of the Miami Indians were omitted from the list. The amendment provides that they shall be reckoned in. It brings in a few Indians who were unjustly left out. The Committee on Ways and Means recommend a concurrence.

The amendment was concurred in.

This was all the information given to the House. (Congressional Globe, first session Thirty-fifth Congress, pp. 2912, 2913.) Thus did Congress, in violation of the treaty of 1854 and of the rights of the persons to whom the treaty guaranteed them, almost without consideration, and certainly without adequate proof, parcel out the moneys and lands of the 302 to those who, by that treaty, had no possible right to any portion of either land or moneys.

This was all done on the assumption that these 73 added persons had been "improperly excluded" by the treaty of 1854. But if this was so, why were not the 302 given an opportunity to defend against the charge? Surely the truth would have lost nothing by such an investigation. But the charge was not true. At the time of the repeal of this act of 1858, viz, in February, 1867, it was clearly shown that the 73 were not entitled to be listed with the 302 for two reasons: First, they were not of full Miami blood; second, their right to annuities and lands rested with the remainder of the tribe, which had chosen to emigrate west of the Mississippi under treaty stipulations with the United States, made in 1846 and 1854; and it was unjust, as well as violative of the treaty of 1854, to list them with the 302; and after a very full discussion Congress repealed the law of 1858 on these grounds. (Congressional Globe, second session Thirty-ninth Congress, pp. 1647, 1650.)

It is also worthy of notice that this repeal was had upon the motion of the Senate, where the mistaken action of 1858 first originated and came in by way of an amendment to the Indian appropriation bill of 1867, first proposed in the Senate (Congressional Record, second session Thirty-ninth Congress, pp. 1646, 1647); and the discussion in the

Senate as to the propriety of the repeal was clear and full, and conclusively shows that the act of 1858 was a clear and palpable violation of the treaty of 1854, and upon the repeal of the law the 73 persons, together with the increase of their families, were dropped from the list and have been paid nothing since 1867.

But this action of Congress was only a partial reparation for the wrong committed by the act of 1858. It only stopped further wrongful payment. It did not make restitution of the lands and moneys wrongfully diverted. It is too late now to correct the wrong as to the lands so taken, for the rights of innocent purchasers have intervened and render that impracticable. But it is not too late to restore the moneys which have never been refunded.

During most of the years from 1858 to 1867 the 302 strenuously objected to the payments of which they now complain. A bill (H. R. 2099, first session, Fiftieth Congress) was introduced into the House by the member then representing the district in which these Indians reside, and upon his inquiry of the Commissioner of Indian Affairs on this point, while the bill was being considered in committee, he received the following reply and document, viz:

To the honorable the Senate and

House of Representatives of the United States in Congress assembled:

The undersigned, your petitioners, would to your most honorable body most respectfully represent that they are Miami Indians, residing in the State of Indiana, and that they and their families and the persons whom they represent are the individuals referred to as the Miami Indians in the Senate amendment to the fourth article of the treaty of the 5th of June, 1854, between the United States and the Miami Indians, and whose names are embraced in the corrected list referred to in said treaty amendment; and your petitioners respectfully call your attention to that provision which stipulates that no person other than those embraced in the corrected list agreed upon by the Miamis of Indiana, in the presence of the Commissioner of Indian Affairs, in June, 1854, comprising 302 names as Miami Indians of Indiana, and the increase of the families embraced in said corrected list, shall be recipients of the payments, annuities, commutations, moneys, and interests hereby stipulated to be paid to the Miamis of Indiana, unless other persons shall be added to said list by the consent of said Miami Indians of Indiana, obtained in council, according to the custom of the Miami Indians of Indiana.

Your petitioners further show that the Secretary of the Interior, in pursuance of the third section of an act of Congress approved June 12, 1858, entitled "An act making supplementary appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1859," has caused to be added to said list the names of some 60 persons, as we are informed; that the same have been added without our consent and against our wishes, and have been paid out of our moneys; that we conceive that if the section of the act referred to was intended to refer to the Miamis of Indiana, as it is construed by the Commissioner of Indian Affairs, it is in direct violation of said treaty.

Your petitioners, therefore, humbly pray that said third section of the act referred to, or so much thereof as violates their rights and appropriates their money for the benefit of persons whom they do not recognize, may be repealed, and that the moneys heretofore diverted to that purpose may be refunded. And in duty bound your petitioners would ever pray, etc.

Done in council on the 1st day of February, 1859, at the house of Gabriel Godfrey, on the Mississinewa River, Miami County, Ind.

(Signed with an x mark): John B. Bronellitt or Te-quah-yah, Peter Bondie or Waw-pow-pe-ta, Me-shing-o-me-sha, Pim-y-tine-aw, Kil-oc-com-ach, La-maw-wah, Shaw-aw-pe-ne-maw, Waw-caw-co-now, Po-con-ge-ah, Len-e-pe-shew-saw, Waw-pe-man-gnaw, Po-can-ge-ah, Ah-toh-a-toh, Pe-me-to-sin-wah, Ke-oh-cat-wah, She-pen-do-ciah, Ke-oh-cat-wah, Pa-len-swah, My-ac gne-ah, Gabriel Godfrey, We-shing Goodbo, So-mille-le-jes-ion, Sho-quang-oh, William Godfrey, Tow-wah-quah-hey.

No written protest was filed by Miami Indians at each payment against allowing Indians placed on roll in 1858 to participate in annuities. Several of the agents making payments, however, report that these Indians were objected to.

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J. D. C. ATKINS,
Commissioner.

It may be claimed that these Indians occupied the relation of wards to the United States Government, and therefore Congress had the right to pass the act of 1858, notwithstanding it violated the treaty of 1854. As a matter of mere force Congress could so act, but certainly not as a matter of conscience and right. Your committee know of no principle of guardianship which protects the guardian in appropriating the property of one ward to the use of another ward. Besides these Indians are now and for many years have been resident citizens and voters in the State of Indiana, and were such when the act of 1858 was passed.

As to the amount that should be refunded, your committee fix it at the sum of \$48,072.69; this being the amount as computed by the Interior Department in its communication to a former Representative in this House under date of February 14, 1887, as follows:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, February 14, 1887.

SIR: In compliance with your verbal request, I submit the following statement in reference to certain Miami Indians of your State who were, under act of June 12, 1858 (U. S. Stat. 11, p. 332), enrolled with the 302 persons named in the Senate amendment to the treaty of 1854 (U. S. Stats. 10, p. 1099):

After the removal of the larger portion of the Miami Indians of Indiana to their new homes in the West in 1854, a number belonging to the tribe and who remained in Indiana, including the names of those who had been objected to by the delegations of the tribes from the Indian country and from Indiana who appeared before the Commissioner of Indian Affairs during the summer of 1854, and just before the conclusion of the treaty of that year, as not being of Miami blood, and that they were not considered by them to belong to their tribe, and who were consequently omitted from the list agreed upon at the making of the treaty and left unprovided for, called the attention of the Government to their case and insisted upon being restored to their tribal rights. Their claim was laid before Congress in May, 1858, with a full report in reference to the descent of each claimant, showing that they had all proved themselves to be of part Miami blood and recommending the legislation necessary for their relief. The result was the act of June 12 of that year, above referred to, section 3 of which reads:

"That the Secretary of the Interior be, and he is hereby, authorized and directed to pay to such persons of Miami blood as have heretofore been excluded from the annuities of the tribe since the removal of the Miamis in 1846 and since the treaty of 1854, and whose names are not included in the supplement to said treaty, their proportion of the tribal annuities from which they have been excluded; and he is also authorized and directed to enroll such persons upon the pay list of said tribe and cause their annuities to be paid to them in future, provided that the foregoing payments shall be in full of all claims for annuities arising out of previous treaties. And the Secretary is also authorized and directed to cause to be located for such persons each 200 acres of land out of the tract of 70,000 acres reserved by the second article of the treaty of June 5, 1854, with the Miamis, to be held by such persons by the same tenure as the locations of individuals are held which have been made under the third article of said treaty."

By virtue of this act 68 persons who were proved to be part Miami blood were added to the list of Miamis and became recipients of the annuities and lands from which they had been excluded since the removal of the tribe in 1846 and since the treaty of 1854, and in the winter of 1862, after a careful investigation into the claims of 3 grandchildren and 2 great-grandchildren of John Baptiste La Bresche, the Secretary decided that they also were of Miami blood and entitled to the benefit of the act of 1858; and by his direction they were enrolled with their tribe and all arrears paid to them, thus making altogether an addition of 73 persons to those named in the list agreed upon at the treaty of 1854.

These 73 and their descendants continued to draw a share of the annuities payable to the Miamis of Indiana up to and including the year 1867, or, in all, thirteen annual payments, when by act of March 2, 1867 (14 Stats., p. 492), making appropriations for the current and contingent expenses of the Indian Department for the fiscal year ending June 30, 1868, there is appropriated to the Miamis of Indiana for

interest on \$221,257.86, as provided for in the treaty of 1854, \$11,062.89, and section 5 of same act is as follows:

"That the sum hereinbefore appropriated to the Miamis of Indiana, or which shall hereafter be appropriated to them, shall only be paid to such persons as may be, upon the opinion of the Attorney-General, legally entitled to the same under the provisions of the treaty with said Indians of June 5, 1854, and Senate amendments thereto, regardless of any subsequent legislation."

Accordingly the question was submitted to the Attorney-General, who, after reviewing the treaties and legislative acts under which the Miami Indians became entitled to their annuities, states as follows:

"The appropriation of \$11,062.89 to the Miamis of Indiana by act of March 2, 1867, is directed to be paid only to such persons as may be legally entitled to the same under the treaty of 1854 and Senate amendments thereto, without reference to subsequent legislation. From the foregoing there does not seem to be any room for doubt as to who these persons are. In the body of the treaty they are referred to under the general description of Miami Indians of the State of Indiana and Miamis of Indiana; but these must be understood as comprehending only such Indians as are more particularly designated in the amendment, who may be classified and described as follows:

"(1) Persons embraced in the *corrected list* agreed upon by the Miamis of Indiana in the presence of the Commissioner of Indian Affairs in June, 1854, comprising 302 names.

"(2) The increase of the families of persons included in said list.

"(3) Persons who shall be added to said list by the consent of the said Miamis of Indiana, obtained in council according to the custom of the Miami tribe. In my opinion the persons here indicated, and no others, are legally entitled to the above-mentioned appropriation, under the said treaty and amendment, without reference to subsequent legislation."

In view of this opinion a special agent, M. W. Wines, of Fort Wayne, Ind., was instructed to prepare a new roll which should contain the names of all Indiana Miamis then living whose names appeared on the roll of 1854 and the names of the descendants of all who appeared there and who were then alive, and no other.

Accordingly Agent Wines submitted a roll, which, after being duly examined in this office and found correct in all important particulars, was returned to him approved, and he was directed to, and did, pay to the persons named thereon all of the \$11,062.89 above referred to.

With this roll Agent Wines also submitted a roll containing the names of 119 persons who, under the decision of the Attorney-General, were excluded as not entitled to a share in this money, which was also approved, and there is no record in this office that any of these 119 ever obtained the requisite consent of the Miamis of Indiana, in council, according to the custom of the tribe, to have their names added to the list agreed upon in June, 1854; and since the above payment was made by Agent Wines for the fiscal year ending June, 1868, and at each subsequent payment of annuity money since that year up to and including the final payment of the principal sum of \$221,257.86 by Hon. Calvin Cowgill in 1882, these 119 persons and their descendants have been excluded.

Repeated efforts have been made in this office to trace the original 73 persons who were added to the Miami rolls of 1854-'55 through the rolls for the subsequent twelve payments, but owing to the brief manner of enrolling Indians for payment followed some years back, and the frequent changes in the family relations and manner of spelling Indian names, this was found to be impracticable. Neither can the 119 persons finally excluded under the opinion of the Attorney-General be traced back for the same reasons, but it is believed that the total amount paid to these 73 or 119 persons named can be arrived at sufficiently close to satisfy all parties by the following method, viz: To find the number who drew a share of this money each year from 1854 to 1867, inclusive, we must first take from the 119 excluded 11 who were born subsequent to the payment of 1867, as appears by the records in this office, which leaves but 108 who actually shared in the payment of 1867, or could have shared in the other payments. To this 108 we add the original 73, making 181, which, divided by 2, gives an average enrollment for the thirteen years of 90½. In the same way we take the amount of one per capita share as the same appears on the rolls for each of the thirteen years in question, viz:

Fiscal year.	Amount.	Fiscal year.	Amount.	Fiscal year.	Amount.
1854-'55	\$41.49	1858-'60	\$48.71	1864-'65	\$25.00
1855-'56	55.50	1860-'61	28.51	1865-'66	51.05
1856-'57	64.46	1861-'62	28.51	1866-'67
1857-'58	52.11	1862-'63	67.00		
1858-'59	43.85	1863-'64	25.00	Total	531.19

Which, multiplied by 904, the average number of the 73 or 108, who shared in these payments, gives \$48,072.69 as the total amount so paid, or, say, in round numbers, \$48,000, which is no doubt very nearly correct. I should think sufficiently so for Congress to act upon in case it is proposed to pay it or any part of it to the original 302 persons on the corrected list of 1854 and to their descendants.

In explanation you are informed that the payment for the fiscal year 1856 of a per capita of \$55.50 was not regular current interest, but back unpaid annuities, and that the payment for the fiscal year 1856 was made at the same time that the payment for 1865-'66 was made, the funds appropriated for the year 1866-'67 being used for that purpose, and the payment for the last-named year was subsequently provided for and paid, but no part of it was afterwards paid to the 73 or 108 persons dropped.

As these payments were recommended by a previous head of this Department, and made under Congressional authority, I do not feel warranted in making any suggestion or recommendation in the premises.

In reply to your verbal request for a statement of fees paid attorneys for Miami Indians, and explanation of the nature of the duties they performed, and an opinion as to whether they should have been paid by the Government or by the Indians, I inclose herewith a copy of a report by this office to the honorable Secretary of the Interior of January 2, 1886, which contains the names of the attorneys employed, refers to the nature of the duties they performed, and states the amounts paid to them.

As these attorneys were employed under a previous administration of the affairs of this Department, and as I have no reason to suppose that their contracts with the Indians were not closely scrutinized and the fees paid believed to be a reasonable and proper charge against said Indians before being approved, I must respectfully decline to give an opinion in the matter.

Respectfully,

J. D. C. ATKINS,
Commissioner.

Hon. GEO. W. STEELE,
House of Representatives.

Since this bill (H. R. 111) was referred to this committee, it was referred to the Hon. John W. Noble, Secretary of the Interior, for the opinion of that Department on the merits of the bill, and by him it was referred to the honorable Commissioner of Indian Affairs. This latter officer gave full consideration to the bill and approved the first section thereof in the following communication by him addressed to the Secretary of the Interior, and by the latter referred to this committee in the following words, to wit:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, April 21, 1892.

SIR: I have the honor respectfully to return herewith H. R. 111, being a bill to reimburse the Miami Indians of Indiana for money which they claim was improperly withheld from them by the United States, received by Department reference of 13th inst., and in compliance with your instructions to report thereon, I inclose a copy of a communication addressed to Hon. Geo. W. Steele by Commissioner of Indian Affairs, J. D. C. Atkins, under date of February 14, 1887, which contains a full statement of this matter, and which is to the effect that, under the provisions of a treaty with the Miamis in the year 1854 (10 Stats., p. 1099), a certain sum of money was set aside for 302 Miamis in Indiana, who were named in a list filed in this office, the interest to be paid to them annually, and all other Miamis were specifically excluded by the terms of the treaty from sharing in this money, unless permitted to do so by said Miamis of Indiana, by act of their council.

During the year 1858, however, 68 persons who had some Miami blood petitioned Congress to be added to this approved roll of 302 persons and allowed to share in the interest named, and under date of June 12, 1858 (11 Stats., 332), an act was approved authorizing their enrollment, and said 68 (afterwards increased to 108) were allowed to share with the Indiana Miamis for thirteen years, or up to and including 1867, when, owing to the original 302 persons objecting, Congress by act of March 2, 1867 (14 Stats., 492), directed that the Attorney-General decide the question, which decision was to the effect that no one who was not included in the list of 302 persons, and the increase of the families of such, were entitled to share in said interest, unless others were added by consent of the Indiana Miami council. Consequently, the names added, as above explained, were stricken from the roll, and the whole of the interest was paid to the 302 and their descendants, beginning with that for the year 1868, up to and including the year 1882, when the principal was paid to them.

Commissioner Atkins adds: "As these payments (those to the 108 whose names were added) were recommended by a previous head of this Department, and made under Congressional authority, I do not feel warranted in making any suggestion or recommendation in the premises."

After carefully considering all the circumstances, I do not agree with Mr. Atkins in the conclusion he reached, but think that inasmuch as the money paid to the added persons was taken from that belonging to the 302 under specific treaty provisions, and was paid to others who were not added to the roll by consent of the 302, and as Congress by its subsequent action, above referred to, recognized the fact that the justice of such payment was questionable, and that the money may have been improperly diverted, and further, as the Attorney-General decided that the added parties receiving the money were not entitled to it under the treaty, I am of the opinion that the claim of the Miami Indians of Indiana, referred to in the first section of the bill, is just and that the necessary funds should be appropriated to pay it.

In reference to section 2 of the bill, which is to reimburse the Miami Indians for certain fees, amounting with interest to \$5,714, which it is claimed were wrongfully withheld from said Indians and paid to attorneys for personal services rendered, I must agree with Commissioner Atkins's statement in the final paragraph of his letter above noted, that as these charges were no doubt closely scrutinized by the Department and believed to be reasonable and proper charges against the Indians before being approved or paid I must also decline to recommend that the Indians be reimbursed therefor, in which opinion I am sustained by a report in regard to the matter by Mr. Boothman, of the Committee on Indian Affairs, Report No. 22, House of Representatives, Fifty-first Congress, first session, page 5, who says:

"Regarding the claim set out in the bill under consideration for attorney fees, claimed to have been paid, your committee are of opinion it should not be refunded. We place this opinion on the ground that in this matter these Indians upon the one hand and the United States on the other are by this bill placed in the attitude of litigants before a court of equity. That the act of 1858, under which the payments complained of were made, was regularly, though as we believe mistakenly, passed; yet we are bound to presume it was an honest mistake; and as the fees were incurred principally in securing the legislation by which the 73 persons and the increase of their families were excluded from the roll, we think it should not in equity give the prevailing party the right to recover attorney fees."

The communication of Hon. Thomas Lynch, covering the bill referred to, is herewith respectfully returned.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

It is thus plainly seen that the Interior Department, through the proper bureau, pointedly recommends the appropriation of the said sum of \$48,072.69 to pay the persons entitled thereto, and in this the present Committee on Indian Affairs concur and recommend the passage of the bill so amended as to cover only that sum and no more.

Regarding the claim set out in the bill under consideration for attorney fees claimed to have been paid, your committee are of opinion it should not be refunded. We place this opinion on the ground that in this matter these Indians upon the one hand and the United States on the other are by this bill placed in the attitude of litigants before a court of equity. Though the act of 1858, under which the payments complained of were made, was regularly, though as we believe mistakenly, passed, yet we are bound to presume it was an honest mistake; and as the fees were incurred principally in securing the legislation by which the 73 persons and the increase of their families were excluded from the roll, we think it should not in equity give the prevailing party the right to recover attorney fees.

Upon the question of interest on the sum herein recommended to be paid, your committee think the case one in which interest should not be allowed. From 1867 to the year 1887 it seems that no action was taken by these Indians which invoked the action of Congress upon this particular claim to have these moneys refunded, except their protest

and petition above set out. We think Congress would have refunded the sum due long since if a proper attempt had been made to invoke its aid; but that not having been done, we apply a principle analogous to the statute of limitations as to the interest and refuse to pay it.

Your committee also think that the bill should be further amended by providing that the acceptance of the sum herein recommended to be paid shall be considered a release of all further claim of any and every kind arising out of this matter. We therefore recommend that the bill be amended as follows:

Immediately after the word "Indiana," in line 5 of section 1, insert the words, "being three hundred and two persons listed on the corrected list under the treaty of June fifth, eighteen hundred and fifty-four, and the increase of their families."

Also, in line 5 of said section 1, strike out the words "ninety-four thousand," and in their stead insert the words "forty-eight thousand seventy-two and sixty-nine one-hundredths."

Also, in line 8, change the word "treaties" to "treaty."

Also, in line 10 of said section 1, strike out the words "or eighteen hundred and fifty-eight, or so much of said sum as may in equity be found to be due to said Miami Indians of said State."

Also, add the following proviso to the end of said section 1 as above recommended to be amended, viz:

Provided, That the sum hereby appropriated shall be in full settlement of any and all claims in favor of said Miami Indians, or any of them, arising out of any and all alleged violations of the terms of said treaty of June 5, 1854, on the part of the United States Government.

Also, strike out the whole of section 2 of said bill, and in line 1 of section 3 of said bill strike out the figure "3" and insert the figure "2."

And as thus amended we recommend the passage of the bill.