

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1886.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 943.]

The Committee on Indian Affairs, to whom was referred Senate bill 943, report the same favorably with an amendment.

The facts appear in the letters of the Commissioner of Indian Affairs, March 24, and of the Secretary of the Interior, March 26, which are hereto appended in support thereof.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, March 24, 1886.

SIR: I have the honor to submit the following report upon Senate bill 943, Forty-ninth Congress, first session, "to pay the Delaware Indians the value of certain lands in Kansas, in compliance with treaty stipulations," which accompanied the letter of Hon. H. L. Dawes, chairman of the Senate Committee on Indian Affairs, dated the 2d, and received by Department reference of the 3d instant.

The said bill provides "that the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of \$36,800 to the Delaware Indians, the same being in full compensation for the value of twenty-three sections of land which by the sixth article of the treaty of May 30, 1860, they were to be paid the full value of, and which by the fourteenth article of the treaty of July 4, 1866, they were to be given other lands in lieu thereof, without cost; said sum to be a full settlement for all claims for the said twenty-three sections of land referred to in said treaties."

The facts in this case appear to be as follows, viz:

Under the provisions of the second article of the treaty of 1818 (7 Stat., 188) with the Delaware Nation of Indians and the provisions of a supplementary article to said treaty, entered into September 24, 1829 (*Id.*, 327), certain lands were set apart and guaranteed to these Indians forever.

By the first article of the treaty of 1854 with the said Indians (10 Stat., 1048), a permanent reservation was set apart for them out of the land guaranteed them by the treaty of 1818, and the supplementary article thereto, which it was agreed should thereafter at their request be allotted in severalty, the remainder of their lands being ceded in trust and afterwards sold for their benefit.

By the first article of the treaty of 1860 with these Indians (12 Stat., 1127), provision was made for allotment of their lands in severalty, in specified quantities, and by the third article the residue thereof, after making assignments to individuals, was to be sold to the Leavenworth, Pawnee and Western Railroad Company.

The sixth article of this treaty provides, among other things, that, "It is further understood that, at the treaty between the Delawares and the United States, made September twenty-four, eighteen hundred and twenty-nine, the boundary of the reservation then set apart for them included the half-breed Kansas lands; but it afterwards proved that the United States had previously set apart these lands for the Half-breed Kaws (Kansas), and by that means they have been kept out of the use and

benefit of said lands: It is, therefore, hereby agreed that a fair valuation shall be made by the United States upon such lands, under the direction of the Secretary of the Interior, and that the amount of said valuation shall be paid the Delawares."

By article two of the treaty of 1866 (14 Stat., 794) the Secretary of the Interior was authorized to sell to the Missouri River Railroad Company, or to other responsible party or parties, in a body, all the remaining part of the reservation of these Indians, and all other lands owned by said tribe in the State of Kansas, "except as hereinafter provided" for at not less than \$2.50 per acre, exclusive of improvements, and by the fourth article of which the United States agreed to sell to the Delawares certain lands in the Indian Territory, to be paid for by said Indians out of the proceeds of sale of their lands in Kansas.

The fourteenth article of this treaty provides that "The United States further agree that, in accordance with the general provisions of the sixth article of the Delaware treaty of May 30, 1860, which have not yet been fulfilled, * * * the Delawares shall receive, without cost, from the United States land included within their new reservation to the amount of 23 sections, in place of the 23 sections of half-breed Kaw lands referred to in said sixth section of the treaty of 1860." * * *

Under the provisions of article 15 of the treaty of 1866 with the Cherokee Nation (14 Stat. 803), the United States was granted the privilege of settling any civilized Indians friendly with the Cherokees and adjacent tribes on unoccupied Cherokee lands east of the 96°, on such terms as might be agreed upon by any such tribe and the Cherokees, subject to the approval of the President, and to be consistent with certain provisions therein named:

Under the provisions of said article an agreement was entered into between the Cherokees and Delawares on April 8, 1867, which was approved by the President April 11, 1867, and by which the Cherokees sold to the Delawares 157,600 acres of land east of the 96°, being equal to 160 acres for each individual of the Delaware tribe, who had, or might be, within one month enrolled for removal, for which the Delawares agreed to pay the sum of \$1 per acre. It was subsequently ascertained that there were 985 Delawares removed to the Cherokee country under the agreement, and calculating 160 acres each, we have the 157,600 acres above referred to.

The proportion of the number of the Delawares to that of the Cherokees was found to be as 1 to 13.78, and on this basis the amount of stocks transferred to the Cherokees as pro rata funds from those belonging to the Delawares was \$121,824.28, including premium on bonds, which, with the \$157,600 paid for the lands, makes a total of \$279,424.28.

As has been seen, the United States agreed, by the fourteenth article of the treaty of 1866, to give to the Delawares, without cost to them, twenty-three sections of land within their new reservations in lieu of the twenty-three sections of their lands given to the Kansas half-breeds. It has also been seen that the United States did not carry out the agreement with this people by giving them, without cost, twenty-three sections within their new reservation, but that the Delawares paid \$1 per acre for each and every acre in their "new reservation."

The present bill provides for an appropriation of \$36,800, based, as appears from its several whereases, upon the second and twelfth articles of the treaty of 1866, which provide that the Delaware lands in Kansas shall not be sold for less than \$2.50 per acre.

This, I think, is erroneous. The Delawares never had title to the twenty-three sections of land in question, and therefore the second and twelfth articles of the treaty of 1866 have no bearing upon the subject. In addition to this fact the fourteenth article of that treaty makes specific provision as to how the Delawares shall be compensated for the said twenty-three sections of land: "and the Delawares shall receive, without cost, from the United States, land included within their new reservation, to the amount of twenty-three sections, &c., so that the Delawares may have only a claim against the Government for the amount paid by them for twenty-three sections of land in the Indian Territory (their new reservation), and that is 14,720 acres, at \$1 per acre, making \$14,720, with interest thereon from the date of the treaty of 1866.

The United States agreed by the treaty of 1818 to give the Delawares a country west of the Mississippi River, and by the supplementary article thereto of 1829 that country was defined, within the boundaries of which it was found the reservations granted to the Kansas half-breeds by the sixth article of the treaty of 1825 (7 Stats., 245) were situated. These Indians never received the land in question, the use thereof, or consideration therefor, and it is but just and equitable that they should be allowed a reasonable interest on the amount due them, at least since the date of the treaty of 1866, wherein the United States agreed to secure to them, without cost, twenty-three sections of land in their new reservation (Indian Territory).

I have prepared a draft of bill intended to meet the views herein expressed, naming the interest at 5 per centum per annum, and giving the Secretary of the Interior discretion as to how the fund shall be expended, and have the honor to recommend that

the committee be requested to adopt it as a substitute for the one now under consideration.

The papers are herewith returned.

I will add that this matter was favorably reported upon by this office February 1, 1878, and again March 7, 1882.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, March 26, 1886.

SIR: I have the honor to acknowledge the receipt, with your letter of 2d instant, of Senate bill 943, of the current session, "to pay the Delaware Indians the value of certain lands in Kansas, in compliance with treaty stipulations," with request for "examination and report."

The bill in question provides "that the Secretary of the Treasury be, and he is hereby, authorized and directed to pay out of any money in the Treasury not otherwise appropriated, the sum of \$36,800 to the Delaware Indians, the same being in full compensation for the value of twenty-three sections of land which by the sixth article of the treaty of May 30, 1860, they were to be paid the full value of, and which by the fourteenth article of the treaty of July 4, 1866, they were to be given other lands in lieu thereof, without cost; said sum to be a full settlement for all claims for the said twenty-three sections of land referred to in said treaties."

The subject having been referred to the Commissioner of Indian Affairs, I inclose herewith for the information of the committee copy of his report of the 24th instant upon the subject.

The facts in the case appear as follows:

Under the provisions of the treaty of September 24, 1829 (7 Stat., 327), certain lands therein described, situated in Kansas, were set apart as a permanent residence for the Delawares.

It was afterwards ascertained that the reservation so created included within its limits certain lands which had previously been assigned to the Kansas half-breeds, under the sixth article of the Kansas Indian treaty of August 16, 1835 (7 Stat. 270).

In article 6 of the treaty with the Delawares of 1860 (12 Stat., 1127) reference was made to the Kansas half-breed lands included in the Delaware Reservation above referred to, and it was agreed "that a fair valuation shall be made by the United States upon such lands, under the direction of the Secretary of the Interior, and that the amount of said valuation shall be paid the Delawares."

Under the provisions of article 4 of the Delaware treaty of July 4, 1866 (14 Stat., 794), the United States agreed to sell to the Delawares certain lands in the Indian Territory, to be paid for out of the proceeds of the sale of their lands in Kansas.

In article 14 of this same treaty (14 Stat., 797), the United States agreed "that in accordance with the general provisions of the 6th article of the Delaware treaty of May 30, 1860, which have not yet been fulfilled, * * * the Delawares shall receive, without cost, from the United States, land included within their new reservation to the amount of twenty-three sections of half-breed Kaw lands, referred to in said sixth section of the treaty of 1860."

Under Article XV of the Cherokee treaty of July 19, 1866 (14 Stat., 803), it is provided that the United States may settle civilized Indians on the lands of the Cherokees under certain specified conditions.

In accordance with this provision and by virtue of an agreement between the Delawares and the Cherokees, the former secured 157,600 acres of land from the Cherokees, which they paid for at the rate of \$1 per acre. (Agreement between Cherokees and Delawares of April 8, 1867.)

Twenty-three sections of land comprise 14,720 acres, which, at one dollar per acre, amounts to the sum of \$14,720.

The Commissioner of Indian Affairs in the examination of the claim of the Delawares under the treaty stipulation cited in his report, expresses the opinion that the 14th article of the treaty of July 4, 1866 (14 Stat., 797), "makes specific provision as to how the Delawares shall be compensated for the said twenty-three sections of land, in declaring that they should receive, without cost, from the United States, land included within their new reservation to the amount of twenty-three sections, &c., and he concludes 'that the Delawares have only a claim against the Government for the amount paid by them for the twenty-three sections of land in the Indian Territory (their new reservation), and that is 14,720, at \$1 per acre,' amounting to \$14,720, and

he suggests that it is but just that they should be allowed a reasonable interest on the amount due them, at least since the date of the treaty of 1866, wherein the United States agreed to secure to them, without cost, twenty-three sections of land in their new reservation (Indian Territory);" and he presents the draft of a bill, copy herewith, intended to meet the views expressed in his report, which he recommends may be adopted by the Committee in lieu of S. 943, now under consideration.

The views of the Commissioner have the concurrence of this Department.
Senate bill 943 is herewith respectfully returned.

Very respectfully,

L. Q. C. LAMAR,
Secretary.

The CHAIRMAN COMMITTEE ON INDIAN AFFAIRS,
United States Senate.

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