55TH CONGRESS, 3d Session. SENATE. DOCUMENT No. 30.

CLAIM OF THE MEDAWAKANTON AND WAHPAKOOTA INDIANS.

DECEMBER 12, 1898.—Referred to the Committee on Indian Affairs and ordered to be printed.

Mr. GEAR presented the following

MEMORANDA RELATING TO THE CLAIM OF THE MEDAWAKANTON AND WAHPAKOOTA BANDS OF SIOUX INDIANS, BY REV. JOHN EASTMAN.

Under the treaty of 1837 these Indians were entitled to $15,000 per annum forever, and under the treaty of 1851 they were entitled to $61,450 for fifty years, beginning July 1, 1852. At the date of the confiscation act of 1863 the sum of $133,449.20, arising under the two treaties, was to their credit in the Treasury (p. 7, S. Doc. No. 67, Fifty-fifth Congress, second session). Appropriations of the $15,000 per annum under the treaty of 1837 were made up to and including the fiscal year 1864, and appropriations were made also up to the fiscal year under the treaty of 1851—12 installments in all under the latter treaty, leaving 38 installments of $61,450 to be provided for, amounting to $2,335,100, to which should be added the sum of $133,449.20 to their credit at the date of the act of 1863, making a total of $2,458,549.20 under that treaty up to July 1, 1902, the date of its expiration.

There is also due, under the treaty of 1837, 34 annual installments of $15,000 from July 1, 1884, to July 1, 1898, amounting to $510,000, making a total unpaid installments under the two treaties of $2,978,549.20. The account with these Indians under the two treaties named and various transactions had with them since the act of 1863 is as follows:

DR.		CR.	
To amount provided for by treaty of 1830	$40,520.00	By amount due, treaty of 1830	$40,520.00
To amount of annual installments of interest, under treaty of 1837, up to July 1, 1864	1,091,000.00	By annual installments of interest, under treaty of 1837, up to July 1, 1864	1,091,000.00
To annual installments of interest, under treaty of 1851, to July 1, 1864	1,227,400.00	By annual installments of interest, treaty of 1851, to July 1, 1864	1,227,400.00
To value of land ceded, treaty of 1858	96,000.00	By 34 installments, $15,000 each, treaty of 1837, from July 1, 1864, to July 1, 1898	510,000.00
To value of lands in Minnesota	219,692.54	Additional principal	300,000.00

Dr—Continued.		Cr—Continued.	
To amount under act of March 2, 1889	$180,317.62	By 38 installments of $61,450, treaty of 1851, from July 1, 1864, to July 1, 1902	$2,335,100.00
To amount expended under treaty of 1868	1,818,955.75	By amount in Treasury, credit of Indians, treaties of 1837 and 1851, at date of act of 1863	133,449.20
		By amount due for land treaty of 1858	96,000.00
		By value of lands in Minnesota	219,692.54
		By act of March 2, 1889	180,317.62
		By amount due under treaty of 1868	1,818,955.75
	4,673,885.91		7,952,435.11
			4,673,885.91
Balance due			3,278,549.20

It will be observed, by reference to page 20 of Senate Document No. 67 of the Fifty-fifth Congress, second session, the Secretary of the Interior finds that there are unpaid annuities arising under the two treaties, 1837 and 1851, amounting to the sum of $3,052,792.83. (Statement No. 11.)

It will also be observed, by reference to his "General account," on the same page, that he finds an overcredit to the Indians in the sum of $1,077,814.55, not taking into consideration the unpaid installments of annuities arising under the said two treaties.

To make up that sum he charges the Indians with $636,328.96, paid out for depredations, being one-half the amount paid, the other half being charged to the Sisseton and Wahpeton bands, and which forms the principal item going to make up the amount contained in his statement No. 5, found on page 18 of said document. This amount should not be charged against the Indians. Neither should the other items going to make up that statement, one-half of which is charged to these Indians and the other half to the Sissetons and Wahpetons, because the removal and subsistence of the Indians was made necessary by the wrongful and illegal act confiscating their annuities, and which necessity would never have arisen but for that act, because their own funds would have been used for that purpose, and the Government can not afford to take advantage of its own wrongdoing and charge these people with these amounts, especially so when in justice and equity and by every rule of law, as between man and man, these people are entitled to interest on the amount of the annuities withheld from them since 1863.

But admitting the erroneous conclusions arrived at by the Secretary to be correct, and taking his own statement, what is the result? He finds (statement No. 11, page 20 of said document) that the unpaid annuities arising under the two treaties amount to $3,052,792.83, and taking from this the sum of $1,077,814.55, alleged to be overcredited to the Indians (statement No. 10), we have $1,974,978.28 still due, according to this official statement of the Secretary. If we add to that amount the sum of $636,328.96 paid for depredations, and which should not be charged to the Indians, we have a total of $2,611,307.24 due after deducting the amount paid for removal, subsistence, etc.

LOSS OF PROPERTY SUSTAINED BY THE INDIANS.

I now deem it proper to give an account of the destruction of property upon the reservations, and in this I shall be as particular as the limits of this report will allow—not so particular as I would desire, but sufficiently so to convey a clear general idea of the matter.

All the dwelling houses (except two Indian houses), stores, mills, shops, and other buildings, with their contents, and the tools, implements, and utensils upon the upper reservation (Sisseton and Wahpeton) were either destroyed or rendered useless. After a careful estimate I place the loss sustained upon the upper reservation at the sum of $425,000.

On the lower reservation (Medawakanton and Wahpakoota) the stores, shops, and dwellings of the employees, with their contents, were destroyed entirely, and most of the implements and utensils and some of the Indian houses (eight, I believe, worth, with their contents, about $5,000) were also destroyed or rendered useless. The mills and all the rest of the Indian dwellings were left completely unharmed by the Indians.

The new stone warehouse, although burned out as far as it could be, needs only an expenditure of a few hundred dollars to make it as good as ever. I put this loss at $375,000. If, however, no attention is paid to the standing and uninjured houses and mills, they, too, may be taken as destroyed—lost to all practical purposes—as I feel almost certain that such will be the case. I therefore estimate the entire loss at the lower agency, in buildings, goods, stock, lumber, supplies, fences, and crops, at not less than $500,000. Thus on the reservation alone we find a direct loss of about $1,000,000, and most of this is to be placed to the account of the United States as trustee of the Indians. Indeed, I much doubt whether $1,000,000 will cover the loss.

An estimate of the growing crops has already been given. I now present an estimate of their value on the reservations:

LOWER SIOUX.

25,625 bushels corn, at 80 cents	$20,500
32,500 bushels potatoes, at 50 cents	16,250
13,500 bushels turnips, at 20 cents	3,700
Beans, peas, pumpkins, squashes, and other vegetables	8,000
Total Lower Sioux	48,450

UPPER SIOUX.

27,750 bushels corn, at $1	27,750
37,500 bushels potatoes, at 75 cents	28,125
20,250 bushels turnips, at 30 cents	6,075
Beans, peas, pumpkins, squashes, and other vegetables	9,000
Total Upper Sioux	70,950
Add Lower Sioux	48,450
Total	119,400

A provision was inserted in the amended third article of the treaty of 1851 which reads as follows:

It is further stipulated that the President be authorized, with the assent of said bands of Indians, parties to this treaty, and as soon after they shall have given their assent to the foregoing *article* as may be convenient, to cause to be set apart by appropriate landmarks and boundaries such tract of country without the limits of the cession made by the first (2d) article of the treaty as may be satisfactory for

their future occupancy and home: *Provided*, That the President may, by the consent of these Indians, vary the conditions aforesaid if deemed expedient.

Under the authority therein vested in him the President so far varied the conditions of said Senate amendment as to permit said bands to remain on the lands originally set apart for them by the third article of the treaty, and no "tract of country without the limits of the cession" was ever provided for them.

Matters thus ran along until the act of July 31, 1854 (10 Stat., 326), wherein the President was authorized "to confirm to the Sioux of Minnesota forever the reserve on the Minnesota River now occupied by them, upon such conditions as he may deem best."

The President took no direct action to confirm said reservation to these Indians as authorized by the act, and finally a treaty was entered into with them on June 19, 1858 (12 Stat., 1037), by article 1 of which the lands on the south side of the Minnesota River were set apart as a reservation for these bands, and by article 2 it was agreed to submit to the Senate the question as to whether they had title to the lands within the reservation, and, if so, what compensation should be allowed them for that part thereof lying on the north side of the Minnesota River; whether they should be allowed a specific sum therefor, and, if so, how much, or whether the same should be sold for their benefit. Similar provisions were incorporated in the treaty of June 19, 1858, with the Sisseton and Wahpeton Indians (10 Stat., 1031).

Resolved, That said Indians possessed a just and valid right and title to said reservations, and that they be allowed the sum of 30 cents per acre for the lands in that portion thereof lying on the north side of the Minnesota River, exclusive of the cost of survey and sale or any contingent expenses that may accrue whatever, which by the treaties of June, 1858, they have relinquished and given up to the United States.

It was further resolved that all persons who had in good faith settled and made improvements on lands within said reservations, believing them to be Government lands, should have the right to preempt 160 acres; and in case such settlement had been made on lands reserved for the Indians by article 1 of the treaty on the south side of said river the assent of the Indians was to be obtained (12 Stat., 1042).

It was ascertained that the reservation of the Sisseton and Wahpeton bands lying north of the Minnesota River contained an area of 560,600 acres, which, at 30 cents per acre, the price fixed by the Senate resolution, amounted to $170,880. It was also ascertained that the reservation of the Medawakanton and Wahpakoota bands lying north of the Minnesota River contained an area of 320,000 acres, and at the price fixed by the Senate resolution amounted to $96,000, and these two amounts were appropriated by items contained in the Indian appropriation act of March 2, 1861 (12 Stat., 237).

By the act of March 3, 1863 (12 Stat., 819), the President was authorized and directed to assign and set apart for the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands a tract of unoccupied land outside the limits of any State sufficient in extent to enable him to assign to each member of said bands 80 acres of good agricultural land. By sections 2 and 3 of said act the lands set apart for these four bands of Indians by article 1 of the two treaties with them of 1858 were to be surveyed and appraised, and thereafter to become subject to preemption at the appraised value thereof, etc., and section 4 provides the manner of disposing of the proceeds derived therefrom.

Here again the Government had the advantage over the Indians to the extent of the difference between 30 cents per acre and $1.25 per acre, the minimum price of public lands, that difference being $304,000.

The Government entered into separate treaties with the Creeks and Seminoles in the year 1866, under which 30 and 15 cents per acre was paid to said Indians, respectively, for the lands therein ceded. The lands so ceded are no better than, in fact not so valuable as, those ceded by the Medawakantons and Wahpakootas by the agreement of 1851 and 1858. But the Government having been convinced that an injustice had been done the Creeks and Seminoles by their treaties of 1866, Congress in 1889 made appropriations to pay them the difference between the amount agreed upon in the treaties and $1.25 per acre, the minimum price of public land, deducting 20 cents per acre for surveys, etc. In this connection it should be borne in mind that the Creeks and Seminoles entered into treaties with the Southern Confederacy and were in open hostilities against the United States, a large majority of them serving in the Confederate army.

Now, I ask, why are not the Medawakanton and Wahpakoota bands entitled to as generous treatment as those who were in open hostility to the Government? Why should not the same rule of justice and fair dealing be adopted toward the Medawakanton and Wahpakoota Indians that was meted out to the Creeks and Seminoles?

Is there any reason, in justice and equity, why the Medawakantons and Wahpakootas should not now be paid the difference between that paid them, or agreed to be paid them, per acre for the various cessions made by them and $1.25 per acre, the minimum price of public lands, deducting 20 cents per acre for surveys, etc., as was done in the Creek and Seminole cases?

It is a fact, which the record of the Government will substantiate, that in all the various Indian wars since the foundation of our Government there has never been a single instance where the Indian participants were punished by the confiscation of their lands and annuities.

They have always fared better and been treated with more consideration than those who have remained loyal and steadfast.

Even the Five Civilized Tribes, who made treaties with the Southern Confederacy and were in open hostility to the Government of the United States, were not disturbed in their rights of lands and annuities, notwithstanding the fact that by the act of July 5, 1862 (12 Stat. L., 528), it was provided—

> That in case where the tribal organization of any Indian tribe shall be in actual hostility to the United States the President is hereby authorized, by proclamation, to declare all the treaties with such tribe to be abrogated with such tribe, if, in his opinion, the same can be done consistently with good faith and legal national obligations.

As a matter of fact, the President, seeing that "good faith and legal national obligations" would be violated by the exercise of the authority vested in him by that act, never issued the required proclamation.

CONSTITUTIONALITY OF THE ACT OF 1863.

There is still another phase of this question, and a very important one, and that is the question of the constitutionality of the act of 1863 confiscating the annuities of these people.

There are many eminent lawyers, constitutional lawyers, on both sides of the Chamber, and I desire to invite not only their attention, but the attention of all others to what I am about to say on that subject.

Now, I make the broad statement, without reservation and without fear of contradiction, that so far as the Sisseton and Wahpeton and the Medawakantons and Wahpakootas are concerned the act of 1863 is unconstitutional, absolutely and without qualification, because the outbreak of

1862, though terrible in the extreme, and for which I have no extenuating circumstances to plead, did not constitute treason as defined by the Constitution.

TREATIES ARE THE SUPREME LAW OF THE LAND.

By article 6, clause 2, of the Constitution, treaties are declared to be the supreme law of the land, and it has been universally held by the courts that there is no power vested in the Congress of the United States to interfere with or destroy vested property rights secured by treaty or otherwise.

Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political. (Holden *v.* Joy, 17 How., 247; Wilson *v.* Wall, 6 Wall., 89; Insurance Co. *v.* Canter, 1 Pet., 542; Doe *v.* Wilson, 23 How., 461; Mitchell et al. *v.* United States, 9 Pet., 749; United States *v.* Brooks et al., 10 How., 460; The Kansas Indians, 5 Wall., 737; 2 Story on the Constitution, 1508; Foster et al. *v.* Neilson, 2 Pet., 254; Crews et al. *v.* Burcham, 1 Black., 356; Worcester *v.* Georgia, 6 Pet., 562; Blair *v.* Pathkiller, 2 Yearger, 407; Harris *v.* Barnett, 4 Black., 369.)

Mr. Webster, in speaking of the obligation of a treaty, in his opinion on Florida land claims arising under the ninth article of the treaty of 1819 between the United States and Spain, said:

> A treaty is the supreme law of the land. It can neither be limited, nor modified, nor altered. It stands on the ground of national contract, and is declared by the Constitution to be the supreme law of the land, and this gives it a charactor higher than any act of ordinary legislation. It enjoys an immunity from the operation and effect of all such legislation. (Opinion quoted in Senate Report No. 93, Thirty-sixth Congress, first session.)

There is no exception to this rule, unless it be in the case of treason.

ORDINANCE OF 1787.

Before referring to and proceeding to discuss the articles of the Constitution bearing upon the questions at issue, I want to invite attention to the provisions of the ordinance of 1787, which was adopted prior to the adoption of the Constitution. It is provided in the third article of that ordinance, as one of the irrevocable clauses thereof, that—

> The utmost good faith shall always be observed toward the Indians; their land and property shall never be taken from them without their consent, and in their property rights and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress, but laws founded in justice and humanity shall from time to time be made for preventing wrongs being done to them, and preserving peace and friendship with them. (1 Stat., 50.)

This article was intended by our forefathers as the Indian's magna charta, but it has never been carried out or observed by the United States, in fact or in theory. How grossly and shamefully it has been violated in the present case is shown by the record. The act of 1863 took the property of an innocent, inoffensive, patriotic, and loyal people "without their consent" and without just provocation or consideration. Was that a law "founded in justice and humanity?" Is it thus that "in their property rights and liberty they never shall be invaded or disturbed?" Is this the manner in which "the utmost good faith shall always be observed toward them?" Is it thus that laws shall be passed "for preventing wrongs being done them and preserving peace and friendship with them?" Is it thus that these people shall be punished for the noble impulses which actuated them in breaking away from their

ancient and hereditary customs and joining the United States troops and fighting against their brethren, and rescuing women and children made captive by the hostiles? Is this a fitting reward for their magnificent services to the Government and to the people of Minnesota at the time of their greatest peril and need?

Now, what constitutes treason, and were the participants in the outbreak of 1862 guilty of that offense?

Article 3, section 3, clause 1, of the Constitution declares that—

> Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. (United States *v.* The Insurgents, 2 Dall., 335; United States *v.* Mitchell, 2 Dall., 384; Ex parte Ballman, and Swartwout, 4 Cr., 75; United States *v.* Burr, 4 Cr., 469.)

Section 5331 of the Revised Statutes provides that—

> Every person owing allegiance to the United States who levies war against them, or adheres to their enemies, giving them aid and comfort, within the United States, or elsewhere, is guilty of treason.

It will be observed that there are three things essential to constitute the crime of treason:

First. There must be a levying of war against the United States, adherence to their enemies, or giving them aid and comfort.

Second. No person can commit the crime of treason who does not owe *allegiance* to the United States; and

Third. There must be a judicial determination of the fact that the overt act was committed.

The outbreak of 1862 did not constitute treason within the meaning of the Constitution, because it was not a "levying of war" against the United States, etc. To constitute a "levying of war" there must be an assemblage of persons with force and arms to overthrow the Government. (4 Sawyer, 457.) The outbreak of 1862 was not a war levied against the United States. In fact, none of our Indian wars have been levied against the United States within the meaning of the Constitution, but have merely been outbreaks against the whites in retaliation for some wrong, real or fancied, and no punishment for such acts has ever been declared, either in the Constitution or by Congress.

Again, no person can commit the crime of treason who does not owe allegiance to the United States. These Indians at the time of the outbreak were not citizens of the United States and owed them no allegiance, and, consequently, could not commit treason.

While Congress may, under the Constitution, prescribe any punishment for the crime of treason, even forfeiture and death, that body has no power vested in it under the Constitution to enforce the penalty. Forfeiture of property and rights can not be adjudged by legislative acts, and confiscation without judicial hearing after due notice would be void as not being "due process of law. Nor can a party by his misconduct so forfeit a right that it may be taken away from him without judicial proceedings in which the forfeiture shall be declared in due form." (Cooley Const. Law, 4550; 38 Miss., 434; 24 Ark., 161; 27 Ark., 26.)

In the act of July 17, 1862, to suppress insurrection, to punish treason and rebellion, to seize and confiscate property of rebels, and for other purposes (12 Stat., 389), Congress was very careful to observe its limited power under the Constitution, and conferred upon the courts the power to judicially determine and declare forfeiture.

We have now seen that the outbreak of 1862 did not constitute treason within the meaning of the Constitution, nor within the meaning of

section 5331 of the Revised Statutes; that the Indians, owing no allegiance to the United States, could not commit the crime of treason, and that the forfeiture of their annuities was without "due process of law."

But the act of 1863 is unconstitutional on other grounds. The tenth section of article 1 of the Constitution, clause 1, declares that no State shall pass any law impairing the obligation of contracts.

While the Constitution does not inhibit Congress from passing such a law, it has been held that such legislation is against the principles of our social compact and opposed to every principle of sound legislation. (Walker *v.* Leland. 2 Pet., 646; Colder *v.* Bull, 3 Dall., 386; Sturges *v.* Crowninshield, 4 Wheat., 206; Ogden *v.* Saunders, 12 Wheat., 269; Federalist, No. 44.)

A treaty is a contract and, in the case under consideration, the contract was fully executed on the part of the Indians by surrendering to the Government the title and possession to the land ceded, and was executory on the part of the United States to the extent of the unpaid portion of the consideration named therein. Upon the ratification of the treaty the right of the Indians to the balance of the consideration became determined, fixed, and absolute. It was an ascertained debt for the purpose of ultimate payment and satisfaction as in the treaty provided, and, as before stated, there was no power vested in Congress under the Constitution to devest those rights. Where a law is in its nature a contract and absolute rights have vested under it, a repeal of the law can not devest those rights. (Fletcher *v.* Peck, 6 Cranch, 87.)

Again, in the present case, the United States assumed to act as trustee and in a fiduciary capacity, and should be held to as strict an account toward the cestui que use and to act as scrupulously and with as much care as a private individual acting in that capacity would be required to do. But here is a case in which the cestui que trust appropriates to its own use the funds and property of the cestui que use, a proceeding unheard of in legal jurisprudence, and one which would not be tolerated for a moment between private individuals. The act of 1863 is unconstitutional because it is an ex post facto law.

Article 1, section 9, clause 3, of the Constitution declares that "No bill of attainder or ex post facto law shall be passed." (Fletcher *v.* Peck, 6 Cr., 87; Ogden *v.* Saunders, 12 Wh., 213; Walson et al. *v.* Mercer, 8 Pet., 88; Carpenter *v.* Commonwealth of Pennsylvania, 17 How., 456; Lock *v.* New Orleans, 4 Wall., 172; Cummins *v.* The State of Missouri, 4 Wall., 277; Ex parte Garland, 4 Wall., 333; Drenham *v.* Stifle, 8 Wall., 595; Klinger *v.* State of Missouri, 13 Wall., 257; Pierce *v.* Carskadon, 16 Wall., 234; Holden *v.* Minnesota, 137 U. S., 483; Cook *v.* United States, 138 U. S., 157.)

Now, what constitutes an ex post facto law? A statute which would render an act punishable in a manner in which it was not punishable when it was committed is an ex post facto law. (6 Cranch, 138; 1 Kent, 408.)

A law to punish acts committed before the existence of such law, and which acts had not been declared crimes by preceding law, is an ex post facto law. Every law that makes an act done before the passing of the law, and which was innocent when done—that is, for which no punishment had been previously prescribed by law—and prescribes a penalty therefor, is an ex post facto law. (3 Story Const., 212.)

As has been seen, the outbreak of 1862 was not treason within the meaning of the Constitution nor within the meaning of section 5331 of the Revised Statutes. There has never been a law passed by Congress

prescribing a punishment for participants in an Indian outbreak or an Indian war, and neither the Constitution nor Congress has ever defined any species of crime for such acts, and consequently, applying the rules of interpretation laid down by the courts, the act of 1863 is an ex post facto law, and therefore unconstitutional.

Now, suppose we admit, for the sake of argument, that the outbreak of 1862 was treason within the meaning of the Constitution and that the four bands were actually engaged in hostilities, what is the result of the act of 1863?

The second clause of section 3 of article 3 of the Constitution declares that—

> The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted. (Bigelow *v.* Forest, 9 Wall., 339; Day *v.* Micou, 18 Wall., 156; Ex parte Lange, 18 Wall., 163; Wallach *v.* Van Riswick, 92 U. S., 202.)

Under this provision of the Constitution Congress may, as before stated, prescribe any form of punishment for the crime of treason, even forfeiture and death, but if forfeiture be declared the Constitution expressly and explicitly limits it to the life of the person attained. In no other case is power delegated to Congress to declare forfeiture, nor is Congress vested with power to carry into effect a forfeiture constitutionally declared. But here we have an act which is not only an ex post facto law, and which impairs the obligation of a contract, but is in effect a bill of attainder and declares a forfeiture beyond the limit prescribed by the Constitution, and by that act Congress assumed judicial functions not delegated to it by the Constitution and carries that forfeiture into effect, which forfeiture not only extends to those engaged in the outbreak, but to their descendants ad infinitum—a proceeding wholly unconstitutional.

This subject might be enlarged upon, but sufficient has been said to show that the act of 1863 is unconstitutional in its relation to the Sisseton and Wahpeton bands, and to the Medawakanton and Wahpakoota bands as well.

Of those actually engaged in the outbreak many were killed, some 39 were hung, and most of the remainder fled to Canada, where they afterwards remained and where their descendants now are. From the best information obtainable, it is not believed that 50 of those actually engaged in the outbreak are now residing within the United States.

If the act of 1863 be constitutional and the outbreak constituted treason, then under the Constitution it can only apply to such of those as were actually engaged in open hostilities and who are still alive and residing in the United States, but as to the descendants of those who are deceased the act has lapsed by constitutional limitation, and the rights of the parties have become vested. These rights are theirs by right, by law, in equity by the provisions of the Constitution, and can only be withheld from them by the arbitrary and unconscionable refusal of Congress to enact the necessary legislation to make them effective.

The bill in its present shape excludes from its benefits such of the Indians as are not residents of the United States, and, as suggested during the last session by the Senator from Wisconsin (Mr. Spooner), it can be so amended, if thought best, as to exclude from its benefits all persons who were actually engaged in the outbreak, though it seems to me that they have been punished enough.

Now, I want to appeal to Senators to come forward and do at least partial justice to these people, not on the ground that the act of 1863 is unconstitutional, though that is sufficient reason, but that it worked a

great, unconscionable, and unpardonable wrong and hardship on an innocent, patriotic, and faithful people, in return for their loyalty and friendship, and the gallant services rendered the Government and the people in Minnesota in the hour of their greatest need and peril.

The Government, as stated by the Commissioner of Indian Affairs in his letter to the Secretary of the Interior of April 20, 1866, "owes these people a debt of gratitude, and has not discharged that debt, but has deprived them of their share of the property and income of their people."

General Sibley, who had command of the United States troops during the outbreak, in a letter dated July 13, 1878, says:

> I have the best reason for knowing that as a general rule the chiefs and headmen of these divisions not only had no sympathy with those of their kindred who took part in the massacre, but exerted themselves to save the lives of the whites then in the country, and joined the forces under my command as scouts and rendered signal and faithful service in my campaigns against the hostile Sioux, and subsequently in guarding the passes to the settlements against raiding parties of their own people. I have always regarded the sweeping act of confiscation referred to as grossly unjust to the many who remained faithful to the Government, and whose lives were threatened and their property destroyed as a result of that fidelity.
>
> Having been in command of the forces which suppressed the outbreak and punished the participators in it, I became necessarily well informed as to the conduct of the bands and individuals who took part for or against the Government during the progress of the war, and I have repeatedly, in my official capacity, called the attention of the Government to the great injustice done the former class by including them in the legislation which deprived them of their annuities.

Bishop Whipple, in a letter dated December 26, 1877, says:

> I believe that there were many of the Lower Sioux who showed great heroism in opposing the hostile. It was to such men as Tacopi, Wakeanwashta, Wabashta, Wakeantowa, and others we owe the deliverance of the white captives. So far as I know and believe, there were hundreds among the Upper and Lower Sioux who were not at any time hostile to us. They were in the minority and overborne by the fierce warriors of hostile bands. I have not the slightest doubt that we not only owe the lives of the rescued captives to the Sioux who were friendly, but our immunity from Indian wars since is due to the wisdom of Gen. H. H. Sibley in employing these friendly scouts to protect our borders. I appreciate your efforts to secure justice to our friends, even if they have red skins.

I do not expect the Government to do full justice to these people for what they suffered by the unjust and illegal confiscation of their annuities. By every rule of justice and equity, and by the fundamental principles enunciated by our highest judicial tribunals, these people are entitled to interest on the amount withheld from them by the Government, and damages besides; but they do not ask this. The Government can never compensate them for their self-sacrifice, their heroism, and loyal services during the outbreak, the value of which can not be estimated in dollars and cents, but we can do them a modicum of justice, and at the same time relieve our Government from a stigma of dishonor, by restoring to them the balance of their confiscated annuities.

We should at least be honest and act in good faith toward an inferior and wronged people, who, while owing no allegiance, were second to none of our best citizens in patriotism, loyalty, and devotion to our Government, and who, by might and not by right, were made to suffer all these years for no wrong done. We should bear in mind that the Government occupies toward these people the relation of guardian to ward, as cestui que trust and cestui que use, and that acting in that fiduciary capacity we are bound, not only legally and equitably, but by the law of good conscience, to faithfully and scrupulously give an account of our stewardship.

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