

IN THE SENATE OF THE UNITED STATES.

JULY 12, 1892.—Ordered to be printed.

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

REPORT:

[To accompany S. 3407.]

The Committee on Indian Affairs, to whom was referred the finding of the Court of Claims in the case of the New York Indians, etc. *vs.* The United States, make the following report:

The finding of the Court of Claims is as follows:

[Court of Claims. Congressional case No. 151. The New York Indians, being those Indians who were parties to the treaty concluded at Buffalo Creek, in the State of New York, on the 15th day of January, 1838, *vs.* The United States.]

At a Court of Claims held in the city of Washington on the 11th day of January, A. D. 1892, the court filed the following findings of fact, to-wit:

The claim or matter in the above-entitled case was transmitted to the court by the Committee on Indian Affairs of the Senate of the United States, the 21st day of June, 1884.

James B. Jenkins, Henry E. Davis, Guion Miller, esqs. (with whom was George Barker, esq.), appeared for claimants, and the Attorney-General, by F. P. Dewees, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The following is the letter transmitting the cause to this court:

UNITED STATES SENATE COMMITTEE ON CLAIMS,
June 21, 1884.

At a meeting of the Committee on Indian Affairs of the Senate of the United States the following order was made by that committee:

Ordered, That Senate bill (S. 467) to provide for a settlement with the Indians who were parties to the treaty concluded at Buffalo Creek, in the State of New York, on the 15th day of January, 1838, for the unexecuted stipulation of that treaty, together with the accompanying amendment intended to be proposed by Mr. Voorhees to the aforesaid bill, which bill and proposed amendment were referred to said committee at the first session of the Forty-eighth Congress, and which bill and proposed amendment are now pending before said committee, be transmitted (in accordance with the provisions of an act entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," approved March 3, 1883), to the Court of Claims of the United States, together with the vouchers, papers, proofs, and documents appertaining thereto, for the investigation and determination of the facts involved in said bill and said proposed amendment thereto.

J. R. McCARTY,
Clerk to the United States Senate Committee on Indian Affairs.

All questions relative to the proposed amendment to the Senate bill mentioned in said letter were abandoned by counsel at the beginning of the argument, and and it was stated that an agreement had been reached upon its subject-matter.

The case having been brought to a hearing on the 25th day of November, 1891, the court, upon the evidence and after considering the briefs and arguments of counsel on both sides, find the facts to be as follows:

I.

In 1784 the United States by treaty secured the Oneida and Tuscarora Nations in the possession of the lands upon which they were settled, and fixed the boundaries of the lands of the Six Nations, it being agreed by the United States that the Six Nations should be secured in the peaceful possession of the lands they then inhabited east and north of the boundaries fixed.

The stipulations of this treaty were renewed and confirmed in 1789 when the boundary was again described in the same terms as in the treaty of 1784 and the Indians relinquished and ceded to the United States the lands west of the defined boundary. The Mohawks were not parties to the treaty of 1789.

In 1794 another treaty was concluded with the Six Nations guaranteeing peace and friendship perpetual between the parties, acknowledging the lands reserved to the Oneida, Onondago, and Cayuga Nations in their treaty with the State of New York to be their property, and engaging that the United States would never claim the same or disturb them or either of the Six Nations, nor their Indian friends residing thereon and united with them in the free use and enjoyment thereof, but the said lands should remain theirs until they chose to sell the same to the United States, who "have the right to purchase." The land of the Seneca Nation is also described by metes and bounds in this treaty, acknowledged as their property, and confirmed as theirs until they choose to sell to the United States, who "have the right to purchase," and the United States having thus described and acknowledged the lands of the Oneidas, Onondagas, Cayugas, and Senecas, and engaged never to claim the same nor disturb the Six Nations in the free use and enjoyment thereof, the Six Nations upon their side engaged never to claim any other lands within the boundaries of the United States.

II.

The New York Indians in 1810 petitioned the President of the United States for leave to purchase reservations of their western brethren with the privilege of removing to and occupying the same. Thereupon, with the approbation of the President, lands situated at Green Bay, Wis., was purchased by the said New York Indians from the Monomonee and Winnebago tribes.

III.

In 1821 the Monomonee Indians ceded to the Stockbridge, Oneida, Tuscarora, St. Regis, and Munsee nations two large tracts of land in Wisconsin for a small money consideration. The title to one of those tracts was confirmed in the New York Indians by the President March 13, 1823.

IV.

Thereafter certain New York Indians belonging to the Oneida, St. Regis, Munsee, and Brothertown tribes removed to and took possession of the lands in Wisconsin. Subsequently questions of tenure and boundaries of the lands granted to the New York Indians were raised by the Menomonees, negotiations were had, and steps were taken through which the purchase by the New York Indians from the Menomonees and Winnebagos was so reduced as to include only 500,000 acres of land on the south and west of the Fox River, together with three townships on the north and east of said river, comprising 89,120 acres, which was to be set apart for the Stockbridge, Munsee, and Brothertown tribes, to all of which the New York Indians duly assented, and thereafter the title to the said three townships and the said 500,000 acres was recognized by the Congress and the President of the United States to be in the New York Indians. In the treaty of February 8, 1831, with the Menomonee Indians it was agreed that certain land in Wisconsin might be set apart as a home to the several tribes "of New York Indians who may remove to and settle upon the same within three years from the date of this agreement."

This treaty was assented to by the New York Indians, October 17, 1832, and by amendment later introduced by agreement between the United States and the Menomonee Indians, the removal of those of the New York Indians who might not be settled on the lands at the end of three years was left discretionary with the President of the United States. A small portion of the New York Indians removed to the Wisconsin or Green Bay lands.

In the treaty with the Monomonees, *supra*, appears at the end of article 1 the following:

"It is distinctly understood that the lands hereby ceded to the United States for the New York Indians are to be held by those tribes under such tenure as the Menomonee Indians now hold their lands, subject to such regulations and alteration of tenure as Congress and the President of the United States shall from time to time think proper to adopt."

V.

The title of the New York Indians as set forth in the fourth finding has since been acknowledged by the United States; as in the treaty with the Menomonees of September 3, 1836; in the treaty with the Stockbridges and Munsees, of September 3, 1839; in the treaty with the New York Indians concluded at Buffalo Creek January 15, 1838; and in the treaty with the Tonawanda band of Senecas of November 5, 1857.

VI.

From the preceding findings it appears as a fact that prior to February, 1831, the claimants, with the approbation of the President, had purchased from the Menomonee and Winnebago Indians certain lands near Green Bay, in the then Territory of Wisconsin; that a question had arisen as to the extent of this purchase, which was finally settled by treaty between the Monomonees and the United States in February, 1831 (ratified in 1832), which treaty contained a provision securing to claimants, in consideration of \$20,000, 500,000 acres of land at Green Bay (in addition to the townships set apart for the Stockbridge, Munsee, and Brothertown tribes), on condition that they should remove to the same within three years or such reasonable time as the President of the United States should prescribe.

VII.

In January, 1838, the claimants had not all removed to the lands in Wisconsin, but had been prevented from doing so by reasons accepted as sufficient by the President of the United States.

VIII.

Prior to the month of January, 1838, the claimants applied to the President of the United States to take their Green Bay lands and provide them a new home in the Indian Territory. Pursuing the Government policy in removing the Indians to the west of the Mississippi, the President acted upon the application of the Indians by making with them the treaty (known as the treaty of Buffalo Creek) of January 15, 1838.

IX.

The treaty of Buffalo Creek provided, in consideration of the premises recited in the foregoing three findings and of the covenants contained in the treaty itself to be performed by the United States, that the claimants cede and relinquish to the United States all their right, title, and interest in and to their Green Bay lands (excepting a small reservation), and in consideration of this cession and relinquishment the United States, in and by the treaty, agree and guarantee as follows:

First, to set apart as a permanent home for all of the claimants having no permanent homes a certain tract of country west of the Mississippi River, described by metes and bounds and to include 1,824,000 acres of land; to have and to hold the same in fee simple to the said tribes or nations of Indians by patent from the President of the United States, in conformity to the provisions of section 3 of the act of Congress of May 28, 1830, entitled "An act to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi;" the same to be divided among the different tribes, nations, or bands in severalty; it being understood that the said country was intended as a future home for the following tribes: The Senecas, Onondagas, Cayugas, Tuscaroras, Oneidas, St. Regis, Stockbridges, Mun-

sees, and Brothertowns, and was to be divided equally among them according to the number of individuals in each tribe, as set forth in a schedule annexed to the treaty and designated as Schedule A, on condition that such of the claimants as should not accept and agree to remove to the country set apart for them within five years, or such other time as the President might from time to time appoint, should forfeit to the United States all interest in the lands so set apart. The following is the Schedule A :

Census of the New York Indians as taken in 1837.

Number residing on the Seneca reservations:

| | |
|------------------------------|-------|
| Senecas | 2,309 |
| Onondagas | 194 |
| Cayugas | 130 |
| | <hr/> |
| | 2,633 |
| | |
| Onondagas, at Onondaga | 300 |
| Tuscaroras | 273 |
| St. Regis in New York | 350 |
| Oneidas at Green Bay | 600 |
| Oneidas in New York | 620 |
| Stockbridges | 217 |
| Munsees | 132 |
| Brothertowns | 360 |

Second. The United States agreed to protect and defend the claimants in the peaceable possession and enjoyment of their new homes, and to secure their right to establish their own government, subject to the legislation of Congress respecting trade and intercourse with the Indians.

Third. The United States agreed that the lands secured to the claimants by the treaty should never be included in any State or Territory of the Union.

Fourth. The United States agreed to pay to the several tribes and nations of the claimants hereinafter mentioned, on their removal west the following sums, respectively, namely: To the St. Regis tribe, \$5,000; to the Seneca Nation, the income, annually, of \$100,000 (being part of the money due said nation for lands sold by them in New York, and which sum they authorized to be paid to the United States); to the Cayugas, \$2,500 cash and the annual income of \$2,500; to the Onondagas, \$2,000 cash and the annual income of \$2,500; to the Oneidas, \$6,000 cash, and to the Tuscaroras, \$3,000.

Fifth. The United States agreed to appropriate the sum of \$400,000, to be applied from time to time by the President of the United States for the following purposes, namely: To aid the claimants in removing to their new homes and supporting themselves the first year after their removal; to encourage and assist them in being taught to cultivate their lands; to aid them in erecting mills and other necessary houses; to aid them in purchasing domestic animals and farming utensils, and in acquiring a knowledge of the mechanic arts. It does not appear that application was made by the tribes or bands or any of them to the Government for removal to the Kansas lands, except as appears in Finding XV below. Article 3 of this treaty of Buffalo Creek provides that such of the tribes of the New York Indians as did not accept and agree to remove to the country set apart for their new homes within five years, or such other time as the President might appoint, should forfeit to the United States all interest in the lands so set apart. By supplemental article the St. Regis Indians assented to the treaty with this stipulation, viz:

And it is further agreed that any of the St. Regis Indians who wish to do so shall be at liberty to remove to the "said country at any time hereafter within the time specified in this treaty, but the Government shall not compel them to remove."

The treaty of January 15, 1838, as amended by the Senate June 11, 1838, was assented to September 23, 1838, by the Seneca tribe of New York Indians; August 9, 1838, by the chiefs of the Oneida tribe; August 14, 1838, by the Tuscarora Nation residing in New York; August 30, 1838, by Cayuga Indians residing in New York; October 9, 1838, by the St. Regis Indians residing in New York; August 31, 1838, by the Onondaga tribe of Indians on the Seneca reservations in the State of New York.

There is no evidence before the court that the Onondagas at Onondaga (300), Oneidas at Green Bay (600), Stockbridges (217), Munsees (132), Brothertowns (360), ever assented to the treaty as amended by the Senate June 11, 1838.

X.

In the year 1838, at the time of the making of the treaty of Buffalo Creek, the Six Nations of New York Indians, designated by that name in the treaty, consisted of six separate nations or tribes known and named as the Senecas, the Onondagas, the Oneidas, the Cayugas, the Tuscaroras, and the St. Regis; and each of said nations or tribes, except the Cayugas, owned and possessed a reservation of land in the State of New York on which the members of said tribes resided, and the right to occupancy to which was secured to them by treaty stipulations. The Cayuga Indians had no separate reservation of their own in the State of New York, but made their home with and resided upon the reservation and lands possessed by the Seneca Nation with the consent of the latter.

XI.

The lands occupied by the Seneca Nation in the State of New York, as set forth in the last preceding finding, consisted of four separate and distinct reservations, namely:

The Buffalo Creek Reservation in Erie County, containing 49,920 acres; the Cattaraugus Creek Reservation, containing 21,680 acres; the Alleghany Reservation, containing 30,469 acres, and the Tonawanda Reservation, in Genesee County, containing 12,800 acres. The lands occupied by the Tuscarora Indians were situated in Niagara County, N. Y., and comprised 6,249 acres. The lands occupied by the Onondaga tribe were situated in Onondaga County, N. Y., and comprised 7,300 acres. The lands occupied by the Oneida tribe were situated in Oneida and Madison counties, N. Y., and comprised 400 acres. The reservation and lands occupied by the St. Regis tribe were situated in Franklin County, N. Y., and comprised about 14,000 acres.

XII.

For many years prior to the making of the treaty of Buffalo Creek in 1838, the said several nations or tribes of Indians had improved and cultivated their lands, on which they resided and from the products of which they chiefly sustained themselves.

XIII.

At the time of the making of the treaty of Buffalo Creek in 1838, one Thomas L. Ogden and one Joseph Fellows, both residents of the State of New York, claimed to be the assignees of the State of Massachusetts and owners of the pre-emptive right of purchase from the Seneca Nation of the several reservations of land occupied by them as above set forth, which pre-emptive right had been secured to the Commonwealth of Massachusetts by a convention of the States of New York and Massachusetts, held on the 6th day of December, 1786. The claims of the said Ogden and Fellows were recognized and provided for in the said treaty of Buffalo Creek and the treaty supplementary thereto, which was entered into between the United States and the said Six Nations on the 20th day of May, 1842. After the ratification of said treaty of 1843, which was proclaimed on the 26th day of August in that year, the Seneca Nation surrendered to said Ogden and Fellows the possession of the Buffalo Creek Reservation aforesaid, and the said nation has since continued to occupy the Cattaraugus and Alleghany reservations mentioned in said treaties of 1838 and 1842.

XIV.

The President of the United States never prescribed any time for the removal of the claimants or any of them to the lands or any of them set apart by the treaty of Buffalo Creek.

XV.

No provision of any kind was ever made for the actual removal of more than about 260 individuals of the claimant tribes as contemplated by the treaty of Buffalo Creek, and of this number only 32 ever received patents or certificates of allotment of any of the lands mentioned in the first article of the treaty, and the amount allotted to those 32 was at the rate of 320 acres each, or 10,240 acres in all.

In 1845 Abram Hogeboom represented to the Government of the United States that a number of the New York Indians, parties to the treaty of 1838, desired to remove to the Kansas lands, and upon such representation and in conformity with such desire said Hogeboom was appointed special agent of the Government to remove the said Indians to Kansas.

The sum of \$9,464.08 of amount appropriated by Congress was expended in the removal of a party of New York Indians under his direction in 1846.

From Hogeboom's muster roll in the Indian Office it appears that 271 were mustered for emigration. The roll shows that of this number 73 did not leave New York with the party; the number, thus reduced to 191, arrived in Kansas June 15, 1846; 17 other Indians arrived subsequently; 62 died, and 17 returned to New York.

It does not appear that any of the 32 Indians to whom allotments were made settled permanently in Kansas.

XVI.

The United States, after the conclusion of the treaty of Buffalo Creek, surveyed and made part of the public domain the lands at Green Bay ceded by the claimants, and sold or otherwise disposed of and conveyed the same and received the consideration therefor.

XVII.

The lands west of the Mississippi secured to the claimants by the treaty of Buffalo Creek were afterwards surveyed and made part of the public domain, and were sold or otherwise disposed of by the United States, which received the entire consideration therefor; and the said lands thereafter were and now are included within the territorial limits of the State of Kansas. The price realized by the United States for such of the said lands as were sold was at the rate of \$1.34 per acre, while the cost of surveying, etc., the same was at the rate of about 12 cents per acre, making the net price realized by the United States about \$1.22 per acre.

XVIII.

By treaty with the Tonawanda band of the Senecas, numbering 650 individuals, the United States, November 5, 1857, in consideration of the release by the said band of its claims upon the United States to the lands west of the State of Missouri, all right and claim to be removed thither and for support and assistance after removal and all other claims against the United States under the treaties of 1838 and 1842 (reserving their rights to moneys paid or payable by Ogden & Fellows), agreed to pay and invest, and did pay and invest for said band the sum of \$256,000. This amounted in substance to compensating the beneficiaries of the treaty of 1838 at the rate of \$1 per acre for their claims to lands in Kansas, under said treaty, and also their proportionate share of the \$400,000 provided to be appropriated in that treaty.

XIX.

After March 21, 1859, an order of the Secretary of the Interior was made which directed that the tract of land in Kansas Territory known as the New York Indian Reserve should be surveyed with a view of allotting a half section each to such of the New York Indians as had removed there under treaty provisions, after which the residue was to become public domain. After this and before the proclamation of the President of said lands as part of the public domain (December 3 and 17, 1860) the New York Indians employed counsel to protect and prosecute their claims in the premises, asserting in the powers of attorney that the United States had seized upon the said lands contrary to the obligations of said treaty, and would not permit the said Indians to occupy the same or make any disposition thereof; the said Indians have steadily since asserted their said claims.

XX.

Of the sum of \$400,000 agreed by the treaty of Buffalo Creek to be appropriated by the United States for the purposes mentioned in the ninth finding above, only the sum of \$20,477.50 was so appropriated (except as hereinafter stated). Of this sum only \$9,464.08 was actually expended; this sum was expended for the removal, more than five years after the ratification of the treaty, of some of the 260 individuals mentioned in the fifteenth finding above; but in addition to said sum of \$9,464.08 there was paid for the Tonawanda band of Senecas \$256,000, as mentioned in the eighteenth finding above.

XXI.

The records of the Indian Office do not show that the President ever prescribed any time for the removal of the New York Indians to Wisconsin under the treaties of February 8, 1831, and October 27, 1832, or that the President prescribed any time for the removal of the New York Indians from Wisconsin and New York to the Kansas lands under the treaty of Buffalo Creek (January 15, 1838), or that the Government took any steps to defend those Indians who did remove to Kansas "in the peaceable possession of their new homes."

XXII.

The account under the treaty of Buffalo Creek may thus be stated (omitting all questions of law and as to interest and without deciding that the United States are or are not responsible for any portion thereof):

| | |
|---|-------------------|
| Credit the tribes with— | |
| 1,824,000 acres of land in Kansas, at \$1 per acre | \$1, 824, 000. 00 |
| Amount named in articles 9 to 14, both inclusive, of the treaty of Buffalo Creek (except the \$100,000 for the Seneca Nation, which has been taken into the account in other dealings between the United States and that nation respecting the claims of Ogden and Fellows) | 23, 000. 00 |
| Amount named in article 15 of the treaty | 400, 000. 00 |
| | 2, 247, 000. 00 |
| Debit the tribes with— | |
| Amount expended in removing the portion of the 206 individuals mentioned in finding 15 | 9, 464. 08 |
| 10,240 acres allotted to the 32 individuals mentioned in finding 15, at \$1 per acre | 10, 240. 00 |
| Amount invested for Tonawanda band | 256, 000. 00 |
| | 275, 704. 08 |
| Balance | 1, 971, 295. 92 |

BY THE COURT.

Filed January 11, 1892.

A true copy.

Test, this 16th day of January, A. D. 1892.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

It will be observed that this finding was made under the so-called "Bowman act," and deals only with facts. Upon the facts as found questions of law arise as to whether the United States is liable for a money payment to the claimants; and, if so, the amount thereof. These questions, in the opinion of the committee, should be determined by a court where they can all be carefully considered and decided. The committee therefore recommends the passage of the accompanying bill conferring jurisdiction on the Court of Claims to hear and determine the case.

The claimants demand interest on the value of their lands in Kansas, which were set apart for them with a view of their removal thereto, from 1843, or certainly from the year 1860, when the United States proclaimed the Kansas lands open to settlement. But in the judgment of the committee this case is not one in which interest should be allowed against the Government.

The bill is therefore so drawn as to exclude the payment of interest upon any sum that may be found due by the Court of Claims.