

THE SISSETON AND WAHPETON BANDS OF SIOUX OR
DAKOTA INDIANS.

FEBRUARY 2, 1897.—Ordered to be printed.

Mr. PETTIGREW, from the Committee on Indian Affairs, **submitted the following**

REPORT.

[To accompany Mr. PETTIGREW's amendment to H. R. 10002.]

The Committee on Indian Affairs, to whom was referred the amendment (H. R. 10002) for the relief of the Sisseton and Wahpeton bands of Sioux or Dakota Indians, submit the following report thereon:

By the treaty of July 23, 1851, with the Sisseton and Wahpeton bands of Sioux Indians, as consideration for the cession of certain lands therein described, the United States agreed to pay to said Indians the sum of \$1,665,000, out of which certain payments were to be made, as therein specified, and the balance, to wit, the sum of \$1,360,000, was to remain in trust with the United States, and 5 per cent interest thereon, paid annually to said Indians for the period of fifty years, as therein provided, commencing July 1, 1852, the said interest amounting to \$68,000 per annum.

The third article of said treaty, setting apart a reservation for said Indians, was stricken out by the Senate in the ratification of said treaty, and by the amendment thereto the United States agreed to pay said Indians at the rate of 10 cents per acre for the lands included in the reservation provided for in that article, the amount, when ascertained, to be added to the trust fund provided by the fourth article. It was ascertained that the reservation thus to be paid for contained 1,120,000 acres, and, at the rate of 10 cents per acre, amounted to \$112,000, yielding an annual interest of \$5,600, which was provided for by an item in the act of August 30, 1852 (10 Stat. L., 52), making a total interest of \$73,600 due these Indians annually for the period of fifty years from July 1, 1852.

By the terms of this treaty these Indians ceded to the United States 17,770,000 acres, lying mostly in the State of Minnesota, and embracing some of the choicest and most valuable lands in that State, the United States agreeing to pay the Indians at the rate of 10 cents per acre therefor.

In the fall of 1862 the Medawakanton and Wahpekoota bands of Sioux Indians, a separate subdivision of the great Sioux Nation, living under separate and other treaty relations with the United States, and occupying other and distinct reservations from that of the Sisseton and Wahpeton bands, inaugurated an outbreak and massacre of the white settlers in the State of Minnesota.

During that outbreak, the history of which it is not necessary to state here, the Sisseton and Wahpeton bands not only preserved their obligations to the United States and freely periled their lives to rescue

the residents of the vicinity and in obtaining possession of the white women and children made captive by the hostile bands, but 250 of them served in the Army of the United States and fought against their brethren. The records of both the Interior and War Departments abound in evidence as to the loyalty, patriotism, friendship, and services of these Indians. As a matter of fact, which the record will show, these Indians never committed an overt act against the Government of the United States, before, during, or since the outbreak of 1862, but at all times have been its loyal and steadfast friends.

Congress, by the act of February 16, 1863 (12 Stat. L., 652), declared all treaties with the Sisseton and Wahpeton and Medawakanton and Wahpakoota bands and all lands in Minnesota and all annuities and claims forfeited; said forfeiture being made, as stated in the act, in consequence of a war waged by said bands against the white settlers in Minnesota, and this forfeiture included the lands and annuities of the Sisseton and Wahpeton bands, notwithstanding the fact that they took no part in that outbreak and massacre, but were the steadfast and loyal friends of the Government at the time of its greatest need. No discrimination was made between the loyal and patriotic Sissetons and Wahpetons, having separate treaty stipulations, and the hostile Medawakantons and Wahpakootas, living under other treaty stipulations. The innocent, loyal, and patriotic were made to suffer equally with the guilty. As a matter of fact, the act of 1863 appears to have been hasty and ill considered. It was passed at a time when the country was startled, excited, and alarmed by the acts of the hostile bands, and Congress was not informed or did not take notice of the fact that the Sisseton and Wahpeton Indians did not take part in the outbreak of 1862, but were the loyal and steadfast friends of the Government, and rendered the most valuable and patriotic service during all that period, but unjustly and unwisely classed these people with the hostile bands, and thus perpetrated upon them a gross and shameful wrong without parallel in the history of any civilized government. It is a fact, which the records 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 even the Indian participants were punished by the confiscation of their lands and annuities.

In the opinion of your committee, the act of 1863 is unconstitutional so far as relates to the Sisseton and Wahpeton Indians, and would be so declared by any judicial tribunal. The courts have held that there is no power vested in Congress to interfere with or destroy vested property rights secured by treaty or otherwise, and that Congress has no constitutional power to settle or interfere with rights under treaty, 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., 837; 2 Story on 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 Yeager, 407; *Harris v. Barnett*, 4 Black, 360.)

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 character higher than any act of ordinary legislation. It enjoys an immunity from the operation and effect of all such legislation. (Opinion quoted in Senate committee report No. 93, Thirty-sixth Congress, first session.)

But whether or not the act of 1863 is unconstitutional, it was certainly unconscionable and unjustified, and was an exhibition of bad faith on the part of the Government.

The Government of the United States having become convinced that a great wrong had been done these loyal and patriotic people in the confiscation of their lands and annuities, and that national good faith and legal obligations had been violated by the acts of 1863, partial restitution has been made to them. By the agreement of December 12, 1889, the act of March 3, 1891, ratifying the same (26 Stat. L., 1037), and by items contained in the Indian appropriation act of March 3, 1893 (27 Stat. L., 654), and March 2, 1895 (28 Stat. L., 889), so much of the confiscated annuities of the Sissetons and Wahpetons as belong to the scouts, or those who served in our army during the outbreak of 1862, and their families, has been restored to them and continued to July 1, 1902, the date of the expiration of the treaty of July 23, 1851, but as to the loyal Indians of the Sisseton and Wahpeton bands other than the scouts and their families, no reparation whatever has been made.

According to a letter of the Commissioner of Indian Affairs to the Secretary of the Interior, dated March 2, 1888, the sum of \$616,086.52 is chargeable to these Indians (House Report No. 1953, Fiftieth Congress, first session), but the Indians claim that this sum should not be charged against them, contending that by the illegal and unconstitutional confiscation of their annuities by the Government they were compelled to a vagabond life, in consequence of which it became absolutely necessary for Congress to make small appropriations from time to time to keep them from actual starvation, and that if their annuities had not been wrongfully diverted and taken from them this necessity would never have arisen. They claim that it was by no fault or overt act on their part that brought about a condition among them which forced Congress to make appropriations at various times to relieve their actual wants, but that it was the fault of the United States, resulting from the sweeping and unjustifiable confiscation act of 1863, which brought about this condition of affairs, and that the Government can not afford to charge against them the result of its own wrongdoing. This contention of the Indians is, in the opinion of your committee, well founded.

The Indians also contend that by every rule of justice and the principles laid down and universally adhered to by our highest judicial tribunals they are entitled to interest on the amount of the annuities withheld from them, which interest will amount to \$3,168,480, and refer to various decisions of our courts in support of such contention.

In the opinion of your committee the Indians have very strong grounds as a basis for this claim, and if the universal rule between man and man in such cases be adopted in this case there can be no doubt of the validity of such claim. While the Indians believe that on every ground of justice, equity, and fair dealing they are entitled to interest on the amount of their confiscated annuities, they do not set up this claim nor ask for its consideration. They will be satisfied if the principal sum is restored to them.

By the treaty of 1851 with these people they ceded to the United States 17,770,000 acres for a total consideration of \$1,777,000, of which amount the sum of \$305,000 was to be paid out for certain purposes in the treaty specified, and the balance, \$1,472,000, which includes the \$112,000 added by the Senate amendment in the third article of said treaty, was "to remain in trust with the United States, at 5 per cent

interest thereon, to be paid annually to said Indians for the period of fifty years, commencing the 1st day of July, 1852, which shall be in full payment of said balance, principal and interest." Estimating the 17,770,000 acres, ceded by these people under that treaty at \$1.25 per acre, the minimum price at which Government land was sold, we have the sum of \$22,212,500, and if we calculate simple interest on that sum at the rate of 5 per cent per annum, the rate allowed the Indians, and for the period of fifty years limited in the treaty, we have the enormous sum of \$55,531,250, quite a handsome profit on the investment made by the Government. But the worst feature of this treaty, and the one doing the most wrong to these people, is that part of the third article above quoted, which provides that the interest for fifty years on the amount which the United States agreed to pay these people as consideration for the lands ceded by them, shall be in full payment of the consideration money as well as the interest thereon, so that in less than six years the United States will not only have had the use of the money for which these lands were sold to citizens of the United States for the period of fifty years, but will also have the \$1,472,000 consideration money placed in the United States Treasury in trust for the Indians, and which the Indians, at the time the treaty was made, were given to understand belonged to them, and have so ever since understood it.

From the facts disclosed your committee is of the opinion that a great wrong was perpetrated upon these people in the confiscation of their lands and annuities under the act of 1863. They now appeal to the Government to restore to them that which is legally theirs, secured to them by solemn treaty stipulation, the supreme law of the land, and of which they have been wrongfully and unjustifiably deprived. They are entitled to justice, though tardily given, and therefore your committee report the bill favorably and strongly recommend its passage, not only as an act of good faith and fair dealing on the part of the United States, but that the Government may be relieved from the stigma and dishonor of having repudiated its legal national obligations and violated its solemn treaty with these loyal and patriotic people, who never committed an overt act, but have at all times and under the most exasperating and trying circumstances been its most loyal and true friends.

ST. PAUL, MINN., *January 13, 1873.*

DEAR SIR: I have examined with some care the printed statement submitted to me having reference to the claims of the Sisseton and Wahpeton bands of Sioux upon the Government who were deprived of their annuities for alleged participation in the outbreak of 1862-63 by the act of Congress, and can attest its general correctness. While some of the young men were doubtless guilty of complicity in that fearful onslaught upon the frontier settlers in Minnesota, Iowa, and Dakota Territory, I have the best reason for knowing that as a general rule the chiefs and headmen of the seditions 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 campaign 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 the individuals who took part for or against the Government during the progress of the war, and I have repeatedly, in my official dispatches, called the

attention of the Government to the great injustice done the former class by including them in the former legislation which deprived them of their annuities.

Very respectfully, yours,

H. H. SIBLEY,
Late Brevet Major-General, United States Volunteers.

UNITED STATES INDIAN SERVICE,
Sisseton Agency, Dak., August 26, 1882.

Sir: I am convinced that these claims as presented are just and equitable and that there is justly due the said Indians all the moneys and annuities from which they were deprived by the act of Congress entitled "An act for the relief of persons for damages sustained by depredations and injuries by certain bands of Sioux Indians," approved February 16, 1863 (12 Stat. L., 652), and this because the said Indians did remain faithful to the United States and did assist in subduing the outbreak, protecting the white people, and also in carrying on war against their own people, serving all the way from three to five years as scouts under General Sibley, and receiving no pay a part of the time.

For this fidelity they were punished and now seek redress, which in all moral certainty they are entitled to—not only because of the dollars and cents of which they have been deprived, but as a matter of honest, square dealing between the Government and its servants.

Very respectfully,

CHARLES CRISSEY,
United States Indian Agent.

Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

[Report Commissioner of Indian Affairs for 1866, p. 227.]

Fourth class—Sissetons, etc., near Fort Wadsworth.—Some action has already been taken in regard to this class, by providing for their being represented by their headmen at Fort Rice, on the Missouri, at the expected conference with the treaty commissioners. It is probable that a treaty will be made with them at that time. From representations made verbally to your Department and to this office by General Sibley, to whom these people surrendered, it is supposed that these Indians will ask a reservation near Fort Wadsworth, in the country not heretofore ceded by them, while there is reason to suppose that the military authorities and many of the people of Minnesota would prefer their being located much farther north, and in the vicinity of Devils Lake.

As giving much valuable information in regard to the feeling and wishes of these Indians, and aiding in the foundation of a just judgment as to the proper disposition of these bands, I herewith transmit copies of two papers, marked E and F, being a petition from their chiefs, dated December, 1864, and a letter from Rev. Mr. Riggs, formerly missionary among them. If, as the information at hand appears to justify, we are to trust in the friendly disposition of these people, their location near Fort Wadsworth would be a wise measure and a protection to the frontier settlements, and I recommend that proper instructions be sent to the treaty commissioners in regard to the point to be fixed upon for their residence.

But there are 600 to 800 people of these bands at and near Fort Wadsworth in great want, while they are able to earn their living, and willing to do so if they can be furnished with implements and seeds, and measures should be taken to provide them with these necessaries in time for the spring work. They will till the ground for this season, at all events, to such extent as is possible, near Fort Wadsworth, and I trust that some means will be provided for enabling them to do this to advantage.