

IN THE SENATE OF THE UNITED STATES.

AUGUST 28, 1890.—Ordered to be printed.

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

REPORT:

[To accompany S. 4354.]

The Committee on Indian Affairs, to whom was referred the bills S. 2321, S. 2322, and S. 4005, submit the following report:

The substitute bill here submitted provides for the reference to the Court of Claims for adjudication of the subject matter embraced in the original bills.

The history and basis of these claims, as set out and provided for in sections 1, 2, and 3 of the bill, are as follows:

Prior to the year 1866 the Cherokee Nation of Indians claimed and possessed a tract of country in the Indian Territory bounded on the north by the State of Kansas, on the east by the States of Missouri and Arkansas, and on the south by the Choctaw, Creek, and Seminole Nations of Indians.

On the 19th day of July, 1866, the Cherokee Nation made and entered into a treaty with the United States, and among other things the contracting parties stipulated and provided in article 15: (1) That the United States may settle civilized Indians, friendly with the Cherokees and adjacent tribes, on unoccupied lands east of the ninety-sixth degree west longitude in the Cherokee Nation; (2) on such terms as may be agreed upon by the tribes and the Cherokees and approved by the President of the United States, with the provision that the tribes settling should abandon their tribal organizations and pay into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country; and on compliance the Indians settling shall be incorporated into and ever after remain a part of the Cherokee Nation, "equal in every respect with native citizens."

Article 16 of this treaty provides that the United States may settle friendly Indians in any part of the Cherokee country west of the ninety-sixth degree west longitude, to be taken in compact form and conveyed in fee-simple to each of the tribes.

Article 9 of this treaty provides that all freedmen who were liberated by voluntary act of former owners or by law, as well as free colored persons who were in the country at the commencement of the rebellion, and are now residents in the Cherokee Nation or who may return in six months, and their descendants, shall have all the rights of native Cherokees.

On the 7th day of June, 1869, the Shawnees made an agreement with the Cherokee Nation, under the authority of the aforesaid fifteenth article, yielding and paying to the Cherokee Nation \$5,000 of their perpetual annuities, and \$50,000 in cash. For this payment of money the Cherokees agreed to receive the Shawnees into the Cherokee Nation on the unoccupied lands east of the ninety-sixth degree west longitude, in the Cherokee Nation, Indian Territory, and that they shall be incorporated into and ever after remain a part of the Cherokee Nation on equal terms in every respect, and with all the privileges and immunities of a native citizen of the Cherokee Nation. "Stipulating that the Shawnees who shall elect to avail themselves of the provisions of this agreement shall register their names and permanently locate in the Cherokee country within two years from the date of this agreement; otherwise they would forfeit all rights under this agreement."

This agreement was approved by the President on the 9th day of June, 1869, in the manner as is authorized by the aforesaid fifteenth article. And, to wit, 900 Shawnees complied with the provisions and conditions of this agreement, moved and settled in the Cherokee Nation.

On the 8th day of April, 1867, the Delaware Indians made and concluded an agreement with the Cherokee Nation, under the aforesaid article 15 of the treaty of 1866. In said agreement it is provided (1) that the Cherokee Nation will sell to the Delawares a quantity of lands east of the ninety-sixth degree of west longitude in the Cherokee Nation, in aggregate equal to 160 acres for each individual Delaware who had been enrolled February 18, 1867, who should elect to remove to the "Indian Country." Names could be added by the Delaware council within a month after the signing of the agreement. (2) The Delawares agree to pay to the Cherokees for the land \$1 per acre; upon compliance with the stipulations and conditions of the agreement, the Delawares were to be incorporated into the Cherokee Nation, with the same rights and immunities and the same participation in the national funds as native Cherokees. And children thereafter born of such Delawares shall be in all respects regarded as native Cherokees.

The agreement was ratified by the national committee June 15, 1867; and, to wit, fourteen hundred Delawares moved into the Cherokee Nation under the authority of this agreement.

Referring to the freedmen claiming rights under the ninth article of the said treaty, it was ascertained that the census and roll recently taken, under the recent act of Congress, shows that there are over five thousand persons.

From the time of making and entering into the aforesaid articles of the treaty and the agreements, up to May 19, 1883, the Shawnees, Delawares, and freedmen were accepted and recognized by the Cherokee Nation as Cherokee citizens, with all the rights, benefits, and immunities of native Cherokees, as provided and obligated by the aforesaid treaty and agreements.

About this time the Cherokee Nation received from the Government \$300,000, appropriated by Congress out of funds due under appraisal of Cherokee lands west of the ninety-sixth degree west longitude. This money the Cherokee legislative council directed by an act to be paid out per capita to Cherokees by blood only in the Cherokee Nation.

On July 5, 1883, the Cherokee Nation leased, rented, or granted to an association of persons, who are United States citizens, a permit to occupy and graze all of the vacant land belonging to the Cherokee Nation west of the ninety-sixth degree west longitude, or west of the Arkansas River in the Cherokee Nation. This lease was made to run for five years, at a rental of \$100,000 per year. The act of the Cherokee national council authorizing this lease provided and promised that when \$300,000 was paid into the Cherokee national treasury the amount should be paid out per capita as the council should direct. In May, 1886, this amount was paid into the Cherokee national treasury, and the Cherokee national council passed an act requiring the Cherokee national treasurer to pay the said money out per capita to Cherokee citizens by blood and descent only in the Cherokee Nation. This action deprived the Shawnees, Delawares, and freedmen out of their share and portion of this money. This payment was \$15.50 per capita.

At the same session of this council an act was passed and approved construing the rights of the Shawnees, Delawares, and freedmen. By this act the intention of the Cherokee Nation is clearly shown that the Cherokee Nation will not allow the Shawnees, Delawares, and freedmen to ever participate in the distribution of or the allotment of their lands west of the Arkansas River in the Cherokee Nation.

The justification and defense the Cherokee Nation set up for their acts and these violations are as follows: (1) Because the amount paid by the Shawnees, Delawares, and freedmen is not adequate or equivalent under the provisions of the treaty; (2) because the lands west of the ninety-sixth degree west longitude, belonging to the Cherokee Nation, was set off, appropriated, and diverted for a specific purpose, before these agreements were entered into.

This position of the condition of these people is by the committee regarded as serious and calculated to keep up and open contentions and hinder and obstruct the progress of these people; it is deemed best to provide a plan to settle the status of these people in the country, and their claims to their rights, by sending the matters of dispute to the Court of Claims, and this plan is agreed to by the Cherokee delegates as well as the Shawnees.

The original bill provided for an appropriation to pay the Shawnees for the defaulted payment of 1886, out of Cherokee funds, as was provided in the act of October 19, 1888, but the committee find that the money paid out to the Cherokee citizens at the time was money derived from the leasing of the lands west of the Arkansas River, for grazing purposes, and that the Departments and Congress do not recognize the right of the Cherokee Nation to lease the said lands, and the lessees of these lands have been ordered to vacate and remove from and off the lands by the 1st of October, 1890, therefore the committee conclude it proper and justice to all to send the whole question to the courts for a proper and a final decision.

Referring to the subject-matter, and the provision of section 4, of this substituted bill, the committee find as follows: That in November,

1863, William P. Dole was Commissioner of Indian Affairs, and caused to be placed to the credit of H. B. Branch, Superintendent of Indian Affairs, the sum of \$89,000 for payment per capita to the Shawnee tribe of Indians.

Superintendent Branch was instructed by Commissioner Dole to make a careful examination as to the number of Shawnee orphans, and retain in his hands the amount found to be due to them, allowing them to share equally with the other Indians in the per capita payment.

He was also instructed to make a thorough investigation respecting the disposition that had been made of the money that belonged to the Shawnee orphans, and paid to the guardians or the Shawnee council, to be applied for the benefit of the orphans, including the payment made on the 29th of October, 1860, to certain guardians under bonds, and the payments made previously, and if he should find that any of the money rightfully belonging to the orphans had been squandered or misapplied, to retain from the remittance such additional sums as he should find to be withheld or misapplied, and make payment to the balance of the tribe.

On the 29th of January, 1863, Superintendent Branch reported that he made payment on the 20th, 21st, and 22d of January, 1863, to these Shawnees; that he ascertained the number of orphans to be thirty-eight, and retained out of the annuity \$70 per head for such, making \$2,660 withheld. He also reported that, owing to the default of Shawnee guardians, he withheld from the Shawnee tribal fund the further sum of \$7,846.39, making a sum total of \$10,506.39, which has been held from the Shawnee tribal fund since January 23, 1863.

The committee further find that Superintendent Branch failed to settle his accounts with the United States Government, and defaulted for a large amount, and embezzled the aforesaid sum, \$10,506.39, which he withheld out of the Shawnee tribal fund on the 22d of January, 1863.

The committee further find that this tribal fund, out of which this payment was made, and Branch embezzled, the said amount, under the provisions of the seventh article of the treaty made with the Shawnees and the United States, 1832, and article 3 of their treaty of May 10, 1854, the United States stipulated and agreed to pay to these Shawnees 5 per cent. per annum on this annuity fund, and that the obligation is not released or discharged by the embezzlement of ex-Superintendent Branch.

The committee further find that in 1884, in the act making appropriation to supply deficiencies, etc., the sum of \$9,437.62 was appropriated to be paid to the Shawnees on account of arrears of annuities due under the third article of the treaty of May 10, 1854, caused by the defalcation of Harrison B. Branch, Superintendent of Indian Affairs, in 1861 and 1862. The difference between the sum withheld and the sum appropriated, viz, \$1,068.77, was recovered from the sureties on the bond of ex-Superintendent Branch. The committee further find that in June, 1885, the Commissioner of Indian Affairs addressed a letter to the Secretary of the Interior and asked to be instructed if it was the intention of the Department to construe the act of 1884, appropriating the said sum of \$9,437.62, as to authorize the funds appropriated to be paid to the Shawnee orphans, without regard to the claim of the tribe as a whole. The Shawnees then, as now, claimed and contested that this was their tribal fund, and that the amount should be distributed to the tribe per capita. On the 3d day of July, 1885, the Secretary of the Interior returned the letter for the Commissioner's recommendation as to the right and proper course to be pursued in the

matter. On the 9th of July the Commissioner returned his office report of the 29th of June, with an opinion that justice demanded at least the sum of \$2,870, part of said appropriation, should be paid directly to the parties to whom it belonged, *i e.*, the Shawnee orphans, and that he could not recommend that the whole amount of the appropriation be paid to the Shawnees as a tribe, which the strict construction of the letter of the act seemed to require. He also recommended that he be instructed to take no further action in the premises, looking to new and more definite legislation by Congress. On the 10th day of July, 1885, the Secretary of the Interior directed the Commissioner to take no further action in the premises under the existing law, and thus this matter has rested from that date to the present time.

The committee find that there is an unsettled question of law between the Shawnees and the Interior Department, (1) whether the Commissioner of Indian Affairs is authorized and empowered from his jurisdiction over Indian affairs to instruct a disbursing officer of the Department to divert Indian tribal funds appropriated by Congress to fulfill provisions and stipulations of treaties, and (2) as to the authority of the officers of the Government to withhold the payment of money appropriated by Congress, by a forced construction of the act, and refuse and neglect to disburse the funds as the act directs.

The committee are of the opinion that the proper and wise disposition of this subject is to refer these matters to the courts for a careful and a thorough investigation and final settlement. Therefore they submit a substitute for the bills S. 2321, S. 2322, and S. 4005.

And the committee recommend it do pass.

DEPARTMENT OF THE INTERIOR,
Washington, July 10, 1890.

SIR: I have the honor to acknowledge the receipt of your communication of 26th May last, inclosing S. 2321, a bill "to appropriate money to repay and refund the Shawnee tribal fund," and of yours of 26th ultimo, inclosing a letter from Johnson Blackfeather in relation to said bill.

In response thereto I transmit herewith copy of a communication of 9th instant from the Commissioner of Indian Affairs, and inclosures therein referred to, giving the history of the claim.

John Blackfeather's letter is herewith returned.

Very respectfully,

JOHN W. NOBLE,
Secretary.

The CHAIRMAN COMMITTEE ON INDIAN AFFAIRS,
United States Senate.

WASHINGTON, D. C., *July 9, 1890.*

SIR: I have the honor to acknowledge the receipt, by your reference, of a communication from the Hon. H. L. Dawes, United States Senator, inclosing S. 2321, "To appropriate money to repay and refund the Shawnee tribal fund, with the request for information and data regarding the same; also of a communication from Senator Dawes, dated June 26, inclosing letter from Johnson Blackfeather, chief of the Shawnees, relative to said bill. The bill enacts that the sum of \$50,000, or so much thereof as may be necessary, be appropriated in order to re-imburse and pay to the Shawnee Indians the sum of \$15,000, with 5 per cent. interest, from the 1st day of September, 1862, up to the date of the approval of the act, being amount retained by ex-Superintendent Branch, under the order of the Commissioner of Indian Affairs, from the Shawnee annuities, to make good certain annuities due the Shawnee orphans, but which were lost on account of the default of guardians appointed for them by the Shawnee council. The bill in many respects is defective, and the following history of the claim is submitted for the information of the Department and of the Congress:

In November, 1862, the Hon. William P. Dole, Commissioner of Indian Affairs, caused to be placed to the credit of H. B. Branch, Superintendent of Indian Affairs, the sum of \$89,000 for payment per capita to the Shawnee tribe of Indians.

Superintendent Branch was instructed by him to make a careful examination as to the number of Shawnee orphans and to retain in his hands the amount found to be due them, allowing them to share equally in the payment with the other Indians. He was also instructed to make a thorough investigation respecting the disposition that had been made of the money belonging to the Shawnee orphans and paid to guardians or the Shawnee council to be applied for the benefit of the orphans, including the payment made on the 29th of October, 1860, to certain guardians under bond, and the payments made previously, and if he should find that any of the money rightfully belonging to the orphans had been squandered or misapplied, to retain from the remittance such additional sum as he should find to be withheld or misapplied and make payment of the balance to the tribe.

The Commissioner states that his intention was to hold the tribe collectively responsible for all funds belonging to the orphans which had been paid to the executive council of the Shawnees for them, or to guardians under the direction of the council.

On the 29th of January, 1863, Superintendent Branch reported that he made the payment on the 20th, 21st, and 22d of January, 1863; that he ascertained the number of orphans to be thirty-eight, and retained out of the annuity \$70 for each, making \$2,660 withheld under his instructions. He also reported that owing to the default of guardians, he had withheld the sum of \$7,846.39, making a total of \$10,506.39 withheld.

It appears that ex-Superintendent Branch failed to settle his accounts with the United States, and defaulted for a large amount, including the Shawnee orphan fund. For many years this office reported this claim to Congress in the deficiency estimate, and in 1884, in the act making appropriations to supply deficiencies, etc., the sum of \$9,437.62 was appropriated to be paid the Shawnee Indians on account of arrears of annuities due under the third article of the treaty of May 10, 1854, caused by the default of Harrison B. Branch, Superintendent of Indian Affairs, in 1861 and 1862. The difference between the sum withheld and the amount appropriated, viz, \$1,068.77, was recovered from the sureties on the bond of ex-Superintendent Branch. In June, 1885, this office addressed a letter to the honorable the Secretary of the Interior, containing a history of this claim, and asked to be instructed if it was the intention of the Department to so construe the act as to authorize the funds appropriated to be paid to the orphans, without regard to the claim of the tribe as a whole, the tribe having contended that it was a tribal fund, and should be distributed per capita.

On the 3d of July, 1885, the Secretary of the Interior returned the above letter for the Commissioner's recommendation as to the right and proper course to be pursued in the matter.

On the 9th of July, 1885, the Commissioner returned office report of the 29th of June with the opinion that justice demanded that at least the sum of \$2,870, part of the said appropriation, should be paid directly to the parties to whom it belongs, and that he could not recommend that the whole amount of the appropriation be paid to the Shawnees as a tribe, which a strict compliance with the letter of the act seemed to require. He also recommended that he be instructed to take no further action in the premises, looking to new and more definite legislation by Congress.

On the 10th day of July, 1885, the Secretary directed this office to take no further action in the premises under the existing law, and the matter has rested from that date until the present time.

From the above history of the claims it appears that this money actually belongs to the Shawnee orphans or their heirs, and I respectfully recommend that the bill under discussion be amended by changing the title to "A bill for the relief of certain Shawnee orphans," and that the entire preamble be stricken out, also all the lines on pages 4 and 5, after the word "assembled" in line 2, and the following inserted in lieu thereof, viz: "That the act of Congress approved July 7, 1884, entitled 'An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1884,' which provides for the payment of the sum of \$9,437.62 due the Shawnee Indians for arrears of annuities under the third article of the treaty of May 10, 1854, be, and the same is hereby, amended so as to authorize the payment of said sum to the Shawnee orphans, to whom the money is actually due."

I return herewith the two letters of Senator Dawes, together with copies of correspondence, in duplicate, above referred to.

Very respectfully,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

WASHINGTON, D. C., June 4, 1890.

SIR: Referring to S. 2321, a bill introduced by Mr. Plumb, January 27, 1890, which was read twice and referred to the Committee on Indian Affairs, and which is a bill to appropriate money to repay and refund the Shawnee tribal fund, and which is now pending before said committee, I beg to place before you the following:

Charles Bluejacket, a Shawnee Indian, on December 27, 1888, makes the following statement under oath: "That his name is Charles Bluejacket; that he is seventy-two years old; that he lives at or near Bluejacket Station, Cherokee Nation, Indian Territory; that he is a farmer and an ordained minister of the gospel in the Congregational Church; that he is a native Shawnee Indian; that he was United States interpreter for the Shawnees for the year 1853 and until about the year 1870, and a Shawnee councilman and principal chief for four years; that he was born in the State of Michigan; lived there about ten years; from thence with his parents moved to the State of Ohio, with the Shawnee tribe; that they were located on lands ceded by the United States to the Shawnees at Wa-pa-gh-kan-net-ta, Ohio; that he lived there for seven years, and from thence, in 1832, moved with the Shawnees to Kansas, west of the Missouri River, and lived there with the Shawnee tribe until 1870, when he moved with the Shawnees and settled east of ninety-six, in the Cherokee Nation, Indian Territory, as provided by the 15th article of the treaty between the United States and the Cherokee Nation, July 19, 1886.

"That when the said Shawnees were locating and living in Kansas, in the fall of 1862, Indian Superintendent Branch came to De Soto, Kans., with an amount of money due the Shawnees from the United States Government on the Shawnee Indians' tribal funds or money account, to make to the said Shawnees a payment of the same. Before making this payment to the Shawnees, and in the presence of the said Charles Bluejacket, the said Branch informed the Shawnees and their council that out of the amount of money then and there in his possession and control he should deduct and retain and carry away with him a sufficient amount to re-imburse, repay, and replace the Shawnees' orphan fund, which before had been defaulted, wasted, squandered, and misappropriated by the guardians of the Shawnee minor orphans, and which was not collectible or recoverable because of the insolvency of the bondsman of said defaulted guardians. And at the same time the said Branch caused a list of such to be made by the Shawnee council, and among the names appearing on the said list he remembers the names of Paschal Fish, Coffey Greenfeather, Joseph Barnett; there were others, which he does not recollect; that the aggregate amount which was required to be deducted from the money at the said time was between \$11,000 and \$12,000. And that the said Branch, as Indian superintendent aforesaid, at said time and place, deducted and kept out of the amount of money he then and there had in his possession and control as such officer, and which was a portion of the common tribal moneys of the Shawnee tribe of Indians, granted to the said Shawnees by the treaties and public acts of the United States Government. And the said Branch took and carried away with him the said \$11,000 or \$12,000 from the said De Soto at said time, promising and purporting that he would pay the said last amount into the Treasury of the United States and the same would be placed to the credit of the deficit Shawnee orphan money. But the said Charles Bluejacket states he is informed and believes that the said Branch never at any time paid into or turned into the Treasury of the United States, or paid to any officer of the United States, the aforesaid sum of \$11,000 or \$12,000, or any part or portion thereof, but that the said Branch misappropriated the said money to himself and embezzled the whole amount of the said sum of \$11,000 or \$12,000. And that no part of the said amount has ever been recovered from the said Branch nor collected from his bondsman, and that the Shawnees feel that it is but just and right that the amount should be replaced by the United States Government, and that it should be paid out and distributed to the Shawnees per capita, as all common and tribal moneys have been before paid out and been distributed, and which is requested by the Shawnee council, as appears by the records and minutes, on the 18th day of December, 1888."

This statement was transmitted to the Indian Bureau in a letter of April 1, 1889, dated at Washington, D. C., signed by C. Brownell, attorney and counsel for the Shawnees, and which is now on file in the Indian Bureau.

Subsequently Charles Tucker, in August, 1889, made the following statement under oath: "That his name is Charles Tucker; that he is seventy-four years of age; he is a Shawnee Indian by blood and descent; was born in the State of Ohio; farmer by occupation; resides in the Cherokee Nation, Indian Territory, east of 96 degrees west longitude; * * *

"That he has always lived and resided with the Shawnee Indians; that he has always taken active part and interest in the welfare of the Shawnees; that he has held office in their council, and as their second chief, until old age compelled him to decline re-election; that he was their delegate to Washington for many years; that he has heard read a sworn statement, made by Charles Bluejacket on the 27th day of December, 1888 (the statement as above quoted), and that he knows the facts above stated

to be true; that he was present and a Shawnee councilman at De Soto, Kans., in the fall of 1862, when Indian Superintendent Branch made to the Shawnees a payment of a sum of money due them out of their tribal funds; that the said Charles Bluejacket was chief of the tribe; said Branch was very severe in his manner and statements to the Shawnees for allowing such a large amount of the orphan fund to be squandered in the hands of the guardians. He made inquiries who and how many were responsible and able to return and replace this lost money. The reply was none of the guardians were able. Branch told them that the Shawnee tribe was responsible for the loss of the money, and that he should keep and retain an amount sufficient to replace the said lost money out of the payment he was about to make to them, and that he did retain and carry away with him the sum of, to wit, \$10,000 out of said payment to replace the sum which had been squandered by the said guardians of the said Shawnee orphans; that the said Branch stated that he should deposit the said amount in the Treasury of the United States to the credit of the orphan fund; that when he left the said Shawnees he had the said amount of money with him, and he said he would go to St. Joseph, Mo., then to Washington, and there deposit the money, but that the report soon came back to the Shawnees that he, Branch, squandered the said money and lost it by gambling and dissipation. That in the years of 1864-'6, '7, '8, '9 he was a delegate to Washington, D. C., for the Shawnees. That the Commissioner of Indian Affairs's attention was called to the loss of this money by the defalcation and embezzlement of said Branch, and that the said officers informed the delegates that the Government of the United States was responsible and would pay it if the bondsman of Branch was not responsible; that an investigation was to be made, and that as soon as the investigation was reported further action would be taken and the money would be paid. That at the date of making this statement the money has not been paid.

"That it is the unanimous expression of the Shawnees that when the money is paid it should be paid out per capita, the same as the tribal fund was paid out at the time Branch took the money from the Shawnees at De Soto. The affiant further states that among the names who were guardians of said orphans and who defaulted their trust and squandered their money are Paschal Fish, Coffey Greenfeather, Joseph Barnett, and Charles Fish. There were many others, but for the long time which now intervenes this affiant is unable to recollect and state their names."

This statement was transmitted to the Indian Bureau in a letter dated at Washington, October 1, 1889, signed by James W. Denver and C. Brownell, attorneys and counsel for the Shawnees. In the said letter the attention of the Commissioner of Indian Affairs was called to the condition of this defaulted orphan fund, and the Commissioner was requested to investigate and report a recommendation to Congress for an appropriation of money to pay the amount of this claim. As near as I can ascertain the amount is \$10,863 as the principal, and with the interest, with 5 per cent. per annum added for twenty-eight years, will show the total amount of the claim.

The claim for interest is based upon the treaty made by the United States with the Shawnee Indians, August 8, 1831 (7 Stat., p. 335, article 7): "The United States will expose to public sale, to the highest bidder, in the manner of selling public lands, the tracts herein ceded by the Shawnees; and after deducting from the proceeds of such sales the sum of seventy cents per acre exclusive of the cost of surveying, the cost of the grist-mill, saw-mill, and blacksmith shop, and the aforesaid sum of \$13,000 to be advanced in lieu of improvements, it is agreed that any balance which may remain of the avails of the lands after sales as aforesaid shall constitute a fund for the future necessities of said tribe, parties to this compact, on which the United States agree to pay to the chiefs, for the use and general benefit for their people, annually, 5 per cent. on the amount of said balance as an annuity, said fund to be continued during the pleasure of Congress, unless their people, in general council assembled, should desire that the fund thus to be created should be dissolved and paid over to them, in which case the President shall cause the same to be paid, if, in his discretion, he shall believe the happiness and prosperity of said tribe would be promoted thereby."

This treaty was made with these Indians at the time above, for the purpose of acquiring the lands belonging to these Shawnees at Wa-pa-gh-kon-net-ta and on Hog Creek, in the State of Ohio. Nowhere can it be found that this fund was ever dissolved and paid over in the manner provided in this article of the treaty. Again, in the treaty made with these Shawnees May 10, 1854 (10 Stat., page 1053, article 3): "In consideration of the cession and sale herein made, the United States agreed to pay to the Shawnee people the sum of \$329,000, in manner as follows, viz, \$40,000 to be invested by the United States at a rate of interest not less than 5 per centum per annum, which, as it accrues, is to be applied to the purpose of education; that the amount, with the addition of \$3,000 of perpetual annuities provided by the treaties of August 3, 1795, and September 29, 1817, and now hereby agreed to be likewise so applied, together with the sum paid by the Missionary Society of the Methodist Episcopal Church South, as hereinafter provided, being deemed by the Shawnees as suf-

ficient, for the present, for such purposes; \$700,000 to be paid in seven annual installments, during the month of October of each year, commencing with the year 1854, and the residue of \$89,000 to be paid within the same month of the year after the determination of that period."

This treaty, as the former, was made with these Indians at this time for the purpose of acquiring from them lands which they ceded to the United States at said time and places. It is assumed that the money which Superintendent Branch embezzled from these Shawnees was from the amounts stipulated for in the articles of these treaties above quoted, and that it was the expressed stipulation that 5 per cent. per annum should be paid on the portion of this money, as provided and stipulated for in the respective articles of these treaties; and it seems to be logical conclusion that it was the intention of the United States to pay to these Indians 5 per cent. per annum for the use of this money, and that it is an item and a part of this claim which should be allowed to these Shawnees, in addition to the principal amount which was taken at said time by said Branch from these Shawnees; and which they have been without for nearly thirty years.

Referring to the liability of the United States to replace this fund, as is claimed in this bill, I submit that it rests on the relations these Shawnees sustain and are held by law to the United States. The Shawnees are wards, the United States is the guardian, dealing with its wards, for the purpose of securing and acquiring the landed estate of the wards, this position in law serves to obligate the United States to be responsible for all moneys which is derived from the purchase of their lands, and that the said moneys shall be paid to and delivered to and into the hands of the wards, and that no justification can be admitted or be allowed for the diversion of this money to any other purpose than what is expressed in the treaties.

The Shawnee council can not be held liable for the money embezzled by the guardians of the Shawnee orphans, or for the misappropriation of the orphan fund any more than a court, having jurisdiction in probate matters, can be held liable for the default or misappropriation of funds belonging to the ward of the court by a guardian which should be appointed by the court. There is a personal responsibility attached to these guardians and their bondsmen; if the council or the members of the council were in any way accessory, their liability would be of a personal and perhaps a criminal nature, but in no way could the tribal funds be diverted for the purpose of replacing or repaying the amount of the defaulted and embezzled orphans' fund in the hands of these guardians.

I respectfully request that you carefully consider this letter, and that you make the proper necessary call on the Secretary of the Interior for a full and complete report of this claim, and that you will place it before your committee, that such action as shall be proper, in this bill, to secure and pay to the Shawnees their money as provided in this bill.

I respectfully suggest that if this is a proper item, if found to be true as herein set forth, to be placed on the Indian appropriation bill, and if it is found that it is proper, I request that you see that it is put into the appropriation bill for this session of Congress.

I am, most respectfully and obediently, yours,

JOHNSON BLACKFEATHER (his x mark),
Chief and Delegate of the Shawnee Indians.

Attest:

THOMAS DOUGHERTY,
Interpreter.

HON. HENRY L. DAWES,
United States Senate, Washington, D. C.