57TH CONGRESS, 1st Session. } SENATE. { REPORT No. 951.

# INDIAN APPROPRIATION BILL.

APRIL 1, 1902.—Ordered to be printed.

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

## REPORT.

[To accompany H. R. 11353.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 11353) making appropriation for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1903, and for other purposes, beg to report that hearings were given to all persons interested in special provisions proposed in the bill; that the Commissioner of Indian Affairs was present at nearly all the meetings, and that after careful consideration of all matters involved it reports the bill back with sundry amendments and recommends its passage.

The bill as it passed the House of Representatives carried appropriations aggregating $8,441,505.69. Your committee has added thereto $973,834.19, the items of which are as follows:

INCREASE.

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| Two Indian agents | $3,100.00 |
| Indian inspector for the Indian Territory | 1,000.00 |
| "Self-Emigration Claim" Creek Indians | 12,220.00 |
| Northern Cheyennes, purchase cattle and wire | 35,150.00 |
| Mission-Tule Agency, Cal., clerk | 720.00 |
| Commission Five Civilized Tribes, salaries | 5,000.00 |
| Commission Five Civilized Tribes, expenses | 15,000.00 |
| Walker River Indians (estimated) | 30,000.00 |
| Pima Indians, employment and support | 40,000.00 |
| Interest on Chickasaw fund | 600.00 |
| Canton, S. Dak., Insane Asylum | 13,000.00 |
| Omaha and Winnebago Agency, bridges, etc | 10,000.00 |
| Oneida Indian School, purchase land | 1,000.00 |
| Lower Brule Sioux claims | 1,500.00 |
| James R. Goss, claim | 150.00 |
| Robert F. Thompson, claim | 3,000.00 |
| Emmett Cox, claim | 3,875.00 |
| Round Valley Indian Reservation claims | 8,050.00 |

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| Huff Jones, claim | $1,226.39 |
| Delaware Indians, difference between gold and currency | 130,000.00 |
| Chippewa Indians of Mississippi and Lake Superior, difference between gold and currency | 18,670.39 |
| Mille Lac Indians, for improvements, etc | 50,000.00 |
| Net Lake Indian Reservation, Minn., surveying, etc., allotments | 1,000.00 |
| Jean Louis Legare, services rendered and money expended | 8,000.00 |
| Chamberlain, S. Dak., school | 12,000.00 |
| Carson City, Nev., school | 28,000.00 |
| Elko, Nev., school (new) | 60,000.00 |
| Fort Lewis, Colo., school (new) | 25,000.00 |
| Fort Shaw, Mont., school (new) | 80,000.00 |
| Grand Junction, Colo., school | 4,275.00 |
| Puyallup Reservation, Wash., school (new) | 71,600.00 |
| Salem, Oreg., school | 30,000.00 |
| Springfield, S. Dak., school (new) | 15,000.00 |
| Tulalip Reservation, Wash., school (new) | 30,000.00 |
| | 748,136.78 |

REIMBURSABLE.

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| Appropriations made in bill by committee reimbursable to the United States: | | |
| Wind River Reservation, allotments | $10,000.00 | |
| Uintah and White River Utes, for lands | 70,064.48 | |
| Eli Ayres, claim | 155,200.00 | |
| Wichita and affiliated bands, attorneys' fees | 43,332.93 | |
| | | 278,597.41 |
| Total | | 1,026,734.19 |

REDUCTIONS.

The following reductions in the appropriations as passed by the House of Representatives are proposed by your committee:

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| Omaha, Nebr., warehouse | $2,000.00 | |
| Uintah Reservation survey | 6,000.00 | |
| Sioux Indians, allot reservations | 10,000.00 | |
| Pottawatomie Reservation, bridges | 3,000.00 | |
| Haskell Institute, Lawrence, Kans | 8,500.00 | |
| Mandan, N. Dak., school | 18,400.00 | |
| Pipestone, Minn., school | 5,000.00 | |
| | | 52,900.00 |
| Net increase | | 973,834.19 |

AUTHORITY TO USE TRUST FUNDS.

By sundry amendments authority is given the following Indian tribes to use money out of their respective trust funds in the Treasury for specified purposes, under the direction of the Secretary of the Interior:

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| The Cherokees, to pay national warrants | $610,000.00 |
| The Sioux, Crow Creek Reservation, S. Dak., to purchase cattle, fence wire, reservoirs, etc | 168,335.10 |
| The Southern Utes of Colorado, irrigation, etc | 150,000.00 |
| The Omaha Indians, to distribute among them per capita | 100,000.00 |
| Fond du Lac Indians, due merchants | 2,856.11 |
| Chippewa Indians, stumpage | |
| | 1,031,191.21 |

DAWES COMMISSION.

Your committee has amended the laws relating to the Commission to the Five Civilized Tribes by providing that the decisions of said Commission heretofore rendered shall be final as to all matters of appraisement and allotment of lands, unless disapproved by the Secretary of the Interior within sixty days from the passage of this act, or within thirty days from the date of decisions hereafter rendered, and the decisions of said Commissioners determining the right of citizenship in any of the Five Civilized Tribes heretofore rendered shall be final, provided that the Secretary of the Interior shall have power at any time within sixty days from the passage of this act to review any such cases which in his opinion have not been correctly decided, and all decisions hereafter rendered by said Commissioners determining the right of citizenship in any of said tribes shall be final, unless an appeal therefrom to the Secretary of the Interior shall be taken within thirty days from the rendition thereof.

TOWN SITES.

The town-site commission in the Indian Territory have found great difficulty in completing their work on account of new towns being constantly laid out by speculators and others without the permission of the commission or the Secretary of the Interior, which greatly retards the work of the commission. An amendment drafted by the Secretary of the Interior has been added to the bill providing that before a new town is laid out in the Indian Territory it is necessary to obtain the permission of the Secretary of the Interior. Provision is also made for the laying out of parks, etc.

UINTAHS.

The item of $70,064.48 to be paid to the Uintah and White River Utes covers claims which these Indians have made on account of the allotment of lands on the Uintah Reservation to Uncompahgre Indians and for which the Government has received from said Uncompahgre Indians money aggregating $60,064.48; and the remaining $10,000 is claimed by the Indians under an act of Congress detaching a small part of the reservation on the east and under which act the proceeds of the sale of the lands were to be applied for the benefit of the Indians. This amount is advanced as a compromise in settlement of these claims and to remove all objection of the Indians to any arrangement for taking allotments and opening their reservation.

WICHITAS.

Regarding the amendment to pay the sum of $43,332.93 to the attorneys who conducted the litigation to determine the conflicting title to land on the former Wichita Reservation, your committee here attaches the statement made by Mr. Philip Walker, of counsel, as follows:

"Mr. WALKER. The litigation was a test case and involved not only the Wichita Reservation, but indirectly also the Kiowa and Comanche

Reservation of nearly 3,000,000 acres, and Greer County, including more than a million and a half acres of improved and cultivated lands, for all of which the Choctaws and Chickasaws claimed upward of $10,000,000. It occupied fourteen actual days in argument in the Court of Claims and two days in the Supreme Court. It involved the preparation of 541 pages of answer and briefs for these Indians. The jurisdictional act under which this case was tried made these Indians parties and forever barred them of their right if they failed to promptly defend it in the Court of Claims and the Supreme Court. This required them to employ counsel, which they did under a contract for 6 per cent of the recovery, which contract was approved by the Government. Counsel after six years of earnest and arduous work achieved success, and this success made it unnecessary to institute and try a similar case provided for under the act ratifying the Kiowa and Comanche agreement. The dissenting opinion in the Court of Claims, which accorded with the unanimous opinion of the Supreme Court (179 U. S., 494), was based upon points raised by counsel for these Indians in the Court of Claims and not by the United States, though the Attorney-General adopted them above and they were approved by the court.

"In view of the fact, as above stated, that the attorneys of these Indians have done faithful and successful service, which has inured more largely to the benefit of the United States than of the Indians themselves, it is submitted that provision be made that 6 per cent of the amount recovered, or $43,332.92, be appropriated for payment of the attorneys, in the nature of an advancement to the Indians, to be reimbursed to the United States out of the proceeds of the sale of the lands. This is especially equitable, as the attorneys are payable under the contract out of the first money received by the Indians."

The money is due and, in the opinion of your committee, has been well earned. The sum will be reimbursable to the United States out of the proceeds of the sale of the lands of the said Wichita Reservation.

ELI AYRES.

In adopting an amendment to pay the estate of Eli Ayres the sum of $155,200, your committee find that four reports in favor of this claim have been made to the House of Representatives, namely: Report No. 2959, by Judge Gifford, of the Committee on Indian Affairs in the Fifty-first Congress, which recommended the payment of the original claim ($155,200, with interest at 3 per cent per annum, in land scrip at $1.25 per acre); House Report No. 2113, Fifty-second Congress, by Mr. Clover, of the Committee on Indian Affairs, and House Report No. 2149 of the same Congress, which recommended the reference of the claim to the Court of Claims, with authority to render judgment; House Report No. 1900 of the Fifty-third Congress, which made the same recommendation. A favorable report was made by the Senate Committee on Indian Affairs in the Fifty-fourth Congress (No. 1457), authorizing an appropriation of $58,158.46; by the Senate Committee on Claims in the Fifty-fifth Congress (Report No. 1599) for the same amount, and in the Fifty-sixth Congress (Report No. 1610), and the Fifty-seventh Congress (Report No. 466) from the same committee, recommended an appropriation of $155,200 in payment of the claim.

The Department of the Interior has also carefully investigated the

subject-matter of this claim, finding the claimant entitled to relief substantially as provided in the pending bill, as appears from the report of Indian Commissioner Hiram Price of October 18, 1882, covering the whole history of the case, approved by the Secretary of the Interior in his transmittal of the same to Congress.

The evidence submitted to your committee in support of this claim consists of the deeds from the Indian reservees to the claimant, Ayres, the treaty under which they were made, certificates of location, proofs of the payment by Ayres of the consideration price for the land embraced in the deeds, briefs and arguments of counsel, reports of the departments, facts verified by record evidence, the adjudications of courts, and the various reports of committees to which reference has heretofore been made.

Upon a careful consideration of these proofs, your committee find as follows:

1. That in 1839, 150 Chickasaw Indian reservees, in conformity with the requirements of the treaty made with the Chickasaw Indians in 1834, sold 194 sections of their reserved lands, situated in the State of Mississippi, to Eli Ayres, in his lifetime, for which they executed and delivered to him 150 deeds, and were paid therefor by Ayres $1.25 per acre, making an aggregate sum of $155,200.

2. That said Ayres was justly entitled to the approval of said deeds, as provided for in the treaty, for the reason that the reservations of 640 acres each as set apart and the locations of the same as made by the Indian grantors of Ayres were in conformity with the terms of the treaty and vested in them the title in fee to the said lands which they sold and conveyed to Ayres, as has since been determined by the supreme court of the State of Mississippi and the Supreme Court of the United States. (See 10 S. and M., Miss., 461–462; 27 Miss., 567; 15 Wall., U. S., 112–116; also art. 6, treaty, 1834; 7 U. S. Stat. L., 452.)

3. That the Government, disregarding these vested and acquired rights of ownership in Ayres and his Indian grantors, arbitrarily appropriated the land and sold and patented to purchasers 149 sections of it, and otherwise disposed of the remaining 45 sections as unlocated lands, thereby taking away from him the entire 194 sections of land which he had purchased, as above stated.

4. That the said sale of the 149 sections of land by the Government and the patents issued thereon were absolutely void, as has since been determined by said courts and recognized by subsequent acts of Congress. (See authorities above cited and 11 Stat. L., 514, for the relief of Wilson.)

5. That the Government received into the Treasury the sum of $58,158.46 as the net proceeds of the unlawful sale of the 149 sections of the Ayres land, and this sum was invested by the Government in interest-bearing securities, as required by the treaty in the case of the sale of unlocated lands, and has borne interest all these years at 5 per cent per annum, said interest amounting, in the aggregate, on the 1st day of May, 1900, as officially determined at that time, to $157,027.84, which sum, together with the principal, on that day amounted to $215,186.30, and adding thereto the interest which has accrued on said principal from that date to January 1, 1902, the amount is $220,032.84, which the Government still retains, notwithstanding it was created by an unlawful assumption of authority and the

exercise thereof by the then executive department of the Government, induced by an erroneous interpretration put by its officers upon the right of alienation by the Indian grantors of Ayres as conferred by said treaty, and which alone operated to prevent the approval of the Ayres deeds as provided for therein.

6. That said Ayres still has in his possession the original deeds made and executed by the said Indian reservees to him, and that the same were made and executed in accordance with the requirements of the treaty, and that the payment of the consideration price as alleged is fully established by proofs, and the deeds are now on deposit with the Washington Safe Deposit Company, in the city of Washington, D. C.

7. The proofs also show that this claim, from its origin to the present time, has been zealously and persistently pressed, in the departments and in the courts of the State of Mississippi and of the United States, to a final determination, by which the right of the claimant to relief has been judicially established, and by bills in twelve successive Congresses to obtain that relief, so that the responsibility for the long delay in the adjustment of this claim would seem to rest alone upon the Government.

Neither the Government nor the Indians had any right to the $58,158.46 which was covered into the Treasury. The Supreme Court held that the United States had no title and that the Indians had parted with their title and received from Ayers the sum of $1.25 per acre. Therefore the United States can be reimbursed the money paid Ayers in pursuance of the provisions of the amendment from money which is now held in the Treasury for the benefit of the Indians without right.

### DELAWARES AND CHIPPEWAS.

The amendment making payments to the Delaware Indians and the Chippewa Indians of Mississippi and Lake Superior Indians is in pursuance of specific contracts to pay in gold. Although the United States may pay any of its debts in its own legal tender, whatever may have been the money in circulation at the time the contract was made, where no specific contract exists for the payment in gold coin, still the United States is bound to comply with its contracts to pay in gold equally with private parties.

In these cases the lands of the Indians were disposed of by the Government for gold according to the provisions of treaties, and it was stipulated in the treaties that the Indians should receive compensation for their land in gold. They were, however, paid in currency. The amendment proposes to make good the difference between gold coin and the currency which the Indians received. There were four instances, according to the Department, where currency instead of gold was paid the Indians, two of which (Pottawatomie and Mackinac) have been paid, and the two named in the amendment will close these transactions. (See 16 Stat., p. 337; 24 Stat., 272.)

### PIMA INDIANS.

The Pima Indians in Arizona were semicivilized when the United States acquired the Territory. They supported themselves largely by agriculture carried on by means of irrigation. The water has been taken from them by settlers who have purchased land from the United

States higher up on the Gila River until they are now in a suffering condition. It was proposed to construct a dam high up on the Gila River and bring water in abundance to irrigate land for a large number of Indians and incidentally to dispose of water to white settlers, but that project was rejected by the House at the last session.

The committee are unable to devise with certainty any other and cheaper plan without further investigation, but they propose to put at the disposal of the Secretary of the Interior the sum of $40,000 for the support and employment of the Indians, with sufficient discretion on his part to devise any feasible plan for furnishing them water for irrigation. The committee are impressed with the conviction that the Government must in some way provide for these Indians who have supported themselves by means of irrigating and cultivating the land from time immemorial, inasmuch as the action of the Government in disposing of lands to settlers higher up the river has deprived them of the means of subsistence.

## ELKO INDIAN SCHOOL.

Regarding the amendment providing for a new Indian school at Elko, Nev., the committee find that very few of the Indians of Nevada have been on reservations, but have supported themselves from early settlement by their own industry. They are scattered all over the State, where they are largely employed in mining, agriculture, and other pursuits. The school at Carson is in the western part of the State, to which a large portion of the Indians have easy access. Elko County is about 300 miles east of Carson and in the neighborhood of many Indian residents.

Inasmuch as these Indians have received little or no aid from the Government, it seems proper that their children should have some educational advantages which they will appreciate. There are about a thousand Indian children in Nevada of school age and only about 300 are provided for in the Carson School. In fact, the Indians in the middle and eastern part of the State are too far remote to conveniently attend the school at Carson.

## NEW JUDICIAL DISTRICT.

Your committee have amended section 8 of the bill as it passed the House of Representatives by creating a new judicial district, to be known as the western district, in the Indian Territory. The amendment of the committee was drafted by the Assistant Attorney-General of the Interior Department after careful study, and has been approved by the Secretary of the Interior. The formation of the district is recommended by the United States judge, district attorney, and many prominent lawyers practicing in the Territory. The amendment seems to conform to the existing requirements.

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