

TO CARRY INTO EFFECT TREATY BETWEEN UNITED STATES AND
LOYAL SHAWNEE AND LOYAL ABSENTEE SHAWNEE INDIAN
TRIBES

MAY 22, 1926.—Committed to the Committee of the Whole House on the state
of the Union and ordered to be printed

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

REPORT

[To accompany H. R. 5218]

The Committee on Indian Affairs, to whom was referred the bill
(H. R. 5218) to carry into effect the twelfth article of the treaty
between the United States and the loyal Shawnee and loyal Absentee
Shawnee Tribes of Indians proclaimed October 14, 1868, having con-
sidered the same, report thereon with a recommendation that it do
pass with the following amendment:

Strike out all after the enacting clause and insert:

That there is hereby authorized to be appropriated, out of any moneys in the
Treasury not otherwise appropriated, the sum of \$463,732.49, and the Secretary
of the Treasury be, and he is hereby, authorized and directed to pay said sum to
the Indians of the Shawnee Tribe and thirteen Delaware Indians affiliated with
said tribe, their heirs, or legal representatives, in accordance with the official
findings, arbitration award, and report to the Secretary of the Interior to Congress
in pursuance of the twelfth article of the treaty between the United States and
the Shawnee Indians proclaimed October 14, 1868 (Fifteenth Statutes at Large,
page 513): *Provided*, That out of said sum there shall be paid to the attorneys
for said Indians 10 per centum of the above amount in full satisfaction of their
contract: *And provided further*, That before payment of the amount hereby
authorized to be appropriated the Indian beneficiaries or their legal representa-
tives entitled to said awards shall execute in writing a receipt, release, and relin-
quishment of any and all claims arising under the twelfth article of said treaty
which they may have against the United States, and which receipt, release, and
relinquishment shall be approved by the Commissioner of Indian Affairs and the
Secretary of the Interior and which shall be binding when executed and approved
on all parties thereto. The Shawnee Indian superintendent and the council of
the tribe at Shawnee, Oklahoma, shall execute a release binding on all beneficiaries
having no legal representatives.

Amend the title to read:

A bill to carry into effect the twelfth article of the treaty between the United
States and the Shawnee Indians proclaimed October 14, 1868.

This bill authorizes an appropriation out of the Treasury of the United States of the sum of \$463,732.49, in full payment and settlement of what is in effect an arbitration award made by commissioners appointed by the United States pursuant to the twelfth article of the treaty between the United States and the Shawnee Indians proclaimed October 14, 1868 (15 Stat. L. p. 513).

These Indians, who are now located in Oklahoma, were formerly located in southeast Kansas, where they were residing during the Civil War. These Indians had made frequent treaties with the Government and were always loyal. Many of them served in the Union Army during the Civil War. The Government had, by previous treaties, including that of 1854, guaranteed to protect them, and Congress appropriated the money to pay for claims, in accordance with the treaty of 1854, for property destroyed.

The Secretary of the Interior on January 28, 1867, reported to Congress:

The Shawnees as a friendly tribe, strictly regarding their treaty stipulations with the Government, and abstaining from acts of private revenge and retaliation, but relying upon the good faith of the Government, are entitled to its protection, and for remuneration for losses at the hands of its citizens. It is apparent from an examination of the evidence that the Government of the United States had the use for its troops of a large amount of the property taken.

Following this report to Congress a treaty was entered into between the Shawnee, Seneca, Mixed Senecas, and Quapaw Indians, and the United States, on February 23, 1867, ratified by Congress on June 18, 1868 (15 Stat. L. 513), and proclaimed on October 14, 1868.

Article 12 of this treaty provided for an ascertainment of the Indians' claims for losses during the Civil War, and for a report to Congress. The provision reads as follows:

ART. 12. Whereas, the aforesaid Senecas, Mixed Senecas, Shawnees, and Quapaws were driven from their homes during the late war and their property destroyed, it is agreed that a commission of not to exceed two persons shall be appointed by the Secretary of the Interior, who shall proceed to their country and make a careful investigation of their claims and losses, and make full report of the same to the department; and the Secretary of the Interior shall report the same to Congress.

Following the ratification of this treaty the United States appointed two Indian agents, John H. Pickering and Johnathan Richards, as the commissioners provided for by article 12. Instructions were given them. These instructions directed them to proceed and examine each claim filed; that each claim should be fully investigated, and the claimants examined and cross-examined, and such other testimony secured as was available in order to ascertain the amount of property destroyed, its value, and all facts relevant thereto, and to make a report thereon.

The report of the commissioners, Pickering and Richards, sets forth each individual claim, the aggregate being \$463,732.49. The commissioners included in the claims the claims of certain Delawares who were affiliated with the Shawnees and who by treaty had been guaranteed protection by the United States as in the case of the Shawnee Tribe.

On May 11, 1874, the Secretary of the Interior, pursuant to article 12 of the treaty of 1868, reported the losses to Congress as found by the commissioners. The United States, since then, has paid the

claims of the Senecas, Mixed Senecas, and Quapaws, which were filed, examined, and reported under this same twelfth article of the treaty of 1868, leaving unpaid only the claims of the Shawnees and affiliated Delawares, embraced in the pending bill. No impeachment of this report has been made and no evidence has been offered that the allowances by the commissioners were excessive or not justified.

The report of the Department of the Interior, dated March 15, 1926, appended hereto, states:

The twelfth article of this treaty of 1868 (15 Stat. L. 513), provides for the establishment of a commission of not to exceed two persons to be appointed by the Secretary of the Interior to make a careful investigation of the claims of the Senecas, of the Mixed Senecas and Shawnees, and Quapaws for losses sustained through United States and Confederate troops during the Civil War. The claims of all the above-mentioned Indians except those referred to in the bill have been paid.

In addition to the report from the department, the Commissioner of Indian Affairs appeared before the committee and was given an opportunity to present any objection, legal or otherwise, why these claims should not be paid. There is no dispute as to questions of fact. The members of the commission were appointed under the twelfth article of the treaty of 1868; they made the examination as instructed and reported the same back to the Interior Department and the Secretary of the Interior in turn reported the same to Congress. The smaller claims of the Senecas, the Mixed Senecas, and Quapaws were paid. These claims have repeatedly and continuously been pressed upon Congress for payment since 1874 and a bill for the payment of the claims has twice been favorably reported to the House. (See H. Rept. No. 1653, 60th Cong., 1st sess.; also H. Rept. No. 827, 64th Cong., 1st sess. 1916.) They were favorably reported to the Senate on April 28, 1910 (see Rept. No. 607, 61st Cong., 1st sess.), and on February 22, 1912 (S. Rept. No. 401, 62d Cong., 2d sess.), and also in Senate Report No. 235, Sixty-fourth Congress, first session.

Inasmuch as the various items which make up the claim were investigated and reported by the agents of the Government and accepted by the Secretary of the Interior and reported to Congress at the time, for payment, it appears that there is no question of fact in dispute.

The Interior Department placed the same legal construction upon the treaty then as did the Indians, that the Government was liable to the Indians for the amount found, by reporting the claim to Congress for an appropriation.

The claims of the Senecas, Mixed Senecas, Shawnees, and Quapaws, under the same treaty for similar losses sustained, were appropriated for and paid, and there would therefore seem to be no question as to the liability of the Government. Inasmuch as there is no question of either law or fact in dispute to adjudicate, it does not appear that there is any reason justifying longer delay in the payment of the claims by referring them to the court.

Your committee believe that the claims constitute both a legal and equitable obligation against the Government and that their payment should no longer be delayed, and recommend that the bill, as amended, do pass.

The report of the Department of the Interior is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, March 15, 1926.

HON. SCOTT LEAVITT,
Chairman Committee on Indian Affairs,
House of Representatives.

MY DEAR MR. LEAVITT: Further reference is made to your letter of December 31, 1925, inclosing for a report a copy of H. R. 5218, "A bill to carry into effect the twelfth article of the treaty between the United States and the loyal Shawnee and loyal absentee Shawnee Tribes of Indians proclaimed October 14, 1868." This bill is identical with S. 2113.

The twelfth article of this treaty of 1868 (15 Stat. L. 513), provides for the establishment of a commission of not to exceed two persons to be appointed by the Secretary of the Interior to make a careful investigation of the claims of the Senecas, of the mixed Senecas and Shawnees, and Quapaws, for losses sustained through United States and Confederate troops during the Civil War. The claims of all the above-mentioned Indians except those referred to in the bill have been paid.

The bill as drawn carries an appropriation of \$463,732.49 for the purpose of paying the loyal Shawnee and loyal absentee Shawnee in accordance with the official findings, arbitration award, and report of the Secretary of the Interior made in pursuance of the twelfth article of the treaty proclaimed October 14, 1868, *supra*.

It was reported by Indian Agents John H. Pickering and Jonathan Richards, appointed under this article to investigate and report upon the claims, that there were 169 claims of loyal Shawnees and loyal absentee Shawnees amounting to approximately \$426,000. The amount named in the bill includes the claims of 13 Delawares and other Indians not parties to the treaty. Under date of May 19, 1924, the tribal council of the Shawnees met and elected a business committee to transact the business of the tribe, pertaining particularly to this claim. The business committee, immediately upon election, voted to accept \$400,000 in full settlement of the claim.

The attorneys of these Indians are acting under a contract between themselves and the claimant Indians executed May 26, 1909. The contract was not submitted to this department for approval for the reason that the claims are individual rather than tribal. The contract is more fully set out on page 18 of the hearing on H. R. 7324, Sixty-eighth Congress, first session, April 25, 1924, to which attention is invited.

The Director of the Bureau of the Budget has advised that this legislation is in conflict with the financial program of the President.

Very truly yours,

HUBERT WORK.

Bills passed the Senate in the Sixty-second and Sixty-fourth Congresses and were favorably reported to the House.

The Secretary of the Interior, under date of March 7, 1910, reporting upon a similar bill to the Senate Committee on Indian Affairs with reference to these claims, said:

Regarding the claims of the loyal Shawnee and loyal Absentee Shawnee Indians of the State of Oklahoma, it appears from treaties made with the Shawnees, as well as documentary evidence on file in the department and the Indian Office, that the Absentee Shawnees have claims against the United States for losses sustained by them during the War of the Rebellion. These losses consist in the taking of their property, including provisions, household goods, tools, houses, corncribs, and domestic cattle.

These Indians claim, and this department has no reason to doubt their claims, the evidence in its possession sustaining such contention without contradiction, that they were loyal to the United States, and it is known that many of them served in the Union Army, and some of them are drawing pensions for such service.

The property alleged to have been taken from them was taken during the time some of the claimants were absent from their homes in the military service of the United States.

In the same report the Secretary of the Interior stated:

Many of these claimants are now old and in needy circumstances; many have already passed away, and it appears that the best interests of the Indians would be served by their being able to enjoy the benefits of reimbursement during their lifetime, instead of having the money which may be found due paid to their descendants.

In both the 'oyal Seminole and loyal Creek cases the Senate examined the claims after they were thoroughly investigated by the department, and made the award. The Absentee Shawnee claims have been thoroughly investigated by the department at a time, several years ago, when it was possible to interview the then living claimants and living witnesses who had direct knowledge of the facts and circumstances regarding the alleged depredations, and it is not believed that after such a lapse of time it would be possible to procure any better evidence than has already been presented both on behalf of the Indians and on behalf of the Government. (S. Rept. 401, 62d Cong., 2d sess.)

The bill provides for an attorneys' fee of 10 per cent. The hearings (pp. 47-54) show the contract entered into on May 26, 1909, agreeing to pay the sum of 20 per cent of the amount recovered, and various extensions of said contract, but the committee amended the original bill by reducing the amount to 10 per cent in payment for the services of all attorneys here in Washington and in Oklahoma who have been presenting and pressing these claims for the past 17 years. The report of these claims was made to Congress in 1874 52 years ago. No interest is allowed upon the claims.

MINORITY VIEWS

In my opinion H. R. 5218 involves a subject which by all means should be submitted to the Court of Claims, as there is in my mind a serious question as to whether the United States is under any obligation to pay the claim of the Indians. For this reason I oppose this bill.

W. H. SPROUL.