

INDIANS IN MICHIGAN AND INDIANA.

[To accompany bill H. R. 2283.]

MEMORIAL
OF
CERTAIN INDIANS

RESIDING IN

Michigan and Indiana, for relief.

JANUARY 15, 1878.—Referred to the Committee on Indian Affairs and ordered to be printed.

*To the Senate and House of Representatives of the United States of America
in Congress assembled:*

Your memorialists are that portion of the Pottawatomie Nation of Indians which, by the provisions of the treaty of September 27, 1833, were exempted from removal west of the Mississippi River, and are now residing in the counties of Cass, Van Buren, and Berrien, in the State of Michigan, and Saint Joseph County, in the State of Indiana, and by their duly constituted business committee, and attorney, a resident in their vicinity, in these premises would most respectfully represent:

That from the earliest knowledge of Indian affairs up to 1833, there has been a united nation of Indians known as the United Nations of the Ottawas, Chippewas, and Pottawatomes, for many years known and treated with as the Pottawatomie Nation of Indians, residing upon and occupying that portion of the United States now embraced in the States of Ohio, Michigan, Indiana, Illinois, and Wisconsin, and which nation included the bands known as the Bands of the Prairie and Kankakee.

From the earliest history of the government they have been friendly toward the pioneer settlers in their midst, and as early as 1795 entered into a treaty of peace and friendship with them, and they, with other tribes who claimed some title to the same, relinquished their right of possession to the greater part of the territory of Ohio; since which time the nation, as such, has at all times kept and maintained her covenants of peace and fidelity to her treaty stipulations.

At different times since 1795, especially in the years 1809, 1818, 1821, 1826, 1828, 1829, 1832, 1833, and 1846 (see exhibit of treaty stipulations hereunto attached), the government has purchased, by the different treaty provisions, vast tracts of land, amounting in the aggregate to about twenty-five million acres (25,000,000), therein stipulating to pay

certain sums of money annually forever, or for a given term of years; also to provide them with means to support blacksmiths and supply their shops, for education, salt, &c. (See exhibit of treaty stipulations and citations.) In 1832 or 1833 the government adopted the policy of purchasing their remaining lands and reservations, which were specifically guaranteed to them in former treaties, and inducing them to remove west of the Mississippi.

As the result of this policy, before 1837 the government had purchased all their tribal lands in the said States, and all of the Pottawatomies were under treaty stipulations to remove from their reserves and go west of the Mississippi, excepting only those whose interests are herein presented. (See exhibit of treaty stipulations and citations of same.)

On the 26th and 27th September, 1833, there was a treaty concluded between the government and this nation, in which the Indians ceded the last lands which they as a nation held in common, the same being estimated in the treaty at 5,000,000 acres, being less than one-fifth the amount they as a united nation had, at different times, ceded to the United States. (See exhibit, &c., and citations.)

A portion of the nation, being the band of Pokagon, the second chief of the nation, then numbering some 350, the same being your memorialists and their ancestors, did not desire to remove West, and did not enter into the treaty of the 26th September, 1833, but on the following day, by articles supplemental, they united in the cession of the 5,000,000 acre tract (the property of the nation in common), and they also ceded tribal and band reserves guaranteed to them under former treaties in the State of Michigan, amounting to 164 sections, upon which they were then residing.

The old chief, Pokagon, was very anxious to remain in Michigan. He and his people had become greatly attached to their religious and educational missions; they were a quiet, religious, and orderly people, agreeable and friendly to the settlers; and it was well known to the United States treaty commissioners that they were determined to avoid treaty stipulations to go West; and, according to their desires, they were permitted to remain, and their just proportion of annuities due under former treaties, and that arising from the proceeds of the sale of their reserves (the 164 sections ceded), should be paid to them.

Five millions of acres of land west of the Mississippi River were secured by the second article of the treaty entered into September 26, 1833, to that portion of the nation that by this treaty had stipulated for their removal West, "in part consideration" of the 5,000,000 tract ceded to the United States in the first article of same. In 1846 (see vol. 9, page 853, same) the government purchased the 5,000,000 west of the Mississippi, and set apart \$643,000 as a fund in trust for the Pottawatomies, stipulating to pay them 5 per cent. interest on the same, amounting to \$32,150 per annum, to which treaty your memorialists were not parties, and to the money therein stipulated to be paid make no claim, whatever might be the equitable rights of your memorialists in the premises.

In accordance with the provisions of the supplemental treaty bearing date September 27, 1833, to which your memorialists were parties, and which was made for the direct and sole purpose of defining and protecting the rights of your memorialists (and with them only), your memorialists removed to L'Arbre Croche; but, finding the climate inhospitable and the resident Indians unfriendly, they, by and with the consent of the Government of the United States, returned and purchased land of the government, in the neighborhood of their reserves ceded in 1833

with the money paid them down upon the ratification of the treaty under articles therein contained.

For some six years they received no annuities, then made complaint to R. Stuart, esq., then Indian agent at Detroit, and in 1843, and for that year, T. Hartley Crawford, then Commissioner of Indian Affairs, allowed them, and remitted to Mr. Stuart for them, \$1,587.50, being, as he estimated their proportion in the perpetual annuity of July 29, 1829.

Commissioner Crawford awarded them their portion of one treaty only, when the article says "a just proportion of all former annuities." This amount, \$1,587.50, was regularly paid up to and including the year 1865, and which payments have been duly acknowledged by your memorialists; which, with the sum of \$39,000 paid by the government in 1866, comprises all the money paid by the United States in discharge of its treaty stipulations with your petitioners since the year 1835, prior to which time, and including that year (1835), your memorialists make no claim of any kind whatever against the government.

Having thus briefly stated the history of our claim, your memorialists respectfully submit the following propositions:

1st. The Government of the United States purchased some 30,000,000 acres of land from the Pottawatomie Nation of Indians, then occupying large portions of the territory now embraced in the States of Ohio, Indiana, Illinois, Michigan, and Wisconsin, in consideration whereof the United States covenanted to pay to said nation of Indians certain sums of money, at stated periods of time, as is evidenced by the several treaties entered into between the Government of the United States and said Pottawatomie Indians, and which said treaties may be found in vol. 7 United States Statutes at Large, tabulated reference being made thereto in the following exhibit:

The following exhibit shows the reference and moneyed features of these several treaties of purchase, which, in the territory above mentioned, aggregate nearly 30,000,000 of acres of land, now second to no country in the nation.

Stipulations.	Volume ?.	Date of treaty.	Amount.	Proclamation.	Time to run.
Perpetual annuity.....	49	Aug. 3, 1795	\$1,000	Dec. 2, 1795	Forever.
Salt.....	74	June 7, 1803		Dec. 26, 1808	
Perpetual annuity.....	113	Sept. 30, 1809	500	Jan. 16, 1810	Forever.
Perpetual annuity.....	185	Oct. 2, 1818	2,500	Jan. 15, 1819	Forever.
Annuity.....	295	Aug. 29, 1821	2,006	March 25, 1822	Twenty-two years.
Annuity.....	295	Oct. 16, 1826	2,000	Feb. 7, 1827	Pleasure of President.
Blacksmith.....	295	do.....	do.....	do.....	do.....
Iron, steel, and miller.....	295	do.....	do.....	do.....	do.....
Salt (160 bushels).....	295	do.....	do.....	do.....	do.....
Perpetual annuity.....	317	Sept. 20, 1828	2,000	Jan. 7, 1829	Forever.
Annuity.....	317	do.....	1,000	do.....	Twenty years.
Tobacco, iron, and steel.....	317	do.....	do.....	do.....	Annually.
Education.....	317	do.....	1,000	do.....	Pleasure of Congress.
To chief.....	317	do.....	100	do.....	Life of.
Blacksmith.....	317	do.....	do.....	do.....	do.....
Iron and steel.....	317	do.....	do.....	do.....	do.....
Annuity.....	378	Oct. 20, 1832	15,000	Jan. 21, 1833	Twenty years.
To chief.....	378	do.....	do.....	do.....	Life of.
Annuity.....	394	Oct. 26, 1832	20,000	do.....	Twenty years.
Education.....	394	Oct. 27, 1832	2,000	do.....	Pleasure of Congress.
Perpetual annuity.....	320	July 29, 1829	16,000	Jan. 2, 1830	Forever.
Iron and steel.....	320	do.....	do.....	do.....	Forever.
Blacksmith.....	320	do.....	do.....	do.....	Forever.
Salt (50 barrels).....	320	do.....	do.....	do.....	Forever.
Annuity.....	431	Sept. 26, 1833	14,000	Feb. 21, 1835	Twenty years.
Annuity.....	442	Sept. 27, 1833	2,000	do.....	Twenty years.
To chiefs.....	431	Sept. 26, 1833	1,100	do.....	Life of.
For 4 sections of land.....	498	March 29, 1836	2,560	June 4, 1836	One year.
For 36 sections of land.....	499	May 11, 1836	23,040	May 25, 1836	In one and two years.
For 10 sections of land.....	500	April 22, 1836	6,400	do.....	One year.
For 3 sections of land.....	501	do.....	1,920	do.....	One year.

Stipulations.	Volume 7.	Date of treaty.	Amount.	Proclamation.	Time to run.
For 22 sections of land.....	505	Aug. 5, 1836	14, 080	Feb. 18, 1837	In 1838.
For 10 sections of land.....	513	Sept. 20, 1836	8, 000	..... do.....	In 1838.
For 4 sections of land.....	514	Sept. 22, 1836	3, 200	..... do.....	In 1838.
For 42 sections of land.....	515	Sept. 2, 1836	33, 000	..... do.....	In 1838.
Annuity.....	218	Aug. 29, 1821	5, 000	March 25, 1822	Twenty years.
Three laborers.....	317	Sept. 20, 1828	.....	Jan. 7, 1829	Ten years.
Annuity.....	399	Oct. 27, 1832	15, 000	Jan. 21, 1833	Twelve years.
Annuity.....	467	Dec. 10, 1834	1, 000	March 16, 1835	Two years.
Trust-fund, &c.....	.....	June 5 and 17, 1846.	850, 000	.....	.....
Trust-fund, interest annually.....	.....	June 5 and 17, 1846.	32, 150	.....	.....

By treaty June 5 and 17, 1846, the 5,000,000 tract in Iowa was purchased by the United States, a trust-fund of \$643,000 created, with an interest annuity of \$32,150 annually, and other funds and lands granted to the Indians in Kansas.

Your memorialists were parties to all treaties made by the United States with the Pottawatomie Nation of Indians, and were entitled to share per capita in all *annuities* secured to said nation by said treaties; and that no doubt should be permitted to cloud the title of your memorialists to share in the annuities secured by these several treaties; the supplemental treaty dated September 27, 1833, was framed and ratified between the United States and your memorialists, the caption and first article of said treaty being in the words following:

Articles supplementary to the treaty made at Chicago, in the State of Illinois, on the 26th day of September, 1833, between George B. Porter, Thomas J. V. Owen, and William Weatherford, commissioners on the part of the United States, of the one part, and the united nation of Chippewa, Ottawa, and Pottawatomie Indians, concluded at the same place, on the 27th day of September, 1833, between the said commissioners on the part of the United States, of the one part, and the chiefs and headmen of said united nation of Indians residing upon the reservations of land situated in the Territory of Michigan, south of Grand River, of the other part.

ARTICLE 1. The said chiefs and headmen cede to the United States all their land situated in the Territory of Michigan, south of the Grand River, being the reservations at Notawasepe, of four miles square, contained in the third clause of the second article, treaty made at Chicago on the 29th day of August, 1821; and the 99 sections of land contained in the treaty made at Saint Joseph on the 19th September, 1827; and also the tract of land on the Saint Joseph River, opposite the town of Niles, and extending to the line of the State of Indiana, on which the villages of Topenebee and Pokagon are situated, supposed to contain about 49 sections.

That no question may remain as to the identity of your memorialists, and to establish the fact that they are the parties with whom the supplemental treaty of September 27, 1833, was made, we submit the following extract from a letter written by Robert Stuart, then acting superintendent of Indian affairs at Detroit, Mich., to the Hon. T. Hartley Crawford, Commissioner of Indian Affairs:

Extract from a letter of Robert Stuart, acting superintendent of Indian affairs, dated at Detroit, March 25, 1843, and directed to Hon. T. Hartley Crawford, Commissioner of Indian Affairs.

A delegation of the Pottawatomies, who resided on the reservation in Michigan prior to the treaty held at Chicago in 1833, and who have always refused to emigrate, called upon me a few weeks since to represent their grievances also. They stated that the chief, Pokagon (father of one of them), as also several of his band, were Catholics at the time of signing the treaty, and refused to emigrate west, as it would cause them to recede again into barbarism; that permission was granted them by said treaty to settle in Northern Michigan, where they would enjoy the instruction of priests, and receive their proportion of the annuities; that they, in due time, applied to the Ottawas of L'Arbre Croche, near Mackinac, for permission to amalgamate with them, which, owing to the interference of some evil-

disposed whites, was refused; that they then purchased lands of the United States, which a portion of them still occupy (except forty acres appropriated to their mission). They urgently plead that the department take their cause into favorable consideration, and allow them a just proportion of the annuities (which are now all paid on the Missouri) according to the stipulation on the 599th and 600th pages of the treaty-book. They say that there are from two hundred to two hundred and fifty of their tribe still in Northern Indiana and Michigan. A number of these, as well as the Ottawas, are very desirous of becoming citizens, and there are some hundreds, I have no doubt, worthy of the boon; but how their application will be responded to is another question. I regret the necessity of troubling you with so many questions as have of late been pressed upon me, but the paucity of information left in the office by my predecessor renders it indispensable for me to know what course of policy has or should be adopted.

I am, respectfully, your obedient servant,

ROBERT STUART,
Acting Superintendent Indian Affairs.

After the receipt of this letter, Mr. Crawford, then Commissioner of Indian Affairs, awarded your memorialists \$1,587.50 as their just proportion of the \$16,000 perpetual annuity of treaty of July 29, 1829, and the \$2,000 of treaty of the 27th of September, 1833, which award, as thus made, included but *one* of the former annuities, when the treaty explicitly reads "their just proportion of *all* former annuities."

The following is the copy of the said letter of the honorable Commissioner making this award, as the same appears in Senate report No. 111, 2d session 38th Congress:

OFFICE INDIAN AFFAIRS, *May 17, 1843.*

SIR: My letter to you of the 19th instant informed you of the views of this office respecting the right of the Chippewas of Swan Creek and Black River, yet in Michigan, to participate in the benefits of the annuity due the bands, the whole of which has heretofore been remitted west.

I now reply to the remaining portion of your letter of the 25th March, viz, relative to the Pottawatomies, who claim the privileges granted under the supplemental article to the treaty with the united bands of Chippewas, Ottawas, and Pottawatomies, of September, 1863, which is in the following words:

"And as since the signing of the treaty a part of the band residing on the reservations in the Territory of Michigan have requested, on account of their religious creed, permission to remove to the northern part of the peninsula of Michigan, it is agreed that, in case of such removal, the just proportion of all annuities payable to them under former treaties, and that arising from the sale of the reservation on which they now reside, shall be paid them at L'Arbre Croche."

By the tenor of this article it would seem that their claim is well founded, and that they are entitled to their numerical proportion of those annuities payable to the tribe under the treaty of 1829, and also under the supplementary article of the treaty of 1833, amounting together to \$18,000. Therefore, estimating the number of the Chicago Indians at 2,834, including the 250 represented by you, the share that would be to the latter would amount to \$1,587.50, or \$6.35 to each individual. Accordingly that sum will be remitted to you, to be paid out to them as their share of the annuities.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD,
Commissioner.

ROBERT STUART, Esq.,
Detroit, Michigan.

It will be noticed that the honorable Commissioner made the award upon the data of 2,834 Pottawatomie Indians, including 250 of your memorialists, which is considered by him as the just proportion of the annuity to which your memorialists were entitled by the treaty of July 29, 1829; and your memorialists further say that the sum of \$1,587.50 was annually paid to us from 1843 to 1865 inclusive, twenty-three years, and that in accepting it our people gave receipts for their share of only one of the former annuities, being that of July 29, 1829. (See the following letter of the Second Auditor of United States Treasury:)

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,
January 12, 1872.

SIR: In answer to your letter of the 5th instant, by which you ask to be informed "under and in conformity to what treaty stipulations the \$1,587.50 were annually paid those Potta-

watomie Indians remaining in Michigan, from 1843 to 1865 inclusive," I send herewith copies of three captions—in all of which the treaty stipulations are given—appearing on the several annuity pay-rolls for the period named by you, and on which the years are designated in red ink on the margins.

Respectfully,

E. B. FRENCH, *Auditor.*

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,
January 11, 1872.

This form of caption was on the pay-rolls from 1843 to 1865, both inclusive, excepting the years 1851 and 1865—(the above was written in red ink, &c.):

"We, the chiefs, warriors, heads of families, and individuals without families of the Chipewewa, Ottawa, and Pottawatomie tribes of Indians, within the agency of Michilimackinac, acknowledge the receipt from William A. Richmond, acting superintendent of Indian affairs, of fifteen hundred and eighty-seven dollars and fifty cents, in sums appended to our names, being our proportion of the permanent annuity due said tribes for the year 1846, under second article of the treaty of July 29, 1829, and second article supplementary to treaty of 26th September, 1833." (Voucher 5, set 5077, June 12, 1847.)

The form of the receipts given in the years 1851 and 1865 is substantially the same as the above, with the exception of the words "and second article supplementary to the treaty of September 26, 1833," which are not included in the same in form or substance. (See letters accompanying the papers.)

2d. Your memorialists were exempt from removal West.

In 1832, the government had adopted the policy of removing the Indian tribes then inhabiting the reserves reserved to them, and which were being rapidly encroached upon by the tide of emigration then flowing into the territory east of the Mississippi, and to that end treaties were entered into between the several tribes and the government, by which the titles of the Indians to their reservations, as well as to their tribal possessions, were extinguished by purchase. At the time when the Government of the United States sought to extinguish the title of the Pottawatomie Nation to their reservations and tribal possessions, your memorialists, then having made much progress toward civilized life, objected to being removed with the other members of the nation, as will be seen by the affidavit of Lathrop M. Taylor, which is here submitted:

ROLL No. 7, AFFIDAVIT No. 20.

Affidavit of Lathrop M. Taylor, aged sixty-five years, being duly sworn, states that he has resided in Saint Joseph County, Indiana, since September, 1827, and during that time has known and traded with the Indians; he was present at the Chicago treaty in 1833; knew old chief Pokagon and his band, and had for six years.

Before going to that treaty Topenebee and Pokagon bands held a council, and determined they would not sell their reserves, which were in a good hunting and fishing country, and convenient to church and school. Pokagon, especially, was an ardent advocate of education among his people, and it was resolved in their council that they would not go West and abandon their churches and school privileges.

Pokagon and his band camped a little way out of Chicago. They feared some advantage might be taken of them by the commissioners or land speculators, and holding another council there, they repeated their determination, and also appointed a committee to watch and kill upon the spot any Indian who should sign any treaty ceding their reserves, &c.

Affiant saw Magosaw armed and watching the door of the commissioners. Upon affiant asking Magosaw what was wrong, he replied, "Topenebee has signed the treaty; he is a traitor to his people. I will kill him as he comes out." Affiant notified J. Bertrand, one of the interpreters at the treaty, who approached Magosaw, took him away, promised him a horse and other property, and he signed the treaty.

This and similar transactions made such changes that, on the following day, Pokagon was compelled to sign the treaty. Affiant had an interview with old chief Pokagon, during this time, who was greatly distressed about the turn affairs were taking. Affiant assured Pokagon that the government was powerful, and was bound to have his reserves, and that he better dispose of them when he could make the best terms.

The old chief spoke feelingly of the friendship of his people toward the government since the signing of the first treaty. The great amount of land his people had ceded to the

government. The confidence he had entertained that the government would deal justly with them. The attachment to their reserves, with the advantages of religion, education, and subsistence that they then enjoyed on the hunting-grounds of their people; the earnestness of his manner when he said, "If I could save the reserves for my children, I would gladly die in defense of their rights before I would sign the treaty ceding the lands of his children and people away," and he cried like a child when he signed the treaty.

The old chief told affiant at the treaty that it was understood that he and his people were to remain in Michigan, and have their full share of the annuities of that and all former treaties paid to them, without going West.

L. M. TAYLOR.

Subscribed and sworn to before me this 15th day of December, A. D. 1870.

[SEAL.]

GEO. W. MATTHEWS, *Clerk.*

L. M. Taylor, the above affiant, was a signing witness to the treaty, September 27, 1833; and in his affidavit states that he has no interest in this claim.

After the earnest and persistent protest against removal detailed in Mr. Taylor's affidavit, the following supplemental article to the treaty of September 27, 1833, was entered into between the United States and your memorialists, and which was afterward duly ratified and proclaimed as such, and which is as follows, and requires no comments here:

On behalf of the chiefs and head men of the united nation of Indians who signed the treaty to which these articles are supplementary, we hereby, in evidence of our concurrence therein, become parties thereto.

And as since the signing of the treaty a part of the band residing on the reservations in the Territory of Michigan have requested, on account of their religious creed, permission to remove to the northern part of Michigan, it is agreed that in case of such removal the just proportion of all annuities payable to them under former treaties, and that arising from the sale of the reservation on which they now reside, shall be paid to them at L'Arbre Croche.

In the further support of the proposition that your memorialists were exempted from removal West by the terms of this treaty, we now submit, most respectfully and confidently, the following extracts from the evidence in this case, being the testimony of Samuel L. Cottrell, who was the appointed sheriff to organize Saint Joseph County, Indiana, was subsequently elected to the same office, and was personally acquainted with your memorialists, and assisted in the removal of the main nation:

Synopsis of affidavits relating to Pottawatomie Indians of the Pokagon band, residing in Saint Joseph County, Indiana.

ROLL No. 4, AFFIDAVIT No. 9.

STATE OF INDIANA, *Saint Joseph County, ss:*

(Page 1.) Samuel Cottrell, affiant, being duly sworn, says that he is aged sixty-eight years; resided in Saint Joseph County since 1828; was appointed sheriff to organize said county; knew the settlers and Indians; knew the Pottawatomie Indians, and attended their treaties in 1840; assisted in emigrating these Indians; was intimately acquainted with many of the different bands of the same.

(Page 2.) He was employed by Alexis Coquillard in removing Indians; as train-conductor Coquillard was paid so much apiece for removing them; many opposed to going; had to hunt them up, and, in many cases, bind them and haul them into camp in wagons.

(Page 3.) It being well understood by all of us that the Pokagon band were exempted from going West by the treaty of 1833, and that fact distinguished them from other bands, and, it being established, was sufficient to cause their release from arrest and removal. This fact has always distinguished them in my memory; that many of said band still reside in this county, and have from 1836 to 1843, and since; that the following list of such, with whom he is personally acquainted (except a few young children), are of said band, and residents now of said county.

(Page 4.) The same being carefully prepared by himself, signed by him, and containing the names of 89 parents and children, and that he has no interest in the claim of the same.

(Pages 5, 6, 7, 8, and 9.) List of names, numbering 89 souls. Has no interest in the claim.

SAMUEL L. COTTRELL.

Subscribed and sworn to before me this 18th day of January, A. D. 1872.

[L. S.]

GEO. W. MATTHEWS, *Clerk.*

Also the following extract from the evidence of Evan C. Johnson, also an ex-sheriff of said Saint Joseph County :

ROLL No. 4, AFFIDAVIT No. 12.

STATE OF INDIANA, *Saint Joseph County, ss :*

(Page 17.) E. C. Johnson, aged fifty-seven years, upon his oath, says that he is a resident of St. Jo. County since 1831. But few whites there then. Knew most of the Indians thereabouts. Knew Pokagon, and many of his band. Knew them to be Pokagon's band, because they were not arrested and taken west of the Mississippi River, and they then numbered some 350, whereas all the other Pottawatomies were compelled to go West by the treaty provisions, and have remained there ever since.

(Page 18.) Many Pottawatomies had to be arrested to be taken West by Alexis Coquilard, who had authority for removing them. Pokagon's band was exempt, and this distinguished them. Affiant was elected and served as sheriff of St. Jo. County from 1856 to 1860. I personally know that when they knew an Indian was of Pokagon's band, they did not arrest him to go West. Knew Samuel L. Cottrell since 1831, and know of no person who has had greater opportunities of knowing about the matters in his affidavit, and have examined his affidavit and list, and know that which is stated relative to the resident Indians is true. Has no interest in the claim, &c.

EVAN C. JOHNSON.

Subscribed and sworn to before me this 18th day of January, A. D. 1872.

[SEAL.]

GEO. W. MATTHEWS, *Clerk.*

Also the following extract from the evidence of Hon. Thos. S. Stanfield, judge of the Saint Joseph County circuit court:

ROLL No. 4, AFFIDAVIT No. 13.

STATE OF INDIANA, *Saint Joseph County, ss :*

(Page 21.) Hon. Thomas S. Stanfield (affiant), being duly sworn, says that he is judge of Saint Joseph County circuit court; age fifty-five; resided in said county since 1831. Has known Samuel L. Cottrell ever since then, and from the fact of official positions, and being engaged in removing the Indians, no citizen had greater opportunities, &c., with the Indians in their tribal relations.

(Page 22.) Is personally knowing to the truth of many of the facts in Cottrell's affidavit, and believes his statement in detail to be true. I would further say that I know of no man whose statement is entitled to more credit, or more likely to make proper observation of facts, or more accurate in his recollections, or faithful in his testimony. Has no interest in the claim, &c.

THOS. S. STANFIELD.

Attest : A. N. DEACON.

Subscribed and sworn to before me this 19th day of January, A. D. 1872.

[SEAL.]

GEO. W. MATTHEWS, *Clerk.*

Also, the following extract from the testimony of Dr. Jacob Hardman, of South Bend, in said county and State:

ROLL No 4, AFFIDAVIT No. 11.

STATE OF INDIANA, *Saint Joseph County, ss :*

(Page 13.) Also appears Dr. Jacob Hardman (affiant), being duly sworn, says that he is aged sixty-eight years; resided in Saint Joseph County since 1831; was the first practicing physician in said county; knew all the settlers, and was called as physician and surgeon for Indians, and treated old Chief Pokagon at his lodge, and became extensively acquainted with his band; kept a book account of his fees with them, and was paid most of them at Chicago treaty in 1833. Has carefully examined Samuel L. Cottrell's affidavit and list of names, and, from his knowledge of the facts, knows the facts are as therein set up, and has no interest in the claim of said band.

JACOB HARDMAN.

Attest : A. N. DEACON.

Subscribed and sworn to before me this 18th day of January, 1872.

[SEAL.]

GEO. W. MATTHEWS, *Clerk.*

Also, the following testimony as to the character of the men whose evidence is submitted by your memorialists :

STATE OF INDIANA, *Saint Joseph County, ss :*

We, the undersigned, citizens of Saint Joseph County, in the State of Indiana, hereby certify that we have for over thirty years been acquainted with Dr. Jacob Hardman, of South Bend, Saint Joseph County, Indiana ; have known him as a practicing physician ; have read the affidavit of said Hardman relative to the Pokagou band of Pottawatomie Indians, and that we know that from the early residence of said Hardman as such physician, in his practice had great facilities for a thorough acquaintance with the Indians in said affidavit mentioned, and that we have every reason to believe the statements to be correct, being acquainted personally with many of the claimants, and have no interest in the claim.

LOUIS HUMPHREYS, M. D.,
Examining Surgeon for Pensions and Mayor of South Bend, Indiana.

BENJAMIN WALL,
Justice of the Peace.

DWIGHT DEMING,
County Commissioner of Saint Joseph County.
JOHN BROWNFIELD,
President of South Bend National Bank.

Following this is the official certificate of Geo. W. Matthews, clerk of the Saint Joseph's circuit court, certifying that the persons whose names appear to the above are old and highly respectable citizens, occupying the several positions by them indicated.

The original testimony from which these extracts are made is on file with the committees of the House and Senate of the United States.

3d. Your memorialists are entitled to share *per capita* in all annuities secured by treaty to the Pottawatomie Nation of Indians, bearing date prior to September 26, 1833, in proof of which we respectfully submit the supplemental article of the treaty dated September 27, 1833, which reads :

On behalf of the chiefs and head-men of the United Nation of Indians who signed the treaty to which these articles are supplementary, we hereby, in evidence of our concurrence therein, become parties thereto

And as since the signing of the treaty a part of the band residing on the reservations in the Territory of Michigan have requested, on account of their religious creed, permission to remove to the northern part of Michigan, it is agreed that in case of such removal the just proportion of all annuities payable to them under former treaties, and that arising from the sale of the reservation on which they now reside, shall be paid to them at L'Arbre Croche.

It will be seen on an examination of this article that your memorialists, after being exempt from removal West with the body of the main nation, were secured by the terms of this treaty, and the United States thereby agreed to pay the just proportion of ALL ANNUITIES payable to them (the Pottawatomie Nation) under FORMER treaties.

What is embraced in the term "*all annuities*" has been frequently passed upon by the Department of the Interior, and the officers having charge of Indian affairs, and several committees both of the Senate and House of Representatives, who have had the subject under consideration, and all have uniformly concurred in recognizing the right of your memorialists to share *per capita* in "*all annuities*" made payable to the Pottawatomie Nation by treaties made with the United States and said Indian nation *prior* to September 26, 1833.

In support of this proposition, we respectfully refer to the letter of Robert Stuart, acting superintendent of Indian affairs, (see page hereof,) and the reply of T. Hartley Crawford, Commissioner of Indian Affairs. (Please see page hereof.)

It will be seen from an examination of Crawford's letter that he awarded to your memorialists their proportion of ONE of the "former annuities" only, specifically designating the treaty to which the payment should apply, when in plain terms they were clearly entitled to their "JUST PROPORTION OF ALL FORMER ANNUITIES," which includes some eleven annuities of eleven "former" treaties then operative and in full force, and binding upon the United States.

Regarding this error, the Committee on Indian Affairs of the Senate, in 1865, reported as follows, which is accepted as just and fair, and now only ask that it be faithfully applied to their cause and carried into effect:

While your committee agree with the committee of the other House that Commissioner Crawford, by mistake, failed to carry out the principle adopted by him, by giving them, in fact, their just proportion of all annuities under former treaties, and under the supplemental treaty of Chicago, and that it is just that such principle should now be applied, and that they should now receive their just proportion of annuities under all the treaties in which they had shared, as well as the annuities under the treaty of 1829, and supplemental treaty of 1833, they are at the same time decidedly of the opinion that the only just construction to be given to that supplemental article is, that, in case they did not remove with the nation West, they were entitled to share in the annuities only. (See p. 4, Rep. Com., No. 111, Senate, 2d sess., 1865, 38th Congress.)

The following exhibit, taken from the report of the Hon. S. S. Burdett, House of Representatives, hereafter, on page , cited, makes exhibit at once of the holdings of the Senate and House committees, by quoting the Senate report, and including in it the eleven designated treaties and their annuities, amounts, time to run, &c.; also quoting and adopting the above extract from the Senate Report No. 111, 2d sess. 38th Congress:

The following exhibit, taken from Governor Buckingham's report (No. 121, United States Senate), shows the annuities of treaties of a date prior to 26th September, 1833. These annuitants, under the language of the article permitting them to remain, are not entitled to the annuities of September 26, 1833, it not being a "former" treaty; the treaty of the 27th being styled "articles supplementary," &c., making it a present and not a former treaty, of which the annuitants are entitled to their just per-capita proportion.

Treaty.	Annual amount.	Time.	Amount due in 1836.		Amount due first semi-decade, to 1841.		Amount due second semi-decade, to 1846.		Amount due third semi-decade, to 1851.	
					Yrs.		Yrs.		Yrs.	
Aug. 5, 1795	\$1,000	Perpetual ...	\$1,000	5	\$5,000	5	\$5,000	5	\$5,000	5
Sept. 30, 1809	500	....do.....	500	5	2,500	5	2,500	5	2,500	5
Oct. 2, 1808	2,500	....do.....	2,500	5	12,500	5	12,500	5	12,500	5
Aug. 29, 1821	5,000	20 years.....	5,000	5	25,000	Exp.	.....	.....	.....	.....
Oct. 16, 1826	2,000	32 years.....	2,000	5	10,000	5	10,000	1	2,000	.....
Sept. 20, 1828	2,000	Perpetual....	2,000	5	10,000	5	10,000	5	10,000	5
Sept. 20, 1828	1,000	20 years.....	1,000	5	5,000	5	5,000	1	1,000	.....
July 29, 1829	16,000	Perpetual....	16,000	5	80,000	5	80,000	5	80,000	.....
Oct. 20, 1832	15,000	20 years.....	15,000	5	75,000	1	15,000	Exp.	.....	.....
Oct. 26, 1832	20,000	....do.....	20,000	5	100,000	5	100,000	5	100,000	.....
Oct. 27, 1832	15,000	12 years.....	15,000	5	75,000	2	30,000	.....	.....	.....
June 17, 1846	300	Perpetual ...	.....	.....	.....	.....	.....	5	1,500	.....
Total.....	.....	.....	80,060	.....	400,000	.....	270,000	.....	214,500	.....

Treaty.	Annual amount.	Time.	Amount due fourth semi-decade, to 1856.		Amount due fifth semi-decade, to 1861.		Due sixth semi-decade, to 1866.	Due seventh semi-decade, to 1871.	Due in 1872, for one year.
			Yrs.		Yrs.				
Aug. 5, 1795	\$1,000	Perpetual....	5	\$5,000	5	\$5,000	5,000	\$5,000	\$1,000
Sept. 30, 1809	500	do.....	5	2,500	5	2,500	2,500	2,500	500
Oct. 2, 1818	2,500	do.....	5	12,500	5	12,500	12,500	12,500	2,500
Aug. 29, 1821	5,000	20 years.....							
Oct. 16, 1826	2,000	22 years.....							
Sept. 20, 1828	2,000	Perpetual...	5	10,000	5	10,000	10,000	10,000	2,000
Sept. 20, 1828	1,000	20 years.....							
July 29, 1829	16,000	Perpetual...	5	80,000	5	80,000	80,000	80,000	1,600
Oct. 20, 1832	15,000	20 years.....							
Oct. 26, 1832	20,000	do.....							
Oct. 27, 1832	15,000	12 years.....							
June 17, 1846	300	Perpetual....	5	1,500	5	1,500	1,500	1,500	300
Total.....				111,500		111,500	111,500	111,500	22,300

Previous to 1872, this measure had been repeatedly examined by the Department of the Interior.

Pending the consideration of this measure by the Committee on Indian Affairs of the House of Representatives of the second session, Forty-second Congress, the Hon. William L. Stoughton, House of Representatives, addressed to the Hon. Secretary of the Interior an inquiry, dated June 3, 1872, inclosing a copy of the above report and bill, stating that a greater portion of the Indians resided in his district, and requesting the opinion of the department upon the report and bill, to which the honorable Secretary responded by the following letter and report :

DEPARTMENT OF THE INTERIOR,

Washington, D. C., June 4, 1872.

SIR: I have the honor to herewith transmit for your information, and in reply to your letter of the 3d instant, in relation to report No. 121, United States Senate, accompanying a bill to provide for the claims of the Pottawatomie Indians residing in Michigan and Indiana, a copy of a report of the Commissioner of Indian Affairs, to whom your letter was referred, wherein he expresses the opinion, which is concurred in by this department, that the Pottawatomies referred to are justly and equitably entitled to the amount allowed them by said bill.

Very respectfully, your obedient servant,

C. DELANO, Secretary.

Hon. WM. L. STOUGHTON,
House of Representatives.

DEPARTMENT OF THE INTERIOR, INDIAN OFFICE,

Washington, D. C., June 3, 1872.

SIR: I have the honor to acknowledge the receipt, by informal reference from the department, of a communication from Hon. William L. Stoughton, dated this day, inclosing a report submitted by Senator Buckingham, together with Senate bill No. 944, relative to certain Pottawatomie Indians residing in Michigan and Indiana, and requesting the opinion and recommendation of the department in the matter.

The communication of Mr. Stoughton and inclosures having been submitted for the views of this office, I have the honor to state that I have examined Senator Buckingham's report and the treaties affecting the claims of said Indians, and am fully satisfied that the Pottawatomies referred to are justly and equitably entitled to the amount allowed them by said report and bill. The papers referred to are herewith returned.

Very respectfully, your obedient servant,

F. A. WALKER,
Commissioner.

Hon. C. DELANO,
Secretary of the Interior.

And, in further confirmation of this proposition, the Senate has twice, once in the Forty-second and once in the Forty-third Congress, passed

a bill awarding your memorialists \$152,402.96 and an annual perpetual annuity of \$2,844.87 from and after 1872, and the committee of the House of Representatives of the Forty-third Congress reported favorably on the Senate bill of same Congress, but the bill failed for want of time in the House, Congress adjourning before the bill was reached.

4th. The construction thus given to the supplemental article of the treaty of September 27, 1833, being thus conclusive, it only remains to ascertain what "former treaties" existed at the date of the supplemental treaty of September 27, 1833, in order to determine how much the United States by said treaty agreed and covenanted to pay to your memorialists.

To establish this point, the following reference to the treaties is given, and they will be found on the pages designated in the table in vol. 7, United States Statutes at Large :

Date of treaty.	Page of treaty.	Page of annuity.	Annuity.	Time to run.
August 3, 1795	49	51	\$1,000	Forever.
September 30, 1809	113	114	500	Do.
October 2, 1818	185	185	2,500	Do.
August 29, 1821	918	220	5,000	For 20 years.
October 16, 1826	295	296	2,000	For 22 years.
September 20, 1828	317	317	2,000	Forever.
September 20, 1828	317	317	1,000	For 20 years.
July 29, 1829	320	320	16,000	Forever.
October 20, 1832	378	379	15,000	For 20 years.
October 26, 1832	394	395	20,000	Do.
October 27, 1832	399	401	15,000	For 12 years.

See United States Senate Report 121, 2d session 42d Congress.

To this exhibit must be added the \$2,000 annuity for 20 years of treaty of September 27, 1833, which was made solely with your memorialists; and \$300 annually after 1847, as one of the salt provisions of a treaty prior to 1833, was then commuted in cash, and after that paid as an annuity.

Under the strictly legal and accepted ruling upon the treaty of September 27, 1833, your memorialists are not entitled to participate in any of the moneyed considerations of the treaties with their people, but "annuities" of "former" treaties; this excludes them from sums of vast amount, as the following will exhibit, which the Kansas people alone can enjoy.

The following sums, as annuities, &c., have been paid, or are due the Kansas Indians for reasons shown in the statement, but were improperly included in making the distribution, in the House report and bill in 1864, but are now by Senate bill and the reports excluded :

\$850,000 of treaty of September 26, 1833.....	\$850,000
\$850,000 of treaty of June, 1846	850,000
These were improperly included, as these were not treaties "former" to September 26, 1833, which was the treaty of separation.	
\$5,000 educational fund, annually for 30 years, 1836 to 1866, by treaties of 1826, 1828, and 1829	150,000
\$3,440 blacksmith's fund, annually for 30 years, 1836 to 1866, by treaties of 1826, 1828, and 1829	103,200
\$910 for salt, annually, for 30 years, by treaties, 1795, 1826, and 1828	27,300
These last funds were improperly included, because they are not annuities; they are specific funds, not divisible, or distributed as annuities. The treaty of separation says all "annuities" of former treaties.	
To this sum must be added 5 per cent. per annum on \$643,000, the trust-fund of treaty June, 1846, which was \$32,150 for twenty years, 1846 to 1866.	643,000
Total	2,623,500

This exhibits the amounts from which the Michigan and Indiana people are by present rulings excluded, and sufficiently explains why the Kansas people resisted the cause in 1860-'66.

This also sheds light on the agreement which the Kansas people urged so strongly. It was their personal interest to release these funds from the claims of the eastern Indians by this agreement. By the treaty dated September 27, 1833, these Indians became separate peoples, with distinct, separate rights, by the treaty. The government owed each a definite sum. This agreement was not made in the interest of the government, nor with any intention of releasing the government from its obligations to the Michigan and Indiana people; nor was the government in any sense a party to it. The eastern Indians had no right to participate in these funds, and now make no claim to.

Having given the treaties under which these annuities are secured to be paid, and we trust satisfactorily disclaimed all claims to any payment not strictly secured to us by the term "*former annuities*," as the same has been construed and defined by the government from time to time uniformly since the proclamation of the treaties, we submit the following tabulated statement from the report of Senator Buckingham, made to the Senate of the United States after a most exhaustive examination, dated April 9, 1872, being Report No. 121, United States Senate, second session Forty-second Congress, and also the report of the Hon. S. S. Burdett of the House of Representatives, and chairman of subcommittee of the Committee on Indian Affairs, having the examination of this case in charge, same Congress.

The following, taken from pages 5 and 6 of the Senate Report No. 121, and Mr. Burdett's report, demonstrates the treaties and sums to which your memorialists are entitled to participate, their per-capita amount, the entire amounts which have been paid them, and the balance remaining due.

Treaty.	Annual amount.	Time.	in		Amount due first		Amount due sec-		Amount due third	
			1836.	1841.	ond semi-decade,	to 1846.	semi-decade, to 1851.			
Aug. 5, 1795	\$1,000	Perpetual	\$1,000	Yrs. 5	\$5,000	Yrs. 5	\$5,000	Yrs. 5	\$5,000	
Sept. 30, 1809	500	do	500	5	2,500	5	2,500	5	2,500	
Oct. 2, 1818	2,500	do	2,500	5	12,500	5	12,500	5	12,500	
Aug. 29, 1821	5,000	20 years	5,000	Exp. 5	25,000	Exp. 5	10,000	1	2,000	
Oct. 16, 1826	2,000	22 years	2,000	5	10,000	5	10,000	5	10,000	
Sept. 20, 1828	2,000	Perpetual	2,000	5	10,000	5	10,000	5	10,000	
Sept. 20, 1828	1,000	20 years	1,000	5	5,000	5	5,000	1	1,000	
July 29, 1829	16,000	Perpetual	16,000	5	80,000	5	80,000	5	80,000	
Oct. 20, 1832	15,000	20 years	15,000	Exp. 5	75,000	1	15,000	Exp. 5	100,000	
Oct. 26, 1832	20,000	do	20,000	5	100,000	5	100,000	5	100,000	
Oct. 27, 1832	15,000	12 years	15,000	5	75,000	2	30,000	5	1,500	
June 17, 1846	300	Perpetual	300	5	1,500	5	1,500	5	1,500	
Total			80,000		400,000		270,000		214,500	

Treaty.	Annual amount.	Time.	Amount due fourth semi-decade, to 1856.		Amount due fifth semi-decade, to 1861.		Amount due sixth semi-decade, to 1866.		Amount due seventh semi-decade, to 1871.	Amount due in 1872 for one year.
			Yrs.		Yrs.					
Aug. 5, 1795	\$1,000	Perpetual	5	\$5,000	5	\$5,000	\$5,000	\$5,000	\$5,000	\$1,000
Sept. 30, 1809	500	do	5	2,500	5	2,500	2,500	2,500	2,500	500
Oct. 2, 1818	2,500	do	5	12,500	5	12,500	12,500	12,500	12,500	2,500
Aug. 29, 1821	5,000	26 years								
Oct. 16, 1826	2,000	22 years								
Sept. 20, 1828	2,000	Perpetual	5	10,000	5	10,000	10,000	10,000	10,000	2,000
Sept. 20, 1828	1,000	20 years								
July 29, 1829	16,000	Perpetual	5	80,000	5	80,000	80,000	80,000	80,000	1,600
Oct. 20, 1832	15,000	20 years								
Oct. 26, 1832	20,000	do	5							
Oct. 27, 1832	15,000	12 years								
June 17, 1846	300	Perpetual	5	1,500	5	1,500	1,500	1,500	1,500	300
Total				111,500		111,500	111,500	111,500	111,500	22,300

Years.	Indians west of the Mississippi.	Indians in Michigan and Indiana.	Total number of Indians.	Amount due the nation.	Per capita.	Amount due the bands.
1836	3,840	250	4,090	\$80,000 00	\$19 56	\$4,890 00
1841	3,390	273	3,663	400,000 00	109 20	29,811 60
1846	2,231	269	2,500	270,000 00	108 00	29,052 00
1851	3,914	287	4,201	214,500 00	51 05	14,651 35
1856	3,181	281	3,462	111,500 00	32 20	9,048 20
1861	2,142	304	2,446	111,500 00	45 58	13,856 32
1866	2,202	317	2,519	111,500 00	44 26	14,030 42
1871	2,202	322	2,524	111,500 00	45 60	14,683 20
1872	2,202	322	2,524	22,300 00	8 83	2,844 87
Add full annuity under treaty September 27, 1833, \$2,000 for 19 years						132,867 96
						38,000 00
There were paid the memorialists from the year 1843 to 1863, inclusive, 21 years, \$1,587.50 per annum						170,867 96
In 1864						\$33,337 50
In 1865						1,237 50
In 1866, in accordance with public act						1,587 50
						39,000 00
Balance due memorialists						75,162 50
Annuity of \$2,844.87 capitation, at 5 per cent. per annum, equals						95,705 46
Due to make final settlement						56,897 50
						152,602 96

The per-capita proportion of the perpetual annuities agreed to be paid to the Pottawatomes including your memorialists prior to 1833, at which time the supplemental treaty hereinbefore referred to was entered into, will be found in the report of the Secretary of the Interior to the House of Representatives dated May 14, 1868, an extract from which is as follows:

The Secretary of the Interior, in his report to the House of Representatives, May 14, 1868, reported the following as the perpetual annuities due the Pottawatomes. (See Ex. Doc. No. 290, second session Fortieth Congress):

PERMANENT ANNUITIES.

Treaty of August 3, 1795, article 4 (see Statutes at Large, vol. 7, p. 51), payable in silver.....	\$1,000 00
Treaty of September 30, 1809, article 3 (Statutes at Large, vol. 3, p. 174), payable in silver.....	500 00
Treaty of October 2, 1818, article 3 (Statutes at Large, vol. 7, p. 185), payable in silver.....	2,500 00
Treaty of September 20, 1828, article 2 (Statutes at Large, vol. 7, p. 317), payable in money.....	2,000 00
Treaty of July 29, 1829, article 2 (Statutes at Large, vol. 7, p. 320), payable in specie.....	16,000 00
Treaty of September 20, 1828 (see reference above), and of June 5 and 17, 1846, article 10 (Statutes at Large, vol. 9, p. 855), payable in lieu of tobacco, iron, and steel.....	300 00
Treaty of October 16, 1826, article 3 (Statutes at Large, vol. 7, p. 296), and of September 20, 1828 and of July 29, 1829 (references as above), being for blacksmith, iron, steel, &c.....	2,820 00
Treaty of July 20, 1829, article 2 (reference as above), being for salt.....	437 50
Total amount of permanent annuities.....	25,557 50

The just per-capita proportion of these, due your memorialists, is \$2,844.87, the same being determined upon their relative numbers in 1866 and 1868, when distribution was commenced on the basis of \$22,300, instead of \$25,557.56, as set forth in the report of the Secretary above; this difference being caused by reason of the deduction from the amount found by the Secretary of all sums due from any other source than those which were strictly *annuities*.

It should be observed that by treaty of September 27, 1833 (vol. 7, U. S. Stat., page 442), all the annuities are made payable in specie. The premium was paid in 1865, being 42 per cent., about. No premiums or interest are asked or included in this case, although these two items alone would, in equity, more than equal the present bill. Their demand is simple justice.

From the foregoing statements it will be seen that at the end of the fiscal year ending June, 1872, there was remaining due and unpaid to your memorialists, after deducting all payments made to them on account of the several treaties, the sum of \$152,602.96; the proportion due to your memorialists annually from the perpetual annuities being \$2,844.87. At the close of this fiscal year (1878) there will be due, in addition to the sum found above, six annual payments of \$2,844.87, which, being added to the sum due in 1872, aggregates the sum of \$169,672.18, which last-named sum represents the actual amount of money due to your memorialists on account of these several annuity treaties, on the payment of which your memorialists agree to release the Government of the United States from all future obligations on account of the same.

February 19, 1864, the Committee on Indian Affairs of the House of Representatives reported in favor of the case, awarding \$192,845 (see Report No. 19, 1st sess. 38th Cong., H. R.), and the same session the House passed an act allowing them that sum. But there were two errors in this report: one was that it included the moneyed benefits of other treaties than "former treaties" to September 26, 1833, and other funds than "annuities," as fully shown on page 16 hereof. This greatly increased the amount over what it should have been, had no other error been included; but the other error was this distribution as calculated upon the supposed existence of 6,180 of these people, when, in fact, as hereinbefore shown, there were but 4,090. This error greatly reduced the amount—nearly to the same extent that the other error increased it.

The Senate, in 1865, as fully stated on page 16, and decision of the

committee quoted on page 8 hereof, corrected the first error by excluding the amounts before improperly included in making the distribution, but failed to correct the other error regarding the number of Indians; 6,180 Indians were used in calculating the distribution (see page 4, Report No. 111, U. S. S., 2d sess. 38th Cong.), when there should have been but 4,090, as will be seen on an examination of the correspondence between Senator Buckingham and the Hon. Columbus Delano, then Secretary of the Department of the Interior.

Pending the examination of the case by Senator Buckingham, on the 25th March, 1872, he addressed four letters of inquiry to the Secretary of the Interior, in one of which he inquired the number of Pottawatomie Indians residing in Kausas since 1836, by semi-decades, up to 1866; another, inquiring the number of your memorialists resident in Michigan at the same periods; another, inquiring the amounts paid your memorialists within the same period, and in compliance with what treaties; and a fourth, inquiring whether the treaty of Camp Tippecanoe, October 20, 1832, between the United States and the Pottawatomie "bands of the Prairie and the Kankakee," was regarded as made with the Pottawatomie Nation, or a part of the same known as bands of the Prairie and Kankakee.

The following are the replies:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 27, 1872.

SIR: I have received your four letters, dated the 25th instant, asking certain information in reference to the Pottawatomie tribe of Indians of the Prairie and Kankakee.

In one you ask for a copy of the report of the Secretary of the Interior, made in compliance with the act of Congress approved March 2, 1861, in relation to the amounts, if any, then due the Chippewa, Ottawa, and Pottawatomie Indians, now residing in the State of Michigan.

I inclose herewith a copy of the report. (See document 19, Ex. Docs., vol. 4, third session Thirty-seventh Congress, herewith.)

Your other letters ask for information not in the possession of this department, but which can be found, as I am informed, in the office of the Second Auditor of the Treasury.

I therefore addressed to the Second Auditor a letter asking the information for which you call, and I have the honor to transmit herewith the reply of that officer.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Since writing the foregoing I am informed that the Second Auditor has failed to answer whether the Pottawatomie Nation, or only a band on a particular location, are included in the treaty concluded at Camp Tippecanoe on the 20th October, 1832, which treaty was made with the Pottawatomie tribe of Indians of the Prairie and Kankakee.

I am informed by the Commissioner of Indian Affairs that the construction put upon this treaty includes the Pottawatomie Nation, and that the annuities which have been paid under the provisions thereof have been paid to the nation, and not to any part thereof known as Indians of the Prairie and Kankakee.

I have no doubt that the construction of the treaty at the office of the Commissioner of Indian Affairs is correct.

C. DELANO, *Secretary.*

TREASURY DEPARTMENT,
Second Auditor's Office, March 27, 1872.

SIR: The papers herewith contain the information furnished May 4, 1871, January 12, and February 28, 1872, to W. N. Severance, esq., attorney for Pottawatomies of certain bands, being the same requested by your letter of to-day, modified by suggestions in that of yesterday to you from Senator Buckingham, which last was filed in this office by Mr. Severance.

Very respectfully,

E. B. FRENCH,
Second Auditor.

Hon. C. DELANO,
Secretary of the Interior.

*Exhibit referred to and accompanying the above letter of E. B. French,
Second Auditor of the Treasury.*

The following exhibits the number of the main nation of the Pottawatomie Indians (those residing west of the Mississippi) for the years indicated, as the same appears from the receipt-rolls in the Indian Office:

J. L. Jamison, agent, paid 3,764 persons in 1836.
J. P. Simonton, agent, paid 76 persons in 1836.
A. S. Davis, agent, paid 3,390 persons in 1841.
R. B. Mitchell, agent, paid 2,231 persons in 1846.
J. R. Chenault, agent, paid 3,914 persons in 1851.
G. W. Clark, agent, paid 3,181 persons in 1856.
W. W. Ross, agent, paid 2,142 persons in 1861.
L. R. Palmer, agent, paid 2,202 persons in 1866.

The \$1,587.50 was paid to those Pottawatomies residing in Michigan, in conformity to, and as their proportion of, the treaty of July 29, 1829, and the second article of the supplementary treaty of September 26, 1833, for all the years that the same was paid, excepting for the years 1851 and 1865, in which years the treaty of 1833 is not included.

The payment of the \$39,000 in 1866 was made in conformity to the joint resolution of Congress approved July 23, 1866 (vol. 14, U. S. Stat. at Large, page 370).

In 1843 Robert Stuart paid 253 Indians	\$1,587 50
In 1844 Robert Stuart paid 269 Indians	1,587 50
In 1845 Wm. A. Richmond paid 217 Indians.....	1,587 50
In 1846 Wm. A. Richmond paid 204 Indians.....	1,587 50
In 1847 Wm. A. Richmond paid 244 Indians.....	1,587 50
In 1848 Wm. A. Richmond paid 260 Indians.....	1,587 50
In 1849 Charles P. Babcock paid 260 Indians	1,587 50
In 1850 Charles P. Babcock paid 218 Indians	1,587 50
In 1851 Wm. Sprague paid 229 Indians	1,587 50
In 1852 Wm. Sprague paid 214 Indians	1,587 50
In 1853 Henry C. Gilbert paid 219 Indians	1,587 50
In 1854 Henry C. Gilbert paid 236 Indians.....	1,587 50
In 1855 Henry C. Gilbert paid 236 Indians.....	1,587 50
In 1856 Henry C. Gilbert paid 221 Indians.....	1,587 50
In 1857 A. M. Filch paid 229 Indians	1,587 50
In 1858 A. M. Filch paid 234 Indians	1,587 50
In 1859 A. M. Filch paid 253 Indians	1,587 50
In 1860 A. M. Filch paid 236 Indians	1,587 50
In 1861 De Witt C. Leach paid 235 Indians	1,587 50
In 1862 De Witt C. Leach paid 247 Indians	1,587 50
In 1863 De Witt C. Leach paid 246 Indians	1,587 50
In 1864 De Witt C. Leach paid 242 Indians	1,237 50
In 1865 Richard M. Smith paid 232 Indians: principal, in currency, \$1,587.50; premium, in gold, \$692.24	2,279 74
In 1866 Richard M. Smith paid 338 Indians.....	39,000 00

The above shows the number of Pottawatomie Indians residing in Michigan in the years indicated who received the amount as shown thereon, as the same appears from the receipt-rolls on file in this office.

By reference to the report of Senator Buckingham, before referred to, it will be seen that the number of Indians residing in Michigan and Indiana who are entitled to share in these annuities numbered 322, this number being ascertained from evidence then and now on file with the case. This number may be regarded as correct, notwithstanding the fact that in 1866 the evidence on file in the Treasury Department shows that in that year 338 persons were paid by the government, as is evidenced by the received pay-rolls on file in that department.

For the purpose of securing their rights under these several treaties, your memorialists visited Washington with varied prospects of success, until, in 1859, they sent Edward Cowles, one of their people, to look after their matters. In 1861 he succeeded so far as to have an act passed directing the Secretary of the Interior to examine their case and report

to Congress, which Caleb B. Smith, Secretary of the Interior, made December 19, 1862. (Ex. Doc. No. 19, 3d sess. 37th Congress.)

After receiving the report of the Secretary of the Interior, above referred to, and ordered by Congress, the Senate Committee on Indian Affairs made a report upon the questions involved in this case, from which we submit the following extract :

While your committee agree with the committee of the other House that Commissioner Crawford, by mistake, failed to carry out the principle adopted by him, by giving them, in fact, their just proportion of all annuities under former treaties and under the supplemental treaty of Chicago, and that it is just that such principle should now be applied, and that they should now receive their just proportion of annuities under all the treaties in which they had shared, as well as the annuities under the treaty of 1829 and supplemental treaty of 1833, they are at the same time decidedly of the opinion that the only just construction to be given to that supplementary article is, that, in case they did not remove with the nation West, they were entitled to share in the annuities only. (See p. 4, Rep. Com., No. 111, Senate, 2d sess., 38th Congress, 1865.)

At the same session of Congress the House of Representatives, having this subject under consideration, passed a joint resolution, to which we have before called your attention, awarding to your memorialists, as their share of the annuities secured to the Pottawatomie Nation of Indians by these treaties the sum of \$192,845. (See report No. 19, 1st session 38th Congress, H. R.)

This action of Congress in 1865 and 1866 was not the result of *ex parte* proceedings. The Kansas delegations were here with their experienced attorney, and gave Cowles a most active, relentless, and even vindictive opposition. He was frequently approached with propositions to compromise the case, and finally, in April, 1866, he was threatened that, unless he signed the proposition in writing, they had it in their power to defeat his case.

The proposition submitted by the Kansas Indians, and which was subsequently signed by Cowles, is in words following :

THE COWLES AGREEMENT.

The controversy heretofore existing between certain Chippewa, Ottawa, and Pottawatomie Indians of Michigan and the Pottawatomie Nation of Kansas has been compromised and adjusted, the latter agreeing to pay the former the sum of thirty-nine thousand dollars, in full of all claims, past, present and future, against the tribe, arising out of any treaty or otherwise.

Dated Office Indian Affairs, April 11, 186[5]6.

(Original on the files of the House of Representatives and a certified copy with the Committee on Indian Affairs, House of Representatives.)

He was greatly distressed. He was assured that it contained no release to the government; that by signing it the Indians would lose no rights under the government treaties. He was allowed no time to confer with his people in Michigan, and, believing these representations, he signed it, and reported to his people at once, as shown by the following evidence :

Affidavit of Edicard Cowles.—Synopsis of affidavit No. 43.

He now resides in (Niles) Berrien County, Michigan. Has received a common-school education. In 1859 he came to Washington to look after their annuities. Was delayed from year to year, and resisted by the delegations and attorneys of the Kansas Indians.

That in 1865 and '66 he was approached by them with propositions to compromise the claim, accompanied by threats that unless he accepted their proposition of \$39,000 they had it in their power to defeat the case entirely. That a paper was presented him to sign in April, 1866. It was represented to him that this paper would not release the government from paying his people all that it might owe them on the treaties with them.

The Michigan Indians were poor and greatly distressed by debts and mortgages they had incurred, expecting to receive their annuities. They had built churches and school-houses, which they must lose unless they received what was due them from the government.

That many times on the streets of Washington he was urged by people whom he did not know to accept the proposition; that he became so embarrassed and distressed he hardly knew what to do; that finally, believing the agreement to be what it was represented and appeared to be, he signed it. That he would not have signed it if he had thought it capable of being construed to cut his people off from their just rights under the treaties, and went home as soon as possible and reported what he had done to his people in council.

NOTE.—The remainder of his affidavit concerning the history of the protests, the circumstances of the payment, the representations of Mr. Johnson and others, is substantially the same as that of Toposh, Simon Pakagon, Francis Pakagon, Augusta, and the Motes, and others.

After several councils, on the 14th of June, 1866, the Indians in full council unanimously voted to notify the government that they would not accept the Cowles agreement or relinquish their annuities or any part of them, and employed attorneys to so notify the proper department of their action; which was done, as appears from the following evidence in the case:

Baker & Richards's letter to Hon. Charles Upson.

PAW PAW, MICH., June 15, 1866.

DEAR SIR: We are instructed, by the unanimous vote of our Michigan Indians in council at Rush Lake, to address you this note, and request you to advise the department that the Indians will not relinquish their annuities or any part of them.

BAKER & RICHARDS.

Hon. CHAS. UPSON,
House of Representatives, Washington, D. C.

Synopsis of affidavit of John R. Baker.

(Exhibit of letter same as in Upson's affidavit.)

STATE OF MICHIGAN, *County of Van Buren:*

John R. Baker, of Paw Paw, said county, was one of the law firm of Baker & Richards, of same place, and he wrote the above letter to Hon. Chas. Upson, signed the firm name, and duly mailed the same to said Upson.

Sworn to before S. W. Denscombe, notary public.

February 3, 1873.

Synopsis of affidavit of Hon. Charles Upson.

STATE OF MICHIGAN, *Branch County:*

Charles Upson, of Coldwater, said county, in 1866, while in Washington, D. C., as Representative, received a letter from Messrs. Baker & Richards, of which he thinks the annexed paper, marked A, is a true copy. He does not now recollect, but feels confident that he must have informed either the department or committee of its contents soon after its reception.

Sworn to before David Thompson, United States commissioner, &c.

February 11, 1873.

By this evidence it appears that your memorialists promptly entered their protest by employing attorneys to notify the government that they would not relinquish their annuities, or any part of them, which was duly forwarded to their Representative in Congress (thus "bringing it to the ear of the court"), and requesting him as an officer of the government to so notify the department. Upson received the protest "some six weeks" before the passage of the act, and believes he gave the notice required. Be that as it may, it matters nothing. The Indians had exercised full diligence, and cannot in law, much less in honor and right dealing, be held liable for any neglect on the part of the officers of the

government, especially under trusteeship. The memorialists had gone into debt to build for themselves two churches and two school-houses, as they are now mostly residing in two parishes, expecting in 1863 and 1864 the large amount to be soon paid them, and in 1866 these debts were endangering their small farms and cherished improvements, as appears from the following evidence:

ROLL No. 10, AFFIDAVIT No. 23.

¶ The Indians had long expected the payment of a large amount, being familiar with the reports of Hon. W. P. Dole, Commissioner of Indian Affairs, and Hon. C. B. Smith, Secretary of the Interior, made in 1862, and believed the amount then reported (\$192,850) would be paid. In view of its early payment they had contracted a large amount of debts for churches and school-houses, &c., and upon hearing of the joint resolution awarding only \$39,000 they held several councils of their people and decided not to accept the \$39,000, fearing it would debar them from prosecuting their just claim for the remainder.

ROLL No. 12, AFFIDAVIT No. 26.

STATE OF MICHIGAN, *County of Cass, ss :*

Extract.

* * * * *, which made it necessary for them to receive it to save their farms from being sacrificed at mortgage sale, and partly from representations then made that their claim would yet be paid in full if said government should be satisfied that it was just and equitable.

ELIAS S. HOWARD.

Subscribed and sworn to before me this 10th day of January, 1871.

[SEAL.]

CHANCY T. LEE,

Notary Public, Cass County, Michigan.

Synopsis of affidavit of A. J. Toposh.

That he was present at several councils of these people held in May and June, 1866. That at a council held immediately before, and at the payment of the \$39,000, he was requested and authorized, as their interpreter, to make their deliberations known to the agent making the payment. He was instructed to inform him that the Indians could not accept the \$39,000 as payment in full of the large amounts they then knew to be due them by the government's reports, decisions, and actions, but as they had mortgages on their small farms, church and school property, and threatened with foreclosure and sheriff's sale, being in greatly distressed circumstances, being poor and needy, they would accept the \$39,000, and allow the same as so much paid them on their just claim. That before the payment was made he did faithfully make known the result of the deliberations of the Indians in council, as above set forth, in the presence and hearing of the agent, Mr. Smith, the Indians, and others present. The agent would have no conference with the Indians. That the Indians were advised by friends and counsel, and a Mr. Johnson, who, it was understood, was present to aid Mr. Smith in the payment in some way by appointment of the government, that their acceptance of the money could not have any effect to prevent the payment of all just balances due them, as they only accepted it upon the express condition of their protests. That this advice of friends, counsel, and Mr. Johnson was freely given and expressed in the presence of the agent, to which the agent made no reply. That under these circumstances and advice, relying upon the laws and facts as thus assured to them, they signed the receipt required by the agent.

Affidavits of Francis Pokagon and Simon Pokagon.

¶ They are sons of old chief Pokagon; have had a partial English education. (Note.— Their testimony is substantially the same, and fully corroborative of the above affidavit of Toposh; referring to Johnson's advice, they say:) The Indians were advised by friends and counsel that a receipt so forced from them, under all its attending facts, could not be held to abrogate the government treaties, or in any way defeat them in their just claim under said treaties, and such was the statement then and there made before the payment by said Johnson, which advice and assurances were accepted by the Indians as of authority, and the same was given in the presence of said agent, and the same was not, in the presence or hearing of the Indians or to their knowledge, by said agent in any way modified or disowned, and, relying on this, they signed the required receipt and took the money, said Johnson assisting in the payment, and from our knowledge we don't believe one dollar of it would have

been accepted to this day had the Indians believed or been informed that accepting it would be fatal to their recovering the large balance remaining due them.

Signed and sworn to before Geo. W. Mathews, clerk of Saint Joseph circuit court, February 14, 1873, who certifies that these Indians are intelligent; that the above affidavits were read to them, and signed by them in his presence.

These affidavits are supported substantially by two affidavits of Elias S. Howard, date February 1, 1873, and James Sullivan, date January 10, 1871, of Dowagiac, Mich., being disinterested white witnesses.

STATE OF INDIANA, *Saint Joseph County, ss :*

Seton Moty, Little Seton Moty, Billy Augusta, John Cush-au-wa-Weso Moty, and Francis Williams, all over thirty-six years of age, residing in Michigan. (Note.—These applicants cover the same facts, and fully sustain the preceding affidavit of A. J. Toposh. The first four are members of their business committee.)

Signed and sworn to before George W. Mathews, clerk of Saint Joseph circuit court, February 1, 1873.

Testimony of Rev. P. O. Johnson.

STATE OF MICHIGAN, *County of Washtenaw, ss :*

Personally appeared before me, Andrew J. Sutherland, a notary public in and for said county, one P. O. Johnson, to me personally known, and being by me first duly sworn, upon his oath says that his name is Peter O. Johnson, aged fifty-seven years; that he is a minister of the gospel, now residing in Ann Arbor, said county and State; that he did at the request of the late Richard M. Smith, as Indian agent, accompany him and assist him in making the payment of \$39,000 to the Pottawatomies of Michigan and Indiana at their homes, near Dowagiac, said State, in 1866. Mr. Smith made known to the Indians that he was instructed by the then acting Secretary of the Interior that this was to be their final payment.

At this the Indians were much surprised, and greatly distressed that they were to receive as a final payment only so small a part of what they said the Department of the Interior and the House of Representatives had declared was due them for their lands, and which they seemed to know and believe was due them.

One of their people, Augustine J. Toposh, as the intrepeter of their councils, before the payment was made, and in the presence and hearing of Mr. Smith and the Indians, said that the Indians in their councils had instructed him to say to him (Mr. Smith) that in full accord with their written protest, which they had sent to the Hon. Charles Upson and the department, they could not accept the \$39,000 and relinquish any of their rights under the treaties, but being in great distress, they would accept it only as so much paid on their just demand.

Everything came to a stand-still for the whole day, or nearly so, when Mr. Smith, having known me as a missionary to the Indians since 1843, advised them to counsel with me, as I had intimate knowledge of the treaties and the manner of the government dealing with them. They acted upon this advice, and after several hours spent in free interchange of thought and feelings, during which they stated their claims and grievances to me fully, as I understand their language. I advised them to receive the \$39,000 and sign the required receipt upon their protests already made. I also stated to them that I believed, from what I had seen of the dealings of our government with Indians, that the intention of the government was not to wrong them, but to deal kindly and justly with them; that I felt sure that if, upon examination of their treaty stipulations, it should be found that there remained any sum, large or small, due them it would be paid them. The fact of their signing this receipt would not be a bar to their claim, especially so when it could be shown that the mistake was on the part of our government, and that they were compelled, by reason of debts incurred in anticipation of a much larger sum, long before that, to have the \$39,000 or lose their improvements.

Upon these facts I said to them, "You must or better take the \$39,000 and trust to the government." I said, "Present your case; justice may be a little slow, but it will come."

After this they quietly accepted the money and signed the required receipt. I am stating these facts from a clear recollection of their occurrence. I have no interest personally whatever in the case of these people.

PETER O. JOHNSON.

Attest:

HIRAM C. WALDRON.
L. ST. LORD.

Subscribed and sworn to before me this 3d day of December, A. D. 1874; and I certify that the above Peter O. Johnson is to me personally known to be a person entitled to full faith and credibility.

[L. S.]

ANDREW J. SUTHERLAND,
Notary Public.

Attached to this instrument is the usual certificate of the clerk of the circuit court of said county and State, under the seal of said court, that

Andrew J. Sutherland, the above, is a notary public in and for said county, signed W. N. Stevens, clerk, by H. C. Waldron, deputy clerk.

The legal propositions in this case are few and simple.

The United States can take nothing by the joint resolution passed by the 38th Congress.

The resolution was proposed for the purpose of carrying into effect an agreement entered into between the Kansas branch of the Pottawatomie Nation of Indians and Cowles.

The resolution cannot be made to embrace more than was contained in the agreement upon which it was based and which it was passed to carry into effect.

If, however, this agreement was wrested from Cowles, an inexperienced if not an ignorant Indian, by intimidation and offers of violence, the agreement itself could have no force or effect. This would be such duress as would avoid the agreement. But we are not left to rest the case upon this proposition. The agreement explains itself. It provided for a settlement of claims made by the Michigan Indians to sums of money arising out of treaties with the United States made subsequent to the treaties of 1833, hereinbefore referred to, and to which we now make no claim.

In support of the several legal propositions that may be suggested in the examination of the case, we respectfully submit the following authorities from the many that might be referred to :

A contract made by a party under compulsion is void, because consent is the essence of a contract, and where there is compulsion there is no consent, for this must be voluntary. (1 Par. on Cont., 392; 1 Blk. Com., 131; 5 Hill, 158; 15 Wend., 321; 5 Cow., 588.)

So cautiously does the law watch over all contracts, that it will not permit any to be binding but such as are made by persons perfectly free and at full liberty to make or refuse such contracts. (1 Bay, S. C., 470; 2 ib., 211; Greul. on Ev., 301; 16 Ill., 32; 12 Pick., 7.)

By the court (4 Ohio), 347:

A receipt is *prima-facie* evidence of payment, but a receipt acknowledging the reception of ten dollars and acquitting and releasing from all obligations would be a receipt for ten dollars only. (2 Ves., Ch., 310; 5 Barn. & Ad., 606; 18 Pick., 325; 1 Ed. Ch., N. Y., 341.)

From the above it appears that the receipt they signed when forced and advised to accept the \$39,000 is, *per se*, no bar to the recovery of the remainder.

This sum was, at most, but a part payment of an ascertained, just, and acknowledged debt, and proven upon the findings of record by the government.

Part payment is no satisfaction of the debt, even where the creditor agrees to receive a part for the whole, and gives receipt for the whole demand; and a plea of payment of a small sum in satisfaction of a larger is bad even after verdict. (2 Par. on Con., 618; 3 N. H., 518; 11 Vt., 60; 5 Johns., 388.)

Again, these people were, and now are, the *cestui que trusts* of the Government of the United States, which then was and now is their trustee, in possession of their funds, and protector of their persons and rights. As a reminder of the rigor of the law by which trustees are held to faithfully discharge their trusts, the following is cited from the books:

Trustees are to faithfully apply the property according to the confidence reposed in them by the *cestui que trusts*. (4 Kent Com., 295; Hill on Trustees, 495, 324; 1 Saunders N. & T., 6; 3 Blk. Com., 431.)

The continuance of an estate of trustee will be continued or limited to the accomplishment of the purposes of the trust over the express language of the instrument creating the same. (4 Den., N. Y., 385; 11 B. Mon., Ky., 233.)

Payment must be made of the whole sum, and even where receipt in full has been given for a payment of part of an ascertained sum, it has been held *not to be an extinction of the debt*. (5 Coke, 117; 2 Barn. & Ad., 477; 11 Vt., 60; 26 Me., 88; 9 Johns., 333; 17 ib., 196.)

Upon the most critical examination of the evidence of protest and the circumstances attending the payment, it must be conceded that the Cowles agreement, even though it had been properly obtained and the act in accord with it, was, and remains in law, fully annulled in all legal respects and effects void.

The joint resolution (vol. 14 United States Statutes, page 370) reads:

To pay the Chippewa, Ottawa, and Pottawatomie Indians of Michigan, in pursuance of an agreement and compromise made with the Pottawatomie Nation, so named and designated in the treaty of 1846 with the United States, the sum of \$39,000, in full of all claims in favor of said Michigan Indians, either against the United States or said nations of Indians, present, past, or future, arising out of any treaty made with them, or any band or confederation thereof, and the annuity now paid them is to be restored and paid to said nation for the future.

The act itself states that it was to carry into effect a compromise and agreement between the memorialists and the Kansas people; and, by reference to the Congressional Globe, it appears that this was the only representation made on the floors which secured its hasty passage by both houses on the last two days of the session.

Now, most happily for these unfortunate people, this agreement is in writing, signed by Mr. Cowles and the Kansas delegation, and duly preserved on the file records of the House, and it reads:

The controversy heretofore existing between certain Chippewa, Ottawa, and Pottawatomie Indians of Michigan and the Pottawatomie Nation of Kansas, has been compromised and adjusted, the latter agreeing to pay the former the sum of thirty-nine thousand dollars, in full of all claims, past, present, or future, against the tribe, arising out of any treaty or otherwise.

The purpose of this agreement is manifest. Your memorialists were then claiming their distributive proportion of vast sums to which they had no right. (See page 16, hereof.) It was to release those funds from their claims, and not to release the United States from the treaty obligations with your memorialists, that it was so ardently demanded.

Cowles was assured that by signing it he would not impair the rights of his people upon the treaties to all remaining balances; believing which, he signed it (see evidence, page 29, hereof), and the agreement itself sustains those representations. He or his people in no manner and at no time ever agreed to accept \$39,000 and release their claims against the United States upon the treaties.

The words "either against the United States or" and "and the annuity now paid them is to be restored and paid to said nation for the future," which appear in the act, are not, in fact, in substance, or by implication, to be found in the agreement upon which the act declares it is based.

Pending the examination of the case by Senator Buckingham, on the 25th March, 1872, he addressed four letters of inquiry to the Secretary of the Interior, in one of which he inquired the number of Pottawatomie Indians residing in Kansas since 1836, by semi-decades, up to 1866; another, inquiring the number of your memorialists resident in Michigan at the same periods; another, inquiring the amounts paid your memorialists within the same period, and in compliance with what treaties; and a fourth, inquiring whether the treaty of Camp Tippecanoe, October 20, 1832, between the United States and the Pottawatomie "bands of the Prairie and the Kankakee," was regarded as made with the Pottawatomie Nation, or a part of the same, known as bands of the Prairie and Kankakee.

The following are the replies :

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 27, 1872.

SIR : I have received your four letters dated the 25th instant, asking certain information in reference to the Pottawatomie tribe of Indians of the Prairie and Kankakee.

In one you ask for a copy of the report of the Secretary of the Interior, made in compliance with the act of Congress approved March 2, 1861, in relation to the amounts, if any, then due the Chippewa, Ottawa, and Pottawatomie Indians, now residing in the State of Michigan.

I inclose herewith a copy of the report. (See Document 19, Ex. Docs., vol. 4, third session Thirty-seventh Congress, herewith.)

Your other letters ask for information not in the possession of this department, but which can be found, as I am informed, in the office of the Second Auditor of the Treasury.

I therefore addressed to the Second Auditor a letter asking the information for which you call, and I have the honor to transmit herewith the reply of that officer.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Since writing the foregoing, I am informed that the Second Auditor has failed to answer whether the Pottawatomie Nation, or only a band on a particular location, are included in the treaty concluded at Camp Tippecanoe on the 20th October, 1832, which treaty was made with the Pottawatomie tribe of Indians of the Prairie and Kankakee.

I am informed by the Commissioner of Indian Affairs that the construction put upon this treaty includes the Pottawatomie Nation, and that the annuities which have been paid under the provisions thereof have been paid to the nation, and not to any part thereof known as Indians of the Prairie and Kankakee.

I have no doubt that the construction of the treaty at the office of the Commissioner of Indian Affairs is correct.

C. DELANO, *Secretary.*

TREASURY DEPARTMENT,
Second Auditor's Office, March 27, 1872.

SIR : The papers herewith contain the information furnished May 4, 1871, January 12, and February 28, 1872, to W. N. Severance, esq., attorney for Pottawatomies of certain bands, being the same requested by your letter of to-day, modified by suggestions in that of yesterday to you from Senator Buckingham, which last was filed in this office by Mr. Severance.

Very respectfully,

E. B. FRENCH,
Second Auditor.

Hon. C. DELANO,
Secretary of the Interior.

The following exhibits the number of the main nation of the Pottawatomie Indians (those residing west of the Mississippi) for the years indicated, as the same appears from the receipt-rolls in this office :

J. L. Jamison, agent, paid 3,764 persons in 1836.
J. P. Simonton, agent, paid 76 persons in 1836.
A. S. Davis, agent, paid 3,390 persons in 1841.
R. B. Mitchell, agent, paid 2,231 persons in 1846.
J. R. Chenault, agent, paid 3,914 persons in 1851.
G. W. Clark, agent, paid 3,181 persons in 1856.
W. W. Ross, agent, paid 2,142 persons in 1861.
L. R. Palmer, agent, paid 2,202 persons in 1866.

The \$1,587.50 was paid to those Pottawatomies residing in Michigan, in conformity to, and as their proportion of, the treaty of July 29, 1829, and the second article of the supplementary treaty of September 26, 1833, for all the years that the same was paid, excepting for the years 1851 and 1865, in which years the treaty of 1833 is not included.

The payment of the \$39,000 in 1866 was made in conformity to the joint resolution of Congress approved July 28, 1866 (vol. 14, U. S. Stat. at Large, page 370).

In 1843 Robert Stuart paid 253 Indians.....	\$1,587 50
In 1844 Robert Stuart paid 269 Indians.....	1,587 50
In 1845 Wm. A. Richmond paid 217 Indians.....	1,587 50
In 1846 Wm. A. Richmond paid 204 Indians.....	1,587 50
In 1847 Wm. A. Richmond paid 244 Indians.....	1,587 50
In 1848 Wm. A. Richmond paid 260 Indians.....	1,587 50
In 1840 Chas. P. Babcock paid 260 Indians.....	1,587 50
In 1850 Chas. P. Babcock paid 218 Indians.....	1,587 50

In 1851 Wm. Sprague paid 229 Indians.....	\$1,587 50
In 1852 Wm. Sprague paid 214 Indians.....	1,587 50
In 1853 Henry C. Gilbert paid 219 Indians.....	1,587 50
In 1854 Henry C. Gilbert paid 236 Indians.....	1,587 50
In 1855 Henry C. Gilbert paid 236 Indians.....	1,587 50
In 1856 Henry C. Gilbert paid 221 Indians.....	1,587 50
In 1857 A. M. Filch paid 229 Indians.....	1,587 50
In 1858 A. M. Filch paid 234 Indians.....	1,587 50
In 1859 A. M. Filch paid 253 Indians.....	1,587 50
In 1860 A. M. Filch paid 236 Indians.....	1,587 50
In 1861 De Wit C. Leach paid 235 Indians.....	1,587 50
In 1862 De Wit C. Leach paid 247 Indians.....	1,587 50
In 1863 De Wit C. Leach paid 246 Indians.....	1,587 50
In 1864 De Wit C. Leach paid 242 Indians.....	1,237 50
In 1865 Richard M. Smith paid 232 Indians: principal, in currency, \$1,587.50; premium, in gold, \$692.24.....	2,279 74
In 1866 Richard M. Smith paid 338 Indians.....	39,000 00

The above shows the number of Pottawatomie Indians residing in Michigan in the years indicated who received the amount as shown thereon, as the same appears from the receipts on file in this office.

As the questions arising in this case have so often been considered and examined by the several departments of the government, with a uniformly favorable result to your memorialists' claims for redress; as every question arising out of these several treaties and the relations to, and the rights of, your memorialists under them, have been subjected to the most rigid scrutiny by the officers of the government and members of the Senate and House of Representatives, we deem it unnecessary to add anything further.

The reports of Senator Buckingham and the Hon. S. S. Burdett, of the House, are so full and complete upon all questions arising in the case, whether these questions be of fact, of equity, or of law, that we submit them entire as a part of this memorial.

In conclusion, we will only add that your memorialists are an intelligent, frugal, industrious, and Christian people, fully competent to manage their own affairs. They are at all times assured by the highest authority of the government that their cause is just, and are conscious that ultimately it must prevail. They are in want, and have waited long for their money, diligently and continually urging Congress to enable the Secretary of the Interior to pay them. It has twice passed the Senate, and once the House, and it is most ardently hoped that all future expense and trouble, both to them and the government, may be avoided by the present bill becoming a law, as they will ever pray.

SIMON POKAGON,
Chairman Business Committee.
W. N. SEVERANOE,
Of South Bend, Ind., Counsel.
CHARLES N. LAMISON,
Of Lima, Ohio, Counsel.

REPORT FROM THE COMMITTEE ON INDIAN AFFAIRS OF THE SENATE OF THE UNITED STATES, AND REFERRED TO IN THE FOREGOING MEMORIAL AS THE "BUCKINGHAM REPORT."

[Senate report No. 121, Forty-second Congress, second session.]

Mr. BUCKINGHAM made the following report (to accompany bill S. 944):

The Committee on Indian Affairs, to whom was referred the petition of the Pottawatomie Indians remaining in Michigan and Indiana for the payment of annuities due them, submit the following report:

In the year 1795, and at various times, the government of the United States has made treaties with the Ottawa, Chippewa, and Puttawatomie Indians, in which they were form-

ally recognized as distinct nations uniting in the same treaties, but recently they have been known as the United Nation of Pottawatomies, and since 1846 as the Pottawatomie Nation.

By the provisions of the several treaties the Indians ceded lands to the government, and the government paid for the same in other lands, in money, and in goods, and pledged annuities—some for a short and some for a long period.

On the 26th of September, 1833, a treaty was made by which the nation ceded to the United States about 5,000,000 acres of land lying on the western shore of Lake Michigan, for which the government gave and pledged a satisfactory consideration. A part of the nation did not at the time agree to the treaty, but the next day, being the 27th day of September, 1833, those who had declined and were known as the chiefs and headmen of said united nation of Indians, residing upon their reservations of land lying in the Territory of Michigan, south of Grand River, entered into a treaty supplementary to that which had been executed the previous day, by which they became parties to the main treaty upon terms specified in the supplementary treaty; one of which permitted them to remove to Northern Michigan and declared that in case of removal they should be entitled to share in all annuities payable under former treaties.

The Commissioner of Indian Affairs, in a letter addressed to the Secretary of the Interior, dated November 15, 1862, said that the main tribe moved to their new homes west of the Mississippi, and the Catholic party of the northern portion of Michigan. This is evidence that they complied with the condition upon which they were to share in the annuities due the nation. The nation was permitted to remain on the lands they ceded to the government, until 1836, and received all their annuities there, of which these bands undoubtedly received their portion. After the removal of the nation, the government made repeated appropriations, and paid many of the annuities to the Pottawatomie Nation west of the Mississippi, while the bands in Michigan received no part of the same.

The Commissioner of Indian Affairs in 1843 recognized their claim to a portion of annuities granted to the nation under the treaties of July 20, 1829, and September 27, 1833, and paid the sum of \$1,527.50 annually as their portion of the same from 1843 until and including the year 1865. The Commissioner undoubtedly overlooked annuities pledged in other treaties which are evidently as obligatory as those under which he paid.

An act of Congress, approved March 2, 1861, directed the Secretary of the Interior to examine and report to Congress what amount, if any, was then due to the Chippewa, Ottawa, and Pottawatomie Indians residing in Michigan, under and by virtue of the treaties of July 29, 1829, September 26, 1833, and the articles supplementary thereto, and under the treaty of the 5th and 19th of June, 1846, with the Pottawatomie Nations of Indians, and also to report whether there is any money or property heretofore payable to said Pottawatomie Nation, made under and by virtue of the treaty of October 26, 1832, and other treaties, which has not been appropriated and paid; and, if any, what amount.

In compliance with the requirements of that act, the Secretary reported under date of December 19, 1862, that, based upon the construction given by the Indian Office to the several treaties, there was due the Pottawatomie Nation \$160,540.48 in cash, beside tobacco, iron, steel, and salt, and that he had no reasons to doubt the statement or the construction given by the Commissioner to the treaties.

He also says that no payments were made the Michigan band under the provisions of the treaty of the 27th of September, until 1843, and adds, "that the band which by the supplementary treaty was permitted to remain in Michigan must be regarded as a part of the Pottawatomie Nation. They are entitled to receive *per capita* their proportion of the annuities and other payments provided for in the several treaties with the nation, to the same extent they would have been if they had gone west with the tribe." "To determine the amount due them it is necessary to ascertain the number in Kansas at the date of the several payments, and the number of those of the band who were by the supplementary treaty permitted to remain in Michigan, and of their descendants at the same period."

The Secretary transmits a report of the Commissioner of Indian Affairs, in which that officer states, that from the pay-rolls it appears that the Indians residing in Michigan participated in the benefits of nearly all the treaties from 1795 to the time of their separation in 1836.

Upon this basis he shows a balance of \$73,112.50 due the bands residing in Michigan, by virtue of the provisions of the supplementary treaty.

He also makes a second statement, in which he shows that if the bands are entitled "to participate in all the provisions contained in the treaty of September 26, 1833," (as may be claimed if we look only to the language quoted from the supplementary treaty of September 27, 1863,) "they are entitled to \$49,217.50 from former cash annuities, and to \$16,685 for interest received on money invested in stocks for educational, agricultural, and other purposes, and to \$23,407.50 for interest due on a fund of \$643,000, the avails of a sale of land in Iowa, made under the treaty of June, 1846," making the sum \$99,310, besides an interest remaining in the fund.

In looking at the circumstances of the main nation, and of the Michigan band, and the object which each desired to accomplish, it is evident to your committee that, by the treaty of September 26, 1833, the main nation ceded to the United States all their interest in lands in Illinois and Michigan, for which they agreed to receive \$500,000, to be applied for different

purposes—an annuity of \$14,000 per year for twenty years, and 5,000,000 acres of land west of the Mississippi River, and to remove to the same within three years; also, that the Michigan bands, by the supplementary treaty, ceded to the United States all their interest in lands described in the main treaty, together with certain sections of land which had been reserved to them by former treaties, for which they were paid a consideration separate from that paid to the nation.

After the supplementary treaty had been executed another provision was annexed, as follows: "As since the signing of the treaty a part of the band residing on the reservations in the Territory of Michigan have requested, on account of their religious creed, permission to remove to the northern part of the peninsula of Michigan, it is agreed that in case of such removal the just proportion of all annuities payable to them under former treaties, and that arising from the sale of the reservation on which they now reside, shall be paid them at L'arbre Croche."

This provision was evidently a relinquishment of all claims "to participate in the provisions" of the main treaty of September 26, and gave the bands a right only to a portion of annuities under former treaties, and to the consideration then pledged for their reservations.

Your committee are therefore of the opinion that both the nation and the Michigan band executed the treaties of the 26th and the 27th of September, 1833, for the purpose of making a complete separation of all pecuniary interests, except in annuities due the nation under former treaties, that each party might go their own way, one west of the Mississippi, and the other to Northern Michigan.

If this is a correct construction of the treaty and its supplement, it is evident that the Indians of Michigan have no claim to annuities arising under the main treaty of September 26, 1833, nor to any portion of the consideration paid for lands then ceded, nor to the proceeds arising from the sale of lands lying west of the Mississippi. This construction is also a bar to the claim which the memorialists now make for payment of the lands alienated by the first section of the supplemental treaty. The \$100,000 was the consideration given for that land.

In examining the several treaties, the committee find that by the one of June 7, 1803, the United States engaged to deliver yearly, and every year, a quantity of salt not exceeding 150 bushels.

By the treaty of October 26, 1826, the United States stipulated to provide for the support of a blacksmith at some convenient point; to appropriate, for the purpose of education, the annual sum of \$2,000, so long as Congress might think proper; to build a mill at Tippecanoe River; to support a miller, and to pay annually 160 bushels of salt; all of which therein specified were to have been paid by the Indian agent at Fort Wayne.

By the treaty of September 20, 1828, the United States agreed to furnish the Pottawatomie tribe annually with a specified amount of tobacco, iron, and steel; with a blacksmith for 15 years; with three laborers for a part of each year for ten years, and to appropriate \$1,000 annually, to be applied for the purposes of education, so long as Congress should think the appropriation would be useful.

Other treaties have similar provisions.

Others reserved sections and tracts of land for particular persons and bands, which have since been ceded to the United States, and the consideration paid to the parties for whom they were reserved.

In the judgment of your committee, the memorialists are not entitled to any part of the payments made for lands so reserved; nor for any annuities paid to chiefs and other individuals, nor are they entitled to any annuities for educational purposes, which are restricted to the pleasure of Congress; nor to any which were pledged for the establishment of blacksmith-shops for iron and steel, for mills, millers, and laborers. These were for local objects, in which each individual might receive benefit only as he should resort to such localities, and participate in them in common with the entire nation.

But when, as in one instance, another treaty was afterward ratified, by which the government agreed to pay a specified annuity in money, instead of performing the stipulations referred to above, such annuity being made susceptible of subdivision and distribution, gave your memorialists a title to their just proportion,

The annuity of \$1,587.50, paid the Michigan Indians from 1843 to 1865, was regarded by the commissioners as their just proportion of an annuity of \$16,000 pledged by the treaty of 1829, and of the \$2,000 made payable annually by the supplementary treaties of September 27, 1833; whereas, in the judgment of your committee, as expressed in their construction of this and the several treaties, they are entitled to the entire annuity of \$2,000.

On the 28th of July, 1866, Congress passed an act directing the Secretary of the Interior "to pay the Chippewa, Ottawa, and Pottawatomie Indians, of Michigan, in pursuance of an agreement and compromise made with the Pottawatomie Nation, so named and designated in the treaty of 1846 with the United States, the sum of \$39,000, in full of all claims in favor of said Michigan Indians, either against the United States or said nations of Indians, present, past, or future, arising out of any treaty made with them, or any band or confederation thereof, and the annuity now paid them is to be restored and paid to said nation for the future."

On examination it does not appear that the Michigan Indians were parties to that treaty,

or that the treaty had any reference to them; and it is difficult for your committee to see how two interested parties can justly unite and deprive a third party of interests to which he is entitled by previous treaties which they have entered into with him. Nor do they understand how, in accordance with the principles of law or justice, the government can determine that a partial fulfillment of treaty stipulations shall bar those with whom the treaties have been made from claiming the amount stipulated. There is evidence that the Michigan Indians received this appropriation under a protest, and claimed that it did not discharge the government from all pecuniary obligations to them; to which conclusion the committee have also arrived.

The committee believe that all annuities have been paid up to and including the year 1835, and they determine the amount which has become due since that year, and apportion it to the memorialists and to the nation in proportion to their numbers at each semi-decade. They have, however, made no distinction between the value of annuities payable in silver and those payable in currency.

The number which makes up the nation west of the Mississippi is determined by the receipts on file in the Second Auditor's office of the Treasury Department, and the number which make up the Michigan Indians is determined by like rolls for the years 1843 to 1866, inclusive.

Previous to 1843 government officers recognized their number as being 250, and by affidavits it is shown that a census was taken in 1871 which makes their number 233.

Affidavits show that in 1841 twenty-three of the Michigan band removed to Indiana, and that their number increased to eighty-nine in 1871. No allowance is made for any residing in that State prior to 1841, and as there has evidently been a gradual increase in their numbers since that date, the increase has been apportioned to each semi-decade.

The following exhibit is made in accordance with the construction given to all treaties as herein set forth, and shows the amount due the memorialists:

Treaty.	Annual amount.	Time.	Amount due fourth semi-decade to 1856.		Amount due fifth semi-decade, to 1861.		Amount due sixth semi-decade, to 1866.		Amount due seventh semi-decade, to 1871.		Amount due in 1872 for one year.
			Yrs.		Yrs.						
Aug. 5, 1795	\$1,000	Perpetual ...	5	\$5,000	5	\$5,000	5	\$5,000	5	\$5,000	\$1,000
Sept. 30, 1800	500	do.	5	2,500	5	2,500	5	2,500	5	2,500	500
Oct. 2, 1818	2,500	do.	5	12,500	5	12,500	5	12,500	5	12,500	2,500
Aug. 29, 1821	2,500	20 years ..									
Oct. 16, 1826	2,000	22 year ..									
Sept. 20, 1828	2,000	Perpetual ...	5	10,000	5	10,000	5	10,000	5	10,000	2,000
Sept. 20, 1828	1,000	20 years ..									
July 29, 1829	16,000	Perpetual ...	5	80,000	5	80,000	5	80,000	5	80,000	1,600
Oct. 20, 1832	15,000	20 years ..									
Oct. 26, 1832	20,000	do.	5								
Oct. 27, 1832	15,000	12 years ..									
June 17, 1846	300	Perpetual ...	5	1,500	5	1,500	5	1,500	5	1,500	300
Total....				111,500		111,500		111,500		111,500	22,300

Treaty.	Annual amount.	Time.	Amount due in 1836.		Amount due first semi-decade, to 1841.		Amount due second semi-decade, to 1846.		Amount due third semi-decade, to 1851.	
			Yrs.		Yrs.		Yrs.		Yrs.	
Aug. 5, 1795	\$1,000	Perpetual ...	5	\$1,000	5	\$5,000	5	\$5,000	5	\$5,000
Sept. 30, 1800	500	do.	5	500	5	2,500	5	2,500	5	2,500
Oct. 2, 1818	2,500	do.	5	2,500	5	12,500	5	12,500	5	12,500
Aug. 29, 1821	2,500	20 years ..				25,000	Exp.			
Oct. 16, 1826	2,000	22 years ..				10,000				
Sept. 20, 1828	2,000	Perpetual ...	5	2,000	5	10,000	5	10,000	5	10,000
Sept. 20, 1828	1,000	20 years ..				5,000	5	5,000	5	5,000
July 29, 1829	16,000	Perpetual ...	5	16,000	5	80,000	5	80,000	5	80,000
Oct. 20, 1832	15,000	20 years ..				75,000	1	15,000	Exp.	
Oct. 26, 1832	20,000	do.	5	20,000	5	100,000	5	100,000	5	100,000
Oct. 27, 1832	15,000	12 years ..				75,000	2	30,000		
June 17, 1846	300	Perpetual ...	5						5	1,500
Total....				80,000		400,000		270,000		214,500

Years.	Indians west of the Mississippi.	Indians in Michigan and Indiana.	Total number of Indians.	Amount due the nation.	Per capita.	Amount due the bands.
1836	3,840	250	4,090	\$80,000 00	\$19 56	\$4,890 00
1841	3,390	273	3,663	400,000 00	109 20	29,811 60
1846	2,231	269	2,500	270,000 00	108 00	29,052 00
1851	3,914	287	4,201	214,500 00	51 05	14,651 35
1856	3,181	281	3,462	111,500 00	32 20	9,048 20
1861	2,142	304	2,446	111,500 00	45 58	13,856 32
1866	2,202	317	2,519	111,500 00	44 26	14,030 42
1871	2,202	322	2,524	111,500 00	45 60	14,683 20
1872	2,202	322	2,524	22,300 00	8 83	2,844 87
						152,867 96
Add full annuity under treaty September 27, 1833, \$2,000 for 19 years.....						38,000 00
						170,867 96
There were paid the memorialists from the year 1843 to 1863, inclusive, 21 years, \$1,587.50 per annum.....				\$33,337 50		
In 1864.....				1,237 50		
In 1865.....				1,587 50		
In 1866, in accordance with public act.....				3,900 00		75,162 50
Balance due memorialists.....						95,705 46
Annuity of \$2,844.87 capitation, at 5 per cent. per annum, equals.....						56,897 50
Due to make final settlement.....						152,602 96

The above report having been adopted by the Committee on Indian Affairs of the Senate, and subsequent thereto, during the same sessions the following bill was passed by the Senate:

(S. 944.)

Mr. Buckingham, from the Committee on Indian Affairs, submitted a report (No. 121), accompanied by the following bill; which was read and passed to a second reading:

A BILL to provide for the claims of the Pottawatomie Indians residing in Michigan and Indiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of one hundred and fifty-two thousand six hundred and two dollars and ninety-six cents, to the bands of Pottawatomie Indians residing in Michigan and Indiana, the sum being the amount of annuities due them to this date, under treaties with them and with the Pottawatomie Nation, as well as an amount equal to a capital that would yield annuities which are due them forever under existing treaties: *Provided*, That said Indians, being hereby recognized and declared to be citizens of the United States, shall express their willingness to accept such sums in full of all demands or claims arising out of any and all treaties and agreements heretofore made with said nation and bands in which said bands have an interest.

REPORT OF THE HON. S. S. BURDETT REFERRED TO IN THE FOREGOING MEMORIAL.

The following is the report of the Hon. Samuel S. Burdett, of the House of Representatives, during the Forty-first and Forty-second Congresses, who was a member of the Committee on Indian Affairs, and chairman of the subcommittee to which was referred the cause herein. Of the ability, integrity, experience, and energy which he brought to the impartial, critical, and yet patient examination of the case, it is unnecessary to here affirm, as they are all well known and acknowledged. To each of the features of his report, which is here presented, your patient and impartial consideration is invited:

In order to more clearly understand the premises of this case, it may be profitable to briefly refer to some of the historic facts preceding the immediate origin of the case. In 1795, and prior thereto, the Pottawatomie Indians, now so called, were the most nu-

merous and powerful of our western frontier Indians, and occupied the greater portion of the territory now comprising the northwestern part of Ohio, the northern part of Indiana, the southwestern part of Michigan, the northeastern part of Illinois, and the southeastern part of Wisconsin.

From the first contact of these people with us, they have faithfully maintained the most friendly relations toward the government and our frontier settlers in their midst, and early, gradually, and continuously fraternized with them and adopted the modes of civilized life, encouraged missions, schools, and agriculture, and, under General Cass, several thousand of them, at one time his entire force, marched under his command to the relief of the Detroit frontier from invasion by the Canadian Indians and British army.

In 1795, these people, by their friendly offices, affected such a feeling among the western Indians as to enable General Harrison to conclude the treaty of Greenville, which established a peace then of vast importance to the United States, and in which these Indians released to the government their title to the greater portion of the territory of Ohio, and united these Indians to the interests of the United States.

This was the first important Indian treaty, and the Pottawatomies were the most numerous, powerful, and friendly of the Indians in attendance. At this treaty, the Ottawas and Chippewas residing within the general boundary of the Pottawatomies united with the Pottawatomies, and therefrom grew the "Ottawas, Chippewas, and Pottawatomies," as designated in subsequent treaties, now, and since the treaty of 1846, known as "Pottawatomies."

These historical facts are based upon Generals Harrison's and Cass's reports, and letters, and the treaties. From 1795 to 1833, from time to time, as below shown, these people entered into many treaties with the United States. These treaties were simply treaties of purchase, in which, by boundaries of rivers, &c., the United States purchased of them their general Indian title, and their specific reserves, for the frontier settlers of the country.

The following exhibit shows the reference and moneyed features of these several treaties of purchase, which, in the territory above mentioned, aggregate nearly 30,000,000 of acres of land, now second to no country in the nation:

Stipulations.	Volume 7.	Date of treaty.	Amount.	Proclamation.	Time to run.
Perpetual annuity.....	49	Aug. 3, 1795	\$1,000	Dec. 2, 1795	Forever.
Salt.....	74	June 7, 1803	.....	Dec. 26, 1803	.....
Perpetual annuity.....	113	Sept. 30, 1809	500	Jan. 16, 1810	Forever.
Perpetual annuity.....	125	Oct. 2, 1818	2,500	Jan. 15, 1819	Forever.
Annuity.....	295	Aug. 29, 1821	2,006	March 25, 1822	Twenty-two years.
Annuity.....	295	Oct. 16, 1826	2,000	Feb. 7, 1827	Pleasure of President.
Blacksmith.....	295	.....	.....	do	do
Iron, steel, and miller.....	295	.....	.....	do	do
Salt (160 bushels).....	295	.....	.....	do	do
Perpetual annuity.....	347	Sept. 10, 1828	2,000	Jan. 7, 1829	Forever.
Annuity.....	317	.....	1,000	.....	Twenty years.
Tobacco, iron, and steel.....	317	.....	.....	do	Annually.
Education.....	317	.....	1,000	do	Pleasure of Congress.
To chief.....	317	.....	100	do	Life of.
Blacksmith.....	317	.....	.....	do	.....
Iron and steel.....	317	.....	.....	do	.....
Annuity.....	378	Oct. 20, 1832	15,000	Jan. 21, 1833	Twenty years.
To chief.....	378	.....	.....	do	Life of.
Annuity.....	394	Oct. 26, 1832	20,000	.....	Twenty years.
Education.....	394	Oct. 27, 1832	2,000	.....	Pleasure of Congress.
Perpetual annuity.....	320	July 29, 1829	16,000	Jan. 2, 1830	Forever.
Iron and steel.....	320	.....	.....	do	Forever.
Blacksmith.....	320	.....	.....	do	Forever.
Salt (50 barrels).....	320	.....	.....	do	Forever.
Annuity.....	431	Sept. 26, 1833	14,000	Feb. 21, 1835	Twenty years.
Annuity.....	442	Sept. 27, 1833	2,000	.....	Twenty years.
To chiefs.....	431	Sept. 26, 1833	1,100	.....	Life of.
For 4 sections of land.....	498	March 29, 1836	2,560	June 4, 1836	One year.
For 36 sections of land.....	499	May 11, 1836	23,040	May 25, 1836	In one and two years
For 10 sections of land.....	500	April 22, 1836	6,400	.....	One year.
For 3 sections of land.....	501	.....	1,920	.....	One year.
For 22 sections of land.....	505	Aug. 5, 1836	14,080	Feb. 18, 1837	In 1838.
For 10 sections of land.....	513	Sept. 20, 1836	8,000	.....	In 1838.
For 4 sections of land.....	514	Sept. 22, 1836	3,200	.....	In 1838.
For 42 sections of land.....	515	Sept. 23, 1836	33,000	.....	In 1838.
Annuity.....	218	Aug. 29, 1821	5,000	Mar. 25, 1822	Twenty years.
Three laborers.....	317	Sept. 20, 1828	.....	Jan. 7, 1829	Ten years.
Annuity.....	399	Oct. 27, 1832	15,000	Jan. 21, 1833	Twelve years.
Annuity.....	467	Dec. 10, 1834	1,000	March 16, 1835	Two years.
Trust-fund, &c.....	.....	June 5 and 17, 1846.	850,000	.....	.....
Trust-fund, interest annually.....	.....	June 5 and 17, 1846.	32,150	.....	.....

(By treaty, June 5 and 17, 1846, the 5,000,000 tract in Iowa was purchased by the United States, a trust-fund of \$643,000 created, with an interest annuity of \$32,150 annually, and other funds and lands granted to the Indians in Kansas.)

About 1830 the government adopted the policy of extinguishing, by purchase, all Indian title to lands east of the Mississippi River.

These annuitants, then numbering some 250, had made such progress in civilization, by the aid of their missionaries, schools, and the adoption of the modes of civil life, that they were resolved not to go west or release their government reserve title to their reserves in Michigan and Indiana, then amounting, as shown in the treaty of September 27, 1833, to (104,960 acres) 164 sections.

By the treaty, September 26, 1833, the Indians who finally went to Kansas ceded to the United States their title to the remaining tribal lands, as estimated in the treaty, of 5,000,000 acres, and agreed to go west, receiving therefor 5,000,000 acres on the Missouri, in the (now) State of Iowa, and some \$850,000 in annuities, trust-funds, school-funds, and other moneyed provisions.

This treaty was completed on 26th September, 1833. These annuitants (the memorialists) refused to and did not join in it or accept its provisions.

But on the following day they entered into a treaty called "articles supplementary" to the treaty of the 26th. The following extracts from this treaty exhibit all of importance in this case:

"Articles supplementary to the treaty made at Chicago, in the State of Illinois, on the 26th day of September, 1833, between George B. Porter, Thomas J. V. Owen, and William Weatherford, commissioners on the part of the United States, of the one part, and the united nation of Chippewa, Ottawa, and Pottawatomie Indians, concluded at the same place on the 27th day of September, 1833, between the said commissioners on the part of the United States, of the one part, and the chiefs and headmen of said united nation of Indians residing upon the reservations of land situated in the Territory of Michigan, south of Grand River, of the other part.

"ARTICLE 1. The said chiefs and headmen cede to the United States all their land situate in the Territory of Michigan, south of the Grand River, being the reservations at Notawasepe, of four miles square, contained in the third clause of the second article, treaty made at Chicago on the 29th day of August, 1821; and the 99 sections of land contained in the treaty made at Saint Joseph on the 19th September, 1827; and also the tract of land on the Saint Joseph River, opposite the town of Niles, and extending to the line of the State of Indiana, on which the villages of Topenabee and Pokagon are situated, supposed to contain about 49 sections.

"ARTICLE 2. In consideration of the above cession it is hereby stipulated that the said chiefs and headmen, and their immediate tribes, shall be considered parties to the said treaty, to which this is supplementary, and be entitled to participate in all the provisions therein contained as a part of the united nation; and, further, there shall be paid by the United States the sum of one hundred thousand dollars (\$100,000), to be applied as follows:

("The remainder of the article, in four clauses, awards \$10,000 to satisfy those who asked for individual reserves; \$25,000 to pay outside debts of the nation; \$25,000 in goods; and \$40,000 in \$2,000 payments for twenty years.)

"On behalf of the chiefs and headmen of the united nation of Indians who signed the treaty to which these articles are supplementary, we hereby, in evidence of our concurrence therein, become parties thereto.

"And as since the signing of the treaty a part of the band residing on the reservation in the Territory of Michigan have requested, on account of their religious creed, permission to remove to the northern part of Michigan, it is agreed that in case of such removal the just proportion of all annuities payable to them under former treaties, and that arising from the sale of the reservation on which they now reside, shall be paid to them at L'Arbre Croche."

The treaties of the 26th and 27th in substance simply provide: 1st, on the part of the main nation now in Kansas, that they were to remove west of the Mississippi within three years, on to this 5,000,000 tract, receive the entire benefits of all the moneyed benefits of their release of their Indian title to occupancy of the 5,000,000 tract about Chicago, and the \$850,000, while these annuitants were to remain in Michigan, and receive their just proportion of all former annuities there, their rights to the same remaining unchanged and unimpaired, and the \$100,000 mentioned in the treaty of September 27, in consideration of their tribal reserves (164 sections, 104,960 acres) then ceded to the government, and their interest in common in the 5,000,000 about Chicago.

It appears from the records of the departments that the main nation then numbered 3,840, and these annuitants 250 souls.

These annuitants make no complaint of *laches* of the government in these premises, prior to 1836. They confess the facts of having received their just proportion of all annuities, in full, up to that date, including the \$60,000 in moneyed provisions, and one of the twenty instalments of \$2,000 under treaty 27th September, 1833.

The main nation was removed west, many of them by force of the military of the United States. These annuitants were exempted, and protected by the United States officers from

such removal. They did and do now remain there, and are doubtless as well civilized, christianized and industrious Indians as there are in the United States, being good and unobjectionable citizens in community.

As will be seen by Commissioner Crawford's letter accompanying the papers, they received no annuities until 1843, when an award of \$1,587.56, out of one of the "former annuities" of July, 1829, which was then paid them. This payment was continued to them until 1865. They continually remonstrated that it was not their just proportion of all the annuities due them.

They pressed their case in the Department of the Interior and Congress, and in 1862 the Secretary of the Interior, in compliance with act of March, 1861, reported \$192,850 due them. The Indian Committee reported unanimously in favor of the same, and the House passed a joint resolution awarding them that amount. (See reports accompanying the papers.)

But we must notice two errors in the same: 1st, the reports include the moneyed benefits resulting from an exchange, which the Kansas Indians and United States by treaties in 1846 made, resulting in \$850,000 in money to the Indians, which clearly, under the language of the treaty of September 27, before cited, does not belong to these annuitants, although it might so seem in equity that it did, this being a subsequent treaty to September 26, 1833, not a former treaty.

This error greatly increases the award; and the second error was "supposing" the existence of 6,180 Indians, when in fact there were but 4,090. (See Secretary Delano's letters and reports of 1865 and 1872.) Which error, to almost an exact amount, reduced their proper award; so that, in fact, the award of \$192,850 was only some \$1,250 in error in their favor, at this date.

The Senate (see report of 1865) corrected the first error, but failed to notice the second, which greatly reduced their just award. The Senate committee found \$50,925 their due as arrears, and by its decision established these annuitants in their rights to the perpetual annuities (the last limited annuity having expired in 1847); and they now only ask that this decision be applied to the settlement of this case upon the corrected data, as to the number of Indians participants.

The decision of the said committee is in these words:

"While your committee agree with the committee of the other house that Commissioner Crawford, by mistake, failed to carry out the principle adopted by him, by giving them, in fact, their just proportion of all annuities under former treaties, and under the supplemental treaty of Chicago, and that it is just that such principle should now be applied, and that they should now receive their just proportion of annuities under all the treaties in which they had shared, as well as the annuities under the treaty of 1829, and supplemental treaty of 1833, they are at the same time decidedly of the opinion that the only just construction to be given to that supplemental article is that, in case they did not remove with the nation west, they were entitled to share in the annuities *only*." (See p. 4, Rep. Com. No. 111, Senate, 2d sess. 38th Congress.)

The following exhibit taken from Governor Buckingham's report (No. 121, United States Senate) shows the annuities of treaties of a date prior to 26th September, 1833. These annuities, under the language of the article permitting them to remain, are not entitled to the annuities of September 26, 1833, it not being a "former" treaty; the treaty of the 27th being styled "articles supplementary," &c., making it a *present* and not a *former* treaty, of which the annuitants are entitled to their just per capita proportion.

Treaty.	Annual amount.	Time.	Amount due in 1836.	Amount due first semi-decade, to 1841.	Amount due second semi-decade, to 1846.	Amount due third semi-decade, to 1851.
				Years.	Years.	Years.
Aug. 5, 1795	\$1,000	Perpetual	\$1,000	5	5	5
Sept. 30, 1809	500	do	500	5	5	5
Oct. 2, 1818	2,500	do	2,500	5	5	5
Aug. 29, 1821	5,000	20 years	5,000	5	5	5
Oct. 16, 1826	2,000	22 years	2,000	5	5	1
Sept. 20, 1828	2,000	Perpetual	2,000	5	5	5
Sept. 20, 1828	1,000	20 years	1,000	5	5	1
July 29, 1829	16,000	Perpetual	16,000	5	5	5
Oct. 20, 1832	15,000	20 years	15,000	5	1	Exp
Oct. 26, 1832	20,000	do	20,000	5	5	5
Oct. 27, 1832	15,000	12 years	15,000	5	2	5
June 17, 1846	300	Perpetual	300	5	5	5
Total			80,000		270,000	214,500

Treaty.	Annual amount.	Time.	Amount due fourth semi-decade, to 1856.		Amount due fifth semi-decade, to 1861.		Due sixth semi-decade, to 1866.	Due seventh semi-decade, to 1871.	Due in 1872, for one year.
			Years		Years				
Aug. 5, 1795	\$1,000	Perpetual...	2	\$5,000	5	\$5,000	\$5,000	\$5,000	\$1,000
Sept. 30, 1809	500	...do.....	5	2,500	5	2,500	2,500	2,500	500
Oct. 3, 1818	2,500	...do.....	5	12,500	5	12,500	12,500	12,000	2,500
Aug. 29, 1821	5,000	20 years.....	.....	.....	.....	.....	.....	.....	.....
Oct. 16, 1826	2,000	22 years.....	.....	.....	.....	.....	.....	.....	.....
Sept. 20, 1828	2,000	Perpetual....	5	10,000	5	10,000	10,000	10,000	2,000
Sept. 20, 1828	1,000	20 years.....	.....	.....	.....	.....	.....	.....	.....
July 29, 1829	16,000	Perpetual....	5	80,000	5	80,000	80,000	80,000	1,000
Oct. 20, 1832	15,000	20 years.....	.....	.....	.....	.....	.....	.....	.....
Oct. 26, 1832	20,000	...do.....	.....	.....	.....	.....	.....	.....	.....
Oct. 27, 1832	15,000	12 years.....	.....	.....	.....	.....	.....	.....	.....
June 17, 1846	300	Perpetual....	5	1,500	5	1,500	1,500	1,500	360
Total.....	.....	.....	.....	111,500	.....	111,500	111,500	111,500	22,200

To award the annuitants their proportion of the above annuities only rejects all their claims to the educational and blacksmith's funds, they not being divisible as annuities, to chiefs for salt, &c., which were moneyed provisions of the former treaties, *i. e.*, those prior to 1833, but not annuities. It also cuts them off from all participation in the \$643,000 trust fund, and the \$32,150 annual interest on the same arising out of the sale by the Kansas Indians of the 5,000,000 tract, as reserved to the Pottawatomies in Iowa, and sold to the United States by treaty in 1846. This was a subsequent, not a former, treaty to 1833.

It also cuts them off from participation in the land provisions arising out of the treaty of 1846, by which their Kansas brethren receive, by United States patent, from 80 to 160 acres apiece, old and young included.

This may seem a hardship to the Michigan and Indiana people, but it is the result of what seems to be and is accepted as a proper construction of the treaty of September 27, 1833, by which they were permitted to remain, and upon which their claim rests.

The action of Congress in 1866 terminated by the passage of a joint resolution (No. 191, first sess. 39th Cong.,) allowing these annuitants \$39,000, in full of all demands, either as against the Kansas Indians or the United States, to be paid out of the trust funds of the Kansas Pottawatomies. This joint resolution states that its provisions are the result of an agreement between the eastern and western Indians.

The facts as presented in the case are these: A Michigan Indian, by the name of Edward Cowles, who had a common English education, was not a lawyer, and had no experience in such business, was presenting their case here. He was opposed by the Kansas delegation, and their able and experienced attorney in such matters. They at several sessions of Congress made overtures for a compromise of his claims, which he rejected, until, finally, he was presented with a proposition to accept \$39,000, accompanied by a threat that unless he entered into the compromise then they had it in their power to defeat his case entirely, and a written agreement was presented him to sign. He was allowed no time to confer with his people; was assured that by signing if he would not prejudice the rights of his people for any claims for all balances remaining due them from the United States under the treaties; and, so believing, he signed it, went home, reported to his people in council his action. They repudiated his agreement, revoked his power, employed Messrs. Baker & Richards, attorneys, to so notify the government, which the Indians were informed and believed was properly done, some six weeks before the action of Congress, and supposed that that ended all action on the Cowles agreement, and knew nothing to the contrary until some time in August following, when they received notice that \$39,000 would be paid them soon, in full of all their claims.

They file their affidavits in the case stating that they were informed, and believed, that the results of their councils were properly sent to Washington, notifying the proper department of their refusal to relinquish their annuities or any part of them. John R. Baker files his affidavit of having written to Hon. Charles Upson, then their Representative in Congress, to that effect; Hon. Charles Upson upon his oath states that he received such letter, identifying it by copy, and that he feels confident he gave the required notice to the department, which letter includes notice of revocation of Cowles' power of attorney for having exceeded his powers, &c., and was dated and mailed, and doubtless received nearly six weeks prior to the action of Congress on the joint resolution.

They held councils, and unanimously instructed their interpreter to notify the agent of the United States making the payment that they would not receive it under the provisions of

the resolution of Congress; but as they had contracted debts for schools and churches, expecting a large amount, &c., in their distress they would accept it only as so much paid on their just claim, to save their improvements from sheriff's sale, &c., which protest the interpreter fully made known to the agent of the United States making the payment, and before the money was paid; that, upon this protest by council and friends, the Indians were advised, and believed, and now fully believe, that by accepting the money they could not annul their treaty rights, which they held superior to a receipt, and sacred to them and the government. Under these instructions, given in the presence and hearing of the agent of the United States making the payment, and without his modification or denial, but with the approval of his assistants, they accepted it and gave the required receipt.

It has been said that there is no valid basis for this case in the treaty of September 27, 1833; that the government is not a party, and is not bound by the last-cited provision of that treaty.

In considering this objection it must be remembered that the removal of these Indians west was the principal object of the treaty; that permission to remain could only emanate from the United States as a party.

By virtue of this article they did remain. In effecting the removal of the Indians by military force these annuitants were exempted, and protected in remaining by the United States officers, while all others who could be secured were arrested and taken west by force.

Commissioner Crawford, contemporaneous with the events, speaks of it in his letter to R. Stuart, Indian agent of this agency, as "the supplemental article of the treaty," the article, &c., of full and unquestioned authority and force in the premises.

At all times it has been maintained by the executive and legislative departments of the government as part of the treaty; was ratified as such by the Senate, and is so printed in the statutes.

Both branches of Congress and the Department of the Interior, after frequent and protracted examinations, have established its authority as an article of the treaty. These annuitants have ever believed it a valid article, and to test it by adverse supposition, if it be not, then the United States have perpetrated a fraud upon these people by maintaining them, where its obligations for a valuable consideration are invalid and of no force.

It now seems that it must be held as binding upon both parties as any other article of the treaty, and that in the true interest of both parties.

As to the obligation or guarantee contained in this article protecting the annuitants in their just proportion, it must be observed that, as the treaties by which the government purchased these lands prior to 1833 provided for the payment of the annuities to these annuitants in common with their people in Michigan and Indiana, any act on the part of the government which permits them, or any part of them, to remain there continues the original obligation to pay them there, and no new promise or guarantee is necessary from the United States other than permission to remain, or remaining by permission, which is the same in effect, to keep in full force the original treaty provisions to pay the annuities to these annuitants in Michigan and Indiana.

Again, the agreement as signed by the parties and presented as a defense to this case, does not recite that the \$39,000 shall be accepted as any release of claims against the United States, but only as against the tribe, *i. e.*, the Kansas Indians.

This fully reconciles the representations made to Cowles, believing which, he states in his affidavit, he signed it.

It must be noticed in this relation that the tribe owed these annuitants for nothing. They had no claim upon the trust, educational, or reserve funds of the same, as these were created by treaties subsequent to 1833, and including 26th September, 1833, in which it is decided and accepted these annuitants have no claim.

The government has at all times paid Indian annuities to the annuitants, per capita, at their villages or place of residence. The government clearly permitted these annuitants to remain in Michigan, hence this agreement cannot be held as any bar or barrier to the case of the annuitants.

The resolution, as it passed Congress, in addition to the language of the agreement, which is in writing and signed by the parties, recites "*or against the United States.*"

It will not be doubted but that *cestui que trusts*, competent to contract, may, by contract, release the trustee, but that agreement must be clear, specific, and properly obtained. Here we have the agreement in writing signed by the parties; and it certainly cannot be maintained that it even attempts the release of the United States as trustee, purchasing-debtor, or otherwise, which leaves the joint resolution, as far as the claim of these annuitants is concerned against the government, entirely foreign to the agreement executed by the parties in the premises.

The following shows the manner of determining the amount now due these annuitants on final settlement, taking the last table and the numbers of Indians as established by the record and facts in the case as the data :

Years.	Indians west of the Mississippi.	Indians in Michigan and Indiana.	Total number of Indians.	Amount due the nation.	Per capita.	Amount due the bands.
1836	3,840	250	4,090	\$80,000 00	\$19 56	\$4,890 00
1841	3,390	273	3,663	400,000 00	109 20	29,211 60
1846	2,321	269	2,590	270,000 00	108 00	29,052 00
1851	3,914	287	4,201	214,500 00	51 05	14,651 35
1856	3,181	281	3,462	111,500 00	32 20	9,648 20
1861	2,142	304	2,446	111,500 00	45 58	13,856 32
1866	2,202	317	2,519	111,500 00	44 26	14,070 42
1871	2,202	322	2,524	111,500 00	45 60	14,683 20
1872	2,202	322	2,524	22,300 00	8 83	2,844 87
Add full annuity under treaty September 27, 1833, \$2,000, for 19 years.....						132,867 96
						38,000 00
						170,867 96
There were paid the memorialists from the year 1843 to 1863, inclusive, 21 years, \$1,587.50 per annum.....						\$33,337 50
In 1864.....						1,237 50
In 1865.....						1,587 50
In 1866, in accordance with public act.....						3,900 00
						75,162 50
Balance due memorialists.....						95,705 46
Annuity of \$2,842.87 capitulation, at 5 per cent. per annum, equals.....						56,897 50
Due to make final settlement.....						152,602 96

Having thus considered the facts and features for and against the case, it seems clear that, in the language of the Commissioner of Indian Affairs and the Secretary of the Interior, in approval of the Senate bill and report, "the amount allowed the said Pottawatomies is equitably and justly due them;" and the same should be appropriated and paid to them.

The foregoing pages contain a true copy of a report prepared by me as one of a sub-committee of the Committee of Indian Affairs, House of Representatives, Forty-second Congress.

The views expressed were reached after most diligent and painstaking research. It was to me a matter of sincere regret that opportunity was not found to have final action on the case by the committee and House.

This copy is furnished to W. N. Severance, esq., at his request.

S. S. BURDETT.

This cause was again presented to the Forty-third Congress, and the bill (then being Senate bill No. 218) was reported to the Senate by the Committee on Indian Affairs and passed.

The following extracts are here made from the report of the House Committee on Indian Affairs of the Forty-third Congress on the above bill, which report is on the files of the committee with the other papers in this case :

[Extract.]

The Committee on Indian Affairs, to whom was referred Senate bill No. 218, "To enable the Secretary of the Interior to make final settlement with the Pottawatomie Indians, of Michigan and Indiana, under treaty stipulations existing with them," having considered the same, make the following report :

This bill appropriates the sum of \$155,447.83, due to the Pottawatomie Indians who are now citizens of Cass, Van Buren, and Berrien Counties, in the State of Michigan, and Saint Joseph County, Indiana, in full settlement of all claims whatsoever, under treaties with the United States, and for the surrender of their lands and reservations to the government.

The history of this claim in favor of the Pottawatomie Indians, of Michigan and Indiana, shows that for twelve years past they have personally, and through their representatives, urged its settlement before Congress, and during all that time their claim has been recom-

mended to be paid by the Indian Office, and favorably considered by the Senate and by the Committee of Indian Affairs of this House.

It has at no time been reported adversely.

The committee therefore deem it sufficient to report the facts briefly upon which they recommend the passage of the Senate bill, and the payment of the sum therein mentioned.

The following testimony will, we trust, fully explain everything connected with the payment of the \$39,000 provided for by the joint resolution of Congress, passed for the purpose of carrying into effect the agreement entered into between the Kansas Indians and Cowles, and to which we have before referred. We desire to submit no comments upon this evidence. We append this evidence to our memorial and make it a part thereof.

TESTIMONY OF AFFIANTS, NOS. 55 AND 64, INCLUSIVE, ROLL 28.

[The original testimony will be found accompanying this memorial.]

STATE OF MICHIGAN, *County of Van Buren, ss :*

Before me, Cenius H. Engle, a notary public, in and for said county of Van Buren, personally appeared Augustine J. Toposh, Cetone Moté, Cetone Moté, jr., James Pokagan, John Koshwa, Alexus Chenigar, Joseph Bertrand, William Cowtuckmuck, and John Mix, who, being by me duly sworn, upon their oaths, say that Augustine J. Toposh, Simon Pokagan, Cetone Moté, Cetone Moté, jr., James Pokagan, John Koshwa, Alexander Chenigar, Joseph Bertrand, Joseph Otuckwin, William Cowtuckmuck, and John Mix, are members of the Pokagan band of Pottawatomie Indians, residing in Cass, Van Buren, and Berrien Counties, Michigan, and Saint Joseph County, Indiana, and that Augustine J. Toposh has for many years been living in their midst, and acting many times as their friend, and at the payment of the \$39,000, in 1866, as their interpreter to make known the protest of their people against accepting that sum as final, and their determination not to relinquish any of their treaty rights or annuities.

That their people, as shown by the former evidence in the case, now number some 322 souls; that they are an industrious, orderly, frugal, and religious people, maintaining themselves, their churches and schools, which they have built for their own people; and that they, as a people, are as fully competent to manage their own affairs as any other people in equal common walks of life.

That before the payment of the \$39,000, which was made in 1866, these people had received and fully considered and understood, at several full councils, the various reports of the Department of the Interior, and of the House of Representatives United States, which showed the government owed them nearly \$200,000, which they believed to be just and right in amount; and for these good reasons they wholly refused to accept the \$39,000 as a full and final payment, and relinquish their treaty rights.

But then being in great distress for money, being several years in debt, for money borrowed to build two churches and two school-houses in two parishes, for their people and children, in full confidence of the early payment of the sum of \$192,850, as stated by the government to be due them for their lands, they were forced to accept this \$39,000, as the only escape to save their improvements from sheriffs and mortgage sales, but accepted it only as so much paid on the amount due them.

In 1866, as soon as the Indians learned that the government contemplated paying them but \$39,000, they, in full council, directed the proper department of the government to be notified of their determined protest; which was, that they could not accept the \$39,000 and relinquish their annuities, or any treaty rights; which protest was made in writing, and by them forwarded to and received by Hon. Charles Upson, then in the city of Washington, D. C., their Representative in Congress, some six weeks before the passage of the act awarding them the \$39,000.

Again, at the payment in 1866, before money paid, they, by Augustine J. Toposh, as their interpreter, duly authorized so to do, stated to the agent of the government making the payment, that upon reports of the government \$192,850 was due them for their lands; that by the government delaying to pay them, they had become distressed by debts; that they had no money or credit; that their improvements were liable to be sold at sheriff's sale; that they must have the \$39,000, but that they would only give receipt for so much paid on their treaty rights, and not as the government wanted it, in full and final payment.

They were then informed by friends, and advised by counsel, that they could safely accept the \$39,000 and give the receipt demanded; that the government could not, and would not, hold such receipt so forced from them, as an abrogation of their treaty rights.

They yet feared to sign the receipt lest it might endanger or destroy their treaty rights to the payment for the many broad sections of their land, in sight of and around them, then and now occupied by their more fortunate white neighbors.

There was one Rev. P. O. Johnson, who came with the agent, and was assisting him, and by the Indians was regarded as an officer of the government, speaking with authority, and he told them that if they would sign the paper they could have the money, and that the government, which was their great Christian guardian, and which for so many years had been the friend of their people and was yet their friend, would, upon a proper presentation of their case, pay them all that should be found due to them from the United States Government.*

Everything came to a stand-still for the whole day, or nearly so, when Mr. Smith, having known me as a missionary to the Indians, since 1843, advised them to counsel with me, as I had intimate knowledge of the treaties and the manner of the government dealing with them. They acted upon this advice, and after several hours spent in free interchange of thought and feelings, during which they stated their claims and grievances to me fully, as I understand their language, I advised them to receive the \$39,000 and sign the required receipt upon their protests already made. I also stated to them that I believed, from what I had seen of the dealings of our government with Indians, that the intention of the government was not to wrong them, but to deal kindly and justly with them; that I felt sure that if, upon examination of their treaty stipulations, it should be found that there remained any sum, large or small, due them, it would be paid them. The fact of their signing this receipt would not be a bar to their claim, especially so when it could be shown that the mistake was on the part of our government; and that they were compelled, by reason of debts incurred in anticipation of a much larger sum, long before that, to have the \$39,000 or lose their improvements. (Extract from the testimony of Rev. P. O. Johnson, see p. 12, Supl. Memorial.)

Believing and relying upon these representations, the reports, advice of friends and counsel, and statement of Mr. Johnson, they then signed the receipt, received the \$39,000, and at once commenced these proceedings for the remainder, and they cannot yet believe but that their Christian guardian and government will be true to its obligations, so solemnly entered into, and just to them, by paying them for their lands, which they so unwillingly sold to it.

AUGUSTINE J. TOPOSH.

his
CETONE + MOTEE.
mark.

his
CETONE + MOTE, JUN.
mark.

JAMES POKAGON.

his
JOHN + KOSHWA.
mark.

ALEXIS CHENIGAR.

his
JOSEPH + BERTRAND.
mark.

his
WM. + COWTUCKMUCK.
mark.

JOHN MIX.

Witnesses to signatures by mark:

C. H. ENGLE.
ALLIE ENGLE.

STATE OF MICHIGAN, *County of Van Buren, ss:*

Subscribed and sworn to before me this fifth day of December, A. D. 1874; and I certify the above affiants can all speak English generally and understandingly, and that before administering to them the oath I clearly read in their hearing the above affidavit; and further, in order that they might more fully understand its contents in their mother tongue, I swore said Augustine J. Toposh, who I believe to be an able interpreter, to well and truly interpret the same to them all, which he did in their hearing, and fully made known to them the nature of the oath to be administered to them by me; and further I certify that I have been acquainted with said band of Indians referred to in aforesaid affidavit for seventeen years past, and was present at a great council held by them in their church in 1866, a few weeks before they received the \$39,000 payment from government.

They met to talk over the propriety of receiving the payment aforesaid, and after discuss-

* One of their people, Augustine J. Toposh, as the interpreter of their councils, before the payment was made, and in the presence and hearing of Mr. Smith and the Indians, said that the Indians in their councils had instructed him to say to him (Mr. Smith), that in full accord with their written protest, which they had sent to the Hon. Charles Upson and the department, they could not accept the \$39,000, and relinquish any of their rights under the treaties, but, being in great distress, they would accept it only as so much paid on their just demand.

ing the matter nearly all day, finally took a vote of all present that they would not receive the payment only as part payment of their due from the United States Government, which was claimed by them to be about \$200,000; and further, I certify that all the above affiants, so far as I know, sustain a good reputation, and are men of truth and veracity, and that I have good reason to believe that the facts and circumstances set forth in said affidavit are true in substance, and that I have no interest in the prosecution of this claim against the United States Government.

[SEAL.]

CENIUS H. ENGLE,
Notary Public.

(NOTE.—To this is attached the certificate, under seal, of Samuel Holmes, clerk of Van Buren circuit court, certifying that C. H. Engle is a notary public in and for said county, &c.)

STATE OF MICHIGAN, *County of Van Buren, ss:*

Before me, Cenius H. Engle, a notary public in and for said county, personally appeared Ansel E. Reynolds and Henry P. Phelps, who, being by me duly sworn, upon their oaths state that the above affidavit has been distinctly read in their hearing, and that they are well acquainted with the persons who subscribed the same, except one or two, and that they sustain a good reputation where they live for truth and veracity; that they have been acquainted with the band of Indians mentioned in said affidavit for twenty-six years; that they have dealt with them a great deal during that period, purchasing of them furs, and selling them goods; that they are acquainted with the facts set forth in said affidavit relative to said band of Indians having built two churches, and having to help build two school-houses in two different parishes; that they built them, judging from their talk, with the expectation of an early payment from the United States Government of some \$200,000; and that at the time they received the \$39,000 payment in 1866 they were heavily in debt on their farms as a general thing, and that many of the mortgages were becoming due, and that they had no money or credit to meet their obligations; that it was much talked of in the neighborhood where said Indians lived; that they were obliged to receive the \$39,000 payment on account of debts, and that they received the same believing that they should receive the balance of their claim against the United States Government, and that they are still confident, believing that they are to receive it within a few months at most; and still further, said affiants believe, from their own knowledge, that all the facts and circumstances set forth in said affidavit are correct and true in substance, except as to the matters connected with the protest against the \$39,000, which facts they have no personal knowledge of, but from reliable reports believe them to be true; and that they have no interest in this claim of the Indians against the United States Government.

ANSEL E. REYNOLDS,
HENRY P. PHELPS.

STATE OF MICHIGAN, *County of Van Buren, ss:*

Sworn and subscribed to before me this 5th day of December, A. D. 1874. I hereby certify that the said Ansel E. Reynolds and Henry P. Phelps have been merchants of Hartford Village, in said county, for many years, and that they are persons to be relied upon for honesty and integrity.

CENIUS H. ENGLE,
Notary Public.

STATE OF MICHIGAN, *County of Cass, ss:*

Before me, Chauncy T. Lee, a notary public in and for Cass County, State of Michigan, personally appeared Elias S. Howard, of the county of Cass, and State of Michigan, who, being duly sworn, testifies and says:

That the foregoing affidavits have been distinctly read to me, and that I am well acquainted with the persons who have subscribed the same, and that they sustain good moral characters where they reside, and have the reputation of telling the truth in all matters.

That I have been well acquainted with the band of Indians mentioned in said affidavit for twenty years; that I have had quite a large amount of dealings with them, and found them well adapted to take care of their own matters.

That they are an honest and industrious band, and that I am acquainted with their building two churches, and helping it build two school-houses, which they would not have done had they not expected to receive from government some \$200,000.

And I further swear that I was present at the payment by the agent of the United States of the sum of \$39,000, in 1866, and although they were badly in debt, and many of them about to lose their houses by mortgage, &c, they utterly refused to receive said \$39,000 in full satisfaction of their claims against the government, and only received said \$39,000 in part payment of their claims against the United States Government, and many of them would not have signed the receipt had not one Johnson, who was with said agent, told the Indians that if they would sign the receipt the government would still see that the said Indians would receive from the government the full amount of their claim; and by these

means they consented to receive the \$39,000 in part payment of their claim, and as soon as said \$39,000 was paid the Indians took measures to secure and have allowed the balance of their claim from the United States, and that I am not interested in this claim, directly or indirectly.

ELIAS S. HOWARD.

Subscribed and sworn to before me this 9th day of December, A. D. 1874; and I further certify that said Howard is fully entitled to full faith and credit; and I hereby certify that I have no interest in the claim.

[SEAL.]

CHAUNCY T. LEE,
Notary Public.

STATE OF MICHIGAN, *County of Cass, ss:*

Personally appeared before me James S. Sullivan, of the county of Cass, State of Michigan, who, being duly sworn, testifies and says:

That he is a practicing attorney, and that he is well acquainted with the band of Indians mentioned in the foregoing affidavits, and has been well acquainted with said band for more than twenty years, and have acted as their counsel more or less ever since, and was their counsel at the payment of \$39,000 in 1866 by the government to said band. And the understanding was by the said Indians that they only received said \$39,000 in part payment of their claim against the government, and they protested and refused to receive said \$39,000 in any other shape than as part payment; and I, as their counsel, assured them that the government would not make them receive said \$39,000 in full payment as long as more was their honest due.

And it was under my advice, and the advice of one Johnson (is his name, as I am informed), that they finally consented to receive said \$39,000, and only then as part payment of what was due them from the government.

That I am well acquainted with the most of said Indians constituting said band, and they are an honest and industrious people, and trying hard to make a living, and that they were heavily in debt at the time they received said \$39,000, and unless they had so received said money they would have suffered greatly; and further that I am not interested in this claim.

JAMES SULLIVAN.

STATE OF MICHIGAN, *County of Cass, ss:*

I, Chauncy T. Lee, a notary public in and for Cass County, State of Michigan, do hereby certify that James Sullivan, who subscribed the foregoing affidavit, personally appeared before me and made oath that the same was true, and I hereby certify that the said Sullivan is entitled to full faith and credit. Subscribed and sworn to before me this ninth day of December, 1874.

[SEAL.]

CHAUNCY T. LEE,
Notary Public.

NOTE.—Attached to this instrument is the usual certificate of the clerk of the circuit court of Cass County, Michigan, certifying under seal that said Chauncy T. Lee is a notary in and for said county.

[SEAL.]

CHA'S L. MORTON, *Clerk.*