ADJUSTMENT OF CLAIMS OF THE POTTAWATOMIE INDIANS IN WISCONSIN

H. R. 21219

COMMITTEE ON INDIAN AFFAIRS
HOUSE OF REPRESENTATIVES

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SUBCOMMITTEE OF THE
COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Friday, January 29, 1909.

The subcommittee met at 10 o'clock a. m.

Present: Representatives Howell (chairman), Morse, and Cravens.

Present also: Mr. R. V. Belt, of Washington, D. C., attorney for the Pottawatomie Indians of Wisconsin and Canada; and Messrs. Charles J. Kappler and Charles H. Merillat, of Washington, D. C., associate counsel.

The subcommittee thereupon proceeded to the consideration of the bill (H. R. 21219) providing for the adjustment of the claims of the Wisconsin band of Pottawatomie Indians for annuities and other moneys under treaty stipulations, and for other purposes.

STATEMENT OF MR. CHARLES H. MERILLAT, OF THE LAW FIRM OF KAPPLER & MERILLAT, OF WASHINGTON, D. C.

Mr. MERILLAT. Mr. Chairman and gentlemen, we appear as attorneys for what are known as the stray bands of Wisconsin Pottawatomie Indians, a number of whom are resident in the State of Wisconsin at this time, and others of whom have gone to the Dominion of Canada and are there more or less permanently. We come here and ask for the passage of the House bill which you have under consideration, and ask you to make an appropriation of about $457,000 for those Pottawatomie Indians who are now resident in Wisconsin; and we ask that you send to the Court of Claims the question of the rights of those Indians who emigrated to and are now in Canada, with the right of appeal on the part of either party to the Supreme Court of the United States. We have made this differentiation not because in our judgment there is any more doubt about the rights of those who are in Canada than there is about the rights of those who are in Wisconsin, as we have no doubt about the rights of either side. We think that as a matter of fact the Supreme Court of the United States and the Court of Claims, in what is known as the New York Indian case, has settled every question that is now before you. We think they settled that in the New York Indian case, although a comparison of the treaty between the New York Indians and the United States with the treaty between the Pottawatomie Indians and the United States will show you that the Pottawatomie case is far stronger than the New York Indian case; because the

New York Indian treaty had a provision in it that if the Indians did not remove, then they should forfeit their rights; whereas in the Pottawatomie case there is no provision whatsoever of forfeiture, but simply a statement in the treaty that these annuities which were guaranteed to the tribe as a whole should be paid west of the Mississippi River—in other words, a stipulated place of payment. That stipulated place was made, of course, in order to induce the Indians to remove.

The Indian Office proceeded, however, in contravention of the treaty rights of these Indians, to declare a forfeiture. It declared and worked this forfeiture, refused to make payment to those Indians who did not remove west of the Mississippi River, notwithstanding there was no provision of forfeiture expressly or by implication in the treaty, and it paid over to those who did remove the share of those who remained in Wisconsin, forfeiting the shares of the latter and overpaying the others.

Mr. MORSE. Just a moment. Give us the terms of that treaty just as simply and shortly as you can.

Mr. MERILLAT. I simply wanted to outline our case, and then I was going to do exactly that.

Mr. CRAVENS. I should like to ask you one question right there.

Mr. MERILLAT. Certainly.

Mr. CRAVENS. Was the promise of the payment of these annuities for the purpose of getting them to remove west of the Mississippi River?

Mr. MERILLAT. No, sir. The promise of the payment of the annuities was in consideration of the cession of the lands that they had in Wisconsin, and to which it is admitted they had title; but part of these forfeited annuities (as I was going to show you when I gave you simply at first glance the idea of our case so that you would apprehend the points as they would come along severally) were guaranteed to these Indians in perpetuity by treaties that had been made long before this treaty in question—that is, the treaty of 1833. As early as 1795 the Indians made treaties whereby they ceded a large part of the present State of Ohio; then they ceded Indiana; and thence they were moved west until they stretched around the shores of Lake Michigan. The Government of the United States not only proceeded to take their lands from them and in return promised them lands west of the Mississippi River, and moneys; but when they did not remove, the Indian Office, because it deemed them recalcitrant, proceeded to forfeit their shares in annuities that had been given them for the cession of these lands in Ohio and in Indiana. Not only that, but it did this after Congress had expressly declared, by a positive act passed in 1864, that this action was not proper, and directed the Indian Office to withhold in the Treasury the moneys that were due to those Indians who had not removed. In other words, Congress in 1864 passed a direct act specifically commanding the Treasury of the United States and the Indian Office to withhold and keep in the Treasury the shares these Indians were entitled to. There was not the slightest attention paid to that act of Congress, and the Indian Office proceeded to do just what it had always done; and it did that also in the case of the New York Indians. That matter of the New York Indians finally came to the courts, and the courts decided that the action in forfeiting the rights of these New

York Indians who did not remove was unlawful. The same thing was done with the Winnebagoes, and Congress took hold of that and gave the Winnebagoes their share (act of Jan. 21, 1882; 21 Stat., 315); and we are now here in behalf of the Pottawatomies, asking that that exact thing be done for them that the courts and Congress have done in parallel cases for the New York Indians and for the Winnebagoes.

Mr. CRAVENS. These Pottawatomies are the ones that did not move—the ones you represent?

Mr. MERILLAT. These Pottawatomies are the ones that did not move.

Mr. CRAVENS. I should like to ask you a question right there. What part of this $457,000 was provided for prior to the treaty by which they were to move?

Mr. MERILLAT. I should have to refer you to the statement or report that has been submitted by the Secretary of the Interior, and if that were to be answered absolutely, it would have to be by calculations that would be based upon that statement. In other words, I could not answer the question offhand; but there is a memorial here from which more or less of this information may be obtained, and likewise a report from the department. But upon that point I should like to state that the decision of the Supreme Court of the United States was not based upon any question of prior annuities, but was based upon the fact that the department had forfeited the lands in Kansas because of the failure of the Indians to remove under the specific treaty under which this claim of forfeiture was asserted, the treaty providing that the Indians should move to lands in Kansas, and when they refused to move the Government forfeited and sold the Kansas lands and was compelled by the Supreme Court to reimburse the Indians. So that the New York Indian case of course is based purely upon this proposition: That the Government took the quit-claim rights that these Indians had in the Menominee lands in the west, largely in Wisconsin, and agreed to give them lands in Kansas on condition that they should remove, and also certain money. When it came, however, to a question of removing, as the treaty had provided that the New York Indians should remove, west of the Mississippi River, most of the Indians declined and refused to remove. Thereupon the Indian Office and the Interior Department undertook to forfeit the shares of those who did not remove west of the Mississippi River, and withheld that money from them and sold the western lands to settlers. They endeavored to force the Indians to remove. They still continued to refuse. Some of them went to Canada and some remained in New York State.

Then the question came up in the Supreme Court of the United States, Was there a forfeiture of the rights of the New York Indians because they did not remove as the treaty had stipulated they should remove? And the Supreme Court, after a thorough and careful consideration of that matter, decided that the forfeiture was illegal. The court held this: That that treaty between the United States and the New York Indians was a solemn convention binding on both parties; that the treaty amounted to a grant in presenti of the lands west of the Mississippi River to these Indians; that there was a provision in the treaty whereby the United States, through its proper tribunals, might, if it chose, have declared a forfeiture, because there was a

forfeiture provision in the New York Indian treaty, which there is not in the Wisconsin treaty, making the present case much stronger. It said, however, that there was simply the right in the United States to declare a forfeiture; that there was no power in an executive officer of the United States to have declared this forfeiture; that as the United States never had declared a forfeiture, but had by main strength and the power of the executive officers taken these lands west of the Mississippi River, sold them and appropriated the proceeds to such uses as the United States chose and to such Indians as did remove, the United States was liable to those Indians who did not remove for their proportionate share of lands or money; that the Indian title was a communal title, and that each Indian was entitled to his undivided pro rata share of the total amount; and it ascertained what this total amount was, and said the United States was liable.

You can not read, as I say, this New York Indian decision, and apply it to the facts in this case without inevitably saying that if the New York Indian decision is correct (and it is an enunciation of the highest tribunal that we have), then these Wisconsin Pottawatomies have a much stronger case.

Mr. MORSE. What is the citation to the New York Indian case?

Mr. MERILLAT. One hundred and seventy United States, page 1.

Mr. CRAVENS. What is that case?

Mr. MERILLAT. The New York Indians *v.* The United States (170 U. S., p. 1). It was also tried in the Court of Claims, and is reported in the Court of Claims Decisions—in 30 Court of Claims; also in 40 Court of Claims.

At this point I should like to review the substantive provisions of the Pottawatomie treaty, and then review the provisions——

Mr. MORSE. Where do you find that Pottawatomie treaty?

Mr. MERILLAT. The Pottawatomie treaty is in 7 Statutes at Large, page 431, or in volume 2 of Kappler's Laws and Treaties, page 402. This is the Pottawatomie treaty.

Mr. CRAVENS. Give me that, will you?

The CHAIRMAN. These treaties, I think, are set forth in the letter we have here of the Secretary of the Interior.

Mr. MERILLAT. Yes, sir.

Mr. CRAVENS. In full?

Mr. MERILLAT. Quite largely; but I would sooner give them to you direct.

Mr. CRAVENS. Seventh Statutes at Large?

Mr. MERILLAT. Seventh Statutes at Large, page 431, or volume 2 of Kappler's Indian Laws and Treaties, page 402.

Mr. CRAVENS. Can you cite us to the other treaty, too?

Mr. MERILLAT. The New York Indian treaty will be found in Statutes at Large, page 550, and volume 2 of Kappler's Indian Laws and Treaties, page 502.

By article 1 of the Pottawatomie treaty, approved September 26, 1833 (it was not proclaimed until two years later), it is provided:

> The said United Nation of Chippewa, Ottawa, and Pottawatomie Indians cede to the United States all their land along the western shore of Lake Michigan and between this lake and the land ceded to the United States by the Winnebago Nation at the treaty of Fort Armstrong, made on the 15th of September, 1832, bounded on the north by the country lately ceded by the Menominees and on the south by the country ceded at the treaty of Prairie du Chien, made on the 29th of July, 1829, supposed to contain about five millions of acres.

Article 2 said that in part consideration of this cession, "the United States shall grant to the said united nation of Indians, to be held as other Indian lands are held, which have lately been assigned to emigrating Indians, a tract of country west of the Mississippi," etc. (those being the descriptive words of the title the Indians would get to their lands)——

Mr. CRAVENS. That means in common, does it not?

Mr. MERILLAT. It was, as we will show later, a title in fee in common. We will show that title by reference to what these other Indian treaties were, and the act of Congress. It provided that the Indians should receive a tract of country west of the Mississippi River, to be assigned them by the President of the United States, to be not less in quantity than 5,000,000 acres of land, the title to which was to be held as other Indian lands were held which had lately been assigned to emigrating Indians (those being the words that would correspond to the habendum in a deed). It described what they were to do. The lands were described as lands to be located near the Missouri River, the site chosen being about where Council Bluffs, Iowa, is now located; and a provision was made that a deputation of Indians should visit these lands west of the Mississippi River, and that subsistence should be furnished to the Indians. It was further provided that the Indians were immediately to remove from all that part of the land then ceded which was within the State of Illinois, and that within three years they should remove from the lands north of the boundary line of Illinois—that is, from lands in Wisconsin.

Article 3 provided that in further consideration of this settlement it was agreed by the United States that they would pay certain sums of money (these various sums being set forth), some of which moneys were to be paid immediately in cash and others in annuities to run for stated periods of time.

Then came article 4, under which the Indian Office and the Secretary of the Interior long sought to justify the action they had taken, but which action they now admit was illegal, unauthorized, and a nullification of treaty stipulations of an act of Congress.

By article 4 it was provided:

> A just proportion of the annuity money secured as well by former treaties as the present shall be paid west of the Mississippi to such portion of the nation as shall have removed thither during the ensuing three years, after which time the whole amount of the annuities shall be paid at their location west of the Mississippi.

I have read that article verbatim, and likewise gave you verbatim the title that the Indians were to receive.

Mr. CRAVENS. I wish you would read again that last part relating to the place of payment after three years.

Mr. MERILLAT. "After which time the whole amount of the annuities shall be paid at their location west of the Mississippi."

As we see it, that is simply a designation of a place of payment. There is, you will notice, no provision of forfeiture.

The CHAIRMAN. In dealing with the Indians the Government always considers the action of the majority the action of the tribe, does it not?

Mr. MERILLAT. I would say in this instance that it is apparent that the Government did not so deem the treaty of 1833, because they made fourteen separate treaties following this to get the specific consent of specific bands to the removal of the Indians west of the Mississippi River, and to an acquiescence in this treaty, those Indians

being scattered around in northern Indiana, Michigan, and other places. They did not make any separate convention with these Wisconsin Pottawatomies, who, as a matter of fact, always had denied and still deny that those who made the treaty of Chicago had any right to represent them at all. But I should like at this point to call your attention to the provisions of the New York treaty, in order that they may go in as near apposition as possible to the treaty provisions with the Pottawatomies that I have just read.

By the treaty of Buffalo Creek of January 15, 1838, with the New York Indians, it was recited that the New York Indians were making a claim to certain lands they alleged they had bought of the Menominee and Winnebago Indians in Wisconsin, the Menominees and Winnebagoes likewise claiming this land, and also the New York Indians. So you will notice that what the Indians were doing was giving a quitclaim deed, practically, for they did not occupy the land except in small measure. The Government wanted to settle this matter, and likewise wanted to get these lands, so it made treaties with the Menominees, the Winnebagoes, and the New York Indians. It was provided that the New York Indians (some of whom, as stated, were resident in Wisconsin) should cede their right and their interest in these lands, and by article 2 the consideration was thus stated:

> In consideration of the above cession and relinquishment on the part of the tribes of the New York Indians, and in order to manifest the deep interest of the United States in the future peace and prosperity of the New York Indians, the United States agrees to set apart the following tract of country, situated directly west of the State of Missouri, as a permanent home for all the New York Indians now residing in the State of New York or in Wisconsin or elsewhere in the United States who have no permanent homes, which said country is described as follows:

Then it described a tract of land in Kansas, just as the Pottawatomie treaty had described and defined a tract of land in Iowa. It further provided that the Indians should have and "hold the same in fee simple to the said tribes or nations of Indians by patent from the President of the United States, issued in conformity with the provisions of the third section of the act of May 28, 1830," providing for an exchange of lands.

Then came article 3, under which the executive officers sought to enforce a claim of forfeiture against the New York Indians, just as under article 4 they had sought to enforce a claim of forfeiture by executive act against the Pottawatomie Indians.

The CHAIRMAN. Let me ask you right there if the attempt on the part of the New York Indians was against the whole tribe or against a part of the tribe?

Mr. MERILLAT. Against a part of the tribe; not the entire tribe, as I understand it.

The CHAIRMAN. Was it against the representative authority that made the treaty in the first place?

Mr. MERILLAT. Yes, sir; it was against the representative authority, but it was also directed specifically against those who had been recalcitrant—those who had refused to remove; because, as I understand it, some of the New York Indians did remove.

Mr. BELT. About 32 removed.

Mr. MERILLAT. About 32 removed, as Mr. Belt states. Almost all of them, however, refused to remove; they would not remove.

The CHAIRMAN. If I understand this case (perhaps I am in error), it is this: The United States did make a treaty with the Pottawatomie Indians in Wisconsin for removal?

Mr. MERILLAT. Yes, sir.

The CHAIRMAN. The tribe did remove, and accepted the terms of their treaty, and took lands along the Missouri River; but these are a few Indians who did not conform to the action of the tribe, and now come in and ask for their share of the proceeds of the lands which they never occupied?

Mr. MERILLAT. Yes, sir.

The CHAIRMAN. To which they refused to remove?

Mr. MERILLAT. Yes, sir. That is in part correct, but not wholly, Mr. Howell, because these Wisconsin bands of Pottawatomie Indians constituted a considerable part of the tribe, and they absolutely denied at the time and always have denied that there was any right at all in those who negotiated and made this treaty to bind them. But that is a subsidiary branch of the case; and we can found our case and our rights upon even an admission that as a matter of fact those of the tribe who did make that treaty were authorized to represent them. But in order that the facts may all be before you, it should be kept in mind that the refusal of these Indians was primarily based upon the fact that there was no authority whatever in these Chicago Indians, or those who were represented at Chicago, to represent those Indians who were considerably to the north and in the upper part of Wisconsin, the Pottawatomie Nation at that time really being, as I shall shortly show to you, divided up into a large number of bands, which division the United States recognized when it undertook subsequently to make other treaties.

But the New York Indian treaty, by article 3, provided thus:

> It is further agreed that such of the tribes of the New York Indians as do not accept and agree to remove to the country set apart for their new homes within five years, or such other time as the President may from time to time appoint, shall forfeit all interest in the lands so set apart to the United States.

The President undertook to get them to remove, and they did not remove; and you will notice that there is a provision here reading, "shall forfeit all interest in the lands so set apart to the United States." You will observe that article 4 of the Pottawatomie treaty which I read to you does not contain this provision of forfeiture. So you can see how much stronger is the case of the Pottawatomies than is this case of the New York Indians with that provision in it.

The CHAIRMAN. But right there, it seems to me, that these Pottawatomie Indians, from what you say, never did make any treaty with the United States—never accepted any treaty.

Mr. MERILLAT. That is their contention; and if the United States simply took their lands by force their case is still stronger; but it is admitted and conceded by the United States that they were members of the Pottawatomie Nation. The United States, on its part, holds that they did make a treaty with the United States, and, at any rate, it is admitted that they had a title, just as did all the other Pottawatomies, to their lands; and it is admitted that the United States, treaty or no treaty, took their lands absolutely away from them,

drove them away from the land, put settlers upon those lands in Wisconsin, and received the government price for them; and then, after this, and notwithstanding the absence of a provision of forfeiture in the treaty because the Indians did not remove west of the Mississippi River, the United States attempted to forfeit their interest in the lands in Wisconsin from which they required them to remove and which they sold to settlers, forfeited their interest in the lands in Iowa or in Kansas to which some of the Indians were subsequently removed, forfeited their interest in the annuities guaranteed by this treaty of 1833, and forfeited their interest, moreover, in treaties made between 1795 and 1833 for other lands which these Indians, along with the other members of the tribe, had ceded in Ohio and Indiana at a time when the Pottawatomie Nation was a united nation.

Having shown, as we have desired, the treaty provisions with the New York Indians, and the treaty provisions with the Wisconsin Pottawatomies, and the decision of the Supreme Court of the United States applicable hereto, I want to cite the historical situation of these Indians.

The Pottawatomies at the beginning of the last century, shortly before 1800, occupied lands in the State of Ohio extending from the shore of Lake Erie to the south. The United States made treaties with the Pottawatomie Indians requiring the cession of that land and that the Indians should move farther west, excepting therefrom certain small tracts which it permitted separate bands of the Pottawatomies to retain. It then made subsequent treaties, between 1795 and 1833, whereby the Pottawatomies were required to move still farther west and were given a certain stretch or section of country extending around the shores of Lake Michigan, embracing parts of Michigan, Indiana, Illinois, and Wisconsin. Under those several treaties there were granted in perpetuity to the Pottawatomie Nation as a whole (all the Pottawatomie Indians) certain annuities which they were to receive forever from the Government of the United States. The Indian title, it was held in the New York Indian case and has been held in every single decision that has ever been rendered by any of the courts, is a communal title. That is to say, each Indian has his separate, undivided proportion of lands, funds, or annuities, the same as every other member of the tribe; and that condition has continued until our recent legislation to divide lands and funds in severalty among the Indians, which legislation is a matter of the last twenty years.

The effect of these several treaties was to make the Pottawatomie Nation, at the time of the treaty of Chicago of 1833, comprise a number of bands of Indians, all of whom together constituted the Pottawatomie Nation, with settlements, however, in between them, and segregating and separating various tribes or bands one from the other. So that when the treaty of 1833 was made at Chicago, you have the present city of Chicago located there; you have settlements in Indiana and other places, and you have the Indians resident in these several States. In Wisconsin there were a large number of them, and numbers of others in Michigan and others in Illinois and Indiana, all of them stretching out along the shores of the lakes. The United States desired to remove Indians west of the Mississippi River—the policy of the Government being that all Indians, so far as practicable, east of the Mississippi River should be removed west of the Mississippi,

and there should have a permanent home. In 1830 this national policy was enunciated by an act that was passed. Have you the act [addressing Mr. Belt]?

Mr. MORSE. Never mind the act.

Mr. MERILLAT. The act provided for an exchange of the lands of those Indians who were east of the Mississippi River for lands west of the Mississippi River, and it provided in specific terms that those Indians who exchanged their lands east of the Mississippi River for lands west of the Mississippi River should be assured a title in fee in common; that these lands west of the Mississippi River should be their home forever; and that a patent to those lands west of the Mississippi River would be issued to them if they should desire the same, subject only to this condition—a reversion to the United States if the Indians should become extinct or should abandon the lands. That reversion has since fallen in.

I will read you section 3 of the act of May 28, 1830:

> That in the making of any such exchange or exchanges it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made that the United States will forever secure and guarantee to them, and their heirs or successors, the country so exchanged with them; and if they prefer it that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States if the Indians become extinct or abandon the same.

Under the provisions of that treaty there was effected by various treaties a wholesale removal of the Indians east of the Mississippi River to homes west of the Mississippi River, the Mississippi River then being considered the dividing line between civilization and noncivilization.

Among other treaties, for example, there were treaties negotiated with the Cherókees, the Choctaws and Chickasaws, the Seminoles, the Creeks, the Weas, the Quapaws, the Piankashaws, the Shawnees, and other Indians; and in those several treaties, in one form or another, it was provided that the Indians should receive a patent to their lands, subject only to this reversionary interest in the United States if the Indians should become extinct or abandon their homes.

It has been decided in every case where it has come up that those treaty provisions constituted a title in fee to the Indians. That has been decided in the several Cherokee and Choctaw and Chickasaw cases that the Supreme Court of the United States has passed on. You will recall that in the treaty with the Pottawatomies it was provided that they should have the same title and right to their lands that other Indian tribes have had. I have, therefore, referred you to the rights that the other tribes received. Those rights were, as stated, a perpetual right to the lands, a title in fee in common, and as to each of the tribes that agreed to remove it was further provided that they should have annuities.

So that we find the situation to be this: That by the grant to the Indians of the lands in the State of Iowa the Indians received a title in fee in common, whereby they were guaranteed forever, so long as they existed, the lands in the State of Iowa, amounting to 5,000,000 acres. This treaty was not proclaimed until 1835. The Indians were given three years within which to remove. So far as concerned the Wisconsin Pottawatomies, they denied the right of these chiefs who were at Chicago to represent them, and they did not remove;

and they objected to the treaty, and said it was not proper. Objections likewise were made by these Indians who were scattered in Michigan, Indiana, and Illinois, they stating that they were separate bands; that they had their rights; that they occupied these lands, and people who were not their chiefs had no right, as matter of fact, to cede their country. The United States recognized that, and between 1833 and 1840-odd it made fourteen separate conventions with these several bands in Michigan, Illinois, Indiana, and elsewhere, they being small treaties because the bands were comparatively small. It did not make any convention, however, with those who were in Wisconsin and who were objecting, holding that the chiefs signing did in fact represent the Wisconsin Pottawatomies.

You see, therefore, historically, the position that the Indians were taking and the position that the Government of the United States was taking. The Indians had until 1838 to remove to Iowa. Many of those who did remove died as the result of sickness, exposure, or one thing or another; and those reports of dissatisfaction came back to the Indians of Wisconsin. Furthermore the Indians had no sooner located in Iowa, where the treaty had provided they should have a permanent home, than the influx of white settlement in the State of Iowa began to assume large proportions; and the Government of the United States desired this Iowa home and these 5,000,000 acres of lands for the whites. So an agitation was begun to secure the removal of these Pottawatomie Indians from Iowa, from lands that the treaty had said they should have forever, to a point still farther west and south. That knowledge, of course, came to the Wisconsin Pottawatomies, with the existent dissatisfaction; and the Government of the United States succeeded in securing a treaty in 1846 from those who did remove and from some other Pottawatomies, but not from the Wisconsin Pottawatomies, whereby they took these 5,000,000 acres of land in Iowa and gave the Indians in exchange 576,000 acres of land in the State of Kansas with the same style of title. The result enhanced the dissatisfaction of the Wisconsin Indians and strengthened their opposition to removal. The Government took military and other measures to force those in Wisconsin to remove, with the consequence that a considerable number of the Indians fled to the northern part of Wisconsin where they could not readily be reached, and others went across the border into Canada.

Mr. MORSE. There is one little matter that I want to call attention to. You see, they were there in the deep woods of northern Wisconsin, living on the fish that they could catch and the game that they could shoot. The idea was to remove them from there out onto the prairies. They did not know anything about prairie life. They could not get anything to live on out there. They had been born and raised and brought up in the woods. They were scattering, roving bands, just a handful in a land; and they have remained that way. They are right in my home district to-day, in little bands scattered around just as they were at that time.

Mr. CRAVENS. Do they vote for you?

Mr. MORSE. I do not think they ever vote; no.

Mr. CRAVENS. I want to ask you this question before you start, Mr. Merillat; I do not want to interrupt you. These annuities, as I understand, that were promised to the Pottawatomie Indians, and,

in fact, to all the Indian tribes, were lump sums to be paid to the tribes and not per capita annuities?

Mr. MERILLAT. That is provided by exactly what I am coming up to now. The act of August 30, 1852, provided how annuities to Indian tribes should be paid.

Mr. CRAVENS. When was that enacted?

Mr. KAPPLER. August 30, 1852.

Mr. MERILLAT. The act of 1852 provided that appropriations for the benefit of any Indian tribe should in every case be paid directly to the Indian or Indians themselves to whom it should be due, or to the tribe or part of a tribe per capita, unless the imperious interest of the Indian or Indians or some treaty stipulation should require the payment to be made otherwise under the direction of the President. That is the whole of that.

Mr. CRAVENS. What is that?

Mr. MERILLAT. That is the act of August 30, 1852.

Mr. BELT. That is in 10 Statutes at Large.

Mr. MERILLAT. Ten Statutes at Large, page 56.

The CHAIRMAN. That does not alter the treaty, however, if the treaty provided a way.

Mr. MERILLAT. This is an act of Congress.

Mr. CRAVENS. What page is that?

Mr. MERILLAT. Page 56. That act provided how annuities should be paid and recognized the per capita idea in all Indian matters.

The CHAIRMAN. Unless otherwise provided by treaty?

Mr. MERILLAT. Unless otherwise provided in the treaty.

Mr. CRAVENS. May I ask you another question at this point?

Mr. MERILLAT. Yes, sir.

Mr. CRAVENS. Were all of these annuities paid that were provided for by the treaties, both prior and subsequent to 1833? Have they been paid?

Mr. MERILLAT. They have been paid; but they have not been paid according to the treaty stipulations, or as the law of the Indians and as the act of Congress required.

Mr. CRAVENS. I understand that; but the annuity has been paid?

Mr. MERILLAT. It has been paid. The fact is that the Government of the United States, though, did not pay it in the way or to those to whom the Government of the United States was required to pay it. The Indians had a communal interest. The payments to the Indians always have been made per capita. It has been recognized in every decision in an Indian case that each person who actually was a member of an Indian tribe was entitled to his pro rata share of what was paid. It has further been held that the United States occupies the relation of trustee to the Indians; that the Indians are its wards, and the United States is their guardian. It is a settled principle of equity that if a guardian or a trustee having the duty of making payments to those who are its wards, its cestui que trusts, undertakes to and does pay to some one or more of those entitled to have a payment more than their pro rata share, and there is a deficit, then the trustee must make that up. I do not believe you can find a single decision in Story's Equity or in any other work upon equity that does not recognize the fact that if a trustee does, as a matter of fact, undertake to pay out some money to some of his

cestui que trusts or wards in excess of what they are entitled to, and there is not the just proportion remaining for the other wards, a court will order him to pay it, compel him to pay it, and require his bondsmen to do it if he does not. He can not declare a forfeiture, just as the courts hold an executive officer of the Government can not declare a forfeiture.

Mr. CRAVENS. Your claim, though, is strictly a legal claim; it is not an equitable claim. If you looked back upon the equity side of it, you would have the fact confronting you that these Indians did not remove.

Mr. MERILLAT. No, sir; I would not have the fact confronting me that the Indians did not remove, because the fact is that the Indians removed from the lands in question and simply went to other lands, and in the New York Indian case the Supreme Court said the refusal to remove did not in equity work a forfeiture. They did not go to where they were required to go. And I would have the further fact that the very question that you now raise was decided by the Supreme Court of the United States in the New York Indian case, in which the matter was before the court with full legal and equitable jurisdiction, and in which the Supreme Court of the United States said that their failure to remove, notwithstanding the forfeiture provision in the New York Indian treaty, did not as matter of fact deprive them of their rights in the absence of an assertion by Congress of its right to forfeit and that the United States must, as it did, reimburse those who refused to remove.

Mr. CRAVENS. You say that they did remove. I understood that they did not remove.

Mr. MERILLAT. The New York Indians?

Mr. CRAVENS. No, no; these Pottawatomies.

Mr. MERILLAT. I say they removed from these particular lands in Wisconsin because the effect of the action of the Government of the United States was to force them to remove, but they did not remove west of the Mississippi.

Mr. CRAVENS. Did they remove from all the lands they deeded to the United States?

Mr. MERILLAT. Oh, yes; the United States took possession of it all and sold it all to settlers long ago, and the Indians simply retreated farther into the north. I think Mr. Morse, who is familiar with that, will agree with me in that respect.

Mr. MORSE. They removed from every acre of the land, and the Government has taken every acre away from them and has never paid them a 5-cent piece for them.

Mr. CRAVENS. It seems to me the only question before us is whether or not this money has been properly paid.

The CHAIRMAN. That is the only question.

Mr. CRAVENS. And whether or not these Indians, who have not received their part of it, are entitled to it.

Mr. MORSE. Pardon me for making this suggestion: The first question is whether or not these wandering bands were bound by the treaty which some of the avaricious whites got some of the Indians to sign down there in Chicago.

Mr. CRAVENS. You can admit that, and still, if the laws of the United States required these annuities to be paid out in a certain

way, and if they failed to pay them out in that way, in such a way that these Indians who did not remove were defrauded——

Mr. MORSE. That would be the second question in the case.

Mr. CRAVENS. Yes.

The CHAIRMAN. Would it not be well to let Mr. Merillat conclude his discussion of the case?

Mr. MORSE. Yes; I beg pardon.

Mr. MERILLAT. The very point you are raising, furthermore, was recognized by Congress in the Indian appropriation act of June 25, 1864 (13 Stat. L., 172).

Mr. CRAVENS. What is that?

Mr. MERILLAT. Thirteenth Statutes at Large, page 172—the Indian appropriation act. By that act it was provided as follows:

That the proportion of annuities to which said stray bands of Pottawatomies and Winnebagoes—

Being these very Indians in question—

would be entitled if they were settled upon the reservation with their respective tribes, shall be retained in the Treasury to their credit from year to year, to be paid to them when they shall unite with their tribes, or to be used by the Secretary of the Interior in defraying the expenses of their removal, or in settling and subsisting them on any other reservation which may hereafter be provided for them.

It is our contention that this act of 1864 comprised two propositions: First, a declaration by Congress as to the true construction and proper action with reference to the treaty of 1833, and with reference to what was being done. In other words, the Congress by that act declared to be the law precisely that which the Supreme Court of the United States in the New York Indian case did. We furthermore say that that act was also an express command and direction to the executive authorities of the Government to retain and withhold in the Treasury to the credit of these Indians their pro rata and proportionate share of the annuities and other moneys (and also, of course, the lands) that should have gone to the Pottawatomie Indians of Wisconsin who had not removed. Second, the act of Congress recognized the fact that they had not removed; that they were in Wisconsin; that they were entitled to annuities, and entitled to equal rights with the members of the tribe who had removed; and it made an express provision that they should get their share, or that it should be kept there until such time as they would remove, and hence would then receive in bulk what was retained.

But what did the executive officers of the United States do when it came to that act of Congress? Absolutely nothing. The executive officers, in other words, were in a state of temper toward these Indians, and said: "You will either do what we tell you to do; you will either go out there immediately, or else we will pay over your shares to those Indians who have removed." And it continued, in defiance of that act of Congress, to pay to those Indians who went west of the Mississippi River, and went down to Kansas, not only their own share, but the share of those who were in the State of Wisconsin.

There you have the whole matter before Congress, and a direction of Congress; and you have an ignoring of that specific command of Congress by the executive officers of the Government.

Justice Brewer, in Richardville *v.* Thorp (28 Fed. Rep., 52), specifically said that—

> The Secretary of the Interior had the right to prescribe rules and regulations, but he had no judicial power to adjudge a forfeiture, to decide questions of inheritance, or to divest owners of title without their knowledge or consent.

He held that an executive officer had no power to declare a forfeiture. The right to declare a forfeiture is vested, so far as I know, in only two authorities. One is the courts and the other the Congress of the United States.

Mr. CRAVENS. Mr. Merillat, under this act approved June 25, 1864, it is provided that the money due these bands of Pottawatomies shall be retained in the Treasury, to be paid them when they shall unite with their tribes, or be used by the Secretary of the Interior in defraying the expenses of their removal. Have they ever united with their tribes?

Mr. MERILLAT. They have not united with their tribe, and their money therefore should be in the Treasury to their credit, and the Government of the United States, meaning the whole Government, did not undertake to make a forfeiture of that money and did not undertake to, as a matter of fact, remove them. They did not unite with their tribe; but they did this: They went into the north of Wisconsin, away from these lands; and that act simply directs the retention in the Treasury to their credit of what they were entitled to. Had that act been complied with, the Government of the United States would have in the Treasury of the United States to their credit all of this money from 1864 on; but because of these overpayments to the others, the Government does not have it.

Mr. CRAVENS. Was there any way by which the Government could tell how much to retain?

Mr. MERILLAT. Yes, sir.

Mr. CRAVENS. If those Indians had removed and gotten where the Government could not reach them, how could they possibly tell?

Mr. MERILLAT. The Government of the United States could have ascertained in the same way that the Government of the United States to-day has ascertained. It could have sent agents up among them; it could have made a census, and could have established the exact proportion that they were entitled to, just as the Government of the United States lately has gone up to that country, has made a census of them, and has reported their due proportion. And, furthermore, at this time, in 1864, there were reports of the Indian agent, which are part of the official data that have been used now, which state the proportionate part of the Indians who were in Wisconsin and who had not removed. So the facts and the figures were before the Government, and are part of the official records, shown in documents that are printed, and to which we will refer the committee.

Mr. CRAVENS. Do I understand Mr. Morse to say, too, that these Indians are still roving bands, with no permanent location—no towns, or farms, or anything like that?

Mr. MORSE. No; there are just a few in a band. They are hardly bands, but families scattered around.

The CHAIRMAN. Before you commence again, Mr. Merillat, I should like to ask how many Indians were included in this treaty of 1833?

Mr. MERILLAT. That is shown [examining papers].

Mr. BELT. While Mr. Merillat is searching for that, I want to call the committee's attention to the fact that this Document No. 185, Fifty-seventh Congress, second session, which is a memorial of the Indians, shows that the United States furnished an agent to look after these Indians for a number of years after the war.

Mr. CRAVENS. After 1835?

Mr. BELT. After 1835—after the civil war.

Mr. CRAVENS. How do these Indians live now?

Mr. MORSE. Oh, some of them by fishing and hunting; some of them have little farms up there.

The CHAIRMAN. Has the Government of the United States never made any provision for them?

Mr. MORSE. Not a penny for one of them; has it, Mr. Merillat?

Mr. MERILLAT. Absulutely nothing, except an appropriation on one or two occasions of $10,000, when reports came that they were starving, owing to some special conditions that arose.

Mr. MORSE. They took from the Indians the best land in the world, and they have received nothing in return.

Mr. BELT. The facts are all set out in this document.

Mr. CRAVENS. Is there any provision in this bill to deduct from their share of the annuities what has been paid them?

Mr. MORSE. I think not. I did not know that anything had been paid them until after I drew the bill.

Mr. MERILLAT. You will find in Senate Document No. 185, Fifty-seventh Congress, second session, a statement which will give you the total number of Pottawatomie Indians, and the number in Wisconsin.

Mr. MORSE. Put that in the record, will you?

Mr. MERILLAT. The total number of Pottawatomie Indians was approximately 8,521. The number of Indians to whom the present measure would apply, and the number who remained at their homes, was approximately 2,087—about one-fourth.

The CHAIRMAN. That would amount to this, then—that there were 10,000 Indians in the Pottawatomie Nation at that time?

Mr. MERILLAT. No, sir; there were 8,500 all told, 2,100 of whom, in round numbers, did not remove west.

The CHAIRMAN. How many bands or tribes were these 8,500 Indians divided into?

Mr. KAPPLER. About 16.

Mr. MERILLAT. Sixteen or seventeen—thereabouts. We know that by the various treaties that were made.

The CHAIRMAN. There were treaties made with each particular band?

Mr. MERILLAT. Yes, sir.

Mr. CRAVENS. Except these Indians?

Mr. MERILLAT. Except these Indians.

Mr. CRAVENS. There were no separate treaties with these 2,100?

Mr. MERILLAT. There was no treaty with any of these separate 2,100, but of course the United States claimed they came under the treaty of Chicago of 1833.

The CHAIRMAN. What particular band did they belong to?

Mr. MERILLAT. They belonged to what was known as the Wisconsin band of Pottawatomie Indians. They were located in

the State of Wisconsin and north of the Illinois boundary line. These chiefs who undertook to make this treaty were very largely those Indians who were in the South, and also Indians in the East. They did not represent, so the Indians claimed, those Indians who were up in the middle part or even the lower part of Wisconsin.

The CHAIRMAN. But how was this treaty of 1833 negotiated and agreed to?

Mr. MERILLAT. By the United States, with a number of chiefs of Pottawatomie bands, who were assembled at Chicago.

The CHAIRMAN. How many bands were represented in that treaty?

Mr. BELT. The process of making that agreement was this: The Government sent a commissioner up there to deal with these Indians, to get them to remove west. Mr. Merillat has very properly stated as to how they were situated. They were on both sides of Lake Michigan, and running down into Illinois, the apex being about Chicago. They were running down in there. At first the Government went to those west of Chicago, which included these people, and made an agreement, dated some time in September, 1833, providing that they would remove to the west of the Mississippi. After they had made this agreement they went on to the east side and made a supplemental agreement, as the treaty book will show, with those people, they agreeing to these stipulations; and in it they provided that all the Indians should settle on this 5,000,000 acres of land on the Missouri River, and that all the Pottawatomies of the various bands should be moved to it. Then they proceeded down into Illinois, on the east of Chicago, and in Indiana, and settled with or made treaties with a very large number of bands of Pottawatomie Indians that had special tracts of land ceded to them by special treaties. All of these bands ceded their land, except three bands; and it was provided by these separate treaties that they—the Indian parties thereto—should go to this land on the Missouri River at Council Bluffs. When the Indians got there, all of these separate bands of Pottawatomies, Ottawas, etc., agreed in the preamble to the treaty of 1846 that they would be thereafter known as the "United Tribe of Pottawatomie Indians."

The CHAIRMAN. What I am trying to arrive at is this: Are these Indians, this remnant of Wisconsin, now a distinct tribe?

Mr. BELT. No, sir; they are a part of the first Indians treated with—the first with whom the treaty of 1833 was negotiated.

The CHAIRMAN. And in that treaty they were represented by their chiefs or heads of families?

Mr. BELT. The chiefs assumed to represent them.

The CHAIRMAN. Which is the usual custom when dealing with the Indian tribes?

Mr. BELT. That is about the usual custom, I admit—about the usual custom—but these people said that they had no right to cede their lands from under them.

Mr. CRAVENS. Referring to this 8,500 which you gave as the number of Pottawatomies, does that mean in Wisconsin, or everywhere?

Mr. MERILLAT. Everywhere, sir.

Mr. BELT. Let me explain, please, about that 8,500. (I do not want any confusion in the minds of the members of the committee.) I have set out in Senate Document 185 the various reports of the

agents that were made to the Government from year to year, showing the progress of removal. Sometimes they would state that they were 8,500, and sometimes they would state that the whole number was very much less. So you must take that with the official statements I have given in the report. I have given the references in that document to the annual reports of the Indian Office showing the numbers. I am not absolutely certain that there were 8,500.

Mr. CRAVENS. What is the number of that document? What is the title of it?

Mr. MERILLAT. Senate Document 185, Fifty-seventh Congress, second session. Then there is a report of the present session—House Document No. 830, Sixtieth Congress, first session.

The CHAIRMAN. Were these Indians that you are representing now known as reservation Indians or blanket Indians? Did they have any fixed places of abode, or were they simply roaming from place to place, without any domicile?

Mr. MERILLAT. These Indians, as the reports of the Government all show, were Indians who at this time lived in Wisconsin. There was their home. They had, as the report states, their small patches of corn. They lived to a considerable extent by fishing and hunting and all that sort of thing. They were not roaming Indians in the sense of Indians who were always, continually, on the move. They were Indians, as we understand, that were in scattered detachments, as it were, and moved out from a given place to fish or to hunt, and then came back. Their habitations were not, of course, the fixed habitation of a white man who has absolutely just one place that he is rooted to; but within a certain limited and defined area they were fixed. They did not, in other words, attempt to extend into Minnesota, or into Illinois, or any place of that kind. They had a larger range than a white man would have, and yet they were circumscribed.

The CHAIRMAN. If I understand the situation aright, when they refused to accede to the treaty that their chiefs had made they simply became fragmentary bands, or renegade Indians? The chiefs of the various tribes that entered into the treaty carried with them to the west most of the tribe, I suppose?

Mr. MERILLAT. There the fact is that they did not carry with them the Wisconsin Pottawatomies, as I understand the situation.

Mr. BELT. They were organized in bands?

Mr. MERILLAT. Yes; they were organized in bands, but I do not understand that the chiefs who made the treaty of Chicago (and the record shows that that is the case) did have the authority or were the chiefs to any considerable extent of these Pottawatomie Indians. They undertook to claim certain chieftainship rights; but as a matter of fact, especially as to those Pottawatomie Indians who were toward the north, they were not their chiefs at all, so the Indians claimed, and hence the difficulty arose over removal. But chiefs or no chiefs, the essential point is, there was no lawful power of forfeiture, and that was what was done and is now complained of as having been found illegal in the New York Indian case.

The CHAIRMAN. That is what I am seeking information about.

Mr. MERILLAT. Yes, sir.

The CHAIRMAN. Have those tribes that you are representing now maintained their tribal relations and their tribal organization from that time until the present?

Mr. MERILLAT. No, sir. For a considerable time, apparently, they maintained a larger tribal organization; and I take it that it happened, although of course the documents are not as full and complete on that point as to enable one to state a particular time when they ceased to have a large tribal organization. But in time they settled into a number of detachments, and they now have scattered through Wisconsin and Canada certain villages, as it were, with chiefs of those villages. The action of the Government of the United States in sending the military forces up there, of course, was to force these Indians out and into smaller communities; so that now they would consist of a collection of bands rather than one general band with one chief, although there are a few who claim that they are representative of the whole organization.

The CHAIRMAN. I just want to get this matter clear as to whether these Wisconsin Indians who remained in Wisconsin were ever parties to this treaty of 1833 that you refer to.

Mr. MERILLAT. There is at that point a certain amount of confusion and conflict. I have desired, if I could, to get the exact facts. It would not be fair, it would not be correct, to state absolutely that they were not parties to it, unless you stated the position. Those Indians in Wisconsin denied that they were parties to it. They said that these chiefs had no right to represent them, and were not their chiefs. And, on the other hand, the chiefs asserted a right to represent them: and the Government of the United States sided with those chiefs, apparently, in the course of conduct that they took, and held they did represent all. But, concede that, and the Supreme Court says, even though the Indians refused to remove the Indian Office could not forfeit either their western lands or their annuities. We find, immediately after these chiefs undertook to represent them, a protest that they did not in fact represent them; and we find that the farther removed from the city of Chicago were the Indians in question the less authority and the less right they recognized in these chiefs.

The CHAIRMAN. The only evidence of that protest, I presume, is the fact that they did not remove?

Mr. MERILLAT. They protested at the time; and the Indian Office records show that the basic ground of their protest was that these chiefs were not authorized to represent them, and that they had no right to cede their lands.

The CHAIRMAN. They protested, then, through chiefs who did claim the right to represent them?

Mr. MERILLAT. They protested through chiefs or headmen among them who said, "We represent these Indians;" and they refused to recognize that treaty. But I do not think it would be a fair statement for anyone to undertake to say dogmatically that they did or that they did not represent them. There was that conflict and that confusion, and that entered into the refusal of these people to remove. That dissatisfaction and that denial of course became accentuated when so many of the Indians who moved from this country of lakes and rivers to this prairie country found the conditions very hard, and it became still further accentuated when they had no sooner gotten to what was stated to be their permanent home than the agitation was begun to move them still farther down into Kansas, and into a country wholly unsuited to them.

That was the historical situation that brought about these conditions that we find. The Indian office sought to assert this claim, and by brute force, as it were, to compel them to remove, and on refusal illegally asserted a forfeiture of their rights. That, as it seems to me, brings us to the precise legal question involved in the New York Indian case, for that was very much the situation of the New York Indians. They were not willing to remove, although it was required by treaty that they should remove.

In the New York Indian case the Supreme Court of the United States considered two contentions: Counsel for the Government of the United States asserted that this grant of lands west of the Mississippi River to the New York Indians was not, as I stated at the opening, a grant in presenti; that the Indians, by virtue and force of that treaty, did not acquire an absolute title to this land in the West, and hence the Government was not liable since removal was a condition precedent to ownership of the lands, and the grant was only one in future.

Mr. BELT. In Kansas.

Mr. MERILLAT. In Kansas; that it was, in other words, a grant upon a condition precedent and in the future tense. The Supreme Court of the United States, in considering that grant, referred among other cases to the Rutherford case in North Carolina, the case of Rutherford *v.* Greene, which was a question as to whether there was a present grant to Gen. Nathaniel Greene. Considering all those cases, the Supreme Court of the United States said:

> Although some part of this is expressed in the future tense, it is perfectly clear that the intention of Congress is to make a grant in presenti, and that by the terms and force of this treaty the New York Indians as a tribe get a communal right to the entire land in the State of Kansas given to them.

It held, therefore, that the New York Indians, whether they did or did not remove, were by the terms and force of this treaty given and granted the lands in the State of Kansas, and had a fee. Then it approached the next question, and said:

> What is the effect, having determined what title they had, of article 3, which specifically provided for a forfeiture?

And upon that point the court said:

> In the view we have taken of the granting clauses of this treaty, the provisions of the third article created a condition subsequent, upon a breach of which the Government might declare a forfeiture, but had no power by simple executive action to reenter, take possession of the lands, and sell them. A distinction is drawn by the authorities between the case of a private grantor, who may reenter in the case of the breach of a condition subsequent, and the Government, which can only repossess itself of lands by legislative or judicial action. The distinction was first clearly drawn by this court in the case of United States *v.* Repentigny (5 Wall., 211, 267), in which the court said: "We agree that before a forfeiture or reunion with the public domain could take place a judicial inquiry should be instituted, or, in the technical language of the common law, office found, or its legal equivalent. A legislative act directing the possession and appropriation of the land is equivalent to office found. The mode of asserting or of assuming the forfeited grant is subject to the legislative authority of the Government."

It held that while Congress might have declared a forfeiture there had been, as a matter of fact, no forfeiture, and that none had been declared by Congress and that the Executive was powerless and incompetent to declare one.

If the court held that in the case of the New York Indians, with this provision in the treaty that they should forfeit their rights by

not removing, how can you possibly maintain any such right of executive forfeiture in the case of the Pottawatomies, where there is no condition and no provision of forfeiture at all, but simply a provision of a place of payment?

Mr. CRAVENS. Let me see, now; they did give up the lands?

Mr. MERILLAT. They gave up the lands; yes, sir.

Mr. CRAVENS. They did not acquire any of these lands that were ceded to them in the West?

Mr. MERILLAT. They did not by actual residence, but under the treaty and the Supreme Court interpretation in the New York Indian case they did acquire a fixed present right.

Mr. CRAVENS. These that you represent now, I mean.

Mr. MERILLAT. Yes, sir; that is correct. They did not actually take.

Mr. BELT. "They did not acquire?"—that is pretty severe. They did not possess.

Mr. CRAVENS. They did not occupy?

Mr. BELT. They did not occupy and possess.

Mr. CRAVENS. They never have?

Mr. MERILLAT. They never have.

Mr. CRAVENS. You are not claiming anything, though, in this bill by reason of the fact that they did not occupy that land ceded to them, are you?

Mr. MERILLAT. Yes, sir; we are claiming their fair share of those lands, because they were given to the tribe as a whole, and the Supreme Court has held the whole tribe acquired in common. There was no right in the United States to take, subsequently, their lands, and, as a matter of fact, give their share in those lands to those of the tribe who did remove, for these people were entitled to their proportionate part. But that is not the main item, of course, of the amount that is fixed. It is chiefly the annuities.

Mr. CRAVENS. What you have asked for in this bill is their proportionate share of the annuities?

Mr. MERILLAT. We ask their proportionate share of the annuities, and we ask their proportionate share of the price that was received when the Government undertook to (as it did) sell certain of these lands. I think some were sold to a railroad. Is not that true?

Mr. BELT. Yes, sir.

Mr. MERILLAT. The Government undertook to sell, and did sell, certain of their lands, and covered the proceeds of sale into the Treasury, and then distributed the proceeds to those Indians who did remove; and some smaller part is still due to the Indians on account of what would have been, at the price of sale, their share of the lands that were left and that were divided up among the others.

Mr. CRAVENS. How much of this $447,339 is their proportionate share of annuities under treaties, and what part of it is what you claim as their proportionate share of the price of the land?

Mr. MERILLAT. That entire information you will find in House Document 830, Sixtieth Congress, first session.

Mr. CRAVENS. Whereabouts in that? It is a pretty long document.

Mr. MERILLAT. The statement of account that was made goes into each part of that separately. You will find in that document, beginning with page 7, statement No. 1, statements Nos. 2, 3, 4, 5, 6, and then a recapitulation; and in statement No. 4——

Mr. CRAVENS. Did any of these Pottawatomie Indians that went West go from Wisconsin?

Mr. MERILLAT. Some of them went from Wisconsin.

Mr. BELT. Oh, yes, sir.

Mr. MERILLAT. Yes, sir; quite a few.

Mr. CRAVENS. There were left there about 2,100 of the 8,500 that were all over the country?

Mr. MERILLAT. Yes, sir.

Mr. CRAVENS. What part of the 6,400 went from Wisconsin?

Mr. MERILLAT. I do not know that it would be possible to give absolute data, but there is no doubt that a considerable number of those who did remove removed from the State of Wisconsin.

Mr. CRAVENS. A good many of them went—so Mr. Belt stated, as I understood him—from Indiana and Illinois?

Mr. MERILLAT. By that time a number went from Indiana and Illinois, but they were not the larger part of the tribe, because by that time the Pottawatomies had gotten farther west than Indiana and Illinois. There were quite a number that went from there, but the bulk of the tribe had by this time removed West. They were scattered, as you can readily see.

Mr. MORSE. Four hundred and fifty-seven still remain in Wisconsin.

Mr. CRAVENS. That is, now?

Mr. MORSE. Yes.

Mr. CRAVENS. That is, out of the 2,100?

Mr. MERILLAT. Yes, sir.

Mr. CRAVENS. But this bill provides, also, for about 1,900 altogether?

Mr. MERILLAT. It provides that you may send to the Court of Claims and adjudicate that part.

Mr. CRAVENS. What does the record show as to what chiefs attended the making of this treaty at Chicago from Wisconsin? And does it show what part of Wisconsin they were from and what their titles were?

Mr. MERILLAT. I know of no data outside of the signatures that are to it that would show that; and so far as I know, there is no record evidence of the titular authority of the particular persons whose names are signed here. We know that contemporaneously with it there was this denial on the part of the Indians. That is a matter of record. The persons who undertook to secure the removal stated the reasons why. But when it came to go into matters of detail, and determine precisely the title or authority of the parties who claimed to represent the others, we do not have records that would enable you to determine it in the same way that you would determine whether or not an agent is, as a matter of fact, the representative of his principal.

The CHAIRMAN. Were any of these Pottawatomie Indians living in Canada at this time?

Mr. MERILLAT. No, sir. These Pottawatomie Indians at that time were located a considerable distance south. They are now up in northern Wisconsin, but that is the result of time. And looking at the whole record as I have gone over it, this would seem to be a true proposition, as I stated before—that the farther north you went in Wisconsin from Chicago the less strong seemed to be the authority which the chiefs had or which was recognized over those Indians who were to the north. The Pottawatomie Nation had been broken up,

as it were, into bands, and that very condition is recognized in this treaty of 1846, whereby the Indians were removed from the vicinity of Council Bluffs, Iowa, to Kansas, because you will find that the very first part of that treaty is a declaration by the United States that it desires to reunite and bring together the scattered bands of the Pottawatomies and make them into one nation.

Mr. MORSE. Let me read a couple of sentences at this point, and that will make the matter clear. The question has been asked half a dozen times [reading from page 16 of House Document No. 830, Sixtieth Congress, first session]:

> These Indians, as a rule, have no fixed homes, but roam from place to place, picking berries, digging ginseng and other roots, gathering evergreens, working in lumber camps, etc. A few of them have homesteaded, and now hold from 40 to 80 acres of public land, and have made small clearings and erected rude log houses. In the main, though, they are squatters, and have built shelters or shacks and made small clearings in the forest, or wherever vacant land could be found. All the public land in Wisconsin has long since been settled; and lumber companies now own or control the lands on which these nomads temporarily reside. Consequently, when the cut-over lands are sold to settlers, the squatter Indians are forced to move on, and thus lose what few improvements they have made.

As northern Wisconsin has been settling up, and the lumber companies have taken off the timber and sold these lands to actual settlers, the Indians have been driven farther and farther north; and that accounts for the fact that many of them are now across the line in Canada. It is the onward move of civilization that has been pushing them farther north.

The CHAIRMAN. It is over seventy years since that treaty was negotiated; and during all that time the Government has never taken any interest in or had any knowledge of these Indians?

Mr. MERILLAT. Oh, yes, sir; it has.

The CHAIRMAN. So far as any dealings or relations with them are concerned?

Mr. MERILLAT. The Government of the United States, in the very act of 1864, provided that measures should be taken; it recognized the existence of the condition, and there are various reports that show that these matters were brought home to the attention of the Government of the United States. But you were in this position: The executive authorities had taken a stand; they had acted, even in defiance of an act of Congress, and every time the Indian bobbed up and asked for his rights he was knocked down and told that he did not have any, and that forfeiture was continually asserted against him by the people who were supposed to look after him.

The CHAIRMAN. When did these Indians first appeal to Congress for relief?

Mr. MERILLAT. We find that they appealed prior to 1864, because we find in the act of Congress of 1864 that Congress recognized their rights and gave certain directions. The act of 1864, you will remember, directed that their share should be withheld, and it stated that there were these stray bands of Indians in Wisconsin, and it referred to the fact that they had a treaty, and that under that treaty they were entitled to a share in what is now being claimed for them.

The CHAIRMAN. As I recall, in your brief you made the statement that the Interior Department had been against this legislation, had been reporting adversely to this proposed legislation, until recently?

Mr. MERILLAT. Until recently.

The CHAIRMAN. I was trying to get at when this present legislation was first proposed?

Mr. MERILLAT. In the year 1902. In 1902 the attention of the Government of the United States was called to this matter by a missionary among these Indians, who endeavored, through Senator Quarles, of Wisconsin, to get relief for the Indians. The Indian office wrote back to Senator Quarles that the Indians had no rights; that they had forfeited all their rights by not removing; and that there was no claim on their part, and no money. Protests were made against the payment of their shares to those who had removed West. The protests were ignored. No attention was paid to them. Senator Quarles, upon receipt of this letter from the Indian office, denying their right, and asserting that there was a forfeiture, took the position that if the Indian office (the very guardians of these Indians) was denying them rights, it must be because they did not have any. Thereupon, however, Mr. Morstad, who was a Scandinavian, wrote to Senator Nelson, of Minnesota. Senator Nelson sent the letter on, and it came into the hands of Mr. Belt, who was then practicing attorney in this city. Mr. Belt devoted that summer to looking into and ascertaining the exact situation with reference to those Indians. He became convinced upon an examination of the treaties, the reports that were to be had, the data available, and the decisions of the courts, that this action of the Executive in undertaking to declare this forfeiture and in ignoring the act of Congress was illegal; that these persons had rights, and he so wrote to Senator Nelson.

The result of all this was that these scattered remnants or bands got together; and through Chief Kisheck (who seems to have a little more authority over them as a whole than anyone else, and to be, as it were, perhaps, the representative of these scattered bands) a council or a gathering was called. That gathering resulted in the employment of Mr. Belt upon a contingent contract of 20 per cent, the Indians having no money for retainer or expenses or anything of that kind. That contract was sent down to the Indian office; and at that time the Commissioner of Indian Affairs was Mr. Jones. Mr. Jones approved the contract, but with a reduction in the fee to 15 per cent, at the same time stating that the Indian office denied that these people had any rights or any claims. It would seem that there was doubt in his mind, because of the fact that they did not have a tribal organization and were not living in what would be considered tribal relations, as to whether or not his approval and the approval of the Secretary of the Interior were required to that contract under the provisions of section 2103, which prescribes a certain specified mode of making an Indian contract. He said, however, that it seemed only proper to recognize the right of the Indians to be represented by an attorney and to give an official status to this matter. Therefore he approved the contract, but with a reduction of the fee to 15 per cent. Section 2103 provides that after one makes a contract with an Indian tribe or council, the contract must go to the Commissioner of Indian Affairs, and he must approve the same, and that the Secretary of the Interior must also approve the same. Section 2103 does not require the Secretary simply to confirm what the commissioner does. The commissioner and the Secretary act independently.

Mr. MORSE. Just a moment. The commissioner says he thinks $5,000 is enough. What do you say as to that?

Mr. MERILLAT. I say that such a proposition is an absurdity, in view of the fact that it appears here that Mr. Belt has done seven years' work, and we have done three years' work, upon this claim, and every step and every move has been due to us. And I am coming to that in logical sequence.

The Commissioner of Indian Affairs approved this contract for 15 per cent. He stated that the matter had long been denied, and apparently it was a hopeless case. The contract was taken wholly contingently; and in view of all of the difficulties ahead of the parties he, the Commissioner of Indian Affairs, though 15 per cent was a proper amount to allow.

Mr. MORSE. Have you ever sent any representative up there to Wisconsin?

Mr. MERILLAT. Mr. Belt can answer that question.

Mr. BELT. What is the question?

Mr. MORSE. Have you ever sent a man from Washington to Wisconsin to look into this matter?

Mr. BELT. No, sir; I had no need to do so.

Mr. MORSE. You have had no expenses outside of the city of Washington, have you?

Mr. BELT. None whatever in the way of sending anybody up there.

Mr. MORSE. Mr. Morstad has done the work and the Indian Department has prepared the roll?

Mr. BELT. The Indian Department has made the census. Mr. Morstad was employed to assist the enrolling officer.

Mr. CRAVENS. This is settled by contract, is it not?

Mr. MORSE. No.

Mr. CRAVENS. Their fee?

Mr. MORSE. No; it is not settled by contract at all, because when we legislate in a matter of this kind we fix the fee that they shall receive.

Mr. CRAVENS. Who recommends $5,000?

Mr. MORSE. The Commissioner of Indian Affairs.

Mr. MERILLAT. I will get to that matter. The matter then was sent——

Mr. MORSE. You had better be brief about it, because we have got to go up to the House.

Mr. MERILLAT. Yes, sir. The contract was sent to the Secretary of the Interior. Mr. Hitchcock was opposed to the employment of attorneys to represent the Indians at all, stating that he would do it; but they denied, but they insisted in denying, that the Indians had any just claims. The attorneys went on, continued their work, and finally they succeeded in securing an act of Congress directing that a roll should be prepared, and that a statement of the annuities should be submitted to Congress. The attorneys, aided by Mr. Morstad, the missionary in Wisconsin, gave directions to the officers as to where they should make the rolls. We would have refused to make the rolls, because they would have had no verity if we had. We refused to make these computations. The rolls were made from data and various matters that were put by us before them for their verification; and so, likewise, with reference to the computations. The computations were made, and they were sent over to the Secretary of the Interior. The Secretary of the Interior sent for us and asked us to go over them.

The Indian office made an error of $380,000 in our favor in their computations. When we went over their computations, we said: "We will refuse to stand upon these computations, because you have made an error in not counting in some Indians who should be included in this; and we can not justify this report. You have given us too large a percentage of the total." It was sent back to the Indian office, and a chief of the Indian office refused to make any change in his computations, and said he would resign first, but he did make the change after he found that he would have to. Then we went to the Indian office; and after they had for several years denied any right in this claim, they recently came around to the view that the attorneys were correct. What chance would the Indians have had in this case if it had not been for their attorneys?

We went before the Assistant Commissioner of Indian Affairs and asked for a hearing on the only matter that was then left open in their minds—with reference to the fee. They refused to give us a hearing as to what our fee was or should be. They stated that apparently a large part of the services had been performed in Congress. They knew nothing whatever as to that. The assistant commissioner stated to me that he did not know of our firm having anything to do with it. I asked him to send for his subordinate officials, his chiefs of division, who had had control of the matter, and they would state what we had had to do with it, and how much, and how active we had been in our efforts. We have any quantity of correspondence, and can show the memorials, bills, resolutions, and reports we drafted and what we did. We tried to go into that entire matter, and were refused a hearing. We went to the Secretary of the Interior and asked for a hearing, and he declined to give a hearing, stating that he would have to depend upon his Commissioner, or rather Assistant Commissioner, of Indian Affairs; and if this assistant commissioner was going to repudiate a contract which the former commissioner had made, he saw no need for a hearing. The result was that this $5,000 fee was reported without a hearing being given us.

There is and has been a certain amount of personal antagonism between Mr. Belt and the gentleman who passed upon this matter; and that shows itself in this statement that the attorneys should get a fee of $5,000 after one of them has done seven years' work, after the other two have done three years' work, and after we have succeeded in bringing to this point what the Indian office said was no claim whatsoever, and what they regarded as a hopeless undertaking and against their strong and continued opposition. We submit that that is not a fair compensation.

As to what Mr. Morstad has done, we say this: We always had intended and still intend to offer proper compensation to Mr. Morstad, for what has been done by him, out of our fee when paid according to contract. The difficulty with that situation was this: Mr. Morstad was a missionary. He showed in everything that he did that he was doing it out of his interest in the welfare of these people. We could not, under the circumstances, approach Mr. Morstad upon that point. It was a delicate matter. Our intention had been and still is that when the matter was concluded and our contract fee paid, we should say to Mr. Morstad that we desired to recognize his services. The only things that we have not done have been to make the rolls and to make the computations. We refused

absolutely to make any of those, although supplying information and data; because if we had made them, what verity would you have given to them when we came before you?

Mr. CRAVENS. I think you are correct about that. But you say you intended to compensate Mr. Morstad?

Mr. MERILLAT. Yes, sir.

Mr. CRAVENS. To what extent?

Mr. MERILLAT. That is a matter that I should prefer to have Mr. Belt speak about, because our firm has no contract except through Mr. Belt.

Mr. CRAVENS. I want to say right now that I think the amount of fee fixed here by the Secretary of the Interior is ridiculous. That is my opinion of it.

Mr. MORSE. Knowing what I do about the case, I think it is a great plenty. I think it is very liberal compensation.

Mr. CRAVENS. I think that in a matter of this magnitude it would be worth as much as that if you had not done anything.

The CHAIRMAN. Is there anything further?

Mr. MERILLAT. No, sir; I think we have covered the matter.

Mr. BELT. I should like to say as to Mr. Morstad, as that question is up, that this matter came to me on the suggestion of Senator Nelson. When I wrote to him, he sent my reply to Mr. Morstad, simply saying: "I am not from that State, and I do not think I ought to be bothered with it, nor to interfere. I think the Indians had better employ Mr. Belt, as he seems to differ with the department." Mr. Morstad sent that to me; but he said: "These Indians have no money. You will have to take it on a wholly contingent fee." I received a similar letter from Chief Charles Kisheck. I wrote to the chief: "Make your contract and send it to me." They made the contract and sent it to me; and I have never said or written a word to Mr. Morstad, and Mr. Morstad has never said or written a word to me, on the question of compensation for any services rendered by him—not one word. I have all of his correspondence at my office, and you are perfectly welcome to see the whole of it. He has never uttered a word about compensation. When the roll was to be made, I suggested to the enrolling officer that was sent out by the Interior Department: "You will facilitate your work if you will employ Mr. Morstad to go along with you to make this roll. He knows those people; he knows where they are, and he will help you." He did so. That is all there is about it. When this matter is settled, if I am awarded my fee according to the contract, I propose to offer Mr. Morstad suitable compensation for the aid he has given me in the prosecution of this claim.

Mr. CRAVENS. I should like to ask you what steps you have taken. What have you done in this matter? You say you have had it in charge since 1902, I believe?

Mr. BELT. A summary of services rendered is given in the brief we have placed in your hands, beginning at page 25, and we can show them in full. Let me state the different steps: You will see that Senator Quarles was notified by the Indian Office that the Indians had no claim. You have seen that document. There is his letter (handing Document No. 185). I had to go to Senator Quarles, when I took hold of the matter, with a memorial, prepared after long study and research, and ask him to introduce it. It took me six months to

convince Senator Quarles that these people had some rights, before he would even introduce that memorial so as to get this thing started. After he did introduce that memorial he wrote me a letter saying: "I have introduced your memorial for you now, but you must do the rest of your business with Mr. Brown." I had not seen Mr. Brown on the subject at all up to that time, I think. I then addressed myself to Mr. Brown, who represented that district. I had to labor with Mr. Brown for a long while (I do not know but what it was two sessions of Congress) before I could convince him that he ought to take up the matter. I convinced him, and he took up the matter, and reported the bill drawn by me and introduced by him, authorizing the enrollment of the Indians and the making of this account contained in Senate Document No. 830, Sixtieth Congress, first session. Then my work was practically suspended, except to advise and correspond with the people out there that the enrolling officer was coming, and to be ready to receive him, and to give their names. My work was all done by correspondence.

Mr. CRAVENS. What has taken all this time? What has caused all this delay from 1902 to 1909?

Mr. BELT. Oh, I had to take so much time with Senator Quarles, gathering and furnishing him information. I said "six months"—I spent six months there persuading him to introduce the memorial, and then I spent about two years with Mr. Brown and his subcommittee before I could get the bill reported, the department having made an adverse report upon it. Of course, when the bill was reported it took some time to get it through Congress. I think it took two sessions to get it through Congress. I think the most of the delay has been up here.

Then there has been another consumption of time: The Indian office, or the department, sent out an inspector to make the rolls, and he came back with four hundred and some odd people as the whole number of these people. The Indian office said: "That is not right; we know it is not right." I did not complain about that. I was willing to come up here with that. I knew there were some in Canada. The Indian office would not accept it, and came here to Congress and asked Congress to give them money to send another man out to make the enrollment complete before stating the required account; and when Congress refused to give the money I appealed to the Secretary of the Interior (the present Secretary) and said to him: "You have got the law for making this enrollment; why can you not send somebody there to make it?" And he did authorize and direct the Commissioner of Indian Affairs to send somebody there to make this enrollment, and it was made.

Mr. CRAVENS. You have performed about the same services as are performed in all cases of this kind?

Mr. BELT. Yes, sir.

Mr. CRAVENS. What is the usual compensation?

Mr. BELT. I was in the Cherokee case, and there I represented the Cherokees in North Carolina. I was there from 1894 until the case was decided, in 1904, I think—something like that. I had a contract for 15 per cent. The Secretary of the Interior approved it for 10 per cent, and when I was about half through with my work and was in the court the Indians renewed my contract, and he refused to approve it. I came up here and asked Congress to send me to the Court of

Claims and let the Court of Claims decide what my fee should be. In the meantime the Indians said, "Our case has gone to the court, and you are doing more work than we expected; you shall have 15 per cent for your work." And they gave me an additional contract, and the Court of Claims awarded me 15 per cent.

Mr. CRAVENS. What is the usual fee, though? Not yours, but that ordinarily allowed.

Mr. BELT. About from 10 to 15 per cent. I would say this: There is a law of Congress which regulates the fees in Indian depredation cases, and it says that no fee in excess of 15 per cent shall be allowed except the court shall decide that it is an extraordinary case. That is the law in Indian depredation claims, act of March 3, 1891, section 3. (26 Stat., 854.)

Mr. MERILLAT. You asked with reference to the delay. I think two years of the delay was caused by the fact that the Indian office was constantly fighting us, and was constantly reporting that there was no claim on the part of these Indians, and that they had forfeited all of their rights. Then the Senators and the Members of Congress from the States were constantly coming back with the statement: "Why, the Indian office is against you; you surely can not have any claim." In other words, it was an uphill task, and you had to go first after one and then after another and get them to act.

Mr. CRAVENS. Have you any other citations here on this authority of statutory law as to the payment of annuities except the one you gave me—Thirteenth Statutes at Large, 172?

Mr. BELT. I think there is one in 1847.

Mr. MERILLAT. We can get you several decisions of the Comptroller of the Treasury.

The CHAIRMAN. If there is nothing further, the committee will adjourn. Is there anything further to put in the record, Mr. Cravens?

Mr. CRAVENS. Not that I know of.

Mr. KAPPLER. We can bring you up a great mass of documents that we have that will show these various matters and the services that we have rendered.

Mr. CRAVENS. No; you do not know what I mean. This is as to the payment of annuities—as to their payment per capita under these same treaties, the same kind of treaties that you are proceeding under now.

Mr. KAPPLER. Yes, sir.

Mr. CRAVENS. And what, if any, provision has heretofore been made in other cases where all of those of the tribe have not received their pay—what became of the rest?

Mr. BELT. You have got it right here.

Mr. CRAVENS. In this case, I know, it was all paid out.

Mr. BELT. No; I can give you a decision of the Comptroller of the Treasury—I have not got the exact number, but I will send it to you—saying that where a man is born a member of the tribe he is born to a right, and he can not be deprived of his annuities. If he is absent, his annuities must be retained for him in the Treasury until he makes his application for them. That is in volume 12, I think.

Mr. KAPPLER. I want to say that in the Loyal Creek case Congress fixed a fee of 15 per cent, which involved not half as much work as

we have performed in this case, and this was done with the approval of Senator Platt, of Connecticut, who was considered one of the best friends the Indians ever had in Congress.

Mr. MERILLAT. We want a fee fixed, but we do not want it fixed without a hearing.

Mr. KAPPLER. That has been our difficulty. We did not have a hearing before the department report was made, and I doubt if the Indian Office would have made such a report if it had heard our explanation of services rendered. I am confident Mr. Leupp, if he had been here, would have been more reasonable. We have all the facts in writing—all the services that have been performed by us.

(The committee thereupon adjourned.)

WASHINGTON, D. C., *February 1, 1909.*

HON. JOSEPH HOWELL,
Chairman Subcommittee, House of Representatives,
Washington, D. C.

DEAR SIR: Pursuant to the promise made to the committee to furnish them, in connection with the Pottawatomie Indians, of Wisconsin, bill, with a reference to a decision of the Comptroller of the Treasury with respect to the right of each Indian to secure his per capita share of any tribal annuities or other payments, we desire to cite you to the decision rendered by the comptroller February 18, 1907, under the head of "Annuities to minors of Osage Indian tribe," published in volume 13 of Decisions of the Comptroller of the Treasury, page 552. In the course of this opinion, the Comptroller of the Treasury says:

"An Indian who is entitled by membership in a tribe to share in the annuities or other communal benefits of the tribe does not lose such right by the failure of an Indian agent or other officer to enroll him for any particular payment. The right is inherent in every born member of the tribe from the date of birth. The appearance or absence of the name on the roll is only prima facie evidence. If the name of an Indian entitled to enrollment and payment be omitted from the roll for one or more payments, either by mistake of the agent or in pursuance of erroneous instructions, his right to the payment or payments is not thereby extinguished; but upon correction of the mistake, or countermand of the erroneous instructions, he may claim and have allowed the payment or payments which have been withheld by his nonenrollment. His status as to payment is the same as that of an annuitant who has not been paid at the regular time on account of absence, sickness, or other cause. 'Such unpaid shares will be held subject to the claim, through the Indian office, of the parties to whom they may be due, or the agent may be instructed to pay them at the next annuity payment.' (Sec. 152, Reg., 1894; see also sec. 154, Reg., 1884, and par. 15, sec. 324, Reg., 1904.)"

Speaking further on this same matter, the comptroller's opinion said:

"Such right of enrollment and payment was inherent from date of birth, and is in accordance with immemorial custom in Indian annuity payments."

With respect to the fees, we desire to call to your attention the fact that in the Indian depredation cases it was recognized by Congress that a fee of 15 per cent was proper to be paid to representatives of the Indians. There were a great many of these cases and they did not involve, as does the Pottawatomie claim, the upsetting of a long established but illegal departmental denial of treaty rights.

In the act of Congress approved March 3, 1903 (32 Stats., 995), Congress appropriated $600,000 for the payment of the claim of the loyal Creek Indians and directed the payment to the attorneys there engaged of 15 per cent of the amount of the claim.

In the matter of the Choctaw and Chickasaw nations of Indians (26 Stats., 1025) $2,991,450 was appropriated to pay these Indians for the claim the Choctaws and Chickasaws had in certain lands the Cheyennes and Arapahoes were occupying. A compensation of 25 per cent was allowed the attorneys.

In the matter of the claim of the Pottawatomies in Michigan and Indiana for the recovery of unpaid annuities under sundry treaties from 1795 to 1846, 12 per cent was awarded the attorneys.

In the matter of the contract between the Seneca Indians of New York and James C. Strong to recover a large section of land under the treaty of 1826, 10 per cent, together with costs and expenses, was allowed.

The case of Lamon *v.* McKee and McKee *v.* Cochran (18 D. C. Reports, 446) shows that these attorneys recovered a fee of 30 per cent on a Choctaw claim amounting to nearly $3,000,000.

In Cherokee Nation *v.* The United States (40 C. Cls. R., 252) compensation was allowed the attorneys of 15 per cent of the recovery.

In the claim of the Kaw Indians allowed by the Indian appropriation bill of 1905, to the extent of $155,000, 10 per cent was allowed.

In the matter of the Sisseton and Wahpeton bands of Sioux Indians (scouts and soldiers) in which Congress made an award of $545,178.37, the attorneys were allowed a fee of 10 per cent.

In the case of the Turtle Mountain band of Indians of North Dakota, Congress made an award to the Indians of approximately $1,000,000 and fixed the attorneys' fee at $50,000. This case involved little work, whereas the Pottawatomie matter has been a long labor.

In the matter of the claim of the archbishop of the Catholic Church of California against the Government of Mexico, which resulted in what was known as the "pious fund" arbitration award at The Hague, in which the archbishop was awarded the sum of $1,400,000 Mexican, or about $600,000 American, in which arbitration one of the present attorneys for the Pottawatomies was engaged the attorneys had a contract for and there was awarded to them 25 per cent of the recovery, which recovery, as stated, was about $600,000 in American money.

There has not been a single step taken in this case that was not taken either by the attorneys themselves or taken, whether in Congress or out of Congress, at their suggestion. They have constantly pushed the matter, and the documents in their possession will show it.

They are willing either that Congress shall fix a reasonable fee based upon services rendered and results obtained after a full hearing and investigation of the same by Congress, or they are willing that the court shall determine the fee after proof of services, as Congress may elect. They protest against any attempt to name a fee by the Indian office without giving them a hearing, and especially where the same repudiates the action of the Indian office at a time when the claim was considered desperate.

Yours, respectfully,

R. V. BELT.
KAPPLER & MERILLAT.