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Osage Bill

Hon. W. E. Disney,
House of Representatives,
Washington, D. C.

Dear Mr. Congressman:

With reference to the Osage Civilization bill, I have called your attention to the opinion of the Supreme Court in the Shoshone Indian case, reported in advance sheets, Vol. 57, page 246. This case, Nos. 216 and 328, was decided Jan. 4th last.

As the advance sheets are needed in preparing a brief, I asked Mr. Crozier to obtain a copy of this opinion for your use. The chief item of interest, as it bears on the Osage matter, is that the court found that Indians are, in effect, entitled to interest on judgments of the Court of Claims, regardless of the silence of the jurisdictional bill on the subject. In short, the Osages, in waiving interest in the Civilization fund matter, are waiving something which has a substantial basis if the merits of their claim ~~are~~ conceded, and this factor should influence the favorable consideration of the pending bill.

The language of the U. S. Supreme Court, in the Shoshone case, to which I wish to call your especial attention is as follows:

" Third. The claimant's damages include such additional amount beyond the value of its property rights when taken by the government as may be necessary to award just compensation, the increment being measured either by interest on the value or by such standard as may be suitable in the light of all the circumstances. "

In waiving a claim to interest amounting to more than one million dollars, the proposed measure is certainly as little as the political branch of the government can do to make the Osages fairly whole. This involves the waiving by the U. S. of offsets at the best of about \$23,000.00.

I do not believe the statements in the report of the Secretary, in the light of this Shoshone opinion, will cause you any trouble on the floor in the consideration of the bill.

Very truly yours,

F. M. Goodwin

564

Chas. E. Smith

Proposed Amendment to S. 670, as reported out
favorably by House Committee on Indian Affairs.

Insert at the end of Sec. 2, which is line 9, page 2, of the bill so reported, after the word "Indians," the following provision:

" provided, however, that the Comptroller General of the United States is hereby authorized to determine whether any offsets or counterclaims asserted by the United States, as set out in said opinion of the Court of Claims and not by the said court therein specifically denied as proper counterclaims or offsets, are in fact proper offsets or counterclaims for tribal and not individual Indian purposes under the provisions of Section 2 of the Act of August 12, 1935 (49 Stat. 596), and the credit herein awarded shall be reduced by the amount so found and determined by the Comptroller General of the United States as being satisfactorily established by the evidence in said case under the said act."

A BILL

Relating to the investments of Osage Indians of Oklahoma

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That The Secretary of the Interior may, upon the request of any member of the Osage tribe, invest any or all of the funds of such member in a life annuity insurance policy, which upon his or her death will go to the heirs of Indian blood of such member; or may, upon the request of any member of the tribe, use the funds of such member to buy a life annuity insurance policy for any member, of Indian blood, of his or her family, or any near relative of Indian blood, such insurance policies to be held in trust by the United States and not subject to sale, cancelation, or transfer of any kind without the consent of the Secretary of the Interior during the life of such members and his or her heirs, the annuities coming from such life-insurance policies shall be paid to the persons designated therein. Such policies and the income therefrom shall not be subject to attachment, garnishment, or execution and may not be pledged as security for any indebtedness; and it shall be stated in such policies that they are held in trust for such Indians.

Memorandum re Osage Civilization Fund

1. Herewith copy of Section showing conclusively that the findings of facts by Court of Claims.

(A) The Osages who negotiated the Treaty involving the blood Indians, ignorant of the English language, and that the Treaty was actually negotiated and signed in 3 hours time.

(B) The Osages understood that the Treaty gave them the full benefit of all moneys received from the sales of their lands under the Treaty

2. Herewith copy of the Opinion of the Court of Claims, cited in HR. 6682, showing that the Court could not reform the Treaty so as to enter judgment in accord with their findings of fact, and that such reformation of the Treaty was a political question for Congress. (See marked paragraph)

3. The confusion as last hearing as to the acceptance of the principal sum, excluding the claim for interest, was due to failure to recognize two factors, viz:

(A) That the Interior Department, acting as the trustee and guardian of the Tribe, recommended this procedure, and that the Tribe has approved the same, based on

(B) the theory that interest does not begin to run until the lands are actually placed to the credit of the Tribe on the books of the Treasury of the United States. (See report of Secretary)

The legal right to collect interest, unless it is specifically so provided by Congress, is dubious at the best.

(4) Some confusion also existed as to whether other sums from other sources might not have been paid the Osages in lieu of the moneys from these land sales. The Court of Claims found, as charged by the jurisdictional bill, that no offsets or counterclaims exist against the amount claimed.

(5) Some question was raised as to whether the attorneys employed by the Tribe were entitled to credit for the present status of the Osage claim. There can be no question that the suit in the Court of Claims, and the actions of the attorneys, are directly responsible in establishing the facts as found by the Court of Claims, namely, that the Osages understood that the Treaty accorded them and no other Indians the full benefit of all moneys received from the sales of their lands.

The attorneys, therefore, are responsible for establishing facts that fully justify the appropriation now proposed, as the Supreme Court of the United States has repeatedly held that Indian treaties must be construed and interpreted as those unlettered people understood the provisions.

(6) The Osage Tribe desires the attorneys to be paid as provided in existing contract, which is a substantial reduction over the original contract. The amount agreed upon is in compensation of services for a period of over 18 years, and this amount was approved by the Secretary of the Interior when the contract was approved.

SKR # 1165