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Cherokee Indians. (To accompany bill H.R. no. 456)

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CHEROKEE INDIANS.

[To accompany bill H. R. No. 456.]

JUNE 2, 1846.

Mr. JACOB THOMPSON, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to whom were referred the message of the President of the United States, relative to Cherokee difficulties, with the accompanying papers, and also the memorial of John Ross and others, as the representatives of the Cherokee nation, have had the same under consideration, and beg leave to submit the following report:

The Cherokees residing west of the State of Arkansas are divided into three distinct parties, or factions, well known and distinguished by the terms of "old settlers," "treaty party," and "anti-treaty, or Ross party." The "old settlers" and "treaty party," together, constitute about one-third of the Cherokee nation; and of course all the political power of the government is held and exercised by the anti-treaty or Ross party. The manner in which this power was obtained, and is now exercised, is the fruitful source of the discontents and complaints which have been brought to the consideration of Congress.

The old settlers, who were the pioneers of the Cherokee people, who had long claimed to be a distinct and independent community, and who aver that they believed the whole country known as the Cherokee nation, with the exception of the 800,000 acres which have been acquired since the year 1835, to be rightfully vested exclusively in them, are restive, and submit with great impatience to rulers chosen by strangers and intruders, and to laws enacted without their consent. The treaty party represent themselves as feeling no security of person or property, under the administration of the dominant party. Many of their leaders, endeared to them in a thousand ways, have been cruelly murdered, and the perpetrators of the murders have escaped unpunished. They are, for the most part, denounced as "traitors," and the sentence of outlawry has been passed upon them. Day after day witnesses the shedding of blood, and the cries of lamentation and distress are heard throughout the land. Some of this party are in a state of banishment, and a large portion of them having fled their country, are now actually supported by the charity of the United States.

A conviction of their own weakness, and of the necessity of union, connected with the oppression and injustice which they suppose themselves alike to have endured at the hands of the dominant party, has pro-

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duced a strong community of feeling—a deep sympathy for each other, collectively and individually, between the "old settlers" and the "treaty party." To the individual Indians who compose these two parties, the government of the United States is largely indebted; and to abandon them now to be despoiled of every right which they have heretofore enjoyed, voluntarily to leave them the subjects of a reign of terror, liable at any moment to be stripped of property or life, without recourse, would be an act of the most flagrant injustice and the grossest ingratitude.

It has long been a cherished policy on the part of the United States to remove the Cherokees from the States east of the Mississippi river to a country west, beyond the jurisdiction of any State or Territory. The "old settlers," at an early day, cheerfully came into the views of the government, and contributed their influence and example in effectuating its purposes. These kind services should be remembered, and the claims of these persons upon our protection and guardian care must be favorably considered.

Before the treaty of 1835, the Cherokee council had issued a decree that any individual of that tribe who should sign a treaty for the cession of the Cherokee country should be considered as a traitor, and as such should be regarded as an outlaw. Notwithstanding this sentence and fearful penalty, after the Cherokee nation was involved in the most perplexing difficulties with the State of Georgia, which, if persisted in, were calculated to disturb the peace and good feeling of the people of the whole Union; and after it became evident that to remain longer in their old country was destructive to their prosperity, and even of their national existence, and that the only means of saving their own people, and of removing from the States and the general government the perplexing questions of conflicting jurisdictions which had sprung out of their remaining on this side of the Mississippi river, was to treat for the cession of all their country within the States; the treaty party, with a firmness of nerve and a purity of purpose which reflected upon them high honor, came forward, at the most earnest solicitation of the United States, entered into a treaty in the year 1835, in the face of the most violent opposition; braved the most unmeasured denunciations; and, in this manner, enabled our government to avoid a conflict which threatened to shake our institutions to their very foundation. The committee feel unwilling that these individuals should suffer at the hands of a vindictive majority, for acts performed at our instance, as long as we possess the power to throw our shield of protection over them.

These "old settlers" and "treaty party" appeal to us to save them from the evil effects of domestic strife—to give them a country where they may live under their own laws, customs, and head-men, unmolested by a domestic foe who seeks their destruction—to deliver them from oppression and misrule, which, if not arrested, must end in their annihilation. The facts which they set forth, and on which they rely, to sustain them in their prayer, are satisfactorily proven by the mass of testimony submitted to the committee. The reasonableness and justness of this appeal, therefore, readily commend its adoption; and a bill is herewith reported for the appointment of three commissioners, to make an equitable division of the country between them and the Ross party.

As to the policy and good effects of this dismemberment of the nation, there can be but one opinion: division must be made; this people must

be separated; the continuance of the present social compact, unchecked and unrestrained as it exists at present, will inevitably end in the final destruction of the minority parties. On this subject the committee are unanimous.

The only question that can be raised, that deserves serious consideration, is the one relied upon in the memorial of John Ross and others, who claim that the Cherokee nation is one community—who have guarantied to them, by solemn treaty, the right to "establish and enjoy a government of their choice, and to perpetuate such a state of society as may be consonant with their views, habits, and conditions, and as may tend to their individual comfort, and their advancement in civilization;" and from this treaty stipulation they deny to Congress all power whatever to divide the country between any bands or parts of the nation. They refer to that clause of the treaty wherein "the United States agree to protect the Cherokee nation from domestic strife and foreign enemies, and against intestine wars between the several tribes;" and consider it similar to that provision of the constitution which says, "the United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature or of the executive, (when the legislature cannot be convened,) against domestic violence." They then proceed with the argument: "It cannot be pretended that such interposition can be made by the federal government upon the application of an individual citizen, or any number of the citizens of a State, complaining that the laws of the State are oppressive, or that they are oppressively administered or executed: such an interpretation would annihilate State sovereignties, and would inevitably excite the domestic strife it pretended to suppress." The committee have desired to present, in all fairness, the position taken by the dominant party of the Cherokee nation, because they feel unwilling to violate the constitution or to assume power to accomplish the most cherished object. But the whole argument is based upon a most palpable error. Indian nations are not sovereign States or independent governments; on the contrary, they have ever been considered as dependants: the fee simple of the very land they occupy is vested in the United States, and the Indian occupies the position of the ward, and the United States as the guardian and protector.

It is true that, time after time, treaties have been made with the different tribes, which have been conducted and ratified with all the form and circumstance pertaining to a similar arrangement with the most powerful nation on earth: but, in all this, there has been exhibited a strange anomaly in the science of diplomacy. The United States never have treated with an Indian nation as an equal. Our commissioners draw up the treaties—our authorities construe them—our agents execute them, and our sense of right and our views of good policy have ever prevailed, and in no position have we forgotten that they are the weaker, the dependant party; that these treaties are to be construed as contracts, and that interpretation is to be adopted which is most favorable to the Indian interests, and most conducive to his happiness and advancement. And in the history of this very tribe of Indians, we have a most striking example of the interference of our government for the contentment and happiness of the Cherokees. Near thirty years ago, a difference between the various bands of this tribe manifested itself, growing out of the preference

of the one party for the chase and the hunter's life, and of the other for agriculture and the arts of civilization; and this led to a treaty, by virtue of which the different parties voluntarily separated, and a distinct and far distant country was assigned to the then emigrating party, and to such as might be induced to follow. It is true that this appears to have been done by the mutual consent of all the Cherokee people. But no one can doubt that the same thing would have been allowed and sanctioned upon the petitions of the one side and the protest of the other. And in the present case no one could doubt that it would be clearly within the range of our discretion to invite these minority and oppressed parties to leave their country altogether, and to locate on another and different tract of country. This appears to the committee so self-evident that all argument would be superfluous. Then let us suppose that the present Cherokee country is vested in all the tribe, and held by them as tenants in common; can any one entertain a reasonable doubt that, should Congress believe a division of the country between the different bands or factions is necessary to save them from domestic strife, to secure to them life and the untrammelled pursuit of happiness, to give them contentment, and advance them in civilization, they have not the power? On the contrary, would not a refusal or a failure to act, in view of the consequences, be in the highest degree culpable? and, should blood be shed, and the happiness of a people destroyed by this omission, with what justice could we claim to be guiltless, and to hold our skirts to be clear? The position we occupy, of guardian to this people, and the obligations we have taken upon ourselves to protect them from domestic strife, impose upon us the duty of affording some remedy for existing evils; and, in the estimation of the committee, none is more plausible or more effective than a division of the country, and a separation of these embittered parties, leaving each to make their own laws, adopt their own customs and forms of government, and choose their own head-men and rulers.

It has been the uniform custom of the government of the United States, during the whole course of its history, to deprive no Indian tribe of the land of which they were found possessed, without first obtaining their consent in some satisfactory form. Possessed of unlimited power, the United States has exercised it with delicacy, forbearance, and a due regard for the feelings, interests, and even prejudices and superstitions, of the Indians; nor could your committee now give their assent to any other line of policy. They would be unwilling that our government should expel the Cherokee people from one acre of the land assigned them, in order to make way for the settlement of our own citizens. But in this division the United States is a disinterested party. A common inheritance is to be divided by a paternal guardian between the heirs, who are embittered and deadly hostile to each other, in order to restore to them peace, contentment, personal security, and prosperity.

In the bill reported by the committee, a change in the intercourse laws is proposed, for the purpose of the more effectual suppression of vice and certain punishment of crime. The outrages upon all law and humanity which have been committed in the Cherokee country, and have passed away in many instances without investigation, and seldom with the punishment of the offenders, have rendered this change necessary and proper; and the more so, when there are plausible grounds not wanting to suspect the Cherokee authorities of instigating, or at least conniving at, the com-

mission of these crimes. But the question is again raised, has Congress the power to make the proposed change in the intercourse laws, so as to confer upon the federal courts the power of trying an Indian for offences committed against the person and property of an Indian, and to make the same applicable to the Cherokee nation? The treaty of 1835 is relied upon as limiting the power of Congress over this subject; and it is true, that, by the fifth article of this treaty, it is agreed that the United States will secure to the Cherokee nation the right of their national councils to make and carry into effect such laws as they may deem necessary for the government and protection of the persons and property within their own country, belonging to their people. But a proviso immediately follows, that such laws shall not be inconsistent with the constitution of the United States, and such acts of Congress as had been or might be passed, regulating trade and intercourse with the Indians.

At the December term of the Supreme Court of the United States, for the year 1845, in the case of the United States *vs.* Rogers, which came up from the State of Arkansas upon a certificate of division between the justices who held the circuit court of that State, this identical point was made; and Chief Justice Taney delivered the opinion of the court in these terms:

"It is our duty to expound and execute the law as we find it; and we think it too firmly and clearly established to admit of dispute, that the Indian tribes residing within the territorial limits of the United States are subject to their authority: and when the country occupied by them is not within the limits of one of the States, Congress may by law punish any offences committed there, no matter whether the offender be a white man or an Indian."

This opinion of the court covers the whole ground, and supersedes the necessity of further argument on the part of the committee.

Provision is also made in the bill reported for the emigration and subsistence of those Cherokees who still remain in the State of North Carolina; and an election between the parties is given to the emigrating Cherokee on his arrival among his brethren in the west, and he is allowed to settle down and affiliate with that band or division which he may prefer. This is an act of sheer justice, not only to the unfortunate Indian who lingers behind away from his brethren, but also to the State of North Carolina, which has been burdened and molested with this population. And to this section no objection is anticipated.

The committee omit, by design, the expression of any opinion as to the claims for money which are set up by the different parties. This whole matter is now a subject of investigation in the War Department, and no satisfactory conclusion could be attained without further and more definite information.