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Report : Claim of Followers of Gen. McIntosh

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IN SENATE OF THE UNITED STATES.

AUGUST 26, 1850.

Submitted, and ordered to be printed.

Mr. SEBASTIAN made the following

REPORT :

The Committee on Indian Affairs, to whom was referred the subject of the claim upon the United States by a portion of the followers and friends of the late General McIntosh, of the Creeks, have considered the same and respectfully report:

That the origin, character, and extent of this claim are so well stated in the accompanying communications, marked A, B, and C, that the same are herewith submitted as a part of this report.

From these documents it appears that the obligations of the 9th article of the treaty of 1826 with the Creeks has been only partially redeemed. In the statement of the claim by the agent of the Creeks and by the Commissioner of Indian Affairs, the committee think there is error, which should be corrected. The first assumes the number of the Indians at 3 000, an estimate which we think has very properly been reduced to 2,733, less 1,300 provided for by the act of 1848, leaving the number 1,433 yet to be paid according to the terms of the treaty. In fixing the basis of settlement with these claimants, it is not proper either to charge them with the whole amount, as is done in the first instance, or exempt them entirely, as in the statement of the Commissioner, from the sum of \$15,000 paid Mr. Brealy in 1826, immediately after the ratification of the treaty, and in strict pursuance of its terms. It was by the treaty a first and part payment of the gross sum of \$100,000, which the United States agreed "to present to the chiefs of the party, to be divided among the chiefs and warriors." The mode of payment and distribution of the whole sum was the same, with the exception that a part was to be paid upon the ratification of the treaty, and the balance after their removal west. That advance was not, we think, "a gratuity, intended to sooth and compensate the Indians for the injury and disappointment to which they have been subjected, in consequence of the failure of the government to redeem its pledged faith." The failure to deduct this amount when the appropriation of 1848 was made, originated, most probably, in the idea that the whole sum to be paid was a *per capita* allowance to each member of the party, and the fact established before the committee that they had received nothing; hence the estimate of the amount for 1,300, at \$33 33 per head. There was no strict *per capita* distribution contemplated by the treaty. The entire disbursement of the fund was a personal trust confided to the chiefs, for the discharge of which the United States were not re-

sponsible. The proper basis of settlement is to regard the claimants as having received their proportional part of this sum, the balance of which should have been deducted from the appropriation made in 1848. We think, with the Commissioner of Indian Affairs, that the present claimants should not be injured by the excessive payment to those heretofore provided for; nor do we think they should profit by it. If, therefore, these views be correct, the estimate of the amount due would be thus stated:

Due to the chiefs, to be divided among those not heretofore paid, computed to be 1,433, at \$33 33½ per head	-	\$47,766 67
Less the proportional part of \$15,000 paid Brealy	-	7,865 00
		<hr/>
		39,901 67
		<hr/>

Being the balance in full of all demands, under the 9th article of the treaty of 1826, for which the committee recommend an appropriation.

A.

WASHINGTON CITY, D. C., February 7, 1850.

SIR: Our attorney, Judge Bryan, has informed us that some time ago he addressed a letter to the Secretary of the Interior, calling his attention to the fact that a portion of the \$100,000 promised to be paid to the friends and followers of General McIntosh by the 9th article of the treaty of 1826 has never been paid, and asking him to apply to Congress for an appropriation to meet the balance still due; and that this letter was referred to you for a report. We respectfully call your attention to this letter, and ask that you would report upon it at an early day.

We are your friends,

B. MARSHALL,
DAVIS BARNET,
LOUIS McINTOSH,
G. W. STIDHAM.

HON. ORLANDO BROWN,
Commissioner of Indian Affairs.

B.

WASHINGTON CITY, November 27, 1849.

SIR: The 9th article of the treaty concluded on the 24th January, 1826, between the United States and the Creek tribe of Indians, is in the following words:

“ART. 9. In consideration of the exertions used by the friends and followers of General McIntosh to procure a cession at the Indian Springs, and of their past difficulties and contemplated removal, the United States agree to present to the chiefs of the party, to be divided among the chiefs and warriors, the sum of one hundred thousand dollars, if such party shall amount to ten thousand persons, and in that proportion for any

smaller number—fifteen thousand dollars of this sum to be paid immediately after the ratification of this treaty, and the residue upon their arrival in the country west of the Mississippi.”

Immediately after the ratification of the treaty, Congress made an appropriation of \$100,000 to carry said article into effect, and under it \$15,000 was paid. The further sum of \$38,848 42 was taken from this appropriation, and expended in carrying into effect certain articles of the same treaty, other than the 9th; and in December, 1828, the balance—\$46,151 58—was carried to the surplus fund. In March, 1829, the latter sum of \$46,151 58 was unappropriated, and was used in carrying into effect other articles of said treaty than the 9th.

In August, 1848, Congress made an appropriation of \$43,333½ to be paid to 1,300 warriors, friends and followers of General McIntosh, which has been paid.

The account then stands thus:

Amount required to be paid by the treaty	-	-	-	\$100,000 00
Sum paid Colonel Brealy	-	-	-	\$15,000 00
Recently paid, under act of 1848	-	-	-	43,333 33½
				<hr/>
				58,333 33½
Leaving a balance still due	-	-	-	<hr/> <hr/> 41,666 66½

As attorney in fact for the Creek nation of Indians, I have respectfully to ask that you would cause this matter to be presented to Congress, and that you ask an appropriation in order that the amount still due under the 9th article of the treaty of 1826 may be paid to those entitled to have it.

With great respect, your obedient servant,

JOSEPH BRYAN.

Hon. T. EWING,
Secretary of the Interior.

C.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, August 8, 1850.

SIR: I beg leave to submit the following as a report called for from this office on the letter to the department of Joseph Bryan, esq., of the 27th November last.

The application of Mr. Bryan is, that an appropriation may be asked of Congress for the sum of \$41,666 66½—that amount being the balance due to certain Creek Indians under the stipulation of the 9th article of the treaty of 24th January, 1826, with the Creek nation. The article is as follows:

“In consideration of the exertions used by the friends and followers of General McIntosh to procure a cession at the Indian Springs, and of their past difficulties and contemplated removal, the United States agree to present to the chiefs of the party, to be divided among the chiefs and warriors, the sum of one hundred thousand dollars, if such party shall amount

to three thousand persons, and in that proportion for any smaller number—fifteen thousand dollars of this sum to be paid immediately after the ratification of this treaty, and the residue upon their arrival in the country west of the Mississippi.”

The records of this office show that, prior to the year 1843, the McIntosh party of Creek Indians frequently urged on the officers of the government that the pledge made in the treaty had not been redeemed; and on the 26th July, 1843, the then Commissioner of Indian Affairs, whose attention had been directed to the subject, reported on the matter to the Secretary of War. In that report he sets forth that the whole sum of \$100,000 was paid, but does not state when and how. His impression was, that it had been paid to the parties entitled to it, because he goes on to show that, after the expenditure of the \$100,000, and on 30th June, 1834, Congress appropriated the further sum of \$9,770 12 “to pay balances ascertained to be due by the Second Auditor for capitulation money, provisions, &c., under the treaty” of 24th January, 1826.

Under this state of things, the claim of a portion of the emigrants (1,300 in number) was presented to the Congress of the United States. It was referred to the appropriate committee. During the pendency of the said claim in the Senate, and also in the House, this office was called on for information as “to whom, and at what times, was the \$100,000 promised the friends and followers of McIntosh by the 9th article of the treaty of Washington, made with the Creek Indians in January, 1826, paid; and what evidence has the department of its disbursement to the Indians.” The answer, under date of July 24, 1848, was to the effect that the office contained no other information respecting the matter than that embraced in the report of the Commissioner before referred to, but that “the evidence of payment, and when and to whom it was paid, is on file with the accounts in the Second Auditor’s office.” The subject was submitted by the chairman of the Committee on Indian Affairs of the Senate to the Second Auditor, who, on 24th July, 1848, reported, that of the said sum of \$100,000, \$46,151 58 was carried to the surplus fund on the 31st December, 1828, and the difference—\$53,848 42—had been disbursed to various persons. (See report House of Representatives, 30th Congress, 1st session, No. 826, p. 28.) On an investigation of the matter, the committee reported that there was no evidence that more than \$15,000 had been paid as the treaty stipulated, “but that \$38,848 42 has been misapplied, and the balance of \$46,151 58 was carried to the surplus fund, and is now in the treasury.” A bill was therefore reported providing for the payment of the claimants. The substance of the bill was embraced in the 4th section of the act approved August 12, 1848, making appropriations for the civil service of the government, which set apart the sum of \$43,333 33½ in satisfaction of the claims of 1,300 Creek emigrants, who were emigrated to the west in 1829 by Colonel Crowell, under the conduct and control of Luther Blake.

As before stated, the application of Mr. Bryan is, that an appropriation be asked of Congress for the sum of \$41,666 66½—that amount being the balance of the \$100,000 promised to the friends and followers of McIntosh. Mr. Bryan’s application is based on the ground that the number of Indians who emigrated was three thousand—the treaty estimate—and that each is entitled to \$33 33½. He has therefore deducted from the \$100,000 the amount of \$15,000 paid immediately after the ratification of

the treaty of 1826, and the sum of \$43,333 33½ appropriated by the act of August 12, 1848, for a party of 1,300—leaving the sum of \$41,666 66½ for the remaining 1,700 of the said number of 3,000.

The foregoing is, it is believed, a correct statement of the facts bearing on the application of the attorney for the Creek Indians, who, it is understood, are here for the purpose of obtaining an appropriation for their people, who are personally interested.

Whatever opinion was entertained by my predecessor on the subject, I consider myself concluded by the action of the national legislature in the premises; and as Congress has impliedly decided that the money intended for the whole number of the friends and followers of McIntosh has been applied, or not paid to them, it would seem that the only question to be considered is, what amount the government has withheld from the Indians. To determine that correctly, or to approximate to correctness, the number of the friends and followers of McIntosh must be ascertained. From the manner in which his followers emigrated, it is found impossible to fix the precise number from any official data. Some of the Indians were removed under the charge of government officers; others removed themselves—in other words, paid their own expenses.

The number of those who were removed by officers of the government in the years 1827, 1828, and 1829 is placed, in an official statement made in April, 1830, at 2,500.

In a memorial of the Indians presented in February, 1830, the number is stated at 2,700.

In a report made by Rev. Isaac McCoy (who was in the Creek country first in the employment of the government) to the War Department, in 1832, before any emigration was made under the treaty of that year, (no removals by that treaty till 1834,) the number is stated at over 3,000.

Assuming the mean of the three estimates as probably the nearest approach to the true number, it will give 2,733—about the number represented by the Indians themselves.

That number, at \$33 33½ each gives	-	-	-	\$91,100 00
Less for 1,300 provided for by the act of 1848	-	-	-	43,333 33
				<hr/>
Making, at the rate of \$33 33½ <i>per capita</i> , to be due	-	-	-	47,766 67
				<hr/> <hr/>

In the above calculation, I have not taken into consideration the item of \$15,000, which was paid to the chiefs on the ratification of the treaty. The reason is, that no deduction was made of the *per capita* to the 1,300 who were provided for in the appropriation of 1848 on account of the advance, and it would seem to be unjust to charge it to the remainder, who are as equally meritorious as those who have been paid. That advance I take to be a gratuity, intended to compensate and soothe the Indians for the injury and disappointment to which they have been subjected in consequence of the failure of the government to redeem its plighted faith.

Very respectfully, your obedient servant,

L. LFA, *Commissioner*.

Hon. D. C. GODDARD,

Secretary of the Interior ad interim.