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Letter from the Secretary of the Interior, relative to the payment of interest to Cherokee Indians in North Carolina, under treaty stipulations

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INTEREST TO CHEROKEE INDIANS.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

RELATIVE TO

The payment of interest to Cherokee Indians in North Carolina, under treaty stipulations.

FEBRUARY 3, 1868.—Referred to the Committee on Appropriations and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington D. C., February 3, 1868.

SIR: I have the honor to transmit herewith a copy of a letter from the Secretary of the Treasury to the Secretary of the Interior, dated April 23, 1867, in relation to payment of interest to Cherokee Indians in North Carolina, under the provisions of the act of July 29, 1848, and copy of reply of the Secretary of the Interior thereto, dated May 30, 1867; and also copy of a letter, upon the same subject, from the Commissioner of Indian Affairs to the Secretary of the Interior, dated January 31, 1868.

The Secretary of the Treasury desires to be relieved from the duty devolved upon him by law in connection with these Indians, and to be allowed to transfer the entire control of the matter to the Interior Department. This cannot be effected without legislation to authorize it. The attention of Congress is respectfully invited to a consideration of the subject.

Very respectfully, your obedient servant,

O. H. BROWNING, *Secretary.*

Hon. SCHUYLER COLFAX,

Speaker of the House of Representatives.

TREASURY DEPARTMENT,
April 23, 1867.

SIR: In relation to the matter of payment of interest to Cherokee Indians in North Carolina, under the act of 29th July, 1848, regarding which oral communication was had with you a few days since, I would say, that in accordance with the provisions of said act, there was prepared, by J. C. Mully, in 1849 or 1850, a list comprising the names (1,516 in number) of all who were entitled to the benefits of the fourth and fifth sections of the act, and that by this list, the original of which is understood to be on file in the office of the Commissioner of

Indian Affairs, all payments have been regulated. Advances have been made for the payment of the interest up to the 29th July, 1859, substantially upon the principles laid down in the instructions given to the first agent entrusted with the matter, a copy of which is herewith transmitted; but in consequence of the late troubles in that region, the agent employed to make the more recent disbursements prior to that date has rendered no final account of them, though he asserts they have been made.

During the war, of course, no payments were made, but within the past year an agent, (Mr. Powell,) has been despatched to North Carolina to prepare a roll on which payment might be made to such Cherokees as have remained loyal throughout. A copy of the report of this agent is herewith transmitted; the roll which he has prepared is on file in this department, but for its accuracy I am unable to speak, since it has not been compared with the roll of Mullay, which is the only authorized basis of settlement. Thus far the matter has been subject to the control of this department, but I now propose, if you consent, to yield up to your department all control over the ascertainment of the parties entitled, and the payments hereafter to be made. All other matters of that nature relating to Indian affairs are subject to your supervision, and I am unable to perceive in the law of 1848 anything which can have the effect to place this matter beyond the reach of the provisions of the act of March 3, 1849, whereby (section 5) all payments of money out of the treasury on account of Indian affairs are required to be made on requisitions signed by the Secretary of the Interior.

This, as far as I am informed, is the only anomalous case, and I shall be happy to transfer it formally to you, with the documents pertaining thereto, whenever you shall signify your readiness to receive it.

As an additional reason for making the transfer at once, I may say that it is understood that some of these Indians desire to avail themselves of the provisions of the fifth section of the act of 1848, and to remove to the west, and the superintendence of such removal would necessarily belong to your department.

I am, sir, very respectfully, your obedient servant,

H. McCULLOCH,
Secretary of the Treasury.

Hon. O. H. BROWNING,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, May 30, 1867.

SIR: I have the honor to acknowledge the receipt of your letter of the 23d ultimo in relation to the payment of interest to Cherokee Indians in North Carolina, under the act of July 29, 1848, and the transfer to this department of all control over the ascertainment of the parties entitled thereto and the payment hereafter to be made.

The fourth section of that act (Statutes at Large, vol. 9, p. 264) is in these words:

And be it further enacted, That the Secretary of War cause to be ascertained the number and names of such individuals and families, including each member of every family of the Cherokee nation of Indians that remained in the State of North Carolina at the time of the ratification of the treaty of New Echota. May twenty-three, eighteen hundred and thirty six, and who have not removed west of the Mississippi or received the commutation for removal and subsistence, and report the same to the Secretary of the Treasury, whereupon the Secretary of the Treasury shall set apart, out of any money in the treasury not otherwise appropriated, a sum equal to fifty-three dollars and thirty-three cents for each individual ascertained as aforesaid; and that he cause to be paid to every such individual, or his or her legal representative, interest at the rate of six per cent. per annum on such per capita, from the said twenty-third day of May, eighteen hundred and thirty-six, to the time of the passage of this act, and continue annually thereafter said payment of interest at the rate aforesaid.

The duty of causing the payment to be made to the parties thereunto entitled is thus specifically devolved upon the Secretary of the Treasury, and I have serious doubts whether it can be devolved upon the Secretary of the Interior without authority from Congress.

The act of 1849, organizing this department, confers upon the Secretary of the Interior, in regard to Indian affairs, and signing requisitions for the advance or payment of money out of the treasury on estimates or accounts, no power other or greater than that which had been theretofore vested in the Secretary of War. It cannot, in my opinion, be construed as modifying the act of 1848, and I respectfully submit that it has no bearing upon the question.

Such has been the practical construction given to the act. All such payments to these Indians have been made by an agent, appointed by and responsible to the Secretary of the Treasury, and Congress, by the acts of May 31 and August 3, 1854, (Statutes, vol. 10, pp. 291 and 558,) appropriated funds to enable him to compensate the agent.

I have the honor to suggest that no change or transfer of the business in question be made until the requisite legislation be obtained.

This department will cheerfully co-operate in inviting the attention of Congress to the subject.

I am, sir, very respectfully, your obedient servant,

W. T. OTTO, *Acting Secretary.*

Hon. HUGH McCULLOCH,
Secretary of the Treasury.

DEPARTMENT OF THE INTERIOR, OFFICE INDIAN AFFAIRS,
Washington, D. C., January 31, 1868.

SIR: I have the honor to acknowledge the receipt of your letter of the 28th instant enclosing, for the information of this office, a copy of your letter to the Secretary of the Treasury of the 30th of May last, being an answer to his letter proposing to transfer to the Secretary of the Interior the business of paying certain interest due to North Carolina Cherokees.

As you have suggested to the Secretary of the Treasury that no change or transfer of the business in question be made until requisite legislation be obtained, and proffered your co-operation, that the subject may be brought to the attention of Congress, allow me to state that it is very desirable the proposed arrangement should be consummated without delay, so that a needy and suffering people may receive, as soon as possible, the moneys that may be justly due them. I therefore recommend that early steps be taken to lay the matter before Congress for appropriate legislation.

Very respectfully, your obedient servant,

N. G. TAYLOR, *Commissioner.*

Hon. O. H. BROWNING,
Secretary of the Interior.