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Scales and T. M. Gunter. In relation to arrears due Chickasaw
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ARREARS DUE CHICKASAW NATION.

[To accompany report 354.]

LETTERS

FROM

THE SECRETARY OF THE INTERIOR,

TO THE

HONS. A. M. SCALES AND T. M. GUNTER.

IN RELATION TO

Arrears due Chickasaw Nation.

MARCH 8, 1878.—Recommitted to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 25, 1878.

SIR: In reply to the questions propounded in your letter of December 7, 1877, in relation to the demand made by the representatives of the Chickasaw Nation, asking for the payment of certain accrued interest on the trust-fund held by the United States for the benefit of said nation, and stated by them as due in the sum of \$297,890.25, I have the honor to reply as follows:

First. As to whether or not the petition submitted to Congress, by the said representatives, correctly sets forth the treaties under which this fund arose, and the facts pertaining to the same.

In reply to this question I would say, that in the petition all the stipulations of the treaties made between the Chickasaw Nation and the United States, contained in the statute-books, upon which the trust-fund in question is founded, are correctly cited by the petitioners.

The original provisions made for the establishment of this trust-fund are found in the 1st, 2d, 3rd, and 11th sections of the treaty of October 30, 1832, proclaimed by the President March 1, 1833. (7 S., 382 and 385.)

By Article I of said treaty the Chickasaw Nation ceded to the United States all the lands which they owned on the east side of the Mississippi River.

Article II of said treaty provided for the survey and sale of said lands by the United States.

By Article III of said treaty the United States agreed to pay over

to the Chickasaw Nation, all the money arising from the sale of said lands, after deducting therefrom the cost and expenses of the survey and sales.

Article XI of said treaty provides for the creation of a perpetual fund, for the use of the said Chickasaw Nation, out of the proceeds of the country ceded to the United States by the first article of said treaty, and further provides for the investment of the proceeds arising from the sale of the lands in safe and valuable stocks which will bring them in an annual interest, or dividend, leaving the principal untouched, and using the interest alone; and for the furtherance of this purpose, said Chickasaw Nation agreed to and with the United States that the sum to be so laid out in stocks should be left with the government of the United States to be invested by the President, by and with the advice and consent of the Senate, as a perpetual trust-fund for the use and benefit of the said Chickasaw Nation.

By the treaty of May 24, 1834, proclaimed by the President July 31, 1834 (7 S. 450), the treaty of October 20, 1832, was amended; providing for the reservation of certain lands for the use and benefit of that portion of the Chickasaw Nation which should remain upon the original tract.

By section xi (7 S. 454), after said reservations were taken and located, provision was made that the residue of the Chickasaw country should be sold as public lands to the United States, and that the proceeds resulting from said sales, after deducting the necessary expenses of surveying and selling and other advances which might be made, should be from time to time invested in some secure stocks, redeemable within a period of not more than twenty years; and the United States should cause the interest arising therefrom annually to be paid to the said Chickasaw Nation.

The twenty years of limitation providing for the redemption of said stocks having expired, the said Chickasaw Nation entered into a further treaty with the United States, June 22, 1852 (10 S., sec. 5, p. 975), wherein it was provided that the whole amount of their national fund should remain with the United States in trust for the benefit of their people; and that the same should on no account be diminished. And it was further agreed that the United States should continue annually to pay the interest upon said trust-fund to the said Chickasaw Nation.

The petitioners refer to Articles X and XLV of the treaty of April 28, 1866, proclaimed by the President July 10, 1866.

These two articles are in *pari materia* with Article V of the same treaty (p. 770) and when construed together appear to have afforded a general amnesty to all members of the Chickasaw Nation for all past offenses against the laws of the United States committed by any member of said nation before the signing of said treaty; the United States reaffirming all obligations arising out of treaty stipulations or acts of legislation with regard to the Chickasaw Nation, entered into prior to the late rebellion, not inconsistent with the stipulations of the said treaty of April 28, 1866.

This action on the part of the United States on the 28th day of April 1866, restored the Chickasaw Nation, from and after said date, to the same rights and privileges which they held before the war of the rebellion, in accordance with their treaty stipulations; with this exception, that no provision was then made for the payment of the accrued interest which was due or might have been due on the 30th day of June 1866; for, by Article X of said treaty, it was provided "that the United States agrees to renew the payment of all annuities and other moneys accruing under

treaty stipulations and acts of legislation from and after the close of the fiscal year ending on the 30th day of June, in the year 1866.

In reply to the additional questions as to the amount of accrued interest, if any, that has not been paid to said nation "when the same accrued, and the reason why said interest has not been paid," I have the honor to reply as follows:

From the records of this department it appears that there is due said Chickasaw Nation, as accrued and unpaid interest on bonds held by the United States in trust for the use of said Chickasaw Nation, the sum of \$222,290.25, as follows:

For arrears of interest from January 1, 1861, to July 1, 1866, on \$616,000, Tennessee bonds, at 6 per cent. per annum for five and one-half years, \$203,280. For arrears of interest from January 25, 1861, to July 1, 1866, on \$66,666.66 $\frac{2}{3}$, Tennessee bonds, at 5 $\frac{1}{2}$ per cent. per annum, for five years and one hundred and fifty-seven days, \$19,010.25.

The petitioners claim that there is due as interest on said trust fund, which accrued prior to July 1, 1866, the sum of \$297,890.25.

This is an erroneous statement, and is explained as follows:

The United States purchased, for the use of said Chickasaw Nation, bonds of the State of Arkansas in the sum of \$90,000. On these bonds the State of Arkansas failed to pay the interest, and on the 1st day of July, 1866, there was due on said bonds, interest at 6 per cent. per annum from July 1, 1852, fourteen years, at 6 per cent., amounting to \$75,600.

In accordance with the provisions of an act approved December 13, 1872 (17 S., 397), these bonds of the State of Arkansas, originally purchased in the sum of \$90,000, were funded in new bonds of said State, and the interest then due from said State was also funded by the issue of bonds.

The accrued interest (\$75,600) and the amount of the principal of the bonds originally purchased of the State of Arkansas (\$90,000), with some additional interest added at the time of payment, making in all the sum of \$168,300, was funded in 1873, in accordance with the provisions of the act of December 13, 1872, and now stands to the credit of the Chickasaw Nation on the books of this department, being for amount of interest on \$90,000 from July 1, 1852, to July 1, 1866, fourteen years, at 6 per cent. per annum, \$75,600. From July 1, 1866, to July 1, 1873, the United States paid the interest on the original bonds. July 1, 1873, the original bonds were funded in accordance with the provisions of the act of December 13, 1872 (17 S., 397), and in order that the interest on such funded bonds should commence with the calendar year the State of Arkansas paid the interest on the amount of the original bonds from July 1 to December 31, 1873, inclusive, six months, at 6 per cent. per annum, \$27,000, making in all, accrued interest and principal, reinvested in the sum \$168,300.

The reasons for the non-payment of the interest which accrued on the Tennessee bonds between the dates of January 1, 1861, and July 1, 1866, in the sum of \$222,290.25, may briefly be stated as follows:

First. That Congress has not as yet made any appropriation for the payment of said interest.

Second. The first section of the act of July 3, 1862 (12 S., 582), provided that all appropriations heretofore or hereafter made to carry into effect treaty stipulations or otherwise in behalf of any tribe or tribes of Indians, all or any portion of whom shall be in a state of actual hostility to the Government of the United States, including the Chicka-

saws, may and shall be suspended and postponed wholly or in part at and during the discretion and pleasure of the President.

By the third section of the act of March 3, 1863 (12 S., 793), the Secretary of the Interior was authorized to expend only such part of the amount thereby appropriated to carry into effect any treaty stipulation with any tribe or tribes all or any portion of whom might be in a state of actual hostility to the Government of the United States, including the Chickasaws, as might be found necessary to support such individual members of said tribe as had been driven from their homes or reduced to want on account of their friendship to the United States.

The same provision is made by the second section of the act of June 25, 1864 (13 S., 180), and the fifth section of the act of March 3, 1865 (13 S., 562). The last three acts were acts making appropriation for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal years ending respectively June 30, 1864, June 30, 1865, and June 30, 1866.

During this period of the fiscal years from July 1, 1861, to July 1, 1872, no estimates appear to have been made to Congress by the Interior Department for the payment of the accrued interest in question.

On the 13th day of April, 1872, the Acting Secretary of the Interior, B. R. Cowen, submitted to Congress an estimate of appropriation for payment to the Chickasaw Nation of Indians of the said balance of accrued interest then due, and requested the favorable action of Congress upon the said estimate.

On the 23d day of April, 1874, the Secretary of the Interior, Hon. C. Delano, resubmitted to Congress the estimate of appropriation required to pay the said accrued interest to the Chickasaw Nation that had been submitted by Mr. Cowen the year before, together with a copy of a report from the Commissioner of Indian Affairs, inviting the attention of the Secretary to a bill then pending before the House of Representatives for the relief of the Chickasaw Nation of Indians, for the payment of the balance of interest due and unpaid prior to July 1, 1866, on certain bonds held in trust by the Department of the Interior for the benefit of said Indians. There was also inclosed therewith a copy of a communication addressed to the President by delegates of the Chickasaw Nation in relation to this subject, with the indorsement of the President thereon.

In transmitting this correspondence, the Secretary requested of Congress, in view of the indigent condition and circumstances of certain members of the Chickasaw Nation, that the bill in question might receive early and favorable consideration, in order that the relief asked for might be afforded.

It appears that Congress failed to make the appropriation as requested.

I am of opinion that the Chickasaw Nation has both a legal and equitable claim against the United States for the sum of \$222,290.25, being for interest which accrued between the dates of January 1, 1861, and July 1, 1866, on certain bonds held in trust by the United States for the use of the Chickasaw Nation.

It remains with the legislative branch of the government to say whether or no the necessary appropriation will be made for the liquidation of this debt.

Very respectfully, your obedient servant,

C. SCHURZ, *Secretary.*

Hon. A. M. SCALES,

*Chairman Committee on Indian Affairs,
House of Representatives.*

DEPARTMENT OF THE INTERIOR,
Washington, February 28, 1878.

SIR: In reply to your letter of the 26th instant, asking for further information in relation to the claim of the Chickasaw Nation for payment of interest on trust-funds arising on Tennessee bonds, namely, first, "as to whether the United States has collected the interest on the bonds for all or any portion of the time"; second, "whether or not it has been the practice of the United States to pay the interest on said trust-fund, even though it is not collected from the States, and, if so, under what provision of law the same is done," I have the honor to inform you that of the said amount in question the United States purchased, March 3, 1837, bonds of the "Nashville, Murfreesborough and Shelbyville Turnpike Company" in the sum of \$66,666.66 $\frac{2}{3}$, bearing interest at the rate of 5 $\frac{1}{4}$ per cent. per annum. Interest on said bonds was paid by the State of Tennessee up to January 1, 1866, and the interest accruing from January 1, 1861, to January 1, 1866, has not been paid by said State.

And of the amount in question the United States also purchased, in October, 1851, bonds of the Nashville and Chattanooga Railroad Company in the sum of \$512,000, bearing interest at the rate of 6 per cent. per annum, and bonds of the East Tennessee and Georgia Railroad Company in the sum of \$104,000, also bearing interest at the rate of 6 per cent per annum.

Payment of the interest on all of the above bonds was guaranteed by the State of Tennessee.

Interest on the \$512,000 was paid by the State of Tennessee up to January 1, 1861; but the accrued interest due from the State, from January 1, 1861, to January 1, 1866, has not yet been paid by said State. The interest on the \$104,000 was paid by the State of Tennessee, up to January 1, 1861; but the accrued interest due on said sum, from January 1, 1861, to January 1, 1866, has not been paid by said State. (R. C. I. A., 1870, p. 375.)

In relation to your second question, I have the honor to state that by the provisions of the eleventh article of the treaty of March 1, 1833 (7 S., 385), and the eleventh article of the treaty of July 31, 1834 (7 S., 454), the United States guaranteed "to invest the proceeds arising from the sales of the lands of the Chickasaw Nation in valuable stocks which will bring them in an annual interest or dividend; said investment to be made by the President, by and with the advice and consent of the Senate, as a perpetual trust-fund for the use and benefit of said Chickasaw Nation."

By the 5th article of the treaty of June 22, 1852 (10 S., 975), it was further provided "that the whole of the fund of said Chickasaw Nation should remain with the United States, in trust for the benefit of their people, and that the same should on no account be diminished; and it was further agreed that the United States should continue annually to pay the interest upon said trust-fund to said Chickasaw Nation."

It has been the ruling of both the legislative and executive departments of the government that where investments of this character, of the proceeds of the sale of Indian lands, had been made by the United States for the use and benefit of the Indian tribes, in accordance with the guarantees of treaty stipulations, the government was bound to pay such annual interest as might be due on investments so made, whether the United States was successful or not in collecting said interest as it accrued and was due from the original parties.

By the act of March 3, 1865 (13 S., 559), the sum of \$446,433.50 was appropriated by Congress for payment of interest on \$1,690,300 of non-paying State stocks held by the Secretary of the Interior in trust for various Indian tribes.

Similar appropriations were made by acts of July 26, 1866 (14 S., 279); March 2, 1867 (14 S., 514); July 27, 1868 (15 S., 221); April 10, 1869 (16 S., 38); July 15, 1870 (16 S., 358); March 3, 1871 (16 S., 569).

These appropriations appear to have included the accrued interest on all non-paying State stocks held in trust by this department for various Indian tribes, except the interest on those now under consideration held in trust for the Chickasaw national fund, for which no estimate was made to Congress until April 30, 1872, as per my letter of January 25, 1878, on this subject addressed to Hon. A. M. Scales, chairman of the Committee on Indian Affairs of the House of Representatives.

It is proper to state in this connection that all of the funds herein noted were in the custody of the Secretary of the Treasury from the date of making the investments until, in accordance with provisions of the act of July 27, 1868 (15 S., 228), they were transferred to this department. No estimate of appropriation appears to have been presented for the payment of the accrued interest prior to said transfer.

Very respectfully, &c.,

C. SCHURZ, *Secretary.*

Hon. T. M. GUNTER,
House of Representatives.