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Eastern band of Cherokee Indians

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EASTERN BAND OF CHEROKEES.

APRIL 25, 1878.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MARTIN I. TOWNSEND, from the Committee on Indian Affairs, submitted the following as the

VIEWS OF THE MINORITY:

[To accompany bill H. R. 228.]

It is important that the House should know exactly what matters of controversy exist between the Cherokees residing in the State of North Carolina and the Cherokee Nation located in the Indian Territory.

By the treaties of 1835-'36 and the treaty of 1846, the Cherokees relinquished and ceded to the United States all their lands east of the Mississippi, and the United States ceded to the nation the lands now held by the nation west of the Mississippi River, and agreed to pay, and did pay, in pursuance of the treaty, for the benefit of the Cherokee Nation, about \$6,500,000. A portion of this money was to be paid, and was paid, to purchase new lands to enlarge the western domain. A part was to be invested, and was invested, as a permanent fund, in care of this government, for the benefit of the nation. A portion, and a large portion, was to be paid, and was paid, for the expenses of the removal and subsistence of the Indians for a year after their arrival in the West. What of these moneys remained after those disbursements was to be divided among the individuals of the Cherokee Nation, in such wise that the Cherokees living west of the Mississippi before 1835 should have one-third of the surplus and the rest of the nation two-thirds, to be distributed among the nation per capita.

The treaties above referred to also provided that if any of the Cherokee Nation should choose to remain east of the Mississippi, those so remaining should receive into their own hands the amount provided as expenses for each individual's removal, which was \$20 + \$33.33; making \$53.33 for each individual. Something more than two thousand Cherokees remained in North Carolina, and were hence entitled to the \$53.33 each, as the agreed cost of removal. To pay this amount, Congress, July 29, 1848 (see 9th Statutes at Large, p. 264), set apart a sum equal to \$53.33 for each North Carolina Cherokee, or Eastern Cherokee, to be a perpetual fund, of which the interest should be paid annually. To pay the gross surplus remaining for distribution to the Cherokees over and above what was to go to the Old Settler or Western Cherokees, on the 27th day of February, 1851 (see 9th Statutes, p. 572), Congress appropriated \$724,603.37, which was distributed among the nation per capita, and these Carolina Cherokees, as well as those who had recently gone West, were paid their share individually, and their individual receipts are in the office of the Second Auditor. This closed legally all matters connected with the treaty of 1846 proper.

But the United States has had no peace from Cherokee claims from the day of filing the receipts. The Old Settler or Western Cherokees, who were to have one-third of the surplus, and who received it and gave receipts in full for it in 1851-'52, have besieged Congress twenty-six years for a readjustment of their accounts. The Indian Committee of this House at the present session examined the claim and unanimously reported against it, and this House sustained the report. The agent of the Old Settler Cherokees immediately applied to the Senate and obtained the introduction of a new bill and procured it to be referred to the Senate's Committee on Claims, where this twenty-six-year-old claim is still pending.

The Carolina or Eastern Cherokees, who have adopted the habits of civilized life and become citizens, filed a petition against the United States in the Court of Claims in 1857, using the name of one Rogers, who sued on behalf of himself and of those situated like himself, to have the old account readjusted, and, after two hearings and one decision of the court, the reopened case was decided against Rogers and the Carolina or Eastern Cherokees, upon the ground that the government had originally paid all which was due under the treaty.

The lands at the West were patented to the Cherokee Nation in joint tenancy. The Eastern Cherokees used their money received from the United States to purchase homes in Carolina and remained there. From 1848 they have taken no share in the responsibilities of the Cherokee Nation, and have lived a thousand miles removed from them.

In 1866 the government negotiated another treaty with the Cherokee Nation, and in 1868 still another. By these treaties the Cherokee Nation parted to the United States with the title to a portion of their lands lying along the western edge of their domains in the Indian Territory, and have received pecuniary compensation for it as a nation. The money thus received has been applied to the general purposes of their national government—such as schools, the payment of officers, and the support of the civil institutions of the nation. The claim now set up by the Eastern or Carolina Cherokees is that the Cherokee Nation should divide the moneys received for the last mentioned lands in the same ratio which the whole number of Carolina Cherokees bear to the whole number of the Cherokee Nation, considering the whole Cherokee race, wherever domiciled, as still constituting a single nation. The undersigned considers their claim entirely unfounded.

The Cherokees of Carolina are not within the jurisdiction of the Cherokee Nation, and the Cherokee Nation, as such, has no control or right of control or government over them. The land conveyed to the United States belonged to the Cherokee Nation as a nation, and the whole nation owned the land jointly, and, when the lands were sold, the moneys received were the property of the nation, and the government of the nation was, under the laws of all countries, bound to use those moneys for the benefit of their people as a people. The undersigned will not contend but that the Carolina Cherokees were at liberty in 1866 and 1868, or at any time since that time, to return within the Cherokee jurisdiction, adopt allegiance to the government, and thus place themselves in a situation to share in all the benefits enjoyed by others of their blood who had originally emigrated to the western domain; but, until they shall have done so, it seems the height of absurdity to claim that these Carolina Cherokees have a right to share in severality the rents and profits of the lands belonging jointly to the nation in the far West, or in the proceeds of the land when sold, and the purchase-money

has been applied to the common benefit of those within the jurisdiction of the government.

Again, the undersigned believes that it would be of very bad example for the United States Government to authorize the bringing of an action by persons claiming to be members of an Indian tribe with whom the government has negotiated treaties as late as 1866 and 1868, and to whom the United States granted in 1835 the right of self-government within the Indian Territory, against the nation itself, and compel that nation to appear in the United States court against its will and submit to the arbitrament of a tribunal against whose jurisdiction they vehemently protest. The undersigned, especially, in this connection, calls attention to the fifth article of the treaty of 1835, which reads as follows:

ARTICLE 5. The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territory, limits, or jurisdiction of any State or Territory; but they shall secure to the Cherokee Nation the right, by their national councils, to make and carry into effect all 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, or such persons as have connected themselves with them: *Provided always*, That they shall not be inconsistent with the Constitution of the United States and such acts of Congress as have been or may be passed, regulating trade and intercourse with the Indians, and also that they shall not be considered as extending to such citizens and Army of the United States as may travel or reside in the Indian country by permission according to the laws and regulations established by the government of the same.

MARTIN I. TOWNSEND.