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The "Old Settlers," or "Western Cherokees."

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THE "OLD SETTLERS," OR "WESTERN CHEROKEES."

JULY 15, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HOOKER, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 1203.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 1203) to refer the claim of the "Old Settlers," or "Western Cherokees," to the Court of Claims for adjudication, have considered the same, and report thereon, as follows:

It appears, from the papers submitted, that the claim is based upon alleged errors committed by the officers of the government having charge of and stating the account between them and the United States in relation to their interest in the proceeds of the sale of the Cherokee lands east of the Mississippi River, as provided in the treaty between the United States and the Cherokee Indians of 1835.

It also appears by the terms of the fourth article of the treaty of 1846 that these claimants were to receive, in consideration of their consenting to the stipulations therein contained—that the lands formerly owned by these claimants, exclusively, west of the Mississippi River should thereafter be the common property of all the Cherokee people—they should receive one-third of the proceeds of the sale of the Cherokee lands east of that river. The committee deem it unnecessary to refer in this report to the history of the claimants or their relations to the Eastern Band of the Cherokee Indians prior to the treaty of 1835, as shown by the papers, as that is fully given in two reports heretofore made by Senate committees on the same subject.

Under the fifteenth article of the treaty of 1835 the authority seemed to be given for deducting from the fund due these Indians "the amount which shall be actually expended for the payment for improvements, ferries, claims, for spoliations, removal, and subsistence, and debts and claims upon the Cherokee Nation, and for additional quantity of land and goods for the poorer of Cherokees, and the several sums to be invested for the general national funds provided for in the several articles of that treaty. The balance, whatever the same may be, shall be equally divided between all the people belonging to the Cherokee Nation East, according to the census just completed, and such Cherokees as have removed west since June, 1833."

By the second article of the supplement to this latter treaty it is provided and declared "that the sum of five millions of dollars fixed by the Senate in their resolution of — day of March, 1835, as the value of the Cherokee lands and possessions east of the Mississippi River was

not intended to include the amount which may be required to remove them, nor the value of certain claims which many of their people had against the United States."

The third article of the supplement to that treaty allows these Indians the sum of \$600,000, to meet the foregoing items, and the balance of this latter sum, that "may remain after removal and payment of the claims so ascertained shall be turned over and belong to the educational fund."

After concluding the last-named treaty and the supplement thereto it seems that serious difficulties arose between portions of the people constituting and organized as the Cherokee Nation of Indians, growing out of charges to be made against the Western Cherokees, and to be deducted from the \$5,000,000 fund, as the purchase of their lands east of the Mississippi River, under the treaty of 1835. To settle these difficulties and to bring about a final and amicable settlement of all these causes of differences the treaty of August 6, 1846, was entered into between both the Eastern and Western Cherokees and the United States.

By the first article of this treaty all the lands formerly granted to and held and occupied by the "Western Cherokees" were to be occupied and enjoyed by all the Cherokees in common.

And, to settle and have definitely understood what claims or charges that should, and what should not, be made against the \$5,000,000 fund (the proceeds of the sale of their land east), the third article of this latter treaty provides that—

Whereas certain claims have been allowed by the several boards of commissioners heretofore appointed under the treaty of 1835, for rents under the name of improvements and spoliations, and for property of which the Indians were dispossessed, provided for under the 16th article of the treaty of 1835; and whereas the said claims have been paid out of the \$5,000,000 fund; and whereassaid claims were not justly chargeable to that fund, but were to be paid by the United States, the said United States agree to reimburse the said fund the amount thus charged to said fund—and the same shall form a part of the aggregate amount to be distributed to the Cherokee people—as provided in the ninth article of this treaty; and whereas a further amount has been allowed for reservations under the provisions of the thirteenth article of the treaty of 1835 by said commissioners, and has been paid out of said fund, and which said sums were properly chargeable to, and should have been paid by, the United States: the said United States further agree to reimburse the amounts thus paid for reservations to said fund; and whereas the expenses of making the the treaty of New Echota were also paid out of said fund, when they should have been borne by the United States: the United States agree to reimburse the same, and also to reimburse all other sums paid to any other agent of the government and improperly charged to said fund, and the same shall form a part of the aggregate amount to be distributed to the Cherokee people as provided for in the ninth article of this treaty.

The terms "excluding all extravagant and improper expenditures," contained in the 4th article, evidently meant the items specified in the 3d article, which declares that the items therein mentioned should not be chargeable to the \$5,000,000 fund, but be borne by the United States. It is provided by the 4th article that "so far as the Western Cherokees are concerned, in estimating the expense of removal and subsistence of an Eastern Cherokee, to be charged to the aggregate fund of five millions six hundred thousand dollars above mentioned, the sums for removal and subsistence stipulated in the 8th article of the treaty of 1835, as commutation money in those cases in which the parties entitled to it removed themselves, shall be adopted."

The 8th article of the treaty of 1835 fixes those sums at \$53.33 per head.

The 4th article of the treaty of 1846 further provides that so far as the settlement with the Western Cherokees is concerned, "there shall be no deduction from the fund before mentioned in consideration of any

payments which may hereafter be made out of said fund; and it is hereby further understood and agreed that the principle above defined shall embrace all of those Cherokees west of the Mississippi who emigrated prior to the treaty of 1835."

This article and the 3d article of the treaty of 1846 defines the basis of the settlement to be made with the old settlers, or Western Cherokees, and fixes the sum from which the charges proper to be made against them shall be deducted at \$5,600,000.

The 9th article of this treaty fixes the basis of settlement with the Eastern Cherokees, and the sum from which charges against them shall be deducted, at \$6,647,067.

The eleventh and only remaining article of the treaty of 1846, affecting the claim of the Western Cherokees provides as follows:

Whereas the Cherokee delegates contend that the amount expended for one year's subsistence of the Eastern Cherokees after their arrival in the West, is not properly chargeable to the treaty fund: it is hereby agreed that the question shall be submitted to the Senate of the United States for its decision, which shall decide whether the subsistence shall be borne by the United States or the Cherokee fund, and if by the Cherokees, then to say whether the subsistence shall be charged at a greater rate than thirty-three, thirty-three one-hundredths dollars per head; and also the question whether the Cherokee Nation shall be allowed interest on whatever sum may be found to be due the nation, and from what date and at what rate per annum.

(The twelfth article of this treaty was stricken out by the Senate upon the ratification of the treaty, which was assented to by the Cherokees.)

The questions submitted to the Senate of the United States by the eleventh article were settled by the Senate, and thereby became a part of the treaty stipulations by the adoption of the following resolutions, September 5, 1850 (Cong. Globe, vol. 21, part 2, 1849-'50, p. 1760):

Resolved by the Senate of the United States. That the Cherokee Nation of Indians are entitled to the sum of \$189,422.76 for subsistence, being the difference between the amount actually paid and that expended by the United States, and which excess was improperly charged to the "treaty fund" in the report of the accounting officer of the Treasury.

Resolved. That it is the sense of the Senate that interest at the rate of 5 per cent. per annum should be allowed upon the sums found due the Eastern and Western Cherokees, respectively, from the 12th day of June, 1838, upon the treaty of 1846.

By the second of the above resolutions it was declared that the Cherokees were entitled to interest upon any sums due them under the treaties of 1835 and 1846, from the 12th day of June, 1838.

The committee find that among the items of the claim of the Western Cherokees there is one that is a manifest error in settling with these Indians, namely, the item of "removal and subsistence, at the rate of \$53.33 per head, \$909,313.34," found on page 19, Report of the Commissioner of Indian Affairs, Ex. Doc. 65, first session Thirtieth Congress. This item in the Commissioner's statement of the account does not state the number of Indians removed and subsisted at that rate, but on page 17 of that report the number is stated at 13,149. That number, at the rate of \$53.33 per head, would amount to the sum of \$701,236 instead of \$909,313.34, as charged, making an error against the Western Cherokees of \$208,077.34 in the simple matter of calculation.

Besides this item, these Indians claim that by a fair construction of the treaties with them and the acts of Congress relating to their rights under these treaties, they should not be charged, as was done by the accounting officers of the government, in their settlements, with the items—

First. The charge for claims of citizens of the United States of \$59,574.25.

Second. The charge for claims of individual Cherokees, \$17,561.41.

Third. The charge for compensation to Cherokee committee, \$22,026.89.

Fourth. The charge for spoliation, rents, and damages, \$434,861.85.

Fifth. The charge for reservations, allowed, \$116,882.50.

Sixth. The charge for pre-emptions, \$15,589.

Seventh. The charge for and on account of removal and subsistence, \$32,666.65.

There is a peculiarity about the last of the above items that throws some doubt around its correctness, for the cost of subsistence and removal to be borne by the Western Cherokees, as above shown, had not only been charged to them, but overcharged, and the fact that it took just this latter sum to effect a balance of the account with these Indians seems to furnish the reason for the doubt about the correctness of this last item.

The claimants contend, and the committee are of opinion, that the receipt by these Indians of the sum of \$523,782.18, appropriated by the act of September 30, 1850, in the manner in which they received it, does not preclude them from making their claim for any other sum that may be justly due them under a fair and proper interpretation of the treaties with them. Though the act making that appropriation provides "that the Indians who shall receive the said money shall first respectively sign a receipt or release acknowledging the same to be in full of all demands under the fourth article of said treaty," it appears that before these Indians would consent to receive the said sum thus appropriated, they were assured by the agent of the government sent to make the payments, Mr. John Drennon, that they could receive the money under protest and thereby preserve their rights under the treaties between them and the United States for any amounts that might be due them by a just and equitable construction of said treaties.

It also appears that these Indians, before receiving any part of that appropriation, did formally and in writing deliver to said agent their solemn protest against receiving the same as a full settlement of all their claims against the United States under said treaties, which protest, as appears by the records of the Interior Department, was forwarded to the Commissioner of Indian Affairs at Washington City.

The facts necessary to determine the justness of the claim preferred by these Indians consist almost, if not entirely, of the public treaties, proceedings of the Senate, acts of Congress, and the records of the several departments of the government, all of which are preserved.

The committee are of opinion that the claim of these Indians possesses sufficient merit to demand a careful and thorough investigation of the same; that such an investigation involves a judicial interpretation of the several treaties between them and the United States, the construction of the several acts of Congress in relation thereto, and the examination of all settlements made and accounts stated with them under these treaties and acts of Congress; that such an investigation cannot be made by a committee of Congress in the limited time allowed such committee by the performance of the ordinary legislative duty imposed upon its members; and that this case should receive a full investigation by the courts.

The committee is strengthened in this conclusion by the opinion of the Commissioner of Indian Affairs on this subject, contained in his letter of June 7, 1882, transmitted to the Committee by the honorable Secretary of the Interior, a copy of which is appended to this report.

Therefore the committee report back bill H. R. 1203, and recommend its passage with the following amendments, as suggested by the Interior

Department: After the word "and" in line 28 insert the word "on," and after the word "thereon" in line 29, "and on any sum found due said Old Settler Cherokees."

JUNE 7, 1882.

To the honorable the Secretary of the Interior:

SIR: I have the honor to submit herewith House bill 1203, to refer the claim of the Western Cherokees, or "Old Settlers," to the United States Court of Claims for adjudication, forwarded May 23, 1882, by Hon. D. C. Haskell, chairman of House Committee on Indian Affairs (through Mr. Smith, clerk), for the advice and suggestion of the department on the subject-matter for the information of the committee.

H. R. 1203 appears to be a duplicate of Senate bill 321, which was introduced in the Senate December 8, 1881, and reported upon by Senator Cameron, of Wisconsin, March 29, 1882 (Senate report 353), who stated that a similar bill had been considered by the Senate Committee on Indian Affairs at the last session of Congress, and it had been reported favorably from that committee by Senator Logan. Senator Logan set out in detail the claim as presented by the "Old Settlers," showing the history and movements of these Indians, their rights, acquired under the treaties of 1817, 1819, 1823, and sustained by the correspondence between the contracting parties in the Executive and War Departments, anterior to the treaty of 1835.

The separate nationality of the Western Cherokees, and their exclusive title to their lands stood until 1835, when the treaty of that year was concluded between the United States and the Cherokee Nation.

By the first article of that treaty of 1835, the Cherokees, for the sum of \$5,000,000, ceded to the United States all their lands east of the Mississippi River and released all their claims upon the United States for spoiliations of every kind. By the fifteenth article, the amount actually expended for improvements, ferries, claims for spoiliations, removal and subsistence, and debts and claims upon the Cherokee Nation, and for additional quantity of land and goods for the poor Cherokees, was to be deducted from said \$5,000,000.

By the second article of the supplementary treaty of 1836, it was declared that it was not the intention to include the expense of removal and subsistence in the \$5,000,000 allowed by the Senate, and by the third article of said treaty \$600,000 was allowed to meet such expenses. Difficulties arising in the adjustment of these claims, the treaty of 1846 was entered into between both the Eastern and Western Cherokees and the United States; by the first article of which the lands formerly granted to and held by the Western Cherokees were to be occupied and enjoyed by all the Cherokees in common.

The third article defined what claims or charges should, and what should not, be made against the \$5,000,000 (the proceeds of the sale of their lands East).

The third and fourth articles of the treaty of 1846 defined the basis of the settlement to be made with the "Old Settlers," or Western Cherokees, and fixed the sum from which the charges proper to be made against them should be deducted at \$5,600,000.

The ninth article fixed the basis of settlement with Eastern Cherokees and the sum from which charges against them should be deducted, at \$6,647,067. By the eleventh article the question was submitted to the United States Senate for decision, whether the subsistence of Eastern Cherokees, for one year after their arrival West, should be paid by the Cherokees or by the United States, and if by the Cherokees, whether more than \$33.33 should be allowed, and whether the Cherokees should be allowed interest on whatever sum was due the Nation, and from what date and at what rate per annum.

The Senate on the 5th of September, 1850 (Cong. Globe, vol. 21, part 2, 1849-50, page 1760), adopted the following resolution:

Resolved by the Senate of the United States, That the Cherokee Nation of Indians are entitled to the sum of \$189,422.76 for subsistence, being the difference between the amount actually paid and that expended by the United States, and which excess was improperly charged to the treaty fund in the report of the accounting officers of the Treasury.

Resolved, That in the sense of the Senate, that interest at the rate of 5 per cent. per annum should be allowed upon the sums found due the Eastern and Western Cherokees, respectively, from the 12th day June, 1838, upon the treaty of 1846.

The aforesaid sum of \$189,422.76 was appropriated by Congress (act of September 20, 1850, 9 Stat., 536), and at the same time there was appropriated—

"To the 'Old Settlers' or Western Cherokees, in full of all demand, under the provisions of the treaty of 6th August, 1846, according to the principles established in the 4th article thereof, \$532,896.90; and that interest be allowed and paid upon the

above sums due respectively to the Cherokees and 'Old Settlers,' in pursuance of the above-mentioned award of the Senate, under the reference contained in the said eleventh article of the treaty of the 6th August, 1846. *Provided*, That in no case shall any money hereby appropriated be paid to any agent of said Indians, or to any other person or persons than the Indian or Indians to whom it is due: *Provided, also*, That the Indians who shall receive the said money shall first respectively sign a receipt or release, acknowledging the same to be in full of all demands under the 4th article of said treaty."

By these appropriations, it would seem that a final settlement of the claims of these "Old Settlers" was thereby effected, or attempted to be effected, but the Senate committee of the last Congress held that the Indians received the money under protest; that the claim of the Indians possessed sufficient merit to demand a careful and thorough investigation of the same; that such an investigation involved a judicial interpretation of the several treaties between them and the United States, the construction of the several acts of Congress in relation thereto, and the examination of all settlements made, and accounts stated with them under these treaties and acts of Congress, and that this case should receive a full investigation by the courts.

Senator Cameron's committee concurred in and adopted the report made by Senator Logan's committee as its own, and reported back the bill with recommendation that it do pass.

This office, when the subject was before the Forty-fourth Congress, submitted a report to the honorable Secretary of the Interior on the 21st of June, 1876 (copy herewith), recommending that the Indians should first present their claim to the department for examination, stating the nature and amount of said claim, with full reference to all provisions of law or treaty stipulations.

Accepting the views taken by both Senate committees, and knowing that these "Old Settlers" have been before the department for many years with their memorials and claims, no objection is made to the passage of the bill, as it provides the only means of reaching a final decision in the case, unless exception is made to the deduction (for expenses of former "Old Settler" councils, expenses of commissioners, and expenses of attorneys to help prosecute said claim) of 35 per cent. of the claim allowed, as set forth in the resolutions (copy herewith) referred to in the third section of the bill.

The bill is herewith returned with the recommendation that the word "on" be inserted after the first section "and" in the 23th line, and that the word "thereon" in the 29th line of the first section of the bill be stricken out so as to read "and on any sum found due said 'Old Settler' Cherokees," interest to be paid from the time and at the rate fixed by the Senate, * * * thereby conforming to the language of the Senate bill.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

JUNE 13, 1882.

SIR: I have the honor to transmit herewith a copy of the report of the Commissioner of Indian Affairs, of the 7th instant, with inclosures, one House bill, No. 1203, "to refer the claims of the Western Cherokees, or 'Old Settlers,' to the Court of Claims for adjudication."

Very respectfully,

H. M. TELLER,
Secretary.

Hon. D. C. HASKELL,
Chairman Committee on Indian Affairs, House of Representatives.

In reference to the remark of the honorable commissioner as to amount of 35 per cent. set apart by the counsel of the Old Settlers in 1875, we affixed the following resolutions, adopted by a similar counsel in 1880, which was reaffirmed in 1881:

Be it further resolved, That J. M. Bryan, our special commissioner and attorney, who is himself a citizen of the Cherokee Nation and an "Old Settler," and by our former council was duly made treasurer for the amount of 35 per cent. of the amount of the claim that may be allowed. The first council creating said commission was in 1875, at which council 35 per cent. of the whole claim was set apart to pay the expenses of former Old Settlers' councils, to pay the expenses of our commissioners, to pay the expenses of attorneys employed to help prosecute said claim, or as much thereof as might be necessary.

Therefore, we again reiterate that J. M. Bryan is fully authorized to receive the said amount of 35 per cent. of the whole amount allowed on said claim as the "Old

Settler" Cherokee treasurer, and to receipt to the proper authorities of the United States for said amount, which shall be the "Old Settler" Cherokee's receipt for the same.

Submitted by—

H. D. REESE,
W. C. WOODALL,
JOHN HENDRICKS,
Committee.

The above resolution being interpreted and put to vote, was unanimously adopted.
W. A. DUNCAN,
President.

H. D. REESE,
Secretary.

I hereby certify that the above is a true copy of the proceedings had by the "Old Settlers" council.

Given under my hand and seal of office, at Tahlequah, Cherokee Nation, I. T., this 23d day of November, 1880.

ALLEN ROSS,
Clerk, Tahlequah District, C. N., I. T.

Approved November 26, 1880.

D. W. BUSHYHEAD,
Principal Chief, Cherokee Nation.

I hereby certify that this is a true copy of the original.

DELOZIER DAVIDSON,
Notary Public.

WASHINGTON, D. C., January 3, 1881.

From this it is clearly shown that only so much of that per cent. as may be necessary to meet the expenses of the prosecution and collection of their claim and the annual expenses of their councils can be thus used; the balance, if any, their said commissioners would have to return to the fund to be distributed to those Indians *per capita*.

J. M. BRYAN,
Old Settler Commissioner.