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Eastern and Western bands of Cherokee Indians. Message from the President of the United States, transmitting a further report from the Secretary of the Interior in reference to the differences between the Eastern and Western bands of Cherokee Indians.

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EASTERN AND WESTERN BANDS OF CHEROKEE INDIANS.

M E S S A G E

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A further report from the Secretary of the Interior in reference to the differences between the Eastern and Western bands of Cherokee Indians.

FEBRUARY 12, 1883.—Referred to the Committee on Appropriations and ordered to be printed.

To the Senate and House of Representatives :

I transmit herewith a communication of the 8th instant, with accompanying papers from the Secretary of the Interior, comprising a further report in relation to matters of difference between the Eastern and Western bands of Cherokee Indians, required by an item in the sundry civil act approved August 7, 1882 (Pamph. Stats., page 328).

CHESTER A. ARTHUR.

EXECUTIVE MANSION, *February 12, 1883.*

DEPARTMENT OF THE INTERIOR,
February 8, 1883.

SIR: On the 3d instant I submitted to you two reports made by Mr. C. C. Clements, special agent appointed by this department to make the investigation into certain matters relating to the Cherokee Indians, required by an item in the sundry civil bill approved August 7, 1882, and at that time stated that a report, No. 1, made by Mr. Clements on the claims of the Eastern band of Cherokee Indians against the Cherokee Nation of Indians west, for a pro-rata interest in all the common property of said nation of Indians under treaties with the United States, had been submitted to me, but was withheld for further consideration.

I have now the honor to transmit herewith that report, No. 1, and the accompanying papers.

On this branch of the subject of inquiry, Mr. Clements concludes that the Eastern band of Cherokee Indians are legally and equitably enti-

tled to a share of the proceeds derived from all sales of Cherokee lands proportionate to their numbers.

The Commissioner of Indian Affairs states, in his report on the subject of the 31st ultimo (extract copy herewith), that in his opinion the conclusions arrived at by Mr. Clements are correct. He also reports, as his opinion, that the \$10,000 permanent annuity, commuted to \$214,000 in accordance with the eleventh article of the treaty of 1835, belongs to the whole Cherokee people, and the Eastern band of Cherokee Indians are entitled to a pro rata interest therein.

I have examined into this subject, and am of opinion that the conclusions stated by Mr. Clements and by the Commissioner of Indian Affairs in their respective reports are correct and just, and in accordance with the meaning and intent of the various treaties and laws on the subject. They are sustained by the rulings and decisions of the Indian Bureau cotemporaneous with the several treaties, and also by papers of record in the department showing the understanding of the several bands of Cherokee Indians in the matter.

I respectfully recommend that the papers be presented to the Congress.

Very respectfully, your obedient servant,

H. M. TELLER, *Secretary.*

The PRESIDENT.

[Extract from sundry civil act, approved August 7, 1882.]

The Secretary of the Interior shall investigate and report to Congress what in his opinion would be an equitable settlement of all matters of dispute between the Eastern band of Cherokee Indians (including all the Cherokees residing east of the Mississippi River) and the Cherokee tribe or nation west; also all matters of dispute between other bands or parts of the Cherokee Nation; also all matters between any of said bands or parts thereof and the United States arising from or growing out of treaty stipulations or the laws of Congress relating thereto; and what sum or sums of money, if any, should, in his opinion, be paid under such settlement; and the sum of two thousand five hundred dollars is hereby appropriated for such investigation.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 5, 1883.

SIR: Referring to that part of office report of the 31st ultimo, submitting the reports of Special Agent Clements of his findings under the act of August 7, 1882, which relates to the claim of the North Carolina Cherokee Indians to a pro rata interest in the lands of the Cherokees west of the Mississippi, and to the \$10,000 permanent annuity commuted to \$214,000 in accordance with the eleventh article of the treaty of 1835, I have the honor to submit the following report as supplemental thereto, and in support of my views in this matter as set out in said report.

The treaty of 1828 (7 Stat., 311) stipulates that—

It being the anxious desire of the Government of the United States to secure to the Cherokee Nation of Indians, as well those now living within the limits of the Territory of Arkansas as those of their friends and brothers who reside in the States east of the Mississippi River, and who may wish to join their brothers west, a permanent home * * * the United States agree to possess the Cherokees, and to guarantee it to them forever, of seven million acres of land, &c.

By the first article of the treaty of 1833 (7 Stat., 414) "the United States agree to possess the Cherokees, and to guarantee it to them forever," certain lands as therein described.

Article 2 of the treaty of 1835 (*Id.*, 479) provides that—

Whereas, by the treaty of May 6, 1828, and the supplemental treaty of February 14, 1833, with the Cherokees west of the Mississippi, the United States guarantees and secured to be conveyed by patent to the Cherokee Nation of Indians the following tract of country therein described: * * * and whereas it is apprehended that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi, the United States * * * hereby covenant and agree to convey to said Indians and their descendants by patent in fee-simple the following additional tract of land, &c.

Article 1 of the treaty of 1846, which was, in point of fact, a compromise between the contending parties in the nation, provides "that the lines occupied by the Cherokee Nation shall be secured to the whole *Cherokee people*." (Art. 1.)

By the concluding paragraph of article 4 it is provided that the lands shall be and remain the common property of the *whole* Cherokee people. (See also article 9.)

By article 10 of said treaty it is expressly agreed that nothing in that treaty contained shall be so construed as in any manner to take away or abridge any rights or claims which the Cherokees then residing east of the Mississippi had or may have under the treaty of 1835 and the supplement thereto (1836).

None of these provisions guaranteeing the lands to the *whole* Cherokee people have ever been repealed by subsequent treaty or act of Congress.

In a report from this office, dated March 31, 1846 (Ind. Cong. Doc., vol. 35, No. 38), the then Commissioner held that the treaty of 1835, being the law of the land, the Executive has no authority to consider the Cherokee Indians yet remaining in North Carolina in any other light than as parties to that treaty in common with the rest of the tribe east at the time.

Three days after the ratification of the treaty of 1835-'36 an agreement, referred to in my report of the 31st ultimo (copy herewith), between the representatives of the North Carolina Cherokees and the other bands of the tribe was filed in this office. William H. Thomas acted in behalf of the North Carolina Cherokees, under a power of attorney dated January 30, 1836. He was authorized to proceed to this city and examine the treaty of 1835, and if unconditional rights were secured to the North Carolina Indians, to sign that treaty in their behalf, and if necessary to secure to said Indians an equal interest proportioned to their numbers, in the benefits of said treaty without a new negotiation. Mr. Thomas arrived in this city after said treaty had been submitted to the Senate for its action thereon, and with the belief that if further negotiations were attempted it would delay ratification and prevent the furnishing of supplies to the poor class of Cherokees; and believing, further, that the delegation then present, representing the other portion of the tribe, was disposed to do equal and impartial justice to all their people; and further, that the articles of agreement then about to be entered into, which were to prevent improper constructions being placed upon said treaty, would be faithfully complied with, he gave his assent to and assisted in obtaining the ratification of the said treaty. It was admitted in said agreement that the North Carolina Indians were entitled to an equal share in the lands, and notwithstanding they had been deprived of their annuities since 1820, that they were entitled to an interest in all sums in the possession of the United States belonging to the Cherokees; that their proportion of land and

annuities was intended to be secured to them by the twelfth article of the treaty of 1835; that they should be paid their proportional share of all sums arising from the sale of the common property under the treaty just made, and that should a division of the lands west of the Mississippi, belonging to the nation as common property, take place the North Carolina Cherokees should be entitled to have their share laid off to them.

A copy of this agreement was, on the 4th day of July, 1836, submitted to this office, with the request that the decision of Hon. Lewis Cass, Secretary of War, be had thereon.

In the answer of the Commissioner of Indian Affairs, dated July 19, 1836, he says:

I am instructed to inform you that it is the opinion of the Department that the Cherokees "in North Carolina have an interest proportionate to their numbers in all the stipulations of the treaty."

The honorable Attorney-General (Opinions, vol. 3, p. 299), in speaking of these Indians, says: "Consequently the reservations (east) are to be given up to the United States, and they seem in justice to be as well entitled to indemnification as either of the above classes," referring to the Ross or Eastern Cherokee and the Old Settler parties.

In 4th Opinions (p. 437) it is held that—

The Executive of the United States must therefore regard the treaty of New Echota (1835) as binding on the whole Cherokee tribe, and the Indians, whether in Georgia, Alabama, Tennessee, or North Carolina, are bound by its provisions, and as a necessary consequence they are entitled to its advantages.

Furthermore, the rights of the North Carolina Cherokees to remove west at their own election is fully recognized by sections 4 and 5 of the act of Congress, approved July 29, 1848 (9 Stat., 264-5), creating a fund for their removal, leaving it to their discretion as to the time of removal, with the proviso (section 4), "that the amount herein required to be funded for the benefit of the said Cherokees in North Carolina, and the amount required to be paid them shall be charged to the general Cherokee fund under the treaty of New Echota (1835), and shall be reimbursed therefrom."

In fact, every treaty, law, decision or ruling that I have been able to find in the short time which has been devoted to the consideration of this subject is in favor of the claim of the North Carolina Cherokees.

In conclusion I submit this single proposition: Were the North Carolina Cherokee Indians equally interested, in proportion to their number, with all the other Cherokees in the common property of the Cherokee Nation east of the Mississippi River prior to any treaty providing for the cession thereof and removal west; and if so, under what provision of treaty or law have they forfeited that interest?

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

The Hon. the SECRETARY OF THE INTERIOR.

CHEROKEE A, 1.

Know all men by these presents that we, the undersigned, Cherokee Indians, residing in the counties of Haywood and Macon, State of North Carolina, constitute and appoint William H. Thomas, of the county of Haywood and State aforesaid, our lawful agent to attend at Washington City, and for us examine the late treaty made by the Cherokee Indians with Mr. Carroll and John F. Schermerhorn, United States

agent, at New Echota, on the 29th day of December last, and if provision be made, or the agent of the United States will yet make provision, in said treaty for us and our families (such as our said agent shall be satisfied with), we therefore authorize our said agent to sign our names to said treaty, when signed to be as binding on us, our heirs, or assigns, as if we had been personally present at the signing and sealing thereof. We further authorize our said agent (Wm. H. Thomas), to apply for and receive all sums of money due us from the United States, or which may be due us hereafter, payable to us for annuities or stipulations in said treaty. In testimony whereof we have hereunto subscribed our names January the 30th, A. D. one thousand eight hundred and thirty-six.

J. W. RING.
G. W. HAYES.

Signed and delivered in the presence of two hundred and thirty-seven.

Tinniah, his x mark.	Chiu-yon-ruh-tahih, mark x.
Salolah, his x mark.	Euih, mark x.
Catogih, his x mark.	Wallih, mark x.
Ihe-Yaleh, his x mark.	Nella, mark x.
U-to-ya-tuh, his x mark.	Chinnih, mark x.
Chu-la-tes-Rih, his x mark.	Ahpih, mark x.
Canantis-Rih, her x mark.	Nanu, mark x.
Calolstah, his x mark.	U-la-yohih, his x mark.
Ah-Yalahit, her x mark.	Nab-cheuh, his x mark.
Che-yah-lah-tuh, x mark.	Alakih, his x mark.
Woh-te-yoh-hih, x mark.	Saluwahyuh, his x mark.
Callah-nan-is-Rih, his x mark.	Tu-ttes-tuh, his x mark.
Olkinih, x.	Wilson-ih, his x mark.
Anna, her x mark.	Jakih, his x mark.
Cole-Chuh, mark x.	Jo-Welch, his x mark.
Stukih-Ratogah, mark x.	Briches, his x mark.
Ala-Rih, mark x.	Chulaoh (by his father), his x mark.
Tih-he-cuh, mark x.	Te-colagiskih, his x mark (by father).
Chineyuh, mark x.	(Also) Olly, her x mark.
Wah-yeni-tuh, mark x.	Hohyiskeh, his x mark.
Sally, mark x.	Talonaubaskih, his x mark.
Chechuh, mark x.	Wilson, his x mark.
Wallih, mark x.	Charley, his x mark.
Tecuyiskih, x.	Tinnih, his x mark (by his father).
Iakinih, mark x.	Caiskuih, his x mark.
Ieyeh-in, mark x.	Wotannih, his x mark.
Wah-yetuh, mark x.	Ne-lo-suh, his x mark.
Nella, mark x.	Sahtiyuh, his x mark.
Cata, mark x.	Cheyanestuh, his x mark.
Ih-ya-lib, mark x.	Quetuh, his x mark.
Tinniech, mark x.	Cannon-Stiskih, his x mark.
Nauchi, mark x.	Cata, mark x.
Woi-yih, mark x.	Suttayah, mark x.
Chus-gue-nanuhwotih, his x mark.	Anih, mark x.
Howih-netuh, his x mark.	Nauchi, mark x.
Onem, his x mark.	Allayolltoh, mark x.
Dobson, his x mark.	Calino, mark x.
Walkinih, mark x.	Chisquenetuh, mark x.
Anna-Wakih, mark x.	Watesih, mark x.
Luyih, mark x.	Tecus Killuh, mark x.
Betsey, mark x.	Wanchi, mark x.
Tikinuh, his x mark.	Tahnubuecudlih, mark x.
Coult, his x mark.	Tanih, mark x.
Jonna-larga, his x mark.	Catih, mark x.
Charlestown, his x mark.	Chinnih, mark x.
Youna-chuhyuh, his x mark.	Yahkih, mark x.
Jack-Son, his x mark.	Watta, mark x.
Jimmih, his x mark.	Cotiskih, mark x.
Tabnelutuh, his x mark.	Nanchi, mark x.
Iyostuh, mark x.	Wulleyuh, mark x.
Yaholuh, mark x.	Talltuh, mark x.
Nancy, mark x.	Etikigih, mark x.
Wallih, mark x.	Quallih, mark x.
Cunno-Kiskih, mark x.	Suyukih, mark x.
Alsih, mark x.	Sally, mark x.

Winny, mark x.
 Telus Kos Pih, mark x.
 Olpinnih, mark x.
 Utuhoohistuh, x.
 Colenuh, x.
 Younaguska, his x mark.
 Long Blanket, his x mark.
 Willnota, his x mark.
 Big Jack, his x mark.
 Te-cah-nih, his x mark.
 Colahah, his x mark.
 Scotih, his x mark.
 John Davidson, his x mark.
 Cotulla, his x mark.
 Oobsowih, his x mark.
 Ar-Oneachuh, his x mark.
 Suatowih, his x mark.
 Ground Squirrel, his x mark.
 Nedda, his x mark.
 Stekoih, his x mark.
 Johnsonih, his x mark.
 Wallis, his x mark.
 Tetonniskih, his x mark.
 Tiyahah, his x mark.
 Little John, his x mark.
 Jakih, his x mark.
 Tiyonohilla, his x mark.
 Cho-yakuh, his x mark.
 O-ohyuskih, his x mark.
 Culasuttih, his x mark.
 Ah-Cuih, his x mark.
 Elapih, his x mark.
 Georga, his x mark.
 Chiala, his x mark.
 Chuwowhinka, his x mark.
 Jyentuga, his x mark.
 Chochechuh, his x mark.
 Cherley, his x mark.
 Niehajark, his x mark.
 Chunolakah, his x mark.
 Ulanahhiih, his x mark.
 Clungoltoih, his x mark.
 Ahgnottaga, his x mark.
 Fox, his x mark.
 Chiga Suttih, his x mark.
 Cotaskih, his x mark.
 Utahhuttuh, his x mark.
 Culasutta, his x mark.
 Drink Water, his x mark.
 Cunstulla, mark x.
 Utiyah, his x mark.
 Nice, mark x.
 Chinsquih, mark x.
 Sally, mark x.
 Choyakuh, mark x.
 Chayakuh, mark x.
 Elakih, mark x.
 Walkinnih, mark x.
 Ulsaih, mark x.
 Nakh, mark x.
 Chewonih, mark x.
 Yinkinih, x.

Cheyounibtih, x.
 Samuih, mark x.
 Susannih, mark x.
 Takih, mark x.
 Alsun, mark x.
 Tuwoluh, mark x.
 Sockinih, mark x.
 Watesih, mark x.
 Soptiyuh, mark x.
 Oeilih, mark x.
 Anih, mark x.
 Nanchi, mark x.
 Salih, mark x.
 Wilson, mark x.
 Wahlih, mark x.
 Sonnih, mark x.
 Nanee, mark x.
 Johr-a-wagih, mark x.
 Clo, mark x.
 Tawagih, mark x.
 Caloniskih, mark x.
 Caestuh, mark x.
 Peggih, mark x.
 Catah, mark x.
 Netonuh, mark x.
 Ingeeculla, mark x.
 Anih, mark x.
 Willis, mark x.
 Nancy, mark x.
 Che-ye-nanah, mark x.
 Winney, mark x.
 Salih, mark x.
 Rihulo, mark x.
 Nanu, mark x.
 Ow, mark x.
 Alsih, mark x.
 Ulstuih, mark x.
 Coluskih, mark x.
 Ulalteh, mark x.
 Younawahyih, mark x.
 Wallissuh, mark x.
 Cayohhiih, mark x.
 Cannanteskah, x.
 Chachu, mark x.
 Uluchu, mark x.
 Ullesetuh, mark x.
 Elaih, mark x.
 Annissih x.
 Gilloih x.
 Cis Celis Kih x.
 Ollih x.
 Cheuih x.
 Cheyenanah x.
 Sakih x.
 Cahtayuh x.
 Chuvnaluh x.
 Constuskih x.
 Chelowieh x.
 Chelwekeh x.
 Nahnutuh x.
 Olly, mark x.
 Nice, mark x.

The within power of attorney was acknowledged by the Cherokee Indians (two hundred and thirty-seven in number) whose names are thereunto subscribed before me, George W. Hayes, one of the acting justices of the peace for the county of Haywood, State of North Carolina, for the purposes therein contained.

I further certify that I have a sufficient knowledge of the Cherokee language to

enable me to know that the within power of attorney was correctly linecastered to the Inds. whose names are thereunto subscribed.

January the 30th, 1836.

[SEAL.]

GEORGE W. HAYES, *J. P.*

STATE OF NORTH CAROLINA,
Haywood County :

I, William _____, clerk of the court of pleas & quarter sessions for the county of Haywood aforesaid, do certify that Geo. W. Hayes, before whom the within power of att'y was acknowledged, & whose name also appears to the above certificate, is and was at the date thereof an acting justice of the peace in and for said county of Haywood aforesaid, and that due faith and credit ought to be given to his official acts as such. Given under my hand and seal, at office, the 16th day of February, A. D. 1836.

WM. WELCH, *Clk.*

NORTH CAROLINA,
Haywood County :

I, John L. Dilliard, chairman of the county court of pleas and quarter sessions for said co., hereby certify that Wm. Welch, whose name appears to be annexed to the above certificate, is clerk of said court.

Given under my hand this 17th of Feb., 1836.

J. S. DILLIARD, *Char.*

CHEROKEE A. 1.

No. 2.

WASHINGTON CITY, *May 26, 1836.*

Whereas William H. Thomas, authorized by a portion of the Cherokees residing in the State of North Carolina to attend at this place for them, examine, and (if unconditional rights were secured to them) sign a treaty made and concluded at New Echota on the 29th of Dec., 1835, between the United States of America and Cherokee Nation of Indians. He arrived here after it was submitted to the Senate for ratification; could have no opportunity of examining its provisions and obtaining supplemental articles thereto had any been necessary to secure the Indians above mentioned an equal share, proportioned to their numbers, in the proceeds of the sale without a new negotiation, and that, it was believed, would delay the ratification and prevent the supplies being furnished in time to relieve the wants of the poor class of Cherokees. Also being of opinion that the undersigned delegation had the right and were disposed to do equal and impartial justice to all their people; that the powers conferred on the President and Congress of the United States to manage their affairs were intended for that purpose and no other; further, that the articles mentioned below intended to prevent improper constructions would be faithfully complied with, gave his assent to and assisted in obtaining the ratification of said treaty.

The delegation whose names are hereunto annexed for the Cherokees who have emigrated and expected to emigrate to their new homes west of the Mississippi, of the first part, and William H. Thomas for the Cherokees belonging to, or which should belong to, the following towns and settlements, Omalla, Alaska, Aquora, Stekoih, and Cheoih, with their respective settlements, expected to remain east, of the second part.

ARTICLE I. It is admitted that the Cherokees above mentioned are entitled to an equal share, proportioned to their numbers, in all the lands belonging to the Cherokee Nation of Inds; and, notwithstanding they have been deprived of their share of the annuities since the year of 1820, are nevertheless entitled to all sums in possession of the President of the United States for the use of and annuities due from the United States to the Cherokee Nation of Inds. (except such as belong exclusively to the Cherokees now living west of the Mississippi), their proportionate share of which benefits was intended to be secured to them by the 12th article of the New Echota treaty, which reads as follows: "Those individuals and families of the Cherokee Nation that are averse to a removal to the Cherokee country west of the Mississippi, and are desirous of becoming citizens of the States where they reside, and such as are qualified to take care of themselves and property, shall be entitled to receive their due portion of all the personal benefits accruing under this treaty for their claims, improvements, and per capita as soon as an appropriation is made for this treaty.

The qualification therein required referred to the pre-emption privilege which could not be allowed of being *inconsistent* with the previous rights of the States.

Also believing it the interest of those desiring to remain as provided for in the above

article, to purchase their lands, procure fee-simple titles thereto, be the acknowledged owners of the soil, protected by the laws of the States.

ARTICLE 2. That the number belonging to said towns and settlements be accurately ascertained, two acting justices of the peace in an' for the counties in which they reside shall annually take their census, make out and certify a list showing the number in each town, which list shall be certified by the clerk & chairman of the county court agreeable thereto. The President of the United States is requested to pay them their proportionate share of all sums arising from the sale or transfer of all the common property as mentioned in the first article of this agreement.

ARTICLE 3. It is further agreed to that if any construction be given to any of the articles of said New Echota Treaty whereby the Cherokees belonging to or which shall belong to said towns and settlements whereby they shall be deprived of an equal share proportioned to their numbers in all the sums arising from the sale or transfer of the common property mentioned in the 1st article of this agreement, payable to the Cherokee Nation of Inds. or people.

We will request the President and Senate of the United States, and they are hereby requested, to allow them such supplemental articles thereto as shall remove such improper constructions and enable them to receive their equal proportioned share as above mentioned.

ARTICLE 4. It is further understood that our claim, to which said Cherokees desiring to remain are entitled, by the 12th article of the New Echota treaty, amounting to fifty-three $\frac{33}{100}$ each, intended to place them on terms of equality with those that choose to emigrate, in two years from the ratification of the above treaty, who are allowed that sum for removal and subsistence, out of the money arising from the sale of the common property, shall be placed by them on interest in the State Bank of N. Carolina, or some other safe institution to furnish those desiring to emigrate to their new homes in the West, with removal & subsistence, without which they might not be able to reach their friends in the West.

ARTICLE 5. The Cherokees belonging to said towns and settlements are to have the use of the hunting ground adjoining to where they live reserved to the Cherokee Nation by the 7th article of the treaty made at Philadelphia on the 2nd July, 1791 (2).

ARTICLE 6. The Cherokees above mentioned being desirous to have the translation of the Scriptures completed into their own language, for that purpose they agree to pay such person or persons as may be employed for the same the sum of five hundred dollars; also, after the translation is completed for books, five hundred dollars more to be paid on receiving them.

ARTICLE 7. Should a division of the lands west of the Mississippi, belonging to the Cherokee Nation as a common property, take place, the above-mentioned Cherokees shall be entitled to have their share laid off for them.

Witness our hands and seals, day and date above-written.

Interpreted & attested by Stannatie:

WILLIAM ROGERS.	MAJOR RIDGE, his x mark.
ELIAS BUDINOT.	JAMES FOSTER, his x mark.
JOHNSON RODERS.	LONG SHELLED TURTLE, his x mark.
GEORGE WELCH.	JOHN FIELDS, his x mark.
JOHN GAUTER.	JAMES FIELDS, h s x mark.
ANDREW ROSS.	JAME STARR, his x mark.

Stannatie, Arkansas chiefs—

JOHN SMITH, his x mark.
JAMES ROGERS.

On the part of the Cherokees expected to remain East until after the expiration of two years—

W. H. THOMAS,
Agent.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 31, 1833.

SIR: I inclose herewith the reports of Special Agent Clements, three in number, dated respectively the 2d, 20th, and 24th instaut, of his findings under the act of Congress approved August 7, 1882 (22 Stat., 328), which were handed to me for examination. The subjects covered by these reports have been under consideration by Mr. Clements for several months, and it is not expected that in the few days which

they have been in my hands a very thorough examination thereof could be made. I have gone over them, however, and given them such examination as the limited time would afford. I will take them up in the order of their date.

REPORT NO. 1.

This report relates to the claim of the Eastern band of North Carolina Indians against the Cherokee Nation west, to a pro rata interest in all the common property of the said nation.

By article 16 of the treaty of 1835 the Cherokees agreed to remove within two years. It has been claimed by the Western Cherokees that those who did not remove within the two years forfeited their right or interest in the common domain of the nation.

There is no forfeiture clause in said sixteenth article, or in any other treaty that I have been able to find, with respect of the common domain, and I am of the opinion that the conclusions arrived at by Mr. Clements, that the Eastern band of North Carolina Cherokee Indians have a pro rata interest in all the lands of the Cherokees west, or the proceeds thereof, are correct. It has heretofore been so held by this office.

The whole Cherokee people appear to have so understood it, as evidenced by an agreement signed in this city May 26, 1836, now on file in the War Department, and a copy thereof in the files of this office.

By the tenth article of the treaty of 1835 a permanent fund of \$400,000 was created, which was to be invested for the benefit of the whole Cherokee Nation who have removed or shall remove to the lands assigned them west of the Mississippi, the net income of the same to be expended as therein provided.

By the eleventh article it was agreed that the \$10,000 permanent annuity fund should be commuted to \$214,000, which was to be invested as a part of the general fund of the nation. This sum was appropriated by the act of July 2, 1836 (5 Stat., 73).

By the fourth article of the supplemental treaty of 1836 (*Id.*, 489) the fund mentioned in article 10 of the treaty of 1835 was increased to the sum of \$500,000, so that the general fund of the Cherokee people was \$714,000.

Now, I think it evident from the language of the tenth article of the treaty of 1835, that only those Cherokees who had removed or should remove could participate in the fund mentioned in that article, and the \$100,000 added thereto by the third article of the supplemental treaty.

They must have removed west to become beneficiaries under that article. But as to the \$10,000 permanent annuity commuted to \$214,000 in accordance with the eleventh article of the treaty of 1835, I am inclined to a different view. This fund, I am of the opinion, belongs to the whole Cherokee people. The \$10,000 was the common annuity of the whole people, and the amount to which it was commuted was to be invested as a part of the general fund of the nation. There is no qualification to its application, as is provided in article 10, as to the other funds, and it is not affected by that article. There was a prior existing right to this fund which could be defeated only by some subsequent treaty or law. I know of no such treaty or law. I am of the opinion, therefore, as before stated, that this fund belongs to the whole Cherokee people, and the Eastern band of North Carolina Cherokees are entitled to a pro rata interest therein. * * *

Very respectfully, your obedient servant.

H. PRICE, *Commissioner.*

The Hon. the SECRETARY OF THE INTERIOR.

REPORT No. 1.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 2, 1883.

SIR: In pursuance of my appointment as a special agent of your department, charged with the investigation of all matters of dispute between the Eastern band of Cherokee Indians (including all of the Cherokees residing east of the Mississippi River,) and the Cherokee tribe or nation west; also all matters of dispute between other bands or parts of the Cherokee Nation, under the provisions of an act of Congress approved August 7, 1882, I have the honor to submit the following report on the claim of the Eastern band of Cherokee Indians against the Cherokee Nation:

REPORT.

The Eastern band of Cherokee Indians claim that they are justly entitled to a pro rata interest, estimated at one-seventh, in all the common property of the Cherokee Nation of Indians, under the treaties made between those Indians and the United States. This the Cherokee Nation deny.

In the examination of this claim, I find that prior to the Louisiana purchase in 1803, a number of the Cherokees separated themselves from their own people or nation and made their first settlement on the banks of the Arkansas. In 1808 the Cherokee Nation proper, having become divided under the designation of Upper and Lower Towns, sent deputations to Washington as representatives of both parties, who submitted a proposition to the President for a formal and final separation of the tribe. The "Upper Town" Cherokees desired to remain east of the Mississippi River and engage in the pursuits of agriculture and civilized life in the country they then occupied, while the "Lower Town" Cherokees expressed a wish to remove across the Mississippi on some vacant land of the United States.

President Jefferson encouraged this proposed emigration west by his letter of January 9, 1809, from which I quote:

"Those who wish to remove are permitted to send an exploring party to reconnoiter the country on the waters of the Arkansas and White Rivers. * * * When this party shall have found a tract of country suiting the emigrants, and not claimed by other Indians, we will arrange with them and you the exchange of that for a just portion of the country they leave, and to a part of which, proportionate to their numbers, they have a right." (Rev. Ind. Treaties, p. 46.)

The exploration was made, and the country on the Arkansas and White Rivers was selected and settled upon by the emigrants, who numbered when the treaty of 1817 was made between the United States and the Cherokee Nation some two thousand souls, and formed the nucleus of the "Old Settlers" or Western Cherokees.

By the terms of this treaty, in consideration of lands east of the Mississippi, ceded by the whole Cherokee Nation to the United States "in part of the proportion of land * * * to which those now on the Arkansas and those about to remove there are justly entitled," the United States bound themselves "to give to that part of the Cherokee Nation on the Arkansas as much land on said river and White River as they have, or may hereafter receive, from the Cherokee Nation east of the Mississippi, acre for acre." (Rev. Ind. Treaties, pp. 47-8, articles 1, 2, 5.) In addition thereto it was stipulated and agreed that the annuity should be thereafter divided in proportion to their numbers, and that a census should be taken of the entire Cherokee Nation, in order to ascertain the number who had already emigrated, as well as the number who intended to join the Western tribe. (*Ib.*, pp. 47-8, articles 3 and 4.)

The treaty of 1819 was concluded with the Cherokees for the final adjustment of the former treaty without further delay or the trouble or expense of taking the census therein provided for. (*Ib.*, pp. 50-1 preamble, and art. 1.) It stipulated that the lands thereby ceded to the United States were to be accepted "in full satisfaction of all claims which the United States have on them, on account of a cession to a part of their nation who have or may hereafter emigrate to the Arkansas" (article 1), and that the annuity to the Cherokee Nation should be paid, two-thirds to the Cherokees east of the Mississippi and one-third to the Cherokees west of that river, as it was estimated that those who had emigrated and who had enrolled for emigration constituted one-third of the whole nation. (*Ib.*, pp. 53-4, article 6.)

The annuities were thereafter divided, as provided for by that article; separate agents were appointed by the United States, and from that time the Eastern and Western Cherokees were treated as separate and distinct nations, each holding its own property.

"By the treaties between the United States and the Cherokee Nation of 1817 and 1819 the Cherokees became severed into two tribes. * * * The land on the east side of the Mississippi River—the common property of the whole Cherokee Nation—was by those treaties partitioned between the two tribes. The Western Cherokees

exchanged their portion of that land with the United States for land on the Arkansas and White Rivers, acre for acre. The residue of the Cherokee country on the eastern side of the Mississippi, not ceded to the United States by those treaties, thereby belonged to the eastern tribe of the Cherokees." (Opinions Att'y-Gen'l, vol. 5, p. 326.)

But about this time "Disturbances, and in some instances, collisions, of a threatening character, occurred between the Cherokee Nation of Indians and certain citizens of the States or Territories in which they resided, in consequence of which the United States and the Cherokee Nation became anxious to make some arrangement whereby the difficulties which had arisen by the residence of the Indians within the settled parts of the United States, under the jurisdiction and laws of the States or Territorial governments, might be terminated and adjusted." (Holden *vs.* Joy, 17 Wal., 223.) It therefore became the policy of the government, as connected with these people, to endeavor to remove them beyond the limits of the States and organized Territories, and for the purpose of carrying this policy into effect the treaties of 1828, 1833, and 1835 were concluded with those Indians. (Report Sec'y of War, Nov. 24, 1828, Senate Doc. 20th Cong., 2d sess.)

By the treaty of 1828, made with the Cherokee Nation of Indians west of the Mississippi, the United States agreed "to possess the Cherokees, and to guarantee it to them forever, * * * of seven millions of acres of land" therein described, lying west of the western boundary of Arkansas, together with a perpetual outlet west, and a free and unmolested use of all the country lying west of the above-ceded tract, as far as the sovereignty of the United States and their right of soil extended (Rev. Ind. Treaties, pp. 57-58, Art. 2). It was "further agreed that the United States, in consideration of the inconvenience and trouble attending the removal, and on account of the reduced value of a great portion of the lands herein ceded to the Cherokees, as compared with that of those in Arkansas which were made theirs by the treaty of 1817 and convention of 1819 will pay to the Cherokees, immediately after their removal" certain sums of money, including an annuity for a stated time (*Id.*, 58-9, art. 5). In consideration of the foregoing and other stipulations and provisions, the Western Cherokees ceded to the United States all the lands in Arkansas secured to them by the former treaties (*Id.*, p. 59, art. 7).

The object of the treaty of 1828, as shown by the preamble, was "to secure to the Cherokee Nation of Indians, as well those now living within the limits of the Territory of Arkansas as those of their friends and brothers who reside in the States east of the Mississippi, and who may wish to join their brothers of the West, a permanent home; and this was in accord with the policy of the government already adopted. The cession therefore was not made to any separate or distinct tribe or nation of their people, but to "the Cherokees."

The treaty of 1833, concluded with the Western Cherokees, was declared to be supplementary to that of 1828. It contained the same guarantee respecting the ceded territory, but made some unimportant changes in the boundaries. The United States agreed to issue letters patent for the ceded lands as soon as practicable, and give to those Indians a plain set of laws suited to their condition, when desired.—(*Id.*, pp. 63-4, articles 1 and 3.)

On the 29th of December, 1835, another treaty was made at New Echota, in the State of Georgia, between the United States and the Cherokee Nation east. Two delegates from the western nation who were sent at the request of the eastern Cherokees to attend the council east, agreed to the stipulations and provisions of the treaty in behalf of their people and signed the same in their representative capacity. (Letter August 23, 1836, from chiefs Western Cherokees, Senate Document 120, Twentieth Congress, second session.)

The objects of this treaty and the policy of the government as expressed in the preamble thereto, were:

1. To terminate and adjust all difficulties the Cherokees experienced by a residence within the settled parts of the United States under the jurisdiction and laws of State governments.

2. To reunite their people in one body and secure for themselves and their posterity a permanent home without the territorial limits of the State sovereignties, and where they could establish and enjoy a government of their choice. (Rev. Ind. Treaties, p. 65.)

By the terms of this treaty the Cherokee Nation ceded all of their possessions east of the Mississippi to the United States and released all their claims upon the government for spoliations of every kind, for and in consideration of the sum of \$5,000,000, to be "equally divided between all the people belonging to the Cherokee Nation east, according to the census just completed," after deducting the amount which should be actually expended for the payment for improvements, ferries, claims for spoliations, removal, subsistence, debts and claims upon their nation, and for the additional quantity of lands and goods for the poorer class of Cherokees, and the several sums

to be invested for the general national fund provided for in the several articles of the treaty. (*Ib.*, pp. 67-75, articles 1 and 15.)

The second article declared that by the treaty of 1828 and the supplementary treaty thereto of 1833, with the Cherokees west of the Mississippi, the United States guaranteed and secured to be conveyed by patent to the Cherokee Nation of Indians, the tract of land therein described; and it further provided that in consideration of the sum of \$500,000, the government would cede to said nation an additional tract, estimated to contain eight hundred thousand acres, as it was apprehended by the Cherokees that in the first cession there was not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west. (*Ib.*, pp. 67-8.)

The general national fund which was increased to \$500,000 by the fourth article of the supplementary articles to this treaty, was to be invested in "public stocks of the country for the benefit of the whole Cherokee Nation who have removed or shall remove to the lands assigned by this treaty to the Cherokee Nation west of the Mississippi" (article 10); and by the eleventh article thereof, the permanent annuity of \$10,000 was commuted for the sum of \$214,090, to be invested also as part of the general fund of the nation. (*Ib.*, pp. 78, 71, 72.)

It will be observed that although by the treaty of 1828, the Western Cherokees relinquished and surrendered to the United States all the lands in Arkansas secured to them by the treaty of 1817 and the convention of 1819, and accepted in lieu thereof a larger tract thereby ceded to "the Cherokees," of whom they constituted a part, no provision was made to indemnify them for the lands so relinquished and surrendered; neither was their right to any compensation for those lands recognized by the treaties of 1833 and 1835. As a consequence serious difficulties arose between the Eastern and Western Cherokees when reunited west of the Mississippi. To heal all dissensions the act of union of June 26, 1840, was passed by their council, but nevertheless they continued distracted and divided until the treaty of 1846 was concluded. The board of commissioners, then recently appointed by the President of the United States to examine and adjust the claims and difficulties existing against and between the Cherokee people and the United States, as well as between the Cherokees themselves, had decided that under the provisions of the treaty of 1828, as well as in conformity with the general policy of the government in relation to the Indian tribes, and the Cherokee Nation in particular, the Western Cherokees had no exclusive title to the territory ceded in that treaty, but that the same was intended for the use of and to be the home for the whole nation, including as well that portion then east as that portion then west of the Mississippi. The board further decided that, inasmuch as the territory before mentioned became the common property of the whole Cherokee Nation by the operation of the treaty of 1828, the Cherokees then west of the Mississippi, by the equitable operation of the same treaty, acquired a common interest in the lands occupied by the Cherokees east of the Mississippi River, as well as those occupied by themselves west of that river. Adopting the construction placed upon that treaty by the board of commissioners, a basis of settlement was agreed upon, and by the fourth article of the treaty of 1846 the Western Cherokees consented and agreed that the lands west should "be and remain the common property of the whole Cherokee people, themselves included." (*Ib.*, pp. 81-2.) Those Cherokees who elected, under the twelfth article of the treaty of 1835, to remain east were not a party to the treaty; but in article 10 thereof it was expressly agreed that nothing therein contained should be so construed as in any manner to take away or abridge any rights or claims which they had or may have under the treaty of 1835 and the supplement thereto. (*Ib.*, p. 84.)

Those rights or claims were identical with those of all other Cherokees then east, except in so far as they waived, surrendered, or forfeited the same by the terms of that treaty. By the twelfth article of the treaty all Cherokees averse to a removal were entitled to receive their due portion of all the personal benefits accruing under the treaty for their claims, improvements, and per capita, while the Cherokees who should remove to the West were entitled to receive, in addition thereto, an allowance for and on account of removal and subsistence, as well as the exclusive benefits derived from the permanent national fund. (*Ib.*, 71-75, articles 10 and 15.)

In all other respects the rights of all Cherokees then east, in the common property of their nation, were equal. The eastern band neither surrendered nor forfeited anything except an interest in the benefits arising from the national fund during the time they might separate themselves from their brethren west.

Congress subsequently recognized this fact by the act of July 29, 1848 (9 Stat., pp. 264-5), which set apart their proportionate share of the commutation for removal and subsistence, to be applied in defraying their expenses west; and the same remained to their credit in the Treasury until the act of March 3, 1875 (18 Stat., p. 447), made the sum available to perfect the titles to their lands in North Carolina, and for other purposes.

But, it is claimed in behalf of the Cherokee Nation, that the eastern band have abandoned their nation by expatriation, thereby losing all identity as Cherokees, and

become, in law and in fact, citizens of the United States. This proposition cannot be sustained, for as expatriation includes not only emigration out of one's native country, but naturalization in the country adopted as a future residence (Opinions Att'y-Gen., vol. 9, p. 63 and vol. 14, p. 297), and as Indians not taxed, which includes the Cherokees, are excluded from citizenship (Rev. Stat., sec. 1992), the doctrine of expatriation will not apply to them. It follows, then, that as a Cherokee cannot lawfully expatriate himself, he is, wherever he resides within the limits of the United States, a citizen of the Cherokee Nation.

By virtue of the treaties of 1828, 1833, and 1835, the title to the Cherokee domain in the west vested in the Cherokee Nation of Indians, and the lands thereby ceded were set apart for the use of the whole Cherokee people as a permanent home. Nevertheless, those Indians have not only ceased to occupy large tracts of those lands, but have also bargained and sold the same under the provisions contained in the treaty of 1866, made between their nation and the United States. The receipts on account of such sales to the close of the fiscal year ending June 30, 1882, were as follows:

Neutral lands, 799,614.72 acres, \$944,747.56; Cherokee strip, 305,174.14 acres, \$429,869.20; Ponca lands, 101,894.31 acres, \$48,389.46; Kansas and Osage lands, 1,570,196.30 acres, \$1,099,137.41; total, 2,776,879.47 acres, \$2,522,143.63, to which should be added the sum of \$300,000 appropriated by the act of June 16, 1880, (21 Stat., 248) on account of lands west of the Arkansas River, making the whole amount received \$2,822,143.63.

In addition thereto, other lands have been placed by the Cherokees at the disposal of the United States, for occupancy by the Pawnee, Otoes and Missourias, Nez Percés, and Delaware Indians; but no payments have as yet been made therefor.

If my conclusions are correct as to the rights of the Eastern band of Cherokees in the common property of the nation, then those Cherokees are legally and equitably entitled to a share of the proceeds derived from all sales of Cherokee lands, proportionate to their numbers, as such proceeds rightfully belong to the owners of the soil, the whole Cherokee people.

Very respectfully,

C. C. CLEMENTS,
Special Agent.

The Hon. the SECRETARY OF THE INTERIOR.