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Letter from the Secretary of the Interior, transmitting report in the claim of Rollins & Presbrey

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LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

Report in the claim of Rollins & Presbrey.

MAY 3, 1888.—Ordered to be printed and referred to the Committee on Appropriations.

DEPARTMENT OF THE INTERIOR,
Washington, May 2, 1888.

SIR: I have the honor to transmit herewith copy of a report of the Commissioner of Indians Affairs of 1st instant and accompanying papers in the claim of Rollins & Presbrey for legal services rendered to the Eastern band of Cherokee Indians, on which claim the Court of Claims on January 12, 1888, find that the claimants are entitled to the sum of \$10,176.77 beyond what has been paid to them.

The Commissioner in forwarding the papers states that he is clearly of the opinion that the claim ought to be paid by the Government and not by the Indians, and that in accordance with these views he submits a draft of an item, to be incorporated in the proper appropriation bill, for the payment of this claim.

The case was transmitted to the Court of Claims by Mr. Secretary Teller June 19, 1884, as will appear by the records of the case, for the consideration and action of that court in accordance with the provisions of section 2 of the act of March 3, 1883, entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government" (22 Stat., 485).

The accompanying papers present all the facts in the case, and the matter is respectfully submitted for such action as Congress shall find to be right and proper thereon.

Very respectfully,

WM. F. VILAS,
Secretary.

The PRESIDENT PRO TEMPORE OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 1, 1888.

SIR: I have the honor to acknowledge the return of my report of March 30, 1888, on the communication from the Department of Justice, transmitting the findings of the Court of Claims in Departmental case

No. 18, Rollins & Presbrey *vs.* United States, with reference indorsement of April 16, 1888, "for duplicate copies of such of the papers necessary to be laid before Congress for such action as that body may deem proper."

In reply I have the honor to submit, in compliance with said reference, a printed copy of the findings of the Court of Claims; also a copy of a communication, dated the 25th of April, 1888, with H. R. Ex. Doc. No. 169, Forty-third Congress, second session, from the attorney-general of North Carolina, Hon. Theo. F. Davidson, who was an attorney for the Indians in their defense against the claim of said Rollins & Presbrey, amounting to \$40,000, before the courts of North Carolina, and who is conversant with all the details of the case, in which he recommends the payment of the claim; being satisfied, first, that the claim limited to the sum named in the findings is a just and proper one, having great merit and being free from suspicion; second, being a just claim, the only question remaining is how it shall be paid, either by an appropriation out of the funds of the North Carolina Cherokees or by an appropriation out of the funds in the Treasury of the United States.

Upon further investigation and consideration of this latter question I am clearly of the opinion that the claim ought to be paid by the Government and not by the Indians. By the eleventh section of the Indian appropriation act of July 15, 1870 (16 Stats., p. 362), it was made the duty of the district attorneys and the Attorney-General of the United States to institute and prosecute all suits cause for which might arise under this section. It was under this section that the suit against W. H. Thomas *et al.* was instituted, and the Attorney-General, Hon. George H. Williams, in his letter of January 25, 1875, to the Speaker of the House of Representatives, states that in pursuance of this authority suits under his instructions were instituted in the spring of 1873; that the decree of the court awarding the lands to the Indians, made the plaintiffs in the suit, the Indians, liable for one-half the costs; but he, the Attorney-General, declares therein that—

It seems, however, upon a fair construction of the act, that such costs should be paid by the United States as well as the compensation of counsel specially employed by me to aid the district attorney in the prosecution of these cases. * * * (See page 1 of H. R. Ex. Doc. No. 169, Forty-third Congress, second session.)

In accordance with these views I submit herewith, with the recommendation that the same be laid before Congress, a draft of an item to be incorporated in the proper appropriation bill, for the payment of this claim, to the amount fixed by the award of the Court of Claims, viz, \$10,176.77.

I have the honor to be, very respectfully, your obedient servant,
J. D. C. ATKINS,

Commissioner.

The SECRETARY OF THE INTERIOR.

Draught of an item.

For this amount, to be paid to Wallace W. Rollins and Otis F. Presbrey, it being in full payment of the amount of their claim against the eastern band of Cherokee Indians in North Carolina, found by the Court of Claims, in departmental case number eighteen, to be due them for services rendered under their contract of May fifteen, eighteen hundred and seventy-four, with same Indians, ten thousand one hundred and seventy-six dollars and seventy-seven cents.

SENATE CHAMBER,
Washington, April 25, 1888.

SIR: Referring to our conversation this morning in relation to the claim of Messrs. Rollins and Presbrey for additional compensation for services rendered the eastern band of Cherokee Indians under a contract dated May 15, 1874, and approved by the then Secretary of Interior and Commissioner of Indian Affairs, I beg to direct your attention to one or two of the principal facts upon which the claim is based.

1. The claim, I am satisfied, is a proper one, having great merit and being free, so far as my knowledge extends, from any suspicion.

Several years ago the claimants, under advice of counsel, attempted to enforce their demand by suit in the courts of North Carolina against the Indians. I was retained by the Government to defend the action. Upon examination I came to the conclusion that while the amount still claimed to be due—about \$40,000—was excessive and the State courts had no jurisdiction, I was of the opinion that there was something due, and recommended that an additional sum, sufficient to make their total compensation about \$12,500, should be paid the plaintiffs. This was declined, as I now remember, by both the Commissioner of Indian Affairs and the claimants. The suit was determined in favor of the Indians upon the question of jurisdiction.

Subsequently the claim was, upon the recommendation of the Secretary of the Interior, referred for investigation to the Court of Claims, which has decided that "the claimants are entitled to the sum of \$10,176.77 beyond what has been paid to them"—the sum thus ascertained being slightly in excess of the amount I recommended to be paid in 1877.

I attach herewith a copy of the opinion of the Court of Claims, which sets out or refers to all the documents bearing on the case.

2. The claim being thus ascertained to be a just one, the only question remaining is how it shall be paid. This can be done in two ways: (1) By an appropriation of so much of the funds of the eastern band now to their credit in the Treasury of the United States as may be necessary; or (2) by an appropriation from the moneys of the Government.

You will find precedents in the Department of the Interior for the first course suggested, in the payments to the claimants of a part of their demand in September, 1875, and the payment of other necessary expenses growing out of the securing to these Indians the titles to the lands claimed by them, in the years 1876, 1877, and 1878, even as far down as 1881, I believe.

But I respectfully submit that this claim ought to be paid by the Government, for the reason that it was founded upon a state of facts resulting from the conduct of the agents of the Government. The latter was a trustee for the Indians, and as such it attempted by agents of its own selection, and over which the Indians could exercise no control, to make certain investments of the trust funds. The faulty manner in which this was done led to the necessity for the suits in which every one concedes Rollins rendered valuable services and for which he has not been fairly compensated. In a letter from the Attorney-General of the United States to the Speaker of the House of Representatives, dated January 25, 1875, in reference to this matter, it is stated:

"Two of the most important of these suits were recently determined, awarding to the Indians over 50,000 acres of land lying in the western part of North Carolina, and estimated to be worth \$200,000, and to that extent relieving the United States from liability to the Indians." And in pursuance of this view he recommended the payment of certain extra expenses connected therewith, and an appropriation was made and they were thus paid, and an appropriation was made for a survey of lands from the public treasury of several thousand dollars.

That course seems to me to have been proper, and I can see nothing in the facts to distinguish Rollins's present claim from those so provided for. So I submit that as between the claimants and the Indians, the Indians should be made liable, but as between the United States and the Indians the former should be responsible. If the United States should assume the payment it might retain a lien upon the lands of the Indians, which were the subject of the litigation, for its re-imbusement.

The claim being ascertained to be just, we ask you to recommend to Congress that it should be paid. Without some action of your Department we fear Congress will not be inclined to make any appropriation, at this session at any rate, in consequence of which the claimants, having already been delayed ten years, would be postponed another year, if not longer.

With a favorable recommendation from you, I believe the attention of Congress can now be secured and an appropriation be made.

It is therefor that I earnestly request you will give the matter a careful personal examination, and if you are satisfied the demand is just you will say so and advise Congress to provide for its payment at once.

I shall be glad to produce any documents or facts in my possession which you may think will aid you in your investigation; but as the circumstances are all well known, being mainly matters of record in the Department, I apprehend you can obtain them more speedily from those sources.

I am, very truly, etc.,

THEO. F. DAVIDSON.

Hon. J. D. C. ATKINS,

Commissioner of Indian Affairs, Washington, D. C.

[Court of Claims. Departmental Case No. 18. Wallace W. Rollins and Otis F. Presbrey v. The United States.]

FINDINGS OF FACT.

The claim or matter in the above-entitled case was transmitted to the court by the Secretary of the Interior on the 19th day of June, 1884.

T. H. N. McPherson, esq., appeared for claimant, and the Attorney-General, by Lewis Corcoran, his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The case having been brought to a hearing on the 12th day of January, 1888, the court, upon the evidence and after considering the briefs and arguments of counsel on both sides, finds the facts to be as follows:

I.

The council of the Eastern Band or North Carolina tribe of Cherokee Indians passed the following resolutions:

STATE OF NORTH CAROLINA:

County of Cherokee:

CHEOAH COUNCIL GROUND, *October 9, 1872.*

Whereas it is the sense of this council to employ some discreet and trusty person to prosecute all the claims of the Eastern Band or North Carolina tribe of the Cherokee Indians against the Government of the United States at Washington, arising under different treaties and laws from the year 1783 down to the present time: Now, therefore, be it

Resolved, By the Eastern Band or North Carolina Cherokee tribe of Indians in general council assembled, and it is hereby resolved by the authority of the same—

First. That John Ross, chief of Eastern Band of Cherokees, be, and he is hereby, authorized and empowered to employ some discreet and trusty person to have custody of and to prosecute the claims of the tribe for reservations, spoliations, and pre-emptions under the treaties of 1817 and 1819, and the payments provided for by the treaty of 1835-'36.

Second. To assert and establish before the proper authority of the United States all the interest and claims which the said tribe may have upon the United States Government, arising under the provisions of the twelfth article of the treaty of 1835, and of an act of Congress approved July 29, 1848, and to collect and procure the payment to the above-mentioned tribe of all the interest which they may have in and to a fund derived from the proceeds of the sale of the lands known as the neutral lands, the Cherokee Strip in the State of Kansas, and all the lands west of longitude 96, as provided for and by virtue of the treaty of July 19, 1866, a part of which fund is in the custody of the Department of the Interior.

To prosecute, collect, and procure the payment to the said tribe, from the Congress or any other authority of the United States, of whatever the said tribe may be entitled to from the United States on account of the misappropriation, unauthorized, extravagant, or unnecessary expenditure of any portion of the fund of \$5,000,000 set apart, as well for the use and benefit of the Eastern Band of Cherokees as for those of that nation who removed West by virtue of the first article of the treaty of 1835, which claim is as yet unadjusted.

To procure the payment to the said tribe from the Secretary of the Interior so much of an appropriations as they may be entitled to, now in his hands for distribution according to the provisions of the fourth section of an act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations," etc., approved May 29, 1872.

Resolved further, That the chief, John Ross, be, and is hereby, instructed to employ and make a contract with a competent person to carry out the instruction and purpose

of the said council as above mentioned: *Provided, however,* That the person to be selected by the chief, John Ross, shall not be allowed or receive more than 25 per cent. as compensation for all his services in prosecuting, establishing, collecting, and procuring the payment to the said tribe of all or any portion of the claims as above mentioned: *And provided further,* That all such contracts made as provided for by this council shall be first approved of by the Secretary of the Interior and Commissioner of Indian Affairs, as provided for by an act regulating the mode of making private contracts with Indians, May 21, 1872.

Resolved further, That a duplicate copy of these resolutions shall accompany the contract or agreement made and entered into hereafter by Chief John Ross with a competent person as above mentioned.

Approved.

JOHN ROSS,
Principal Chief.
DAVID AAMS,
Clerk of Council.
his
JOHN X TUCKER.
mark.

Attest:

JOHN G. TATHAM,
Interpreter.
JAMES TAYLOR.

Said Ross, in pursuance of said resolution's authority as chief, and his authority as principal chief, entered into the following contract:

Whereas by a resolution of the council of the Eastern Band of the Cherokees in general council assembled and constituted according to the instructions and regulations of the Interior Department, at a session held at Cheoah, in the county of Graham, formerly Cherokee County, in the State of North Carolina, on the first Monday in October, A. D. 1872, it was determined to employ some discreet and trusty person to prosecute the various claims of the tribe against the Government of the United States at Washington City, or elsewhere, arising under different treaties and laws of the United States and the State of North Carolina from the year 1783 down to the present time, and the chief, John Ross, of the county of Graham, formerly Cherokee County, in the State of North Carolina, was at the same time and by the same authority instructed to make a contract with a competent person to carry out the intention and purpose of the said council as above mentioned; and

Whereas since the first Monday in October, A. D. 1872, various suits at law and in equity have been begun by the district attorney of the United States at the request of the said John Ross, chief, in the name and for the benefit of the said Eastern Band of Cherokees, against divers defendants, which suits are depending in the circuit and district courts of the United States, and other suits will have to be brought in said courts and the courts of North Carolina to establish the rights and redress the wrongs of the said Eastern Band of the Cherokees, and the proper conduct and management of all this litigation, pending and proposed, will require the services of an active and efficient agent, and the said chief John Ross, for and in behalf of the Eastern Band of the Cherokees, and by virtue of his authority as chief of said band, having selected Wallace W. Rollins, attorney at law, of the town of Marshall, in the county of Madison and State of North Carolina, as a person suitable to be entrusted with the conduct and management of all their business with the Government of the United States, and such as is or may hereafter be in litigation in any of the above-mentioned courts or in any other court or before any tribunal of arbitration or reference now or hereafter to be constituted:

Now, therefore, it is agreed between the said John Ross, chief of the Eastern Band of the Cherokees, for and in behalf of said Eastern Band and by virtue of his said authority as chief, as aforesaid, and Wallace W. Rollins, of the town of Marshall, in the county of Madison, in the State of North Carolina, as follows: That the following things shall be endeavored to be done by the said Wallace W. Rollins, viz:

(1) To assert and establish before any proper officer or authority of the United States, and to collect for the Eastern Band of the Cherokees, or those of said band thereunto entitled, all such sums of money as may be due to the said Eastern Band of the Cherokees, or to any individual or individuals thereof, and due to them, or any of them, under the provisions of the twelfth section of the treaty of 1835 and 1836, and of an act of Congress approved July 29, 1848, and of subsequent acts of Congress, to carry into effect the provisions of said treaty, and of said act of 1848.

(2) To assert and establish before any proper officer, or authority of the United States, and to collect for the Eastern Band of the Cherokees all such sums of money

as they may be entitled to from the United States, being their pro rata share of a fund derived from the sale of the lands known as the neutral lands, the Cherokee strip in the State of Kansas, and all the land west of longitude 96°, as provided by virtue of the treaty of July 19, 1866.

(3) To assert, prosecute, establish, and collect all the demands of the Eastern Band of the Cherokees or any individual of said band against the United States on account of their claims, known as reservation, pre-emption, and spoliation claims, arising and due under and by virtue of the treaties of 1835-'36, and 1846, which are now unadjusted.

(4) To prosecute, assert, establish, and collect for the Eastern Band of the Cherokees before and from the Congress of the United States, or from any other authority of the United States whatever the Eastern Band of the Cherokees may be entitled to from the United States on account of the misappropriation, unauthorized, extravagant, or unnecessary expenditure of any portion of a fund of \$5,000,000 designated and set apart as well for the use of the Eastern Band of the Cherokees as for those of that nation who removed west, by virtue of the first section of the treaty of 1835, which claim is unadjusted.

(5) To assert, prosecute, and collect for the Eastern Band of the Cherokees so much of an appropriation as they may be entitled to, authorized by the provisions of the fourth section of an act of Congress entitled "An act making appropriation for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes," etc., approved May 29, 1872.

(6) To prosecute and attend to personally, and by such attorney or attorneys as he may employ (and whom he is hereby authorized to employ), all suits now pending in the courts of the United States in behalf the Eastern Band of the Cherokees against any person or persons whatsoever, and such other suits as it may be necessary hereafter to institute in any court of the United States or of the State of North Carolina, or of any other State or Territory, or before any tribunal of arbitration or reference, to establish any right or redress any wrong or injury done to the said Eastern Band of the Cherokees or to any individual thereof.

The said Wallace W. Rollins covenants and agrees with the said the Eastern Band of the Cherokees faithfully and diligently to attend to the prosecution and collection of all the different claims hereinbefore set forth and specified; and to the suits at law or in equity now pending and above mentioned or to any others which may hereafter arise; and as a compensation for his services in behalf of the said Eastern Band of the Cherokees in the matters and things hereinbefore specified the said chief, John Ross, for and in behalf of the Eastern Band of the Cherokees, agrees to pay the said Wallace W. Rollins 20 per cent. of such amounts as he may collect for or establish to be due to the said Eastern Band of the Cherokees on account of any one or all of the claims hereinbefore mentioned, and at the same rate, out of such amounts of money or property as may be recovered in the said above-mentioned suits at law or in equity now pending, or which may hereafter be instituted. It is further agreed that upon any compromise of any of the claims of the said Eastern Band of the Cherokees, hereinbefore mentioned, which the said Wallace W. Rollins, or any one employed by him in this behalf as counsel, may bring about, or upon any decision or award made by any referees or arbitrators to whom the matter now in dispute between the said Eastern Band of the Cherokees and the said above-mentioned defendants in the said suits now pending in the United States courts, that upon whatever sum or sums of money may thus be agreed upon, or adjudged to be due or owing to the said Eastern Band of the Cherokees, the same rate of compensation as above mentioned shall be paid to the said Wallace W. Rollins; and if the compromise or award shall be of real, or other property, then the compensation shall be at the same rate upon the valuation of the said property.

This contract shall continue for four years from the date of its signature by the said chief, John Ross, and the said Wallace W. Rollins; and the said John Ross, for the said Eastern Band of the Cherokees, hereby revokes all and every authority which may be claimed or set up by any other person or persons, except the said Wallace W. Rollins, upon any pretense whatever to represent the said Eastern Band of the Cherokees in the business specified in this contract.

Signed in duplicate at Asheville, N. C., May 15, A. D., 1874.

JOHN ROSS,
Chief of the Eastern Band of Cherokees.
WALLACE W. ROLLINS.

UNITED STATES OF AMERICA,
Western District of North Carolina:

I, Robert P. Dick, judge of the United States district court within and for said district, do certify that, on the 15th day of May, A. D. 1874, personally appeared before me at Asheville, in the county of Buncombe, within said district, John Ross, chief of the Eastern Band of the Cherokees, mentioned in the foregoing contract, of the one

part, and Wallace W. Rollins, of the other part, who acknowledge the execution of said contract in my presence.

I further certify that it appears to me from the statements of the parties before me, that the Eastern Band of Cherokees is the party of the one part and Wallace W. Rollins is the party interested of the other part in the above-mentioned contract; that the authority claimed by the said chief, John Ross, in my presence and in his own proper person, is that he is the lawful chief and representative of the said Eastern Band of Cherokees, and by virtue of his authority as such chief he has the power to make the foregoing contract, and in the exercise of said power has thereunto agreed and executed the same; and that the said Wallace W. Rollins, in my presence and in his own proper person, claims to agree to and execute the said contract in his own right and for his own benefit.

Witness my hand and seal of the said United States district court at Asheville, in the county of Buncombe, and State of North Carolina, as aforesaid, the day first above written.

ROBT. P. DICK,
United States District Judge.

I hereby disclaim any intention to demand or right to receive more than 20 per cent. for all my services under the within contract and that of the same date between the principal chiefs and head-men of the Eastern Band of Cherokee Indians and myself.

WALLACE W. ROLLINS.

I assign one-half my interest to the within contract to Otis F. Presbrey, attorney-at-law, Washington, D. C.

WALLACE W. ROLLINS.

Dated, *August 5, 1874.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
August 24, 1874.

I hereby assent to the foregoing assignment.

H. R. CLUM,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
August 25, 1874.

The foregoing assignment is hereby assented to.

W. H. SMITH,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
June 24, 1874.

I hereby approve the sixth section of the within contract authorizing the party of the second part—

“To prosecute and attend to personally and by such attorney or attorneys as he may employ (and whom he is hereby authorized to employ) all suits now pending in the courts of the United States in behalf of the Eastern Band of the Cherokees against any persons whatsoever, and such other suits as it may be necessary hereafter to institute in courts of the United States, or of the State of North Carolina, or of any other State or Territory, or before any tribunal of arbitration or reference, to establish any right or redress any wrong or injury done to the said Eastern Band of the Cherokees or to any individual thereof.”

For which service the said party of the second part is to receive 20 per cent. of such amount as may be recovered thereby to the Eastern Band of Cherokee Indians.

H. R. CLUM,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
August 25, 1874.

I hereby approve the sixth section of the within contract as recited and approved by the Commissioner of Indian Affairs,

W. H. SMITH,
Acting Secretary.

II.

At the time of the making of said contract there were pending in the circuit court of the United States for the western district of North Carolina two suits, one at law and one in equity, in favor of the Eastern Band of the Cherokee Indians against William H. Thomas and others for the recovery of lands and money alleged to be the property of said Indians. These suits were instituted under provisions of the act of Congress of July 15, 1870, ch. 296, § 11, by the Attorney-General and district attorney.

III.

The claimant Rollins, immediately upon the execution of said contract and before its approval by the Secretary of the Interior, entered upon and attended to the prosecution of said suits and assisted the district attorney. In June, 1874, he appeared in said suits, was recognized by the court as agent and attorney for said band and as such assented to the reference of said cases to arbitrators, which was ordered by the court upon consent of all parties interested.

Said claimants assisted in the trial of said cases before said arbitrators in preparing the cases and in obtaining and arranging the evidence, and faithfully and diligently attended to the prosecution of the same to the conclusion thereof.

Said suits resulted in the recovery to and for said band of Indians—

Money to the amount of	\$11, 183. 89
Land to the value of	65, 700. 00
	76, 883. 89

The claimants have been paid the sum of \$5,200, and no more.

IV.

Thereafter the claimants presented to the Commissioner of Indian Affairs and the Secretary of the Interior the following account, and the Secretary made thereon the order which follows the same, and thereupon they were paid the sum of \$5,200 as allowed:

The Eastern Band of the Cherokee Indians to Wallace W. Rollins and Otis F. Presbrey, Dr.

To services rendered them in the prosecution of their suits against W. H. Thomas, William Johnston, and James W. Terrell, determined at the November term, 1874, of the circuit court of the United States at Asheville, N. C., according to the stipulations of a contract between the said Rollins and Presbrey and the said Eastern Band of the Cherokee Indians, dated the 4th day of May, 1873, and approved, and on file in the Indian Office according to law:

Upon the amount of the value of the recovery of lands in said suits for the said Indians, \$200,000 (two hundred thousand dollars), at 20 per cent....	\$40, 000. 00
Upon the amount of money recovered in said suits for said Indians from William Johnston (\$8,486) eight thousand four hundred and eighty-six dollars, at 20 per cent	1, 667. 20
Upon the amount of money recovered in said suits for said Indians from James W. Terrell (\$2,697.89) two thousand six hundred ninety-seven and $\frac{10}{100}$ dollars, at 20 per cent	539. 57
Total amount due	42, 236. 77

DEPARTMENT OF THE INTERIOR,
September 20, 1875.

The within account is hereby allowed for \$5,200, in accordance with the action of the Commissioner of Indian Affairs and the recommendation of the Board of Indian Commissioners, without prejudice to the parties to claim a balance to be still due to them.

C. DELANO,
Secretary.

Subsequently the claimants made application for further payment on said account, and the following action was had thereon by the Commissioner of Indian Affairs and the Secretary of the Interior:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, November 19, 1875.

SIR: I have the honor to inclose herewith, for appropriate action by the Department, a letter (with one inclosure) to this office from Messrs. W. W. Rollins and Otis F. Presbrey, dated Washington, D. C., November 17, 1875, asking for a payment of \$10,000 (ten thousand dollars), on account of their claim for services as attorneys for the Eastern Band of Cherokee Indians, in the recent suits in the United States courts in North Carolina, and stating that this amount will but little more than reimburse them for the money actually expended by them (by them) in prosecuting these suits.

Reference is made by them to a letter of the Attorney-General to the House of Representatives (Ex. Doc. H. of Reprs., No. 169), and to a memorandum inclosed with their letter, to show that the lands recovered by them to the said Cherokee Indians are estimated to be worth from \$140,000 to \$205,750, and that in addition to the recovery of lands they recovered to the Indians in said suits the sum of \$11,183.89 (See findings Nos. 6 and 7, on page 6 of the printed copy of award herewith).

It is deemed proper, however, to state that the majority of the commission, of which Hon. R. B. Vance, M. C., was chairman, valued the lands referred to at \$56,700.

In this connection I would respectfully submit, for the information of the Department, with the request that the same be returned to this office, together with the letter of Messrs. Rollins and Presbrey, dated 17th instant:

(1) Minority report and accompanying document (marked A, B, and C, respectively), submitted to this office by Hon. R. B. Vance, M. C., chairman of the special commission appointed to appraise the lands recently recovered to the Eastern Band of Cherokee Indians in North Carolina, dated Riverside, N. C., October 26, 1875, on which the total value of said lands is stated to be \$140,000.

(2) Majority report, with accompanying document, submitted to this office by Messrs. James Stevenson and Paul Brodie, members of said commission, dated Washington, D. C., November 12, 1875, in which the total value of said land is stated to be \$56,700.

(3) Copy of office letter dated September 16, 1875, to M. S. Temple, esq., requesting information in regard to the character and value of lands in the Qualla Boundary.

(4) Letter to this office from M. S. Temple, esq., in reply to the same, dated November 6, 1875.

(5) Printed copy of the award of the arbitrators, Messrs. Rufus Barringer, John H. Dillard, and T. Ruffin, in the case of the Eastern Band of Cherokee Indians against Thomas and others and Terrell and others, made and submitted on the 23d day of October, 1874.

The claim of Messrs. Rollins and Presbrey for compensation is based upon the terms of the contract entered into May 15, 1874, between William W. Rollins and John Ross, principal chief of the Eastern Band of Cherokee Indians, on behalf of said Indians, stipulating for the prosecution of their claims under various acts and treaty stipulations as therein recited, and a contract of same date between said Rollins and the persons signing themselves as chiefs and heads-men of the said Eastern Band of Cherokee Indians for the same purpose, executed in accordance with "An act regulating the mode of making private contracts with Indians," approved May 21, 1872 (Stats. at Large, vol. 17, page 136). The said contracts had the approval of this office and of the Department as to the sixth section (see office report to Department June 24, 1874, and Department letter to office July 9, 1874), and also such approval of the assignment of one-half of the interest of Mr. Rollins therein to Otis F. Presbrey (See office report to Department August 24, 1874, and Department approval of same date).

There has already been paid to Messrs. Rollins and Presbrey on account of their claim for services as attorneys in this case the sum of \$5,200 (five thousand two hundred dollars). This amount was paid September 23, 1875, and was based upon the recommendation of the Board of Indian Commissioners.

Taking the value of the lands within the Qualla Boundary at the lowest appraisal, viz, \$56,700, and that of the 6,000 acres outside the boundary at an average price for bottom and arable lands, as found by lowest appraisal of Brodie and Stevenson, at \$1.50 per acre, amounting to \$9,000, and the sum of \$11,183.89, which they have recovered to the Indians according to the award of the court of arbitrators, makes a total of \$76,883.89, 20 per cent. of which, according to their contract, is \$15,376.76, deduct amount already paid, viz, \$5,200, balance due on amount found recovered as above, \$10,176.

The services undertaken and successfully prosecuted by these attorneys were peculiar and difficult. Their value to the Indians is very clearly and positively asserted by Hon. V. S. Lusk, United States district attorney for the western district of North Carolina, Mar-

cus Irwin, assistant district attorney for the same district, and by the three judges, Hon. Rufus Barringer, John H. Dillard, and Thomas Ruffin, of the court of arbitration, as stated by them in communication forwarded to your Department. These two officers of the Department of Justice and the three arbitrators, prominent citizens of the State of North Carolina, are well-known gentlemen of high standing for intelligence and probity of character, residing in the vicinity of these Indians and familiar with their history, and with the great complications and peril in which their rights and interests had become involved, and are thereby cognizant of the nature and extent of the services rendered by these attorneys under this contract. Aside from their official capacity and special opportunities for thorough acquaintance with the case, they are known to be in hearty sympathy with the Indians, and have shown a remarkable interest and readiness to assist this Bureau in its efforts to protect them against wrong and secure their equities against parties by whose neglect or intent to defraud they were exposed to serious loss.

From the competent and positive statements of these gentlemen I am satisfied that the claim of the attorneys, now presented, for \$10,000 additional does not at least exceed the amount to which they are equitably entitled on the lowest appraisal ever made of the lands recovered for them; but in order to be entirely sure, and to cover any possible overestimate of the area of lands outside the boundary, which are put down at 6,000 acres, I respectfully recommend that the account be allowed only in the sum of \$9,500.

Very respectfully, your obedient servant,

EWD. P. SMITH,
Commissioner.

Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., November 25, 1875.

SIR: I am in receipt of your communication of the 19th November instant, inclosing requests of Messrs. Rollins and Presbrey for the payment of \$10,000 on account of their claims as attorneys for the Eastern Band of Cherokees, with other inclosures relating to the same matter.

The claim above mentioned is based upon two contracts, bearing date May 15, 1874; one executed by John Ross as chief and the other by Sawnooka and twenty-one others, described as chiefs and head-men of said band.

An attentive examination of the contracts and the circumstances under which the same were executed has raised very grave doubts in my mind whether they are sufficient to bind the Eastern Band of Cherokees collectively in any form. But without stopping to determine that question, I find these contracts are prepared in separate clauses, each referring to subjects more or less distinct in their character, in all of which Mr. Rollins undertook to perform services at a uniform rate of compensation for the whole.

By the provisions of the act of Congress of May 21, 1872, these contracts must be "approved in writing thereon by the Secretary of the Interior and Commissioner of Indian Affairs" before they can have any force or validity whatever.

Each contract, if duly executed, was an entire thing, and could not be altered without the assent of both parties. The approval required by the statute above mentioned is of the contract as made by the parties.

The approval of a *part* of the contract only would be in effect the substitution of a new agreement for that made by the parties.

I find that the only approval of the contracts in question was of that part designated as the sixth clause. This was not an approval of the contracts made by the parties, and therefore the contracts are wholly void for want of approval by the Secretary of the Interior and the Commissioner of Indian Affairs.

But, still further, the services provided for in the sixth clause and claimed to have been rendered by Messrs. Rollins and Presbrey for the Indians were performed in suits pending at the time the contracts bear date.

These actions were brought by the United States for the benefit of the Indians in the circuit court of the United States for the western district of North Carolina, under the eleventh section of the act of July 15, 1870, by which act the United States undertook to institute and prosecute such suit. No good reason is perceived under the circumstances mentioned for permitting these Indians to incur large liabilities in the prosecution of such suit.

Finally, I am fully satisfied from a careful examination of the whole case that the claimants, Messrs. Rollins and Presbrey, have already been paid all that they would justly be entitled to receive for the services rendered by them in behalf of the Eastern Band of Cherokees, or any individuals thereof, if these contracts had been duly executed

and approved. I am therefore unable to concur in your recommendation that they be paid the sum of \$9,600.

I return herewith the inclosures enumerated in your communication.

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

Z. CHANDLER,
Secretary.

To the COMMISSIONER OF INDIAN AFFAIRS.

V.

Thereafter the claimants again applied for further payment on their claim to the Secretary of the Interior (Secretary Chandler), who re-opened the case, and the following proceeding took place:

DEPARTMENT OF THE INTERIOR,
Washington, D. C. July 27, 1876.

The ATTORNEY-GENERAL:

SIR: I have the honor to submit for your opinion the questions of law hereinafter stated, arising upon the following facts:

In 1874 W. W. Rollins entered into two contracts, one with John Ross, as chief of the Eastern Band of Cherokees, and the other with numerous individuals purporting to be principal chiefs and head-men of said band.

A copy of the first-named contract is marked Exhibit A in the appendix to the accompanying argument of Shellabarger & Wilson, counsel for Rollins and Presbrey, and a copy of the second contract is transmitted herewith, marked No. 3.

I invite your attention to the fact that in the second contract the compensation to be paid said Rollins is stipulated "not to exceed 20 per cent., to be allowed by the Commissioner of Indian Affairs out of such amounts as he may collect, etc."

At the time said contracts were entered into suits were pending in the circuit court of the United States for the western district of North Carolina, which were instituted in the spring of 1873 by the district attorney of said district, under section 11 of the act of Congress approved July 15, 1870 (16 Stats., p. 362).

Prior to the approval of the contracts indorsed thereon by the Acting Commissioner of Indian Affairs and Acting Secretary of the Interior, on the 17th of June, 1874, the subject-matter of said suits was referred by stipulation of the parties to the arbitrators, who made their award under date of October 24, 1874, and the same was confirmed by the order of the court at the following November term thereof.

It will be observed that said Rollins signed the submission as attorney for the Eastern Band of Cherokee Indians, but by what authority is unknown to this Department, the contract under which he claims for services rendered the Indians in said suits not having been approved until long after that date.

In March, 1875, Messrs. Rollins and Presbrey presented a claim to this Department for \$20,000 on account of services rendered under said contracts. The claim was referred to the Commissioner of Indian Affairs by letter of my predecessor, dated April 23, 1875, a copy of which is transmitted herewith, marked No. 4.

Pursuant to the direction of the Secretary of the Interior, the claim was referred to the Board of Indian Commissioners, who reported thereon in favor of allowing the claimants the sum of \$5,200, a copy of which is herewith transmitted, marked No. 5, and may be found in the seventh annual report of said board at page 18. It will be observed that the approval of the board was for the payment of said sum in full of all demands under said claim.

The Commissioner of Indian Affairs thereupon proceeded to allow said claimants the said sum, directing the same to be paid out of the appropriation for the North Carolina Cherokees, contained in 18 Statutes, page 447. A copy of said account, with the indorsement thereon, is herewith transmitted, marked No. 6.

Directly after the appointment of the present Secretary of the Interior said claimant again applied for the payment of a further sum upon said contracts, upon which application the Commissioner of Indian Affairs reported in favor of the allowance of \$9,600, a copy of which report is herewith transmitted, marked No. 7, in which recommendation the Secretary of the Interior refused to concur, and held the contracts invalid for reasons stated in his letter of November 24, 1875, a copy of which is herewith transmitted, marked No. 8.

Since that date the Secretary has ordered the case re-opened and granted a rehearing to said claimants. Their claim is now pending before him for decision. I therefore desire your opinion upon the following questions:

Was the contract between John Ross and claimant Rollins duly approved by the Commissioner of Indian Affairs and the Secretary of the Interior as required by law?

Was the approval indorsed by the Commissioner of Indian Affairs and the Secretary of the Interior upon the contracts made by the chiefs and head-men such an approval as is required by section 2103 of the Revised Statutes?

If the contracts are valid can the claimants be lawfully paid for any services rendered by said Rollins prior to the approval of said contracts by this Department?

Should the claimants, in making proof of services rendered under said contracts pursuant to section 2104, be confined to such acts of service as had been performed subsequent to the date of the approval of the contracts?

No money having been recovered by the Indians, is it competent for this Department to authorize and direct payment upon the contracts in anything beside land?

If a valid demand shall be found to exist in favor of the claimants which may be paid in money, can such payment be lawfully made from the appropriation of March 3, 1875, 18 Stats., p. 447?

In addition to the papers already enumerated, reference may be had to copies of papers bearing more or less directly upon the case, included in the appendix to the brief above mentioned; and at the request of the claimants I also inclose Executive Document No. 169, Forty-third Congress, second session, and a copy of an affidavit made by said Rollins September 17, 1875, filed with the Commissioner of Indian Affairs, which copy is marked No. 7.

Very respectfully, your obedient servant,

CHAS. T. GOBHAM,
Acting Secretary.

In reply to the foregoing letter the Attorney-General advised that the sixth section of the contract, set out in Finding I, had been duly approved, and that another contract, not material in this case and not set out in the findings, had not been duly approved (15 Opin. Atty. Gen., 585).

The claimants again, at different times, applied for further payment, and in reply to a report from the Commissioner of Indian Affairs, made at the request of the Secretary of the Interior, the Secretary took the following action:

DEPARTMENT OF THE INTERIOR,
Washington, April 23, 1884.

The COMMISSIONER OF INDIAN AFFAIRS:

SIR: I have considered the papers presented in your report of the 14th instant, in the claim of Messrs. Rollins and Presbrey for an unascertained balance claimed to be due them for legal services alleged to have been rendered to the Eastern Band of Cherokee Indians under the contracts of May 15, 1874.

You suggest that perhaps the case is one that may properly be referred to the Court of Claims under the second section of the act of March 3, 1883 (22 Stat., 485), entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigations of claims and demands against the Government," and you recommend if the Department does not find sufficient authority under that act to send the case to the Court of Claims that Congress be asked to grant the necessary authority to enable the claimants to bring suit in that tribunal, and for that purpose a draught of a bill is submitted.

After a careful consideration of the case, I am of the opinion that the claim is one that may be properly submitted to the Court of Claims for finding the facts and conclusions of law involved therein under the provisions of the second section of the act of March 3, 1883, above referred to.

You will therefore prepare all the vouchers, papers, proofs, and documents pertaining thereto, and which show fully the matters in dispute, and forward the same to this Department, to be transmitted to the Court of Claims.

Very respectfully,

H. M. TELLER,
Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, June 19, 1884.

To the CHIEF-JUSTICE OF THE COURT OF CLAIMS:

SIR: I have the honor to transmit herewith certified copies of papers on file and of record in this Department pertaining to the matter of an unascertained balance claimed by Messrs. Rollins and Presbrey to be due to them for legal services alleged to have been rendered to the Eastern Band of Cherokee Indians, with letter of 18th instant, from the Office of Indian Affairs, relating thereto.

The matter is respectfully transmitted for the consideration of the Court of Claims and action in accordance with the provisions of section 2 of the act of March 3, 1883, entitled "An act to afford assistance and relief to Congress and the Executive Departments," etc.

Very respectfully,

H. M. TELLER,
Secretary.

CONCLUSIONS OF LAW.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimants were entitled under their contract to 20 per cent. of the amount of money and value of lands recovered—

For the Indians.....	\$15, 376. 77
They have been paid.....	5, 200. 00
	<hr/>
	10, 176. 77

There is still due them the balance as aforesaid, \$10,176.77.

OPINION.

RICHARDSON, C. J., delivered the opinion of the court:

This case was transmitted to the court by the Secretary of the Interior, under the provisions of the second section of the "Bowman Act" of 1883, Ch. 116 (22 Stat. L., 486), which authorizes the head of any Executive Department to transmit to the Court of Claims any claim or matter pending therein which may involve controverted questions of law or fact.

It is urged on the part of the defendants that the controversy involved in the case was finally determined and settled by a former Secretary of the Interior, and could not be re-opened, re-examined, and reconsidered by his successor in office, and that this court can do no more, under such a transmission, than to make a finding to that effect, and to decide and report to the Secretary of the Interior for his guidance and action that the matter is *res judicata* and he has no further jurisdiction therein.

It has long been held in the Executive Departments that when a claim or controversy between the United States and individuals therein pending has once been fully considered, and final action and determination had thereon by any executive officer having jurisdiction of the same, it can not be re-opened, set aside, and a different result ordered by any successor of such officer, except for fraud, manifest error on the face of the proceedings, such as a mathematical miscalculation or newly discovered evidence presented within a reasonable time and under such circumstances as would be a sufficient cause for granting a new trial in a court of law. This ruling and practice of the Departments has been approved elsewhere and has been sustained by the courts (9 Opin. Atty. Gen., 34; 12 ib., 172-358; 13 ib., 387, 456; 14 ib., 275; 15 Pet., 401; Lavalette's Case, 1 C. Cls., R., 147; Jackson's Case, 19 ib., 504; State of Illinois Case, 20 ib., 342; McKee's Case, 12 C. Cls. R., 560; Day's Case, 21 ib., 264, and the opinion of the Judiciary Committee of the Senate, reported by Senator and Judge David Davis, quoted in Jackson's Case above referred to).

But it has never been doubted that any public officer in the Departments may correct his own errors, and open, reconsider, and reverse in whole or in part any case decided by himself.

It appears that the present controversy arose when Mr. Delano was Secretary of the Interior. The claimants presented an account for \$42,236.77, which was examined and reported upon by the Commissioner of Indian Affairs and other officers of the Department, and when it reached the Secretary he made upon it the following indorsement (finding IV):

"DEPARTMENT OF THE INTERIOR, September 20, 1875.

The within account is hereby allowed for \$5,200, in accordance with the action of the Commissioner of Indian Affairs and the recommendation of the Board of Indian Commissioners, without prejudice to the parties to claim a balance to be still due them.

C. DELANO,
Secretary.

This certainly was not a final determination of the merits of the claim, but left the same open for future adjustment.

Subsequently the matter was again considered, reported upon by the Commissioner of Indian Affairs to the Secretary of the Interior, then Mr. Secretary Chandler, recommend-

ing the additional payment of \$9,500. Upon that report and recommendation the Secretary, on the 24th of Nov., 1875, in a communication, set out in full at the end of the fourth finding, decided that the contract with the Indians upon which the claim was founded had never been legally approved by the Secretary of the Interior and Commissioner of Indian Affairs as required by law, and that he was satisfied that claimants "had already been paid all that they would justly be entitled to receive for the services rendered by them in behalf of the Eastern Band of Cherokees, or any individual thereof, if those contracts had been duly executed and approved."

Within a few months after that decision, on the 27th of July, 1876, while Mr. Chandler was still Secretary, the Acting Secretary addressed a letter to the Attorney-General, set out in full in finding five, in which, after stating the proceedings of the Department down to November 24, 1875, when Secretary Chandler disposed of the matter by his letter of that date, he says: "Since that date the Secretary has ordered the case re-opened and granted a rehearing to said claimants. Their claim is now pending before him for decision. I therefore desire your opinion upon the following questions," then and there propounded.

The Acting Secretary was, for the time being and in this matter, the lawful head of the Department, and his action in referring the case to the Attorney-General, with the statement that the Secretary had ordered it to be re-opened and had granted a rehearing, is conclusive proof of that fact, whether it was done by himself or by order of Secretary Chandler, either in writing or orally. It was so regarded by Secretary Teller, who treated it as pending and unfinished business, and after giving some consideration to it, finally transferred it to this court under the Bowman act.

In our opinion the case was not *res judicata*, but was pending when so transmitted, and we are required to pass upon the merits.

The defendants contend that the sixth article of the contract, upon which this claim is founded, although approved as required by Revised Statutes, section 2103, the approval was not warranted by law and is of no force, because, as they argue, the whole contract of six articles was an entirety and could be approved or disapproved in whole and not in separate parts. This question first arose in the Interior Department under the administration of Secretary Chandler, and, with other questions upon the same and another contract between the parties, not material to this case, was referred to the Attorney-General for his opinion.

The Attorney-General, in an opinion approved by him and written and signed by Solicitor-General Phillips, replied as follows:

"In answer to the first question, I have to say that the above contract with Ross was duly approved. Rollins contracted to do six distinct things upon a consideration apportioned to each. The authorities hold uniformly, I believe, that such a contract is separable. Therefore, in case it needs approval or ratification, this may be limited to one of such things alone, or to more than one, or may extend to all, with the effect of validating the contract for the part approved and no more (15 Opins. Att'y-Gen., 539)."

It is sufficient to say that we concur in these views, and hold the contract to have been legally approved.

The defendants further object that John Ross, the principal chief, who executed the contract on the part of the Indians, was without authority to agree to the provisions of the sixth article, and so that article is not binding upon the Indians.

The resolutions of the council, set out in finding one, do not seem to cover exactly the matters contained in the sixth article of the contract, but the principal chief, Ross, in making the contract, did not rely wholly upon those resolutions, but claimed in the contract itself to act "for and on behalf of the Eastern Band of the Cherokees, and by virtue of his authority as chief of said band."

What were the powers and duties of the chief of the band do not appear in the case, and we have no means of knowing whether or not he exceeded his authority. But in view of the fact that his authority was recognized by the district judge of the western district of North Carolina, before whom this contract was executed, as required by law, and that the contract was approved by the Commissioner of Indian Affairs and the Secretary of the Interior, and that his authority was never questioned in all the controversies between the parties while the case was long pending in the Interior Department, and that the Indians have had the benefit of the claimants' services and are enjoying the fruits of their labor under the contract, we are constrained to hold that his authority is sufficiently established.

The principal controversy between the parties in the Interior Department related to the value of the lands acquired for the Indians. That we have established by the findings; and no question of law arises thereon.

The opinion of the court is that the claimants are entitled to the sum of \$10,176.77 beyond what has been paid to them. The clerk will certify these findings, conclusion of law, and this opinion to the Secretary of the Interior for his guidance and action.

[House Ex. Doc. No. 169, Forty-third Congress, second session.]

Letter from the Attorney-General, transmitting, in compliance with the act of July 15, 1870, an estimate of appropriation in relation to the duty of the district attorneys and the Attorney-General of the United States to institute and prosecute suits against the present and former agents of the Eastern Band of the Cherokee Indians.

DEPARTMENT OF JUSTICE,
Washington, January 25, 1875.

SIR: By the eleventh section of an act of Congress approved July 15, 1870 (Statutes at Large, vol. 16, p. 326), it is made the duty of the district attorneys and the Attorney-General of the United States to institute and prosecute suits in the name of the Eastern Band of the Cherokee Indians against their present and former agents and their securities, in the courts of the United States.

In pursuance of this authority, in the spring of 1873 suits in law and in equity were instituted, under my instructions, in the courts of the United States for the western district of North Carolina, against the former agents and their securities of the said Indians.

Two of the most important of these suits were recently determined, awarding to the Indians over 50,000 acres of lands lying in the western part of North Carolina, estimated to be worth \$200,000, and to that extent relieving the United States from liability to the Indians.

The decree of the court awarding to the Indians these lands makes the plaintiffs liable for one-half of the costs, and the act in pursuance of which it became my duty to institute the suits above mentioned does not provide for the payment by the United States of costs. It seems, however, upon a fair construction of the act, that such costs should be paid by the United States, as well as the compensation of counsel specially employed by me to aid the district attorney in the prosecution of these cases, and others still pending, of a like kind in the western district of North Carolina.

I have the honor to transmit herewith an estimate of appropriation required to pay the costs adjudged against the Eastern Band of the Cherokee Indians, in the suits at law and in equity between them and William H. Thomas and others, lately determined in the circuit court of the United States for the western district of North Carolina, and for other purposes, and respectfully present the subject to Congress for its favorable consideration.

I invite attention to the inclosed copies of letters from the Secretary of the Interior and Commissioner of Indian Affairs, recommending this appropriation.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. JAMES G. BLAINE,
Speaker of the House of Representatives.

Estimate of appropriation required to pay the costs adjudged against the Eastern Band of the Cherokee Indians in the suits at law and in equity between them and William H. Thomas and others, lately determined in the circuit court of the United States for the western district of North Carolina, and for other purposes.

For this amount, or so much thereof as may be necessary, to pay the costs adjudged against the Eastern Band of the Cherokee Indians in the suits at law and in equity between them and William H. Thomas and others, lately determined in the circuit court of the United States for the western district of North Carolina, and including compensation to special counsel, and for other purposes, in pursuance of the act of Congress of July 15, 1870, to be expended under the direction of the Attorney-General ----- \$15,000.00

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 23, 1875.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant, inclosing draught of a letter proposed to be sent to Congress, with draught of an appropriation for \$15,000 to cover the costs adjudged against the Eastern Band of Cherokee

Indians in the suits between them and William H. Thomas *et al.* in the United States circuit court for the western district of North Carolina, and asking me to make such recommendation as I may deem advisable, etc.

I concur with you in your views as to the propriety of the payment of the costs in question by the United States, and respectfully invite your attention to the inclosed copy of a report, dated the 22d instant, from the Commissioner of Indian Affairs, to whom your letter and inclosure were referred, together with the printed copy of report of the 16th December, 1874, noting the action taken by the office in relation to the affairs of these Indians.

Your recommendations in the premises are concurred in without qualification.

Very respectfully, your obedient servant,

C. DELANO,
Secretary.

The Hon. the ATTORNEY-GENERAL.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, D. C., January 22, 1875.

SIR: I have the honor to acknowledge the receipt, by reference from you, of a communication from the Department of Justice, dated the 20th instant, inclosing copy of a letter addressed to the Speaker of the House of Representatives, and draught of a bill providing for an appropriation of \$15,000, with which to pay costs adjudged against the Eastern Band of the Cherokee Indians in the suits at law and in equity between them and William H. Thomas and others, lately determined in the circuit court of the United States for the western district of North Carolina, including compensation to special counsel, etc.

Relative to this matter you ask for a report from this office, and, in reply, I have the honor to state that during the administration of William H. Thomas as the agent of said Indians, beginning in 1836 and continuing for a number of years, he purchased with money belonging to said Indians, received from the United States, large tracts of land for the benefit and use of said Indians.

It appears from correspondence on file in this office that said Thomas in purchasing lands for said Indians took the title in his own name, that he afterwards became bankrupt, and the lands were claimed by William Johnston and others, creditors of Thomas, who purchased at sheriffs' sales, with a knowledge of the equities of the Indians.

In pursuance of the eleventh section of an act of Congress, approved July 15, 1870 (U. S. Stat., vol. 16, p. 362), suits in law and equity were brought into the circuit court of the United States for the western district of North Carolina by the Eastern Band of the Cherokee Indians against said Thomas, Johnston, and others for the purpose of acquiring a title to the lands purchased for said Indians. At the May term, 1874, of said court arbitrators were appointed, with the consent of the interested parties, to pass upon the matters of dispute and controversy, and their award was to be final and a rule of the court. On the 24th day of October last the arbitrators made and filed their award, which was confirmed by the United States circuit court, held at Asheville, by which over 50,000 acres of land in the western part of North Carolina was awarded to said Indians.

The decree of the court awarding to the Indians said lands makes the plaintiff liable to half the costs, and I concur with the opinion of the honorable Attorney-General that it should be paid by the United States.

For the action heretofore taken by this office in reference to this matter, I respectfully invite your attention to a report, dated December 16, 1874, printed copy herewith inclosed.

The papers referred to are herewith inclosed.

Very respectfully, your obedient servant,

EDW. P. SMITH,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, D. C., December 16, 1874.

SIR: I have the honor to submit herewith the following statement relative to the Eastern Cherokee Indians in North Carolina:

In May, 1873, in pursuance of the eleventh section of an act of Congress approved July 15, 1870 (Statutes at Large, vol. 16, p. 362), a suit in equity was instituted in the circuit court of the United States for the western district of North Carolina by the East-

ern Band of the Cherokee Indians against William H. Thomas and William Johnston, seeking to subject the said Thomas, as agent and trustee of the plaintiffs, to an account and settlement for large sums of money alleged to have been received by him, for the benefit of the plaintiffs, from the United States from the year 1836 to the year 1861; which moneys, it was alleged, had been, or ought to have been, invested by him, according to various contracts made by the said Thomas from time to time with said Indians, in certain boundaries of land for the benefit of the plaintiffs as a tribe or community, and in a number of separate tracts of land for individual members of said Eastern Band of the Cherokee Indians. It was further alleged that the legal title to all of said lands was still held by the said Thomas in his own name.

It was alleged against the other defendant, Johnston, that in the year 1869 he had procured a sale of all of said lands to be made by the sheriffs of the several counties in which they are situate, to satisfy judgments which he, Johnston, had theretofore obtained in the courts of North Carolina against the said Thomas; and that Johnston had bought in the lands at said sales, and had taken said sheriffs' titles therefore to himself with a knowledge of the subsisting equities of the Indians. It was further alleged that Johnston, after said sheriffs' sales, in September, 1869, had entered into a contract with certain of the said Eastern Band of the Cherokee Indians to release to them for their tribe all the right which he claimed to have acquired by said sheriffs' sales to said lands for the sum of \$30,000, payable within eighteen months from the date of said contract; and that the Indians had paid him at the time said contract was executed the sum of \$6,500.

An action at law was commenced, at the same time as the above-mentioned suit in equity, by the same plaintiffs, against James W. Terrell, their former agent from 1853 to 1861, and his sureties, the said Thomas and Johnston, to recover a balance of their moneys which he had received for their use from the United States, and which, as it was alleged, he had not properly accounted for.

At the May term, 1874, of the said circuit court of the United States the parties to the above two causes entered into an agreement, in writing, to submit all matters of dispute and controversy between them to Rufus Barringer, John H. Dillard, and Thomas Ruffin, their award to be final and a rule of court; said submission to have effect from the approval thereof by the Hon. R. P. Dick, judge of said court, the Secretary of the Interior, the Commissioner of Indian Affairs, and the Department of Justice. This agreement was approved by all the said several officers, and the arbitrators undertook the work thereby imposed upon them. On the 24th day of October, 1874, they made and filed their award, which was confirmed at the following November term of the said United States circuit court held at Asheville.

The award finds: That Thomas was the agent of the plaintiffs from the year 1838, and as such undertook to purchase, and did purchase for them, lands to be paid for with moneys coming to them from the United States; that from time to time, and from various persons, he did purchase lands for them as a tribe and community, and settled them thereon; which purchases make a large tract, situated on Soco Creek and the Oconalufy River and their tributaries, known as the Qualla Boundary, which is described by metes and bounds, and its area estimated by the arbitrators, in a report accompanying their award, at over 50,000 acres.

That within said Qualla Boundary Thomas sold and conveyed, by deed, several tracts to individual Indians (naming them), and received from them, respectively, the purchase money; that he also contracted, in writing, to sell several other tracts within said Qualla Boundary to individual Indians (naming them), and received from them, in whole or in part, the purchase-money. It is, therefore, awarded "that the general boundary, known as the Qualla Boundary, belongs to and shall be held by the Eastern Band of the Cherokee Indians living in the State of North Carolina as a tribe or community, and whether living at this time at Qualla or elsewhere in the State; and that the individual Indians above named as holding under Thomas, either by deed or contract, shall hold and possess their several tracts as their separate property, with the quality of being inheritable, but without the power of alienation except from one Indian to another, and then only with the assent of their council."

The award then proceeds to determine the titles of a large number of individual Indians and persons of Indian blood to tracts of land outside of the Qualla Boundary, and decrees that conveyances shall be made to them by Thomas and Johnston upon the terms and according to their right as specified in the award.

The award finds that the plaintiffs owe Thomas a balance toward the purchase-money of the Qualla Boundary of \$18,250; that Johnston obtained from certain of the plaintiffs on his contract of September, 1869, the sum of \$6,500, which, with interest to the date of the award, amounts to \$8,486, which sum, it is awarded, Johnston shall apply, as a credit on his judgments against Thomas, as money paid by the plaintiffs

toward the balance above stated as due from them to Thomas, thus reducing said balance to \$9,764.

In the action at law the award finds: That Terrell is liable to the plaintiffs for the sum of \$2,697.89 and that that sum be deducted from the above balance of \$9,764, thus reducing it to the sum of \$7,066.11; on the payment of which, with 6 per cent. interest from the date of the award, to the defendant Johnston, by him to be entered as a credit on his judgments against Thomas, the plaintiffs shall have a perfect equity to demand and have of Johnston a conveyance of the legal title to all the lands embraced within the Qualla Boundary, to be made to them or some trustee for them.

The Eastern Band, of the Cherokee Indians reside in the counties of Jackson, Swain, Macon, Cherokee, and Graham, in the State of North Carolina, and number about 2,000. Fifteen hundred of them are full-blood Indians, and about two-thirds of these are in the counties of Jackson and Swain, and live within the Qualla Boundary. A large proportion of the other full-bloods live in what is known as the Cheoah Boundary, in Graham County. The mixed-blooded, or white Indians, as they are called, number some 300, and are settled among the whites in the several counties above named. The whole of these Indians are industrious, sober, obedient to the laws, and have the good-will and esteem of their white neighbors. They have long since adopted the Christian religion, and have several native ministers, who preach the Gospel according to the faith of the Baptist and Methodist Churches. Nearly all of them read and write the Cherokee language, and a few speak and read and write the English tongue.

The territory recently awarded to them, estimated in value at \$200,000, yields abundantly all the cereals, and is unsurpassed in its climate and soil for the production of grapes and fruits and the rearing of live-stock.

These people need money to pay the balance due upon their purchase of the Qualla Boundary, and to discharge what is due by individuals, upon their separate tracts of land; to pay for the making and registration of their tribal and individual title-deeds; to pay the costs and charges incident to their litigation; to purchase a number of tracts of land within their general boundary held by white persons; to pay taxes now due on their lands; and to aid them in educating their children and improving their farms.

They are entitled, as individuals, to a fund set apart, in the Treasury of the United States for their benefit, by the fourth and fifth sections of an act of Congress approved July 29, 1848 (U. S. Statutes, vol. 9, pp. 264, 265).

The money which they used to purchase the general boundary lately awarded to them was, much of it, the interest on the above-named fund, which has, from time to time, been disbursed to them since the passage of the act of 1848. They wish now, according to a resolution of their general council, to have the use of the whole of said fund, principal and interest, for the purposes indicated in the foregoing part of this paper. By a judicious use thereof, having now a clear legal right to their homes and possessions, in the language of the arbitrators, they will "go to work with renewed hope and quickened energy in cultivating and improving the large and valuable domain of over 50,000 acres, henceforth undoubtedly theirs, not to include numerous individual titles also adjudged them."

In order to enable the action herein designated, I submit herewith, with the recommendation that the same be laid before Congress for the action of that body, a draught of a bill providing that the fund set apart in the Treasury of the United States by virtue of the fourth and fifth sections of an act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes for the year ending June thirtieth, eighteen hundred and forty-nine, and for other purposes," approved July 29, 1848, shall be applied, under the direction of the Secretary of the Interior, for the use and benefit of the Eastern Band of the Cherokee Indians, to perfect the titles to their lands, etc. I also submit a copy of the award of the arbitrators referred to.

Very respectfully, your obedient servant,

EDW. P. SMITH,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

Congress appropriated \$15,000 to survey the lands of the Eastern Band of the Cherokee Indians, act June 23, 1874 (18 Stat., p. 213).

For same purpose, \$2,159.27, act March 3, 1877 (19 Stat., p. 368).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fund set apart in the Treasury of the United States by virtue of the fourth and fifth sections of an act of Congress entitled "An act making ap-

propriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes for the year ending June thirtieth, eighteen hundred and forty-nine, and for other purposes," approved July twenty-nine, eighteen hundred and forty-eight, shall be applied, under the direction of the Secretary of the Interior, for the use and benefit of the Eastern Band of the Cherokee Indians, to perfect the titles to their lands recently awarded to them by a decree of the circuit court of the United States for the western district of North Carolina; to the payment of such costs, charges, expenses, and liabilities attending their recent litigations in the said court as the Secretary of the Interior may determine to be properly chargeable to them; to purchase and extinguish the titles of any white person or persons within the general boundaries allotted to them by the said decree of said court, and for the education, improvement, and civilization of the said Indians.

STATESVILLE, *October 24, 1874.*

SIR: In submitting the accompanying award in the cause of the Eastern Band of Cherokee Indians against Thomas and others, and Terrell and others, the arbitrators deem it proper to state briefly to your honor the labors and difficulties involved in the investigation. This will enable your honor, and the parties interested, the better to appreciate the results we have reached, both with a view to the compensation to be allowed to those conducting and making the investigation and the indulgence with which the award will be received and accepted.

The commission began its duties on the 7th of August last. Our first sitting was at Asheville, and lasted one week. To accommodate parties and witnesses, and to see for ourselves the condition of affairs among those people, we adjourned on the 15th of August to the Indian settlement at Qualla, 65 miles west of Asheville. There we found serious obstacles to a fair and speedy investigation of the peculiar matters referred to us, and we accordingly returned, after a few days, to Waynesville, an intermediate point. At this place we sat some three weeks, working often night and day. We then returned to Asheville, and finally to Greensborough and Statesville. At this last place we concluded our work on the 23d of October, instant.

In the course of our investigations we have sworn and examined nearly one hundred and fifty witnesses, most of them Indians, speaking only Cherokee. We have taken, read, examined, and considered many hundreds of pages of oral, written, and record testimony. The amounts involved embraced hundreds of thousands of dollars received, disbursed, and invested; the accounts and transactions extending through a period of nearly forty years, and often including the minutest details of innumerable small debts with 1,500 Indians through all that time. We were also required to assort, scrutinize, and decide upon the title-papers to a large number of individual land-claims, and fix the location, settlement, and boundary of two immense bodies of disputed claims, each numbering thousands of acres. All this had to be done in the midst of that confusion and chaos necessarily caused by the peculiar condition and doubtful legal status of these people through near a century of mixed tribal and civilized life. To increase our difficulties and responsibilities, the facts on which we had to decide could only be reached through witnesses of partisan bias, often extremely ignorant, and speaking only through an interpreter.

Under such circumstances as these it could hardly be expected that the rights and interests of the parties involved could be very readily or satisfactorily ascertained or settled; yet we trust and believe we have done substantial justice, and at the same time so marked, defined, and secured the rights of the several parties litigant, as to bring repose and confidence to all concerned, and greatly quicken individual energy and enterprise among both whites and Indians.

We feel sure that for the first time in their history these Cherokees will stand in clear legal right as to their homes and possessions, and that they will now go to work with renewed hope and quickened energy in cultivating and improving the large and valuable claim of over 50,000 acres, henceforth undoubtedly theirs, not to include numerous individual titles also adjudged them.

So, too, the Government will, for the future, find it a comparatively easy task and grateful duty to superintend this interesting people and protect them in their new condition, and more readily indicate and carry out such policy as it may regard necessary and proper to their progress in the arts of civilized life.

In conclusion, we gladly recommend that proper allowances be made to Deputy Marshal Davis, and his bailiffs, Erwin and Smith, for their services in attending the commission, and in executing process; also to E. R. Hampton, a former referee in the equity suit, for numerous depositions taken by him and used by us.

Respectfully submitted.

RUFUS BARRINGER,
Chairman.

To Hon. R. P. DICK,
Judge of the United States District Court, Asheville, N. C.

I, E. R. Hampton, clerk of the United States district and circuit courts for the western district of North Carolina, hereby certify that the foregoing is a true copy of letter from Hon. Rufus Barringer to Hon. Robert P. Dick, judge of the United States district and circuit courts for the western district of North Carolina, and now on file in my office.

As witness my hand and the seal of said circuit court this 23d day of November, A. D. 1874, and in the 99th year of American independence.

[SEAL.]

E. R. HAMPTON, *Clerk*,
By R. H. GRESHAM, *Deputy Clerk*.

In the circuit court of the United States, fourth circuit, and the western district of North Carolina. November term, A. D. 1874, at Asheville.

BETWEEN THE EASTERN BAND OF THE CHEROKEE INDIANS
and
WM. H. THOMAS, WM. JOHNSTON, and JAS. W. TERRELL. } In equity.

BETWEEN THE UNITED STATES AND THE EASTERN BAND OF
the Cherokee Indians
and
JAS. W. TERRELL, WM. H. THOMAS, WM. JOHNSTON, J. B.
Allison, and A. J. Murray. } Action at law upon J.
W. Terrell's bonds
as disbursing agent
of the United States.

Upon motion this day made unto this court by Marcus Irwin, esq., of counsel for the plaintiffs, it was prayed that the writing or award, bearing date the 23d day of October, A. D. 1874, under the respective hands and seals of Rufus Barringer, John H. Dillard, and T. Ruffin, esquires, and by them filed with the clerk of this court, may be made an order of this court; whereupon, and upon hearing, N. W. Woodfin, esq., of counsel for the defendants, who consented thereto: This court doth order that the said award be made an order of this court, and that the same be observed and performed by all parties thereto according to the tenor and true meaning thereof; and it is further ordered that said award, with this decree, be enrolled upon the records of this court.

It is further ordered that E. R. Hampton, clerk of this court, be allowed three hundred dollars and his expenses for taking depositions in the equity cause between the plaintiffs and defendants, and that Hamilton Erwin be allowed thirty dollars and his expenses—thirty dollars—total, sixty dollars, for his services as bailiff in attending upon the court of arbitration, serving processes, and for other duties performed by him during the session of said court at Waynesville.

(Signed)

ROBERT P. DICK, *Judge*.

Rec'd sixty dollars of Ro. M. Douglas, in full of my allowance on within order and decree, Nov. 16, 1874.

(Signed)

HAMILTON ERWIN.

I, E. R. Hampton, clerk of the U. S. district and circuit courts for the western district of North Carolina, hereby certify that the foregoing is a true copy of the final award of circuit court at Asheville, in the November term, 1874, signed by Hon. Robert P. Dick, United States district and circuit judge, as now on file in this office.

As witness my hand and the seal of said circuit court this 23d day of November, A. D. 1874, and in the 99th year of American independence.

[SEAL.]

E. R. HAMPTON, *Clerk*,
By R. H. GRESHAM, *Dep. Clerk*.

In the circuit court of the United States, western district of North Carolina. In Asheville.

THE EASTERN BAND OF THE CHEROKEE INDIANS
against
WILLIAM H. THOMAS, WILLIAM JOHNSTON, AND JAMES
W. Terrell. } In equity.

THE EASTERN BAND OF THE CHEROKEE INDIANS
against
JAMES W. TERRELL, WILLIAM H. THOMAS, WILLIAM
Johnston, A. J. Murray, and J. B. Allison. } Suit at law on the bond of
J. W. Terrell as the dis-
bursing agent of plaint-
iffs.

Whereas at the May term, 1874, of said circuit court of the United States held at Asheville, before his honor R. P. Dick, judge, the parties to the above two causes entered into an agreement, in writing, to submit all matters of dispute and controversy

between them, as specified and set forth in their said written agreement, to Rufus Barringer, John H. Dillard, and Thomas Ruffin, their award to be final and a rule of court, and said submission to go into effect upon the approval thereof by the said Hon. R. P. Dick, judge of said court, the Secretary of the Interior, the Commissioner of Indian Affairs, and the Department of Justice at Washington City; and whereas their said submission was approved by the said judge of the court and the said several officers at Washington City, as appears from their several indorsements on the said written submission, a copy of which is hereto attached, and to be referred to as a part of this award; and whereas, by virtue of said submission, the reference to the said arbitrators was to be deemed operative and fully authorized as soon as approved as aforesaid:

Now, therefore, we, the undersigned, Rufus Barringer, John H. Dillard, and Thomas Ruffin, having taken upon ourselves the burden of the reference aforesaid, and having heard and duly considered and weighed the several allegations of the said parties, the pleadings in the said two suits, and all the proofs, vouchers, and documents which have been given in evidence before us, and having heard the arguments and suggestions of counsel, do hereby make and publish this our award, in writing, of and concerning all and every the several matters as above referred to us, in the manner following; that is to say:

1. That William H. Thomas became and was the agent of the Eastern Band of the Cherokee Indians living in North Carolina, who are the plaintiffs in the above two causes, after the removal of their brethren west in the year 1838, and as such undertook to purchase, and did purchase, for them land, the amount, location, and boundary whereof will hereinafter be fully described, to be paid for with money or moneys coming to them from the United States under treaties with and the laws of the said United States.

2. That the said William H. Thomas, in pursuance of his said agency and trust reposed in him, did from time to time, and from various persons, purchase lands for the plaintiffs as a tribe and community, and settlement thereon, and carved up the same into towns, which said purchases are included in and make a large tract, situated on Soco Creek and Ocona Lufta River and their tributaries, known as the Qualla Boundary, and bounded as follows, to wit: Beginning at a stump near the spring on Jackson County line at the head of Jonathan's Creek, where the Soco road crosses the mountain; thence in a northerly direction with the said county-line to the ridge which divides the waters of the Ravin's Fork from Bradley or west fork of Ocona Lufta River; thence with the water-shed of that ridge to the line of Widow Hugh's; thence eastwardly with her line, crossing Ravin's Fork; thence down, and with her lines and the lines of Wesley M. Enloe, to the Ocona Lufta River; thence down with the meanders of said river to the southern boundary of Samuel Monteith; thence across said river and with said Monteith's line to his southwest corner; thence with the lines of an entry made by W. H. Thomas and other lines of said Thomas, keeping on his outside lines to the dividing-ridge between the waters of Adam's Creek and Newton's Mill Creek, so running said line as to include all the Indians living on the headwaters of said Adam's Creek; thence in a southerly direction, keeping on the water-shed of said ridge to the line of Sim Sherrell; thence with his line to Ocona Lufta River, the last two lines being run so as to include all the Indian settlements on the east side of Newton's Mill Creek; thence with and across the said Ocona Lufta River to the upper boundary of J. M. Bird; thence with his line to the corner of the first tract of what is known as the State surveys above the said Bird; thence up said river with the lines of said State surveys so as to include one tier of old surveyed tracts bordering on said river, and striking said river below Ute Sherrell's, excluding the tract now occupied by J. A. Gibbs, and also some entries known as Thomas's entries; thence up and with the meanders of said river to a tract of land occupied by an Indian named Ah-ma chama; thence with the line of that tract, and including the same, to the old line of Scroop Enloe, or near it, but so as to exclude the tract now occupied by Mason Reckley; thence with the line of the tract so occupied by Reckley, crossing the Soco Creek below his house, to the old line of said Scroop Enloe; thence with Enloe's line to the line of Thomas's mill-tract; thence with the line of said mill-tract and with the line of an entry known as Thomas's five-hundred-acre entry, and leaving the same outside, to the line of J. B. Sherrell; thence with his line to the line of a tract conveyed to Flying Squirrel by J. W. King; thence with the line of that tract, and so run as to include it, to the line of the Thompson Carter tract; thence with that tract, and so run as to include it, to the top of the ridge which makes the water-shed between Soco Creek and Shoal Creek; thence with the said water-shed to the south corner of the Cathcart survey; thence with the line of that survey to the beginning, at the head of Jonathan's Creek.

3. That within the said Qualla Boundary so as aforesaid purchased for the tribe as a community, the said Thomas, at divers times, sold and conveyed by deed several tracts of land to the following individual Indians, to wit: To Enola (or Black Fox), 40 acres; to One-tah, 33 acres; to Standing Wolf and children, 286 acres; to Catalaska, three tracts,

making together 110 acres; to Charlie Hornbuckle's heirs, 100 acres; to Sa-lo-lu-netah (or Young Squirrel), 53 acres; to Nellie Johnson, 200 acres; and to Jinney Reed, 200 acres, and received from them, respectively, the purchase-money; the locations and boundaries of which said tracts fully appear from the accompanying deeds to the said parties from said Thomas; and also that the said Thomas, at divers times, contracted in writing to sell several other tracts within said Qualla Boundary to the following individual Indians, to wit: To Chu-lo-gu-lah (or Cloud), 50 acres; Wilson Occumuh, two tracts, one of 20 acres and the other known as the Cayuatago tract; to the heirs of Jeff. Hornbuckle, 200 acres; to Sawnooka, the lands surveyed by Dills, being a part of the Holland's old field; to Ben. Quain, 50 acres, where he lives; to the heirs of Long Blanket, the place where they live; to the heirs of Little Witch, the place where they live; to Wilson Wolf, the mill-tract purchased of Abraham Mingus; to Ta-a-kah, the tract known as the Thompson place; to Wilson Reed, 125 acres, surveyed to him by Terrell; to Standing Water, the place where he now lives; to Ta-ya-hah, a part of the Holland's old field; to Tah-gul-se-nah, the place now occupied by him; and received from them, respectively, in whole or in part, the purchase-money, the location of which said tracts, so contracted to be sold, will appear by the several accompanying titles, bonds, and other memoranda from said Thomas to said Indians. We do, therefore, award that the general boundary, known as the Qualla boundary, and above described, belongs to, and shall be held by, the Eastern Band of Cherokee Indians, living in the State of North Carolina, as a tribe or community, and whether living at this time at Qualla or elsewhere in the State; and that the individual Indians above named as holding under said Thomas, either by deed or contract, shall hold and possess their several tracts as their separate property, with the quality of being inheritable, but without the power of alienation except from one Indian to another, and then only with the assent of their council. All the above, however, to be subject to the payment of a sum of money to William Johnston, as hereinafter provided.

4. We find that the wife and children of an Indian named Little John have a deed to a tract of land situated on the south side of Tuckasegee River and outside of said Qualla boundary, for 173 acres, on which they now live, and we award that the same is a good title as against all parties and privies to these suits. We further find that the said wife and children of the said Little John have a title-bond from said Wm. H. Thomas for 100 acres of land, to be curved off from a tract of land adjoining the lands last spoken of, so as to embrace 100 acres of land on both sides of the Skeekee's Branch, and that they have paid for the same in full. Also, that the heirs of Will-gees-ka have a title-bond from Wm. H. Thomas for the tract of land on which they live, adjoining the above lands of the Little John's, and on the south side of said Tuckasegee River, for which they have paid in full. We do, therefore, award that the said defendants, Thomas and Johnson, do lay off and convey to the said wife and children of the said Little John the said 100 acres, to embrace both sides of said Skeekee's Branch; and also that they convey unto the said heirs of Will-gees-ka the land on which they live.

5. We find that at one time it was contemplated between said Thomas and the Indians residing in the region described in the pleadings as Cheoih, to make a similar purchase of a general boundary of land in that section of the State, and that there was a written agreement to that effect between them; but afterwards the Indians declined to furnish, and did not furnish, the funds necessary to make such purchase; and we therefore award that the said agreement between them and Thomas to make such purchase was abandoned; and that in lieu thereof the following individual Indians made separate purchases from Thomas and others, and have deeds or other sufficient title therefor, to wit:

Sakah, 100 acres in district No. 9, section 589.

Corn-silk, 100 acres in district No. 9, section 347.

Corn-silk, 100 acres in district No. 10, section 374.

Chick-a-lilla, 100 acres in district No. 9, section 363.

Chick-a-lilla, 48 acres in district No. 9, adjoining section 363.

Walla-na-kah, 100 acres in district No. 10, section 552.

Ches-que-ne-tah (or Young Bird), son of Ty-al-ta, 100 acres in district No. 9, section 364.

Tom Big-meat, 100 acres in district No. 9, section 359.

Tom Big-meat, 90½ acres in district No. 9, section 360.

Con-na-see-nah, 100 acres in district No. 10, section 386.

And these having all paid the purchase-money in full, we do award that they hold and have title in fee as against said Thomas and Johnson, and all other parties and privies to these suits.

We find further that the following Indians and persons of Indian blood have written contracts for title to lands in Cheoih from William H. Thomas, and are entitled to specific execution thereof, they having paid the purchase-money in full therefor, to wit:

Kay-yu-kah (or Ground Squirrel), for 288 acres in district No. 10, section 23, Cherokee County.

James Taylor, district No. 7, in Cherokee County, Nos. 19, 21, and 27.

That the following have contracts in writing for the purchase of lands, and are entitled to specific performance thereof whenever they shall make full payments of the purchase-money, to wit:

Dick-a-gees-ku's heirs, for 100 acres in district No. 9, section 367.

Oo-tal-ka-nah, 100 acres in district No. 9, section 373.

Chin-a-que (or John Owl), the land whereon he lived in 1855, in Cherokee County, excepting all mineral interests.

Too-way-al-Jah, part of No. 12, district No. 10.

Corn-silk, 100 acres in district No. 9, section 588.

Tracking Wolf, district No. 9, section 404.

Richard Henson and others, and their heirs, 210 acres in district No. 5, section 11

Richard Henson, 157 acres in district No. 5, section 14, with a bounty-claim of 2,700 acres.

Sal-ka-nah and others, 80 acres in district No. 6.

Tes-a-tees-kah, 100 acres in district No. 9.

George Oo-yah-ste-ah, district No. 9, section 365.

Cah-nah-a-to-go and others, district No. 9, section 405.

Cohe-loskah, 120 acres in district No. 9, section 93.

Too-nah-lu-yah, Chees que-ne-tah, Te-tal-ka-nah, no districts or section given.

We do, therefore, award that Ka-yu-kah (or Ground Squirrel) and James Taylor have a perfect equitable title in fee to their said sections of land, and that W. H. Thomas and William Johnston do execute deeds to them severally therefor; and as to all the others above mentioned, we award that they have respectively an equity to have title, and that the same be made to them by the said Thomas and Johnston upon the payment of the purchase-money still due from them; and the said Thomas, or Johnston, as the case may be, shall have a right, in default of such payment of the purchase-money, to enforce the same by sale of their lands, respectively, according to law.

6. We find that in the course of the agency and trusteeship of the defendant Thomas for the plaintiffs he received, in the way of payments by the Government, contributions from individual Indians, and from sales of lands, within the said common boundary at Qualla, to individual Indians, large sums of money; that, on the other hand, by reason of the purchase for them of their lands, by his services rendered them in securing their claims, and by his furnishing them, through a long series of years, with clothing, food, farming-tools, and other necessary supplies, they became largely indebted to him; that after adjusting all claims of every kind and description between them, except as hereinafter mentioned, we find that the said Indians owe the said Thomas a balance toward the purchase-money of the said Qualla boundary of \$18,250; that after the purchase of the said lands by the defendant Johnston, under his executions against the defendant Thomas, the plaintiffs, in pursuance of a contract made with the said Johnston, for the redemption of said lands, on the 29th day of September, 1869, paid to him, the said Johnston, the sum of \$6,500, which said payment we award that the said Johnston shall apply as a credit on his said judgments against Thomas as money paid by the plaintiffs toward the balance above stated as due from them to Thomas; that the said sum of \$6,500, with interest to this day, amounts to the sum of \$8,486, thus reducing said balance due Thomas to the sum of \$9,764.

7. We find in the suit at law on the bond of Terrell and his sureties, that the said defendant Terrell paid over to the said defendant Thomas, his bondsmen, the sum of \$2,478, which is sought to be recovered in said suit on his bond, relying on him to pay it out to those entitled; and we further find that though such payment to Thomas was not in strict compliance with the conditions of his bond, yet this same being paid to Thomas, to whom the plaintiffs were owing a balance of purchase-money for their lands, and who then had a power of attorney from the plaintiffs authorizing him to receive the same and apply it toward the payment of said purchase-money for their lands, we do therefore award that the said sum, with its interest, this day making \$2,697.89, be deducted from the above balance of \$9,764, thus reducing it to the sum of \$7,066.11; and upon the payment of this last-mentioned sum, to wit, the sum of \$7,066.11, with its interest from this date at the rate of 6 per cent. per annum, to the said defendant Johnston, and by him to be entered as a credit on his said judgments against Thomas, we do further award that the said plaintiffs shall have a perfect equity to demand and have of him, the said Johnston, a conveyance of the legal title to all the lands embraced within their said Qualla boundary, the same to be made to them, or to some trustee for them; and until such conveyance be made, the said Johnston, so soon as said balance is paid him, shall himself stand seized as a naked trustee of said lands to the use of said plaintiffs; and the said sum of \$2,697.89, so sued for as aforesaid in the action at law, being applied as above set forth on the said balance due for the purchase-money, we do therefore further award that the plaintiffs do recover in the said suit at law the penalty of

said Terrell's bond, to be discharged on the payment of a penny and the costs of that action, to be taxed by the clerk.

8. Wishing to secure repose of title to the parties and to end litigation between them, we have taken into consideration all accounts, claims, and demands between the said plaintiffs as a tribe, and each and every member of the tribe, wherever residing in the State of North Carolina, and W. H. Thomas and William Johnston, and either of them, and we do hereby award that all such accounts, claims, and demands are to be treated as concluded and adjusted between them, and in no way collectible and enforceable, save and except as is hereinbefore provided in relation to contracts for sales of land, and save and except the matters of controversy between the members of the Raper family in regard to their reservation-money. This latter, being already the subject of litigation in our State courts, we have not considered, but leave the same to be settled in said State courts.

9. We find that William H. Thomas purchased the Cathcart survey of 33,000 acres, and other adjoining tracts and entries, out of part of which the said Qualla boundary is composed, and that he extinguished the titles of all whites inside of said boundary with the single exception of that one of Ute Sherrell, and that but few of his title-papers have been registered, and but few of his deeds to, and his written contracts of sale with, said Indians, whether at Qualla or elsewhere, have been registered. We do therefore award that all of said deeds to Thomas, under which the said Indians claim, and all his deeds and written contracts of sale to them or any of them, shall be registered in the proper offices of the State; and to the end that this may be properly attended to by some competent person, we do award that all such deeds and contracts be delivered to W. W. Rollins, one of plaintiff's agents, for registration.

10. In considering the compensation due to the defendant Thomas, as agent of the plaintiffs, we have estimated his fees and commissions only on the moneys heretofore actually paid to the Indians. On these amounts we award that said Thomas shall claim no further compensation, either directly from the Indians or indirectly through the Government. But we further find that by a special contract of November 25, 1860, the said Thomas is entitled to compensation of 10 per cent. on all moneys said Indians may receive from lands sold for their benefit west of the Mississippi, mainly secured through his efforts, and which contract it is not intended to impair. We therefore award that the said Thomas be allowed said rate of 10 per cent. on all moneys said Indians may hereafter receive from said western land-fund, to be paid when the same is actually realized by the said Indians, and not otherwise.

11. The costs of the suit at law having been hereinbefore disposed of, we award that all the other costs be taxed in the equity case, and be paid one-half by the plaintiffs and the other half by the defendants, W. H. Thomas and William Johnston. We leave the allowance to the arbitrators, and the manner of its payment to be fixed and provided for by the judge.

All of which is respectfully submitted, under our hands and seals, this 23d day of October, 1874.

(Signed)

RUFUS BARRINGER. [SEAL.]
JOHN H. DILLARD. [SEAL.]
T. RUFFIN. [SEAL.]

In the circuit court of the United States, western district of North Carolina—May term, 1874.

THE EASTERN BAND OF THE CHEROKEE INDIANS
vs.
W. H. THOMAS, WILLIAM JOHNSTON, AND J. W. TERRELL. } In equity.

THE EASTERN BAND OF THE CHEROKEE INDIANS
vs.
JAMES W. TERRELL, W. H. THOMAS, WILLIAM JOHNSTON,
A. J. Murray, and J. B. Allison. } Suit at law on bond.

The above causes, together with all unsettled matters connected therewith in law and equity between said parties or any of them, as well as any and all unsettled matters between any of said parties and any of the Cherokee Indians residing in North Carolina, growing out of any of the dealings between said Indians, or any of them, and William H. Thomas, acting as their agent or otherwise, especially in relation to their alleged indebtedness to him for services, supplies, etc., and his alleged indebtedness to them on account of the management, disposal, or investment of their funds in his hands as agent or otherwise; and touching all contracts in relation to lands, and for services rendered, or otherwise, for or with them, or otherwise; also all unsettled matters growing out of

the agency of James W. Terrell as a disbursing agent of the Government, as well as all matters of controversy between the said Indians, or any of them, and William Johnston, defendant, touching the right to land purchased by him at execution sale as the property of William H. Thomas, as well as the contracts of sale of 1869 between him and the said Indians, are referred to the arbitrament and award of John Dillard, esq., of Greensborough, Thomas Ruffin, of Hillsborough, and General Rufus Barringer, of Charlotte, and their award, or that of a majority of them, shall be a rule of court in all matters involved in said suits, and shall be final and forever obligatory between the parties as to all matters herein referred. If either of said arbiters shall not, for any cause, serve, then the other two are authorized to proceed to act, or to select a third person to act with them, and in that case the award of a majority of them shall be conclusive.

This reference is to go into effect when approved by his honor R. P. Dick, judge of this court, the Secretary of the Interior, the Commissioner of Indian Affairs, and the Department of Justice at Washington City.

WM. H. THOMAS.

By JAS. W. TERRELL, *Agent*.

JAS. W. TERRELL.

WM. JOHNSTON.

THE EASTERN BAND OF CHEROKEE INDIANS.

By W. W. ROLLINS, *Agent and Attorney*.

Approved:

N. W. WOODFIN, *Attorney for Wm. H. Thomas*.

Approved:

MARCUS ERWIN, *Asst. U. S. Dist. Attorney*.

Approved:

ROBT. P. DICK, *U. S. District Judge*.

OFFICE OF INDIAN AFFAIRS, June 17, 1874.

Approved:

EDW. P. SMITH, *Commissioner*.

DEPARTMENT OF THE INTERIOR, June 17, 1874.

Approved:

C. DELANO, *Secretary*.

Approved June 17, 1874.

GEO. H. WILLIAMS, *Attorney-General*.

I, E. R. Hampton, clerk of the circuit court for the western district of North Carolina, hereby certify that the foregoing is a true copy of the original paper on file in my office, as witness my hand and the seal of said court this 30th day of June, A. D. 1874.

E. R. HAMPTON,

Clerk.

By R. H. GRESHAM,

Deputy Clerk.

I, E. R. Hampton, clerk of the United States district and circuit courts for the western district of North Carolina, hereby certify that the foregoing is a true copy of the award by the arbitrators, Rufus Barringer, John H. Dillard, and Thomas Ruffin, and accompanying papers, as on file in my office.

As witness my hand and the seal of said circuit court this 22d day of November, A. D. 1874, and in the ninety-ninth year of American Independence.

[SEAL.]

E. R. HAMPTON,

Clerk.

Per R. H. GRESHAM,

Deputy Clerk.