

12-17-1896

Old Settlers, or Western Cherokee Indians.
Memorial of the Old Settlers, or Western Cherokee Indians, praying that the Secretary of the Interior be directed to pay to said Indians the balance remaining subject to his control and reserved out of an appropriation of the sum of \$800,386,31, made for the benefit of said Indians in act of Congress appropriating said sum of money, approved August 23, 1894. (28 stat. L., p, 451.).

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OLD SETTLERS, OR WESTERN CHEROKEE INDIANS.

MEMORIAL OF THE OLD SETTLERS, OR WESTERN CHEROKEE INDIANS, PRAYING THAT THE SECRETARY OF THE INTERIOR BE DIRECTED TO PAY TO SAID INDIANS THE BALANCE REMAINING SUBJECT TO HIS CONTROL AND RESERVED OUT OF AN APPROPRIATION OF THE SUM OF \$800,386.31, MADE FOR THE BENEFIT OF SAID INDIANS IN AN ACT OF CONGRESS APPROPRIATING SAID SUM OF MONEY, APPROVED AUGUST 23, 1894. (28 STAT. L., P. 451.)

DECEMBER 17, 1896.—Referred to the Committee on Indian Affairs and ordered to be printed.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled.

The memorial of the Old Settlers, or Western Cherokee Indians, respectfully states and shows as follows:

First. That in the act of Congress providing for the payment to your petitioner of the sum of \$800,386.31 the Commissioner of Indian Affairs was directed "to withhold from distribution so much of said judgment as was set apart by said Indians for the prosecution of their claim as is necessary for him to pay for expenses and for legal services justly or equitably payable on account of said prosecution." (28 Stat. L., 451.)

Second. The Commissioner of Indian Affairs proceeded in the execution of the duties devolved upon him under said act, and it is fair to presume he would have distributed the fund committed to his jurisdiction by said act but for the passage of a resolution by the United States Senate on March 2, 1895, which directed the Secretary of the Interior—

to withhold from any further distribution and payment out of the money derived from thirty-five per cent of the judgment in favor of the Old Settler or Western Cherokee Indians against the United States, until otherwise authorized by law; and to report to the Senate all payments and distributions from said fund already made, with copies of all papers in any manner connected with said payments and distributions filed in the Interior Department and the office of the Commissioner of Indian Affairs, and the action had thereon.

Third. The Commissioner of Indian Affairs and the Secretary of the Interior made report of their action as required by said Senate resolution, and on the 18th of January, 1896, transmitted the record of their action under said act of Congress and said Senate resolution, and the same is printed as Senate Document No. 77, Fifty-fourth Congress, first session.

Fourth. That in an amendment proposed in the United States Senate to the Indian appropriation bill pending in the first session of the Fifty-fourth Congress it was provided that there should be paid out of the

fund remaining subject to the control of the Commissioner of Indian Affairs, as provided in the act of August 23, 1894, the following sums of money to the following-named persons, to wit:

1. To William S. Peabody	\$29,000.00
2. To Charles A. Webb, administrator of C. M. McLoud, deceased	5,050.00
3. To Marcus Erwin, administrator of Marcus Erwin, deceased	5,050.00
4. To Théodore H. N. McPherson	5,050.00
5. To Mary E. Carey, executrix of James J. Newell, deceased	3,000.00
6. To John A. Sibbald	1,000.00
7. To Samuel W. Peel	5,000.00
8. To Reese H. Voorhees and John Paul Jones	7,003.86
9. To David A. McKnight	1,000.00
10. To C. M. Carter	333.00
11. To Belva A. Lockwood	1,000.00
12. To Joel L. Baugh	5,000.00
13. To Stephen W. Parker	5,000.00
14. To Joel M. Bryan, "the remainder of said sum of money after paying the foregoing specified sums."	

The amount appropriated by the amendment proposed by the Senate, including the specific amounts above stated, and the remainder of said sum of money after paying the foregoing specific sums, made an appropriation of the funds belonging to the Old Settlers, or Western Cherokees, amounting to the sum of \$85,602.69.

Fifth. That the House of Representatives having refused to concur in the Senate amendment providing for said appropriation, the bill became the subject of a conference between the two Houses of Congress, and the result of said conference was the enactment of the following provision contained in the act entitled "An act making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, and for other purposes" (Stat. United States; first session Fifty-fourth Congress; p. 344):

That the Secretary of the Interior be, and he is hereby, directed to withhold any further distribution and payment out of the money derived from thirty-five per centum of the judgment in favor of the Old Settlers, or Western Cherokee Indians, against the United States, in the sum of eight hundred thousand three hundred and eighty-six dollars and thirty-one cents, set apart for the payment of expenses and for legal services justly and equitably payable on account of the prosecution of said claim, until authorized by law.

Sixth. That there remains due and payable to your petitioners of the fund now remaining, subject to the distribution and payment of the Commissioner of Indian Affairs and Secretary of the Interior as provided in the said act of August 23, 1894, as your petitioners are informed and believe, the sum of \$86,602.69, and your petitioners are entitled to have such action by Congress as will authorize the payment of the said sum of money so remaining, subject to the control of the Commissioner of Indian Affairs and the Secretary of the Interior, to your petitioners without any further or unreasonable delay.

Seventh. That in respect of the claims of William S. Peabody, the estate of James J. Newell, John A. Sibbald, David A. McKnight, Charles M. Carter, Belva A. Lockwood, Joel L. Baugh, to whom it was proposed by said Senate amendment to appropriate the sum of \$40,333, your petitioners point with satisfaction to the fact that the claims of each of the persons above named were rejected by the Commissioner of Indian Affairs and the Secretary of the Interior, after a most patient and careful examination of the facts and law applicable to their decision; and your petitioners submit that the parties above named who submitted their claims to the adjudication and determination of a tribunal

authorized by law ought to be concluded by the decision of the tribunal to which said claims were submitted for determination, unless it is made to appear that such new facts can now be shown as would justify a change of decisions previously made; and it is not alleged that any facts of that character exist or can now be shown.

Eighth. That the claims included in the said Senate amendment, which were not presented to the Commissioner of Indian Affairs and the Secretary of the Interior for examination and adjudication as provided in the act of August 23, 1894, are as follows:

Charles A. Webb, administrator of the estate of C. M. McLoud, Marcus Erwin, administrator of the estate of Marcus Erwin, Theodore H. N. McPherson, Samuel W. Peel and Stephen W. Parker, and to these it is proposed to appropriate and take from the funds of your petitioners the sum of \$25,150; and it is thus proposed to take the funds of your petitioners and appropriate them to the parties above named, without any investigation of their merits or requesting any information in regard to their character as legal obligations which your petitioners are bound to recognize or pay.

Ninth. Your petitioners further state that while they were at one time of the opinion that the claim of Joel M. Bryan to the balance of said fund, after the payment of expenses and legal services, had some foundation in equity, your petitioners have been constrained, upon consideration of facts stated in resolutions adopted by your petitioners on the 2d day of November, 1896, to withdraw their approval of the payment of the amount therein provided to be paid to Joel M. Bryan.

Tenth. That in regard to the assent given by your petitioners to the payment of the sum of \$7,003.86 to Rees H. Voorhees and John Paul Jones, your petitioners state that the assent given by your petitioners for the payment of that amount to them was made upon the belief on the part of your petitioners that there was some legal liability resting upon your petitioners to pay that sum of money to those attorneys, but since your petitioners have been advised by the Commissioner of Indian Affairs that there is no legal liability resting upon your petitioners to pay that amount of money to said attorneys in addition to the sum of \$32,015.45, which they have already received from your petitioners, and for the further reasons that the contract under which the said sum of money is claimed from your petitioners was not approved as required by section 2103 of the Revised Statutes, and therefore void as an obligation or contract made by your petitioners and the payment of any money under such contract was not only prohibited but made unlawful and severe penalties imposed by section 2104 of said statute; and for the further reasons, stated by your petitioners in the resolutions adopted by your petitioners in regard to said claims, your petitioners feel justified in withdrawing any assent they may have heretofore given for the payment of said claims of said attorneys, or any part thereof.

Eleventh. That your petitioners had hoped that they might be relieved of further contests or controversy in regard to the balance of this fund; and to provide for a fair and equitable adjustment between your petitioners and the parties named in said Senate amendment, they proposed that provision should be made in the last Indian appropriation bill for a judicial examination and determination of the rights of the said parties against your petitioners; but this just and fair method of adjusting these controversies which are strictly of legal origin and concern, if they have any existence at all, was rejected by those advocates of this amendment who had secured its passage by the Senate; and if there

shall seem to be any reasonable doubt in the mind of any Senator or Representative to whose attention this subject may be brought in regard to the rights of your petitioners to be paid the balance of said fund, your petitioners here now express their entire willingness that the legal merits of the claims asserted against your petitioners by the parties above named may be determined by the Commissioner of Indian Affairs and the Secretary of the Interior, or that provision may be made for conferring jurisdiction of these claims and subjects of controversy either upon the Court of Claims or upon the supreme court of the District of Columbia. Your petitioners, however, hope that the high sense of justice which usually characterizes the action of Congress in all matters relating to the disbursement and expenditure of the funds of your petitioners will induce your honorable body to provide by law that the restraint put upon the Secretary of the Interior by the act of June 10, 1896, and above cited, may be removed, and that the fund now remaining subject to his control may be directed to be paid to your petitioners without further or unreasonable delay. And as in duty bound, your petitioner will pray, etc.

Your petitioner attaches hereto, and marks the same Appendix A, a copy of the authority conferred upon the undersigned as the representative of the said Old Settler or Western Cherokee Indians, dated November 3, 1896, and also copies of resolutions adopted by the said Old Settler or Western Cherokees in council assembled on the 3d day of November, 1896, which contains the expressions of said Old Settler or Western Cherokee Indians in regard to the said claims, and especially with regard to the claim of Joel M. Bryan, and Rees H. Voorhees, and John Paul Jones. The originals of said papers, marked Appendix A, are on file in the office of the Commissioner of Indian Affairs in Washington, D. C., and are made a part of this petition, which is submitted for the consideration of Congress by the Old Settler or Western Cherokee Indians.

JAMES M. KEYS,
*Delegate and Attorney in Fact for the Old Settler
or Western Cherokee Indians.*

APPENDIX A.

CHEROKEE NATION, *Tahlequah District.*

TAHLEQUAH, IND. T., *November 3, 1896.*

SIR: You having been unanimously elected delegate and attorney in fact for the Old Settler or Western Cherokees to represent said Old Settler or Western Cherokees at Washington City, D. C., at a meeting held in Tahlequah, Cherokee Nation, November 3, A. D. 1896, a copy of the minutes and resolution being hereto attached, you are therefore instructed and directed to proceed to the city of Washington, D. C., and transact all unfinished business of all kinds for said Old Settler or Western Cherokees, to wit, to secure the payment of the balance of the 2 per cent out of the 35 per cent to be disbursed as provided by this and other councils of Old Settler or Western Cherokees; also the unexpended balance of 35 per cent originally set apart for fees, expenses, etc., the same having reverted to the original fund of the Old Settler Cherokees, or Western Cherokees, by recent decision of the Honorable Secretary of the Interior, and now being withheld by resolution of the United States Senate, introduced by the Hon. H. M. Teller, of Colorado.

W. H. HENDRICKS, *Chairman.*

W. W. BREEDLOVE, *Clerk Old Settler Council.*

This November 4, 1896.

Approved November 4, 1896.

Hon. JAMES M. KEYS.

S. H. MAYES, *Principal Chief.*

EXECUTIVE DEPARTMENT, CHEROKEE NATION,
November 5, 1896.

To whom it may concern:

I, W. H. Mayes, assistant executive, do hereby certify that the foregoing appointment of Judge James M. Keys as attorney for the Old Settler Cherokees was done by legal representatives of the Old Settler Cherokees, and that the signature of S. H. Mayes as principal chief is genuine.

[SEAL.]

W. H. MAYES, *Assistant Executive Secretary.*

TAHLEQUAH, IND. T., November 3, 1896.

CHEROKEE NATION, *Tahlequah District:*

Whereas the representatives of the Old Settler or Western Cherokees in council assembled deem it necessary to have a representative at Washington City, D. C., to conclude all unfinished business connected with the Old Settler or Western Cherokee affairs: Therefore, be it

Resolved, That the Hon. James M. Keys be duly elected and appointed delegate and attorney in fact for said Old Settler or Western Cherokees.

On motion of Mark Bean, of Going Snake district, Cherokee Nation, James M. Keys was placed in nomination for the position of delegate and attorney in fact for the Old Settler or Western Cherokees.

On motion of Van Chambers, of Cooweeskoo-wee district, Cherokee Nation, James M. Keys was elected by acclamation delegate and attorney in fact for the Old Settler or Western Cherokees.

Moved by W. W. Breedlove, of Delaware district, Cherokee Nation, that the pay for services as delegate and attorney to James M. Keys shall be \$1,000, to be paid out of the unexpended balance of the 2 per cent. Motion carried.

And the Secretary of Interior is hereby requested to pay to said J. M. Keys, our duly authorized attorney, the said sum of \$1,000 out of the 2 per cent of the 35 per cent.

W. H. HENDRICKS, *Chairman.*

W. W. BREEDLOVE, *Clerk Old Settler Council.*

This November 4, 1896.

Resolutions repealing the resolution adopted by the Old Settler Cherokees at a council held on the 28th day of July, 1893, and for other purposes.

Whereas by a resolution adopted at a council of the Old Settler Cherokees, held at Tahlequah, in the Cherokee Nation, on the 28th day of July, 1893, it was provided "That after the Cherokee Nation shall have been reimbursed for borrowed money, and all contracts in full satisfaction the residue of the 35 per cent shall be allowed to Hon. J. M. Bryan, commissioner and treasurer, as an additional consideration for his long and valuable services as commissioner, delegate, and attorney for the Old Settler Cherokees;" and

Whereas the above resolution was adopted by the said Old Settler Cherokees, upon, and in consideration of the statements, representations, and report made by said J. M. Bryan, and with the express understanding derived from said statements, representations, and report, that the residue of said 35 per cent to be paid to said J. M. Bryan, under said resolution would not exceed one-half of 1 per cent, and that 34½ per cent of said 35 per cent had been contracted for and would be required to be paid out of said 35 per cent whenever the amount payable to said Old Settler Cherokees should be paid by the United States; and

Whereas, upon making an examination and payment of the obligations of the Old Settler Cherokees to the Cherokee Nation, and under contracts made previous to the adoption of said resolution, it was found that the amount to be paid to said J. M. Bryan, under said resolution, would exceed 10½ per cent of the amount to be paid to the Old Settler Cherokees from the United States, and not one-half of 1 per cent as they had been induced and made to believe upon the statements and representations made by said Bryan at and before the date of the adoption of said resolution; and that the amount said Bryan would be entitled to receive under said resolution would be \$86,202.63 in addition to the sum of \$52,025.11, as they were induced to believe by the statements and representations of said Bryan, would be the amount he would be entitled to receive under said resolution;

It is at a council of the Old Settler Cherokees, held at Tahlequah, in the Cherokee Nation, on the 2d day of November, 1896: Therefore,

Resolved, That the said resolution, adopted by said Old Settler Cherokees on the

said 28th day of July, 1893, and above quoted, be, and the same is hereby, wholly repealed, revoked, and rescinded, and to be hereafter of no force or effect; and be it further

Resolved, That whatever balance may now remain subject to the custody and requisition of the Secretary of the Interior and the Commissioner of Indian Affairs for payment to the Old Settler Cherokees, according to the provisions of the act of Congress approved August 23, 1894, shall, after the payment out of said fund of such sums as may have been or may be hereafter authorized by the Old Settlers in council assembled, be paid to Col. D. M. Wisdom, United States Indian agent, and he pay the same out according to the pay roll of 1896, who is hereby fully authorized and empowered on behalf of said Old Settler Cherokees to demand and receive the balance of said fund from the United States; and be it further

Resolved, That the language used by us in resolutions at a council held at Tahlequah on the 6th and 7th days of March, 1896, in regard to Voorhees and Jones, was expressed by us in the belief that the said Voorhees and Jones would continue to defend the balance of said fund against false and unfounded claims, which were asserted against said fund by William S. Peabody, the estate of C. M. McLoud, the estate of Marcus Erwin, Theodore H. N. McPherson, estate of James J. Newell, John A. Sibbald, Samuel W. Peel, David A. McKnight, C. M. Carter, Belva A. Lockwood, Joel L. Baugh, Stephen W. Parker, and Joel M. Bryan; and since it has come to our knowledge that the said Voorhees and Jones were both actively engaged during the session of Congress which adjourned on the 11th day of June, 1896, in making vigorous and constant efforts to secure the payment of said false and unfounded claims, in violation of their professional duty and in contempt of their obligations as lawyers for the Old Settler Cherokees, we feel justified in withdrawing from and striking out of our records so much of the first resolution adopted by us on said last-mentioned dates as is expressed in the following language:

"The falsity and injustice of such rejection claims having been made clear through the efforts of attorneys employed by the Old Settler Cherokees to defend their interest in the premises, namely, Messrs. Voorhees and Jones, and which attorneys we desire to see compensated for their valuable services according to contracts made with them."

We therefore, and for the reasons above stated, most earnestly but respectfully protest against the payment proposed to be made to said Voorhees and Jones out of said fund in the bill passed by the House of Representatives, No. —, and in the amendment proposed and reported to the United States Senate in the Indian appropriation bill on April 2, 1896; and be it further

Resolved, That the balance of the said fund appropriated by the act of August 23, 1894 (28 Stat. L., 451), now remaining in the custody of the Commissioner of Indian Affairs and subject to the requisition of the Secretary of the Interior, belongs exclusively to the Old Settler Cherokees, and no person other than those to whom they shall hereafter authorize payments to be made is entitled to any part of said fund; and that the said Old Settler Cherokees respectfully request that, as far as may be proper or possible, the Secretary of the Interior and the Commissioner of Indian Affairs will aid them in securing the payment of the balance of said fund to the Old Settler Cherokees, or to such person or persons as they may direct the same or any part thereof to be paid.

Be it further resolved, That the original 2 per cent set apart in the early session of the Old Settler Councils can not be diverted from the purposes originally intended, viz, to pay domestic and contingent expenses, as the resolution setting apart the said 2 per cent has never been repealed and no authority ever granted to use it otherwise, therefore we earnestly protest against the attempt to appropriate it otherwise.

[SEAL.]
[SEAL.]

W. H. HENDRICKS, *Chairman*.
W. W. BREEDLOVE, *Clerk Old Settler Council*.

This November 4, 1896.

Approved, November 4, 1896.

S. H. MAYES, *Principal Chief*.

EXECUTIVE DEPARTMENT, CHEROKEE NATION, *November 5, 1896*.

I hereby certify that the above and foregoing is a correct copy of the proceedings of the Old Settler Council, and that the signature of S. H. Mayes, principal chief, is genuine.

[SEAL.]

W. H. MAYES, *Assistant Executive Secretary*.