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[Report by Mr. Benton]

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IN SENATE OF THE UNITED STATES,

MAY 17, 1826.

Mr. BENTON, from the Committee of Conference, appointed by the Senate, on the disagreeing vote between the Senate and House of Representatives, on the amendment adopted by the Senate, to the bill appropriating money to carry into effect the treaty lately concluded with the Creek Indians,

REPORT :

That, in pursuance of the instructions given to them by the Senate, they proposed to the Conferees, on the part of the House of Representatives, to unite with them in an application to the Secretary of War, for information concerning the subject-matter of the resolution of the Senate; which invitation was accepted by them, and the letters from the Secretary, with the report of T. L. McKenney, accompanying the same, and herewith submitted, shew the result of the application.

The paper marked A, is a copy of the statement furnished to the Secretary, by the Conferees, and, as appears by his last letter, corresponds with that spoken of by Mr. McKenney in his report, as having been furnished to him by the Cherokees, Ridge and Vann, and by him shewn to the Secretary.

From the facts stated in the documents submitted, it is manifest, that it is the design of the Delegation, by whom the treaty was negotiated, to make a distribution of the greater part of the money to be paid by the United States, under the treaty, among themselves, three Cherokee Indians, who had no interest in the lands, and consequently, were not entitled to any portion of the money, and a few selected individuals, in gross fraud of the rights of the nation. The particulars of the contemplated distribution are stated in the paper marked A.

The Conferees of both Houses are unanimously of opinion, that it is the duty of the Government to protect the nation against this unwarrantable design of the Delegation, as far as that can be done, consistently with the stipulations of the treaty, and the rightful powers of Legislation, which are possessed by Congress, over the interest of the Indian nations, within the United States. They differ, however, as to the extent to which that protection can be afforded.

The Conferees of the House believe, that the amendment of the Senate, so far as it provides for the proportions and manner in which the money shall be distributed, conflicts with the treaty, which stipulates that the money shall be paid to the Chiefs of the nation, to be divided

among the Chiefs and Warriors thereof, and proposed to your Conferees a substitute, in the following words, viz: "Both of which sums shall be paid to the Chiefs of the Creek nation, to be divided among the Chiefs and Warriors of the said nation. And that the same be done by a Special Agent, under the direction of the Secretary at War, in a full Council of the nation, convened upon notice for that purpose."

Your Conferees, believing that the amendment of the Senate, is within their rightful power of Legislation upon the subject, and sensible that there can be no doubt of its superior efficacy, to effect the object in view, have not felt that they would be justified in agreeing to the substitute, without the express instructions of the Senate.

DEPARTMENT OF WAR, *May 15, 1826.*

GENTLEMEN: To avoid delay, I hasten to acknowledge the receipt of your communication of to-day, and inclose the report of the officer to whose superintendence is committed the Bureau of Indian Affairs, as disclosing the information requested. It may be necessary to add, that the Department has adopted no measure whatever, in reference to the paper referred to in your communication. Whatever has been done, or is proposed to be done, is contained in the treaty. For although I was advised, as Col. Benton is aware, to approach the influential chiefs with secret gratuities, justified, as it was urged, by the usages of the Government, I peremptorily refused to do so; and determined, that whatever was given as the price of the land, should appear on the face of the treaty. Its distribution, at their own instance, is considered no affair of this Government, except so far as humanity was concerned in preventing disturbance. To my advice, they replied, their authority as representing their tribe had not been questioned as to the sale of their lands, and they could not see the propriety of its being doubted as to the receipt of the purchase money, and that they are willing to be responsible for all consequences.

Your obedient servant,

JAMES BARBOUR.

The Hon. THOMAS H. BENTON,
The Hon. LOUIS McLANE.

DEPARTMENT OF WAR,

Office Indian Affairs, May 15th, 1826.

To the Hon. JAMES BARBOUR,

Secretary of War.

SIR: I have the honor, in compliance with your directions, to "state what I know of the progressive steps taken by you in regard to the late Creek Treaty, and immediately preceding the opening of

the negotiation, and which led to its execution ; and particularly as it respects a list of the money, which the Chiefs prepared, containing the sums which they requested should be paid over to them, individually, and in this city," to state, that the first step, immediately preceding the opening of the negotiation, was, to impress the delegation with your own apprehensions in regard to the difficulties which would accompany the execution of *any* Treaty, the provisions of which might fall short of those contained in that concluded at the Indian Springs, on the 12th February last ; and that, to reconcile them to the provisions of that Treaty, you were prepared to consult their happiness in a location upon lands West of the Mississippi which they themselves might select ; and to add to the monied stipulations of that Treaty, so as to make them comfortable in their new homes. This the delegation promptly rejected ; nor would they listen to any proposition short of one which should have for its basis the *absolute annulment of that Treaty*, as a preliminary to the formation of any Treaty, and of any kind. The basis was then submitted, and embraced a cession of all the lands owned by the Creek nation within the chartered limits of Georgia. This was also rejected, and the Chatahoochy was proposed by the Delegation as the boundary, accompanied by an explicit declaration that they had no power to go further. Here a discussion took place, in which you urged them to consider the extreme peril of their present situation, and recurred again to your fears that, should they, by refusing to accept the basis which you had submitted, that the negotiations might end, and the treaty of the Indian Springs be sustained and enforced, in which event their situation would be truly deplorable. You assured them that you were consulting their happiness, and that no other object was cherished but to secure to them future security and repose. You illustrated the relation in which the United States stand to Georgia, and the difficulties which they had it in their power to remove, by a prompt acquiescence in the views of their Great Father the President. Frequent interviews were had, beside a resort to the agency of Governor Cass to produce in them a decision favorable to the basis you had proposed, and which had been urged from the beginning.

In this stage of the discussion, and when, at last, the Chatahoochy was agreed to as the basis, with a fragment of land north of it, as defined in the treaty, and before the treaty was put in form, Ridge and Vann made known the intentions of the Chiefs to require reservations for them. This was promptly rejected. They were told by you, that no locations of the sort would be allowed, but that a fair equivalent in money might be added. They replied, money was no object. They finally agreed to ten thousand dollars, meaning, on their part, as they afterwards explained, ten thousand dollars each, but were put right by the assurance that no such sum was intended, nor could be thought of ; and that five thousand dollars each was the extent that could be allowed. They assented. The treaty was then drawn, (as it appears in its present form, without its supplemental article,) and submitted to them, and agreed to.

At this period, and after the signing, Ridge and Vann brought a paper to me, saying the Chiefs had agreed to the payments to the persons whose names were upon it, and in the sums opposite each respectively. I told them it was their own affair; the treaty provided for a payment of the whole \$217,000 "to the Chiefs of the nation," immediately after its ratification; and it would be for them to make whatever disposition of the money they might esteem proper; but suggested that it might not be the best mode, as the nation was interested in the distribution, and might except to it. I then took the paper to you, and explained these views. You were much engaged at the time, and answered, you presumed it was their own affair; and however proper it might be to see a more general equalization of it through the nation, yet you supposed it must rest with them.

I returned and asked Ridge and Vann their *object* for having the apportionments made here? They answered they wanted it counted here,* and sealed up, and given to each person, as preferable to having it done in the nation. I told them it could not be done here, but the Cashier of the Branch Bank would, no doubt, oblige them by seeing it so counted and sealed.

This, afterwards, became a subject of consideration with you. You spoke to me in regard to it, and it having been intimated that probably the inferior and less intelligent of the Chiefs might not know what arrangement was made as to the sums, and the manner of applying them, I sent for Ridge and Vann, and asked them to state distinctly whether every member of the Delegation knew, as well as they did, the mode which they had adopted for the distribution of the money? Ridge frankly answered "no—but that Opothle-Yoholo and Charles Cornnells knew, and that was enough." I reported this to you, when you directed me to send for the Delegation. This was after the supplemental article of the treaty was agreed to, and sent to the Senate. They came. You then represented to them the danger that might arise from so partial a distribution of their money; as their people at home might not submit to it. You were answered, they knew what they were doing. You then directed the Interpreter to say that you had no desire to control that over which the treaty had given them the power, but that as the paper had been handed to you, you wished to read it, and know whether they had all agreed to have the disposition made of the money which was therein indicated. They answered each, and individually, "Yes"—Repeating, that it was their own arrangement, and the fears you had expressed in regard to the probable effects of such a course upon their people, at home, need not be indulged—for that they would see that their people ratified the arrangement, as in the event of any dissatisfaction they had their annuity and this very money, and would so apply it as to satisfy *all*—and that, that very paper, and all that had been written would be read, and fully explained in council, to their people on their return home. You told them you still had your fears but could only advise.

I have thus hastily complied with your direction, omitting of course, many of the details of a tedious, and doubtful, and I may add, *anxious* negotiation—but preserving the outlines, (except the interviews with the McIntosh party, and which related to the provisions in the treaty, and to which they assented,) and where I esteemed it important, *the facts, in detail.*

Respectfully submitted,

THOMAS L. MCKENNEY.

Letter from the Chairman of the Conference to the Secretary of War.

WASHINGTON, 16th May, 1826.

SIR: In the report of Thomas L. McKenney accompanying your communication of yesterday, it is stated that after the signing of the treaty, Ridge and Vann brought a paper to him, saying the chiefs had agreed to the payments to the persons whose names were upon it, and in the sums opposite each respectively." It is desirable to the committee to ascertain if that paper corresponded with the one transcribed in our communication, or if it differed, in what particulars.

We have to ask you, also, to send to us a copy of our letter of yesterday.

We have the honor to be,

Very respectfully,

Your obedient servant.

JAMES BARBOUR, Esq.

Secretary of War.

WAR DEPARTMENT, May 16, 1826.

GENTLEMEN: I am sorry to say that Mr. McKenney's indisposition is such, that he is confined in bed, and hence an answer from him to the inquiry you make, as to the identity of the papers, cannot be furnished to day; though I understood him at the time of making the report, that they corresponded. If more certainty is desirable, I hope Mr. McKenney will be able to furnish it by to-morrow.

As my letter to you has been misplaced by some means, having been written yesterday at my own house, I have directed Major Vandeventer, if you will be good enough to furnish him with the original, to prepare a copy in conformity with your request.

I have the honor to be,

Your obedient servant,

JAMES BARBOUR.

Hon. Mr. BENTON, and

Mr. M-LANE,

Chairmen of Committee of Conference.

