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Claim of J. K. Rogers, and other Cherokees. Letter from the commissioner of Indian affairs, in regard to the claim of J. K. Rogers, and other Cherokees.

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CLAIM OF J. K. ROGERS, AND OTHER CHEROKEES.

LETTER

FROM THE

COMMISSIONER OF INDIAN AFFAIRS,

IN REGARD TO

The claim of J. K. Rogers, and other Cherokees.

JANUARY 16, 1855.—Laid upon the table, and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, January 11, 1855.

SIR: I have examined, in compliance with your request, the claim of "J. K. Rogers, for himself, and the Cherokees in States east of the Mississippi river," for additional per capita claimed to be due them by express provisions of the treaties of 1835-'36, and 1846.

My opinion is that there is no good foundation for the claim, if the treaty of 1846 with the Cherokees, and the appropriation made by Congress, approved 27th February, 1851, are to be regarded as an exposition of the intention of the parties in interest.

This claim is predicated on the mode of settlement indicated by the Second Comptroller and Second Auditor, under the joint resolution of the Senate and House of Representatives of the United States of 7th August, 1848, and a report of the Committee on Indian Affairs of the Senate of the United States of August 8, 1850.

In connexion with this claim, I deem it proper to state, very briefly, what I understand to be the causes leading to the appropriation by Congress of a large amount of money in final satisfaction of the claims of the Cherokees, predicated upon the treaty of 1835-'36. At the time it was concluded, the Cherokees appear to have been divided into three parties:

First. Those desirous of removing to the west of the Mississippi.

Second. Those who had no objection to a cession of the lands east to the United States, provided provision was made authorizing them to remain upon their own improvements.

Third. Those who were averse, under any circumstances, to a treaty providing for a cession of their lands to the United States.

As a result of the conflicting interests, the treaty of 1846 was entered into.

The tenth article of that treaty is relied upon by the memorialists as a basis for their claim, which is in the following words: "It is expressly agreed that nothing in the foregoing treaty contained, shall be so construed as in any manner to take away or abridge any rights or claims which the Cherokees now residing in States east of the Mississippi river had, or may have, under the treaty of 1835 and the supplement thereto."

The memorialists contend that the ninth article of the treaty of 1846, providing for a just settlement of all moneys due to the Cherokees, and subject to the *per capita* division under the treaty of 1835-'36, does not apply to them, on the ground that that article refers to the Cherokee people west only.

I cannot comprehend the propriety of the objection, when it appears that the Cherokees, so called, residing in the States east of the Mississippi, received their *per capita* distribution arising under the treaty of 1846, and the conditions imposed by the act of appropriation approved 27th February, 1851, as *in full* of all claims under the treaty of 1835-'36, and the supplemental treaty of 1846, without protesting, at the time of the receipt of the money, that it was not in full, as indicated in the receipt. The receipt executed by the Cherokee Indians resident in States east of the Mississippi, is as follows: "We, the undersigned, heads of families and individuals, being Cherokees residing east of the Mississippi river, do hereby severally acknowledge the receipt from the United States by Alfred Chapman, their agent, of the sum of money set opposite to our names, respectively, in full of our proportionate shares of the moneys appropriated for the benefit of the Cherokees by the act of Congress approved September 30, 1850, and the act approved February 27, 1851."

The provisions of the treaty of 1846, explanatory of that of 1835-'36, were invariably favorable to the Cherokee people. The settlement and payment made under its provisions *increased* the *per capita* distribution to all the Cherokees parties to the treaty of 1835-'36. In this settlement the memorialists were participants and the beneficiaries; although the question has been seriously mooted, whether, as they did not comply with the expressed intention of the treaty of 1835-'36, "that the whole Cherokee people should remove together, and establish themselves in the country provided for them west of the Mississippi river," they were entitled to any participation in the distribution of the *per capita*.

It is manifest in the payments that have been made to Cherokees under the treaty of 1835-'36, and the settlement based upon the treaty of 1846, that those who have remained in the States east of the Mississippi have actually received a larger portion of the benefits resulting from the treaty of 1835-'36 than those who, in good faith, removed to the west of the Mississippi. Many of them have received, for themselves and families, the commutation of \$53 33 *per capita* for removal and subsistence to the nation west, without having left the place of their abode when the treaty was concluded. A large number, particularly those resident in North Carolina—say 1,514—have, under the provisions of the fourth section of the act of 29th July, 1848, (see Statutes at Large, vol. 9, page 264,) received an interest of six per cent. *per*

annum on the amount of \$53 33 commutation, while those who actually, and in good faith, removed, received that amount of \$53 33 as a *reimbursement for actual expenses incurred* while en route to the country west, and for the cost of their subsistence for one year after their arrival.

I deem it proper to remark that the statement of the claim, and the argument in support thereof, is based, according to my understanding of the *argument* of the claimants, entirely upon the mode of settlement stated by the report of the Committee on Indian Affairs of the United States Senate, before alluded to, of the proper mode of settlement to be made with the "Old Settlers" Cherokees, under the fourth article of the treaty of 1846. The settlement to be made with the Cherokees parties to the treaty of 1835-'36 is defined in the ninth article of said treaty, (Statutes at Large, vol. 9, pages 872 and 875.) A reference to those two articles will show the reasons why a distinction was made in the basis of the settlements between the two parties. The Cherokees east of the Mississippi, if entitled to participate in the result of any settlement, was that under the ninth article; while the basis of the claim set up by the memorialists is based upon the opinion of the committee of the Senate, in stating their opinion as to the settlement that should be made with the "Old Settlers."

The settlement with the "Old Settlers" did not include the amount of \$1,047,067—which, by act of 12th of June, 1838, was appropriated by Congress as additional to the appropriation, per act of 2d July, 1836, of \$5,600,000, (less \$500,000, the consideration of 800,000 acres of land ceded by the Cherokees;) and, as a consequence, did not, could not, and ought not to be taken into consideration in the settlement of the accounts of the Cherokees parties to the treaty of 1835-'36, to which the memorialists were parties.

I transmit herewith a copy of the annual report of this office of 1850, which contains the report of the Senate committee hereinbefore referred to. (See page 162.)

Very respectfully, your obedient servant,

GEO. W. MANYPENNY,

Commissioner.

HON. GEO. S. HOUSTON,

Chairman of Committee of Ways and Means, Ho. of Reps.