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### Imposition of Tax on Cattle by Cherokee Nation

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IN THE SENATE OF THE UNITED STATES.

JUNE 22, 1870.—Ordered to be printed.

Mr. HAMILTON, of Texas, from the Committee on Indian Affairs, submitted the following

REPORT.

*The Committee on Indian Affairs, to whom was referred sundry petitions of certain citizens of the State of Kansas remonstrating against the imposition, by the Cherokee nation, of a tax upon cattle driven through their territory from Texas to northern markets, have considered the subject very carefully, and beg leave to make the following report :*

Petitioners allege that the Cherokees, in general council, passed, on the 16th December, 1867, an act or order levying a tax of ten cents per head upon all cattle and animals driven through their country from Texas to the northern States; and that by another act passed on the 28th November, 1869, in relation to the said tax, it was in some instances doubled, both of which acts or orders in council they charge are in violation of the laws of the United States.

Copies of the acts or orders in council, complained of, are not accessible to the committee, but the principal chief and delegation of the Cherokee nation, in a written statement in answer to the allegations of petitioners, admit substantially the levies as charged, and proceed to justify the legality of the tax. Their statement is herewith submitted.

As a general proposition, it is quite clear that no community, politically or otherwise organized, whether State, territorial, or Indian tribes, can legally deny or obstruct, by tax or otherwise, the right of free transit, whether of person, produce, or merchandise to and from market over any part of the territory of the United States. But the exercise of the right must be enjoyed subject to the local laws and usage legally established in respect to the public highways, the rights of property, and the safety and well-being of the inhabitants.

The statement of the chief above referred to, sets forth : *That the States of Missouri and Kansas forbid the driving of Texas cattle into those States from the first of May to the last of November, that is, in the months that there is grazing in either of those States ; that thousands and tens of thousands of Texas cattle are driven north across the Indian country each year ; and being unable to enter Missouri and Kansas, are herded and grazed several months in the Cherokee nation, and other parts of the Indian Territory ; that when winter comes on, such droves as are late, or too thin for market, find their tax of ten cents a head and five cents per week so much cheaper than the cattle can be kept further north, they persist in wintering their stock in the Cherokee nation ; and the ninth section of the act of June 30, 1834, "to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontier," is quoted in justification of the imposition of the tax in part. The section is in these words :*

That if any person shall drive, or otherwise carry any stock of horses, mules or cattle,

to range or feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, such person shall forfeit the sum of one dollar for each such stock.

Now this is conclusive in regard to that portion of the tax exacted for the privilege of grazing stock within the limits of the Cherokee nation. The tax is within the amount of the penalty fixed by law for grazing stock without the consent of the nation, even though the stock should be kept upon their grazing lands full three months.

It only remains, then, to inquire into the legality of the tax imposed for the right of way through the country, which is ten cents per head for all stock driven through the territory of the Cherokee nation from Texas to northern markets.

If it were only occasional herds, and so small as to make but a slight impression upon the native pastures, the committee is not prepared to say that the tax would be either proper or legal, any more than would a like tax upon the air and water. But the herds are large and numerous, and, so far as the committee can ascertain, wholly dependent upon the grass on their passage through the entire length of the country. Not only so, but it is charged by the principal chief, in the paper before mentioned, that "advantage is taken of the right to pass through to graze all over the country." He says:

Large herds will often move but from three to five miles per day, and zigzag over the country, so as to take in their course the finest grazing; so that, while claiming to pass through, they actually spend the greater portion of the summer and autumn in grazing over the Indian country.

It becomes a very serious matter to a people who are only just abandoning the chase, and for the most part entering the pastoral stage of civilization. The grass is the great crop of the season, and if grazed down during the summer, it is not difficult to imagine the condition of the native stock during the winter and spring. The Indians are not more provident than their white neighbors in the Southwestern States, who do not feed their stock in winter. The trade is already very large between Texas and the people of Kansas, and on the increase. The evil may become so serious soon as to trench upon the subsistence of the people whose chief reliance for support is thus consumed annually.

No one will insist upon the right to pass on foot large herds of almost wild cattle through highly cultivated sections of country, where the inhabitants, from the great expense, have, by law or by common consent, dispensed with fences, and keep up and feed their own cattle. There are many such communities in the different States. A few herds of five hundred or a thousand head each, driven through such settlements in the summer or fall of the year, would effectually destroy the growing crops, if permitted to wander from the public highway. Yet the damage to the inhabitants would be little greater in fact, though larger in amount, than that suffered by the Indians in the partial or total destruction of their chief crop—the grass—upon which they rely for meat and milk, and, in a great degree, for bread and other necessaries as well. Under the conditions above stated, drovers would be obliged to pen and feed their cattle on their passage through cultivated sections of country. If this be done by drovers in the Indian country, there will be no pretext for levying a tax upon the passage of stock.

This view of the subject is borne out by the eighth section of the act of June 30, 1834, before referred to, which reads as follows:

That if any person other than an Indian shall, within the limits of any tribe with whom the United States shall have existing treaties, hunt or trap or take and destroy any peltries or game, except for subsistence, in the Indian country, such person shall

forfeit the sum of five hundred dollars, and forfeit all traps, guns, and ammunition in his possession, used or procured to be used for that purpose, and peltries so taken.

This penalty was denounced against intruders upon the hunting grounds of the Indians, as much for the economy and preservation of the chief reliance of the tribes for subsistence as for the preservation of peace on the frontiers. At that time the chase was the principal occupation of the Cherokees—game and peltries their principal means of support; now, however, the grass crop greatly exceeds in value not only the game and peltries, but probably the receipts from all other industries and trades combined.

The Cherokees deem their right to prohibit the introduction of Texas cattle into their territory equally with Missouri and Kansas, for the same cause, to be indisputable; but being weak and desiring to avoid trouble, the nation considered the small tax levied for the privilege to be, in fact, a concession to the parties engaged in the trade. Besides, it is not the people of Texas who are here complaining, though they doubtless feel the tax, but the traders in Kansas, who complain that it is driving trade from their portion of the State, and compelling cattle-men to drive to Abeline, Kansas, several hundred miles out of their way. The committee feel very certain that drovers will not go three hundred miles out of their way to avoid such a tax.

The Department of the Interior has been frequently appealed to, as appears by the letter of the Commissioner of Indian Affairs of 19th May, 1870, but has reached no decision in the matter. There is no law or department regulation, says the Commissioner, authorizing the tax, but the "various tribes who own the land levy the tax for their *consent* to permit the stock to pass through their territory." "If the charges," says the Commissioner, "by the Indians are excessive, this department will consider suggestions that may be made with a view to the adjustment of any difficulties between the parties."

The committee deem that the honorable Secretary of the Interior and his subordinates have full power, under the law, to protect the respective parties from wrong or outrage; and at the same time feel warranted in saying that the spirit, if not the letter, of the law fully justifies the Indians in the levy of the said tax, and that the department ought to sustain them in its enforcement, so long as it does not exceed the penalty imposed by the law of 30th June, 1834, for grazing stock upon Indian lands, which is one dollar per head. The committee consider the tax just and moderate. It is doubtful whether the Indians can long afford to accommodate the increasing trade upon such easy terms.

There is no necessity for legislation on the subject. The committee therefore ask to be discharged from its further consideration.