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In the Senate of the United States. Letter from the Secretary of the Interior, transmitting report from Commissioner of Indian Affairs relative to claim of John T. Heard for services rendered the Western Cherokee Indians.

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IN THE SENATE OF THE UNITED STATES.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

Report from Commissioner of Indian Affairs relative to claim of John T. Heard for services rendered the Western Cherokee Indians.

JANUARY 8, 1894.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 3, 1894.

SIR: I have the honor to transmit herewith copy of a report of 2d instant from the Commissioner of Indian Affairs and accompanying papers relative to the claim of Hon. John T. Heard for services rendered the "Old Settlers or Western Cherokee Indians" in their claim against the United States.

The commissioner's report contains a statement of facts concerning the claim and shows that Mr. Heard was most earnest, efficient, and laborious in the case, and that his knowledge of its details disclosed his thorough study of the cause and rendered his services of great value in its determination, and based on this statement the commissioner recommends that a law be enacted authorizing the Secretary of the Interior to pay to Mr. Heard for professional services rendered the "Old Settlers" or Western Cherokees the sum of \$10,000, or such part thereof, if any, as shall remain of the 35 per cent set apart by resolution in various councils of said Indians, for the prosecution of said claim, after the ascertainment and determination of the amount of such fees and charges and other claims as are properly chargeable against said 35 per cent, provided, that the Secretary of the Interior shall first declare that said services were rendered to said Indians by said Heard, and were contracted for in good faith by persons authorized to represent said Indians.

I have considered the draft of the bill submitted by the commissioner to carry out his recommendation, and the same is presented with request for the early and favorable action of Congress.

I have the honor to be, very respectfully,

HOKE SMITH,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 2, 1894.

SIR: I have the honor to submit the following statement of facts respecting the claim of Hon. John T. Heard for the sum of \$10,000 for professional services rendered the "Old Settlers" or Western Cherokees, in behalf of their claim for moneys alleged to be due from the Government.

I have received a statement sworn to by John T. Heard, of Sedalia, Mo., on August 29, 1893, before Archibald Hopkins, chief clerk of the Court of Claims, from which it appears that early in the year 1882, Mr. Heard was employed by the Old Settler or Western Cherokee Indians through their commissioner and treasurer to assist in the prosecution of a certain claim of said Indians against the United States for moneys due therefrom on account of errors alleged to have been made against said claimants in settlements previously made by the accounting officers of the Government; that he entered upon the services in pursuance of such employment and in accordance with the agreement made at the time with J. M. Bryan as commissioner, etc.; that he continued actively to perform the services contemplated until February 27, 1885, when a written contract was made between said Bryan and Heard, providing as to how and when the services rendered by Mr. Heard should be paid for; that the services rendered by Mr. Heard consisted in the presentation of the claim and arguments before the committees of the House and Senate in Congress and before the Court of Claims of the United States, to which court the matter had been referred by a committee of Congress under the provisions of the act of March 3, 1883 (22 Stats., 485) known as "the Bowman Act"; that after said claim had been referred to the Court of Claims said Heard in conjunction with other attorneys of claimants was engaged almost continuously for more than one year in procuring and arranging evidence to support the claim and otherwise preparing the case for trial.

That after it had been finally reached for trial in said Court of Claims it was argued on the part of claimants, by Mr. Heard, and the finding of facts on the trial resulted substantially in a recovery for the claimants; that after said claim had been referred to the Court of Claims for a finding of facts, but before it had been considered by said Court, said Heard was elected a Representative in Congress, and in order that he might be enabled to argue the case for the claimants before the beginning of his Congressional term the Court advanced said cause on the docket at the request of the senior counsel for the claimants and it was argued by said Heard, as shown by a transcript of the docket entered in said court, which is filed with the statement; that after the findings of fact had been prepared by the court and returned to Congress said Heard terminated his connection with the case, and on February 27, 1885, as above stated, entered into a written contract with Bryan (a copy of which is transmitted with the papers) by which it was agreed that in case of the recovery by the claimants of the sum of \$266,994.72, with interest, then said Heard was to be paid the sum of \$22,500, and that if the money recovered on said claim should be more or less than the amount specified, then the fee should be proportionately increased or diminished; that at the time said written contract for the payment of \$22,500 was made, the claimants, and the attorneys as well, thought that by the finding of facts referred to the litigation of the claim was practically concluded, but it afterward

transpired that Congress would not appropriate the money to pay said claim, but finally rereferred it to the Court of Claims for full trial and judgment.

That by reason of said unexpected course of events the claimants were compelled to employ other attorneys to complete the work and to provide for the payment of large sums of money for their services, in view of which said Heard felt bound in equity to abate part of his contract demand and voluntarily consented to do so, proposing to reduce the amount of his fee to the original sum contemplated and guaranteed at the date of his employment, viz: the sum of \$10,000; that said Bryan, commissioner, etc., for and on behalf of claimants, entered into a new contract with Heard, stipulating for the payment of that amount as full and complete compensation for services rendered said claimants by said Heard; that at a council of the Old Settler or Western Cherokee Indians held on the 28th day of July, 1893 (a copy of which is attached to the papers), said latter contract was approved of and the payment of the sum agreed upon recommended; and that all the services rendered by said Heard as above set forth were professional and legitimate and the compensation agreed on between the parties to the contract is only a reasonable one in view of the character of the services rendered and the results achieved thereby.

Accompanying Mr. Heard's statement is a contract (entered into in triplicate July 25, 1893) between him and the Old Settler or Western Cherokee Indians by Joel M. Bryan, their commissioner, etc., stipulating, as stated above, for the payment to Mr. Heard of the sum of \$10,000 in consideration for the professional services rendered by him in connection with the prosecution of the claim of said Indians against the United States, in which claim the Supreme Court has recently rendered a judgment confirming the judgment of the Court of Claims previously rendered, with modifications, in the sum of about \$800,000; also the original and two copies of the agreement referred to between the said Joel M. Bryan, commissioner, etc., and John T. Heard, entered into on February 27, 1885. This latter agreement is not in the form prescribed by section 2103, relating to contracts between Indians not citizens of the United States and Indian tribes and attorneys.

The other papers transmitted with Mr. Heard's statement are as follows: A certified excerpt from the record in the case of the Old Settler or Western Cherokees against the United States, Congressional, No. 14, from which it appears that on March 4, 1884, request was made by the attorney of record to enter Mr. Heard as associate counsel, and that on January 29, 1885, the case was argued by Mr. Heard for the claimants and Mr. Fay for the defendants; a letter of August 29, 1893, addressed to the Secretary of the Interior from John C. Fay, from which it appears that Mr. Fay was formerly assistant attorney in the Department of Justice and as such had the immediate charge of and argued on behalf of the United States Congressional case No. 14, Joel M. Bryan *et al.* against the United States, known as the Old Settler case; that Mr. Heard was the active counsel in that case, was diligent and earnest in its preparation and argued it fully, elaborately, and with ability on the final hearing; that the cause was advanced on the docket so that it could be tried and determined before Mr. Heard's Congressional term began to enable Mr. Heard to argue it, his term commencing March 4, 1885, and the cause was argued and submitted in January, 1885; that after the argument Mr. Heard attended with him on Judge Nott in chambers, at the request of the judge, in the preparation of the findings

of fact which the Court of Claims finally reported to Congress; that Mr. Heard was most earnest, efficient, and laborious in the case, which is termed by Mr. Fay as being a "most perplexing case," and that his knowledge of its details disclosed his thorough study of the cause and rendered his services of great value in its determination; also a letter of August 26, 1893, addressed to me by Mr. Reese H. Voorhees, from which it appears that Mr. Voorhees, who assumed the management of the prosecution of this claim in the Court of Claims upon its being again referred there for adjudication, with appeal to the Supreme Court by the act of February 25, 1889 (25 Stats., 694), saw in his first investigation of the records of the case, which then existed, the result of Mr. Heard's labor in it; that the utmost that could be accomplished by him (Heard) under the jurisdiction which the Court of Claims at first had was a favorable report upon the facts to Congress; that the various papers which came under Mr. Voorhees's close scrutiny in 1889 bore unmistakable evidence of earnest, thoughtful, and painstaking labor on the part of Mr. Heard, and Mr. Voorhees always considered its results fully commensurate with the just and reasonable expectations on the part of Mr. Heard's clients.

The contract which Mr. Heard submits for consideration, and which he requests to be approved, is in the form prescribed by section 2103 of the Revised Statutes relating to such agreements, and the other papers submitted, which include, besides those above enumerated, copies of the petition filed on behalf of the claimant Indians, show conclusively that valuable services were rendered by him in the claim, for which he should be compensated and for which the Indians appear to be willing and anxious to provide full pay.

In view of the fact, however, that the contract was entered into on a date subsequently to the rendering of the services and of the further fact that on December 4, 1886, the Attorney-General gave his opinion to this Department on the question involving the principle arising here, in which he held in effect that the Secretary of the Interior is not authorized to approve a contract providing compensation for services rendered prior to its date or to recognize the claim of an attorney under such contract for compensation thereunder (see 18th Opinions Attorney-General, p. 517), the office does not feel that it is authorized to approve Mr. Heard's contract. However, as it is so clearly shown that valuable services have been rendered, I feel that, in the interest of justice and equity, whatever can be done lawfully with a view to providing for the payment to Mr. Heard of reasonable compensation for his services should be done, especially in view of the fact that the Indians seem desirous of providing for the payment of Mr. Heard's reasonable fee.

I have the honor, therefore, to recommend that Congress be asked to enact a law authorizing the Secretary of the Interior to pay to John T. Heard for professional services rendered "Old Settlers" or Western Cherokees the sum of \$10,000, or such part thereof, if any, as shall remain of the 35 per cent set apart by resolution in various councils of said "Old Settlers" or Western Cherokee Indians for the expenses of the prosecution of said claim, after the ascertainment and determination of the amount of such fees and charges and other claims as are properly chargeable against said 35 per cent: *Provided*, That the Secretary of the Interior shall first determine that the said services were rendered to said Indians by said Heard, and were contracted for in good faith by persons authorized to represent said Indians.

I have the honor to submit herewith the draft of a bill to enable the Secretary of the Interior to pay John T. Heard out of said fund with a copy of papers containing a history of the claim.

This statement is made and the draft of bill prepared in accordance with your instructions of the 18th ultimo.

The papers submitted with your letter of December 18, 1893, are herewith returned.

Very respectfully, your obedient servant,

D. M. BROWNING,
Commissioner.

The SECRETARY OF THE INTERIOR.

A BILL to enable the Secretary of the Interior to pay John T. Heard, for professional services rendered the "Old Settlers" or Western Cherokee Indians, out of the funds of said Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to pay to John T. Heard, for professional services rendered, out of any moneys appropriated or to be appropriated by Congress for the "Old Settlers" or Western Cherokee Indians, by reason of a judgment rendered June sixth, eighteen hundred and ninety-three, by the Court of Claims in favor of the "Old Settlers" or Western Cherokee Indians, in case numbered sixteen thousand five hundred and ninety-nine, for certain moneys and lands due, arising from or growing out of certain treaty stipulations or acts of Congress, amounting to eight hundred thousand three hundred and eighty-six dollars and thirty-one cents in compliance with the mandate of the Supreme Court of the United States, the sum of ten thousand dollars, or such part thereof, if any, as shall remain of the thirty-five per cent set apart, by resolution in various councils of said "Old Settlers" or Western Cherokee Indians, for the expense of the prosecution of said claim, after the ascertainment and determination of the amount of such fees and charges and other claims as are properly chargeable against said thirty-five per cent: *Provided,* That the Secretary of the Interior shall first determine that the said professional services were rendered to said "Old Settlers" or Western Cherokee Indians, and were contracted for, in good faith, by persons authorized to represent said Indians.

CITY OF WASHINGTON, District of Columbia:

Jno. T. Heard, on his oath states:

That he resides in the city of Sedalia, in the State of Missouri; that he is an attorney by profession, and duly licensed to practice law in all the courts of said State, and in the Court of Claims and United States Supreme Court, in Washington, D. C.

That early in the year 1882 he was employed by Joel M. Bryan, commissioner and treasurer for the "Old Settlers" or Western Cherokees, as an attorney to assist in the prosecution of a certain claim of said Indians against the United States for moneys due from the United States Government on account of errors made against said claimants in settlements previously made by the accounting officers of the Government, under treaties and laws providing therefor; and that he entered upon said service in pursuance of such employment and in accordance with the agreement then made with said Bryan as commissioner, etc., as aforesaid, as to the compensation to be paid for such services.

That he continued actively to perform the service contemplated by said agreement until the 27th day of February, 1885, when a final settlement and a written contract was made between said Bryan and said Heard, providing fully as to how and when said services so rendered by said Heard should be paid for.

That said legal services consisted in the presentation of oral, written, and printed arguments before the committees of the House and Senate in Congress in support of said claim of the "Old Settlers" or Western Cherokee Indians, and before the Court of Claims of the United States, to which court the said claim was ultimately sent by reference of Congress, under the provisions of the "Bowman Act."

That said work before said Congressional committees was performed in conjunction with other attorneys of claimants; and that said claim was referred to the Court of Claims, as aforesaid, as the result of the work performed, as aforesaid, before said committees.

That after the said claim had been referred to the Court of Claims, as aforesaid, he, the said Heard, in conjunction with other attorneys of claimants, was engaged almost continuously for more than one year in procuring and arranging the evidence to support said claim, and otherwise preparing said case for trial; and that finally when it was reached for trial in said court it was argued on the part of claimants by said Heard, as is shown by the records of said court; and that the finding of facts on said trial resulted substantially in a recovery for claimants—because it furnished the ground upon which Congress subsequently re-referred said case for final trial with jurisdiction to render judgment, etc., and upon which later trial a judgment was found for claimants in amount substantially as indicated in said original finding of facts.

That after the said claim had been referred as aforesaid to the Court of Claims for a finding of facts, but before the same had been considered by said court, the said Heard was elected a Representative in Congress, and that on request of Judge Wilshire (senior counsel for claimants), the court advanced said cause on the docket in order that said Heard might be enabled to argue the same for claimants before the beginning of his Congressional term, which would bar him from appearing in said cause; that the court did so advance the said cause on the docket, and it was argued, as aforesaid, by said Heard, as is shown by a transcript of the docket entry in said court herewith filed.

That after the findings of fact had been prepared by said court and returned to Congress said Heard terminated his connection with the case, and on the 27th day of February, 1885, entered into a written contract with said Bryan, a copy of which is hereto attached, by which it was agreed that in case of recovery by claimants of the sum of two hundred and sixty-six thousand nine hundred and ninety-four and seventy-two one-hundredths dollars (\$266,994.72), with the interest secured by the treaties (which said sum was the amount indicated by the said finding of facts), then said Heard was to be paid the sum of twenty-two thousand five hundred dollars (\$22,500); and that if the amount recovered on said claim should be more or less than the amount specified then the fee should be proportionally increased or diminished.

That when he, the said Heard, was originally employed to prosecute said claim, it was agreed that his compensation, in case of recovery by claimants, should not be less than ten thousand dollars (\$10,000), but should be more if, in the judgment of the commissioner, J. M. Bryan, and the said W. W. Wilshire (senior counsel in the case), the character of his services should warrant an increase.

That at the time said written contract for the payment of \$22,500 was made the claimants, and the attorneys as well, thought that by the finding of facts referred to the litigation was practically settled; but it afterwards transpired that Congress would not appropriate the money to pay such claim, but finally re-referred it, as aforesaid, to the Court of Claims for full trial and judgment.

That by reason of said unexpected course of events the claimants were compelled to employ other attorneys to complete said work and to provide for the payment of large sums of money for such services; and, therefore, said Heard felt bound in equity to abate part of his contract demand, and he voluntarily consented so to do.

Also, that by the happening of the contingency provided for in said written contract, to wit: The recovery of judgment for a less amount than \$266,994 $\frac{72}{100}$, such abatement became necessary to a certain extent; and, therefore, in view of all the facts, said Heard, voluntarily proposed to reduce the amount of his fee to the amount originally contemplated and guaranteed at the date of his employment, namely: The sum of \$10,000; and said Bryan, commissioner aforesaid, for claimants, entered into a new contract with said Heard for that amount, and, as shown by the records of the "council" of said claimants, held on the 28th day of July, 1893 (a copy of which is hereto attached), said contract was approved, and the payment of the sum agreed on, recommended. That the amount for which final judgment was rendered in favor of claimants on the claim referred to herein, principal and interest, is about eight hundred thousand dollars (\$800,000).

That all of the services rendered as aforesaid were professional and legitimate, and that the compensation agreed on between the parties to the contract is only a reasonable one, in view of the character of the services rendered, and the results achieved thereby; and that no reputable lawyer, competent to perform such services would agree to render them for a smaller consideration.

JOHN T. HEARD.

Sworn to and subscribed before me this 29th day of August, 1893.

[SEAL.]

ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

COURT OF CLAIMS, *August 25, 1893.*Congressional case No. 14. "Old Settler" or "Western" Cherokees *v.* The United States.

"*March 11, 1884.*—Request of attorney of record to enter John T. Heard, esq., as associate counsel filed.

"*January 29, 1885.*—This case was argued by Mr. Heard for the claimants and Mr. Fay for the defendants, and submitted."

I hereby certify that the foregoing are true copies of extracts from the record in the above-entitled cause.

[SEAL.]

ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

WASHINGTON, D. C., *August 29, 1893.*

SIR: Having been requested to make a statement relative to the services rendered by Hon. John T. Heard in respect to the case of the "Old Settler Cherokees," I have the honor to say:

I was formerly assistant attorney in the Department of Justice and as such had the immediate charge of, and argued, on behalf of the United States, Congressional Case No. 14, Joel M. Bryan *et al. v.* The United States, known as the "Old Settlers" Case, which had been referred to the Court of Claims by the Senate Committee on Indian Affairs for a finding of facts under the provisions of the "Bowman Act."

Mr. Heard was the active counsel in that case; he was diligent and earnest in its preparation and argued it fully, elaborately, and with ability on its final hearing; the cause was advanced on the docket, so that it could be tried and determined before Mr. Heard's Congressional term began, to enable Mr. Heard to argue it. His term commenced March 4, 1885, and the cause was argued and submitted in January, 1885. After the argument Mr. Heard attended with me on Judge Nott in chambers, at the request of the judge, in the preparation of the findings of facts which the Court of Claims finally reported to Congress.

I can only add that Mr. Heard was most earnest, efficient, and laborious in that most perplexing case, and his knowledge of its details disclosed his thorough study of the cause and rendered his services of great value in its determination.

I have the honor to be, very respectfully, etc.,

JNO. C. FAY.

Hon. HOKE SMITH,
Secretary of the Interior.

WASHINGTON, D. C., *August 26, 1893.*

SIR: At the request of Mr. Heard, I have the honor to submit the following statement for your information:

On the 25th of February, 1889, a bill passed Congress vesting the U. S. Court of Claims and the Supreme Court of the United States with a very broad jurisdiction of the claim of the "Old Settlers" or Western Cherokee Indians *v.* The United States, and authorizing a final settlement by those tribunals.

Immediately upon its passage, under a contract between Messrs. Jones, Boudinot, and myself and the said Indians, I took the active control of the preparation and prosecution of the case in the courts, my intimate relation continuing until final judgment in 1893. My first investigation of the records of the case which then existed showed me the results of Mr. Heard's labors in it prior to the passage of the act. The utmost that could be accomplished by him, under the jurisdiction which the Court of Claims then had, was a favorable report upon the facts to Congress. The report which was made to Congress by the Court showed these Indians to have been cruelly wronged and presented their claim to Congress in a decidedly favorable light.

The various papers which came under my close scrutiny in 1889 bore unmistakable evidence of earnest, thoughtful, and painstaking labor on the part of Mr. Heard, and I have always considered its results fully commensurate with just and reasonable expectations on the part of his then clients. I have attributed in large part to the efforts of Mr. Heard in the Court of Claims, and to the report procured by him from that Court prior to 1889 (showing very heavy injury to have been sustained by the Indians), the passage by Congress of the broad and generous act of jurisdiction in that year.

In my arguments, both in the Court of Claims and in the Supreme Court, on the strength of the knowledge conveyed to Congress in the report procured by Mr.

Heard, I strove to sustain in the act a larger jurisdiction than the courts were willing to exercise.

It is my opinion that Mr. Heard's services were decidedly instrumental in putting this old musty matter intelligently before Congress, and that they have been substantially beneficial to the claim and to the Indians.

Very respectfully,

REESE H. VOORHEES.

Hon. DANIEL M. BROWNING,
Commissioner of Indian Affairs.

The Old Settler council met pursuant to a call printed in the Vinita Globe and the Cherokee Advocate, Hon. W. H. Hendrix, chairman, called the house to order. J. M. Bryan, Jr., was elected secretary. The report of the Hon. J. M. Bryan, Old Settler Cherokee commissioner and treasurer, was read.

Motion made that the president appoint a committee of five to take into consideration the report of Commissioner and Treasurer J. M. Bryan, and to also look into Old Settler matters. The president appointed as such committee, E. B. Wright, H. C. Barnes, E. C. Boudinot, Aaron Terrell, and A. J. Griffin.

Motion made that the house elect an additional member to cooperate with the committee of five appointed by the president, carried, and W. A. Duncan was so elected. Committee made the following report, which was adopted:

TALEQUAH, CHEROKEE NATION, July 28, 1893.

To the honorable the Old Settler Council convened:

We the undersigned, your committee to whom was referred the report of our commissioner, delegate, and financial agent, Hon. J. M. Bryan, beg leave to make the following report:

We earnestly recommend that the Secretary of the Interior be asked to cause the payment of the Old Settler money as soon as appropriated and available to the Old Settlers now living and the descendants of all the Old Settlers in equal per capita distribution of the same, and that the rolls of 1851, upon which the former Old Settler payment was made, be made the basis for the coming payment.

We further recommend that Joel L. Baugh be allowed $1\frac{1}{2}$ per cent of the whole amount allowed the Old Settlers (to be deducted from the 35 per cent set apart for attorney and expenses), as compensation in full for all services rendered and to be rendered by him in prosecuting and attending the Old Settlers' claim as per his appointment by the Old Settler council.

We also recommend that whereas E. C. Boudinot was appointed to act in connection with J. M. Bryan in prosecuting and attending to the Old Settlers' claim, that he be allowed 1 per cent of the whole amount, to be deducted from the 35 per cent set apart as above stated, and that they be authorized to receive and receipt therefor from the Secretary of the Interior.

We further recommend that our treasurer and delegate, Hon. J. M. Bryan, be authorized to pay to John T. Heard, of Missouri, the sum of \$10,000, in accordance with a contract made with him by the said J. M. Bryan, delegate, etc., provided that the same be paid out of the 35 per cent set apart to be used by the said J. M. Bryan in prosecuting the Old Settler claim.

We further recommend that after the Cherokee Nation shall be reimbursed for all borrowed money that the residue of the 35 per cent be allowed to the Hon. J. M. Bryan, in addition to the $5\frac{1}{2}$ per cent already approved, as an additional compensation for his valuable services.

We recommend the adoption of the following resolutions as embracing the substance of this report.

E. C. BOUDINOT,
E. B. WRIGHT,
H. C. BARNES,
A. J. GRIFFIN,
AARON TERRELL,
W. A. DUNCAN,
Committee.

Be it resolved by the Old Settler council in session regularly convened, That the commissioner and treasurer of the Old Settler Cherokees, Hon. J. M. Bryan, be, and he is hereby, requested and instructed to use all lawful means to have the money due the Old Settler Cherokees, under the recent decision of the Supreme Court of the United States, paid out to the Old Settler Cherokees now living and the descendants of all

the Old Settler Cherokees in equal per capita distribution, and that the pay rolls of 1851 be made the basis of the coming payment.

Be it further resolved, That the sum of $1\frac{1}{2}$ per cent of the amount due the Old Settler Cherokees in accordance with the decision of the U. S. Supreme Court, above cited, be paid to Joel L. Baugh for services rendered and to be rendered upon the Old Settler claim, the same to be deducted out of the 35 per cent set apart for the prosecution of the Old Settlers' claim, and that the sum of 1 per cent of the whole amount adjudged due the Old Settler Cherokees be paid to E. C. Boudinot for services rendered and to be rendered in securing the favorable termination of the Old Settler claim and its appropriation, provided that the same shall be deducted from the 35 per cent referred to above, and that the said Joel L. Baugh and E. C. Boudinot are hereby authorized to receive and receipt for the sums due them from the Secretary of the Interior as soon as the money shall be appropriated and available, and the commissioners of the Old Settlers are instructed to enter into written contracts as above in accordance with the requirements of law.

Be it further resolved, That the contract entered into July 25, 1893, by and between Old Settler Commissioner and Treasurer J. M. Bryan on the one part and John T. Heard, of Missouri, of the other part, for \$10,000 be, and the same is hereby, approved, provided that the same shall be taken from the 35 per cent set apart for the prosecution of the Old Settler claim.

Be it further resolved, That after the Cherokee Nation shall have been reimbursed for borrowed money, and all contracts in force satisfied, 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.

Be it further resolved, That all previous acts of the Old Settler councils not modified by these resolutions be, and the same are hereby, reaffirmed.

Be it further resolved, That our delegate and commissioner, or his successors, are hereby instructed to see that no claims are allowed for attorney fees acting for the Old Settlers in cases where no services have been rendered, or where they have failed to strictly comply with the provisions and conditions of their contracts.

Passed the council unanimously.

Signed July 28, 1893, Tahlequah, Ind. T.

E. B. WRIGHT,
E. C. BOUDINOT,
H. C. BARNES,
W. A. DUNCAN,
AARON TERRELL,
ANDREW J. GRIFFIN,
Committee.

Approved July 28, 1893.

W. H. HENDRIX,
President of Old Settler Council.
J. M. BRYAN, JR.,
Secretary of Old Settler Council.

I do hereby certify that the four foregoing pages is a true and correct copy from the original, letter for letter and word for word.

In testimony whereof I have hereunto set my hand and official seal this 10th day of August, A. D. 1893.

[SEAL.]

J. W. DRAKE,
Notary Public, First Division, Indian Territory.

MEMORANDUM OF AGREEMENT.

This memorandum of agreement, made this 25th day of July, 1893, by and between Joel M. Bryan, of Chouteau, Indian Territory, commissioner and treasurer of the "Old Settlers," or Western Cherokee Indians, who makes this agreement on their behalf under authority conferred upon him by the said "Old Settlers," or Western Cherokee Indians, by resolution adopted at their regular annual council held on the 17th day of November, 1881, and at various councils held thereafter, empowering him to employ attorneys at law to assist in the prosecution of the claim of the said Indians against the United States arising under the treaties of 1828, 1833, 1835, and 1836, of the first part, and John T. Heard, attorney at law, of Sedalia, Missouri, of the second part,

Witnesseth, That whereas the said Joel M. Bryan, as commissioner and treasurer aforesaid, acting under the authority aforesaid, and on behalf of the "Old Settlers,"

or Western Cherokee Indians, did heretofore employ the said John T. Heard to assist in the prosecution of the said claim of the "Old Settlers," or Western Cherokee Indians, against the United States before the Congress and the Court of Claims; and

Whereas the said John T. Heard did, under the said employment, render great and valuable services before the committees of Congress in procuring the reference of the said claims by Congress to the Court of Claims, under the Bowman Act, and in prosecuting the said claim in the Court of Claims when there tried under said reference by Congress, in 1885, and did aid in procuring from the said Court of Claims a report to Congress of the facts in the said claim; and

Whereas in consideration of the said services, the said Joel M. Bryan, commissioner and treasurer aforesaid, acting for and in behalf of the "Old Settlers," or Western Cherokee Indians, under authority conferred as aforesaid, did agree, by the memorandum of agreement in writing attached hereto, of date February 27th, 1885, to pay to the said John T. Heard compensation for the said services so rendered according to the method prescribed therein; and

Whereas the said memorandum of agreement of February 27, 1885, was not drawn in conformity with the technical requirements of section 2103 of the Revised Statutes of the United States, and, therefore, not in proper form to be approved by the honorable Commissioner of Indian Affairs; and

Whereas the said "Old Settlers," or Western Cherokee Indians, desire to compensate the said John T. Heard for the valuable services rendered to them, and to secure the approval of the Interior Department of their agreement to make such proper compensation:

Now, therefore, it is agreed by the party of the first part, acting on behalf of the "Old Settlers," or Western Cherokee Indians, under authority conferred upon him by resolution as aforesaid, and the party of the second part that the said party of the second part shall receive, for the services rendered as aforesaid, the sum of ten thousand dollars (\$10,000.00), the said sum of ten thousand dollars to be paid out of the thirty-five (35) per cent upon the amount which shall be appropriated to satisfy the judgment of the Supreme Court of the United States in favor of the said "Old Settlers," or Western Cherokee Indians, which 35 per cent has been set apart by resolution in various annual councils of said "Old Settlers," or Western Cherokee Indians, for such purposes.

It is further agreed by the parties of the first and second parts that this contract shall run for a period of five (5) years.

It is further agreed by the parties hereto that this contract shall be in lieu of and as a substitute for the said contract entered into between the parties of the first and second parts hereto on February 27, 1885, hereto annexed.

In witness whereof we, the said parties, have hereunto set our hands and seals this 25th day of July, 1893, at

J. M. BRYAN,
As Commissioner and Treasurer of the "Old Settlers," or Western Cherokee Indians.
JNO. T. HEARD.

I, Chas. B. Stuart, judge of the U. S. court, Indian Territory, do hereby certify that the foregoing contract was signed and executed in my presence at Muscogee, on the 25th day of July, 1893, by Joel M. Bryan and John T. Heard in person; that all the above are interested parties to said contract, as was stated to me at the time of the signing thereof, and that no other persons were then present, and that the said Bryan claimed power to contract for and in the name of the "Old Settlers," or Western Cherokees, by virtue of the authority vested in him by the "Old Settlers," or Western Cherokees, so to do.

In witness whereof, I have hereunto set my hand and the seal of the said court this 25th day of July, 1893.

CHAS. B. STUART,
Judge.

AGREEMENT TO PAY FOR PROFESSIONAL SERVICES RENDERED FOR THE "OLD SETTLER" CHEROKEES.

The following agreement, made this the 27th day of February, A. D. 1885, by Joel M. Bryan, as the commissioner and treasurer of the "Old Settler" or Western Cherokee Indians (and who, as such commissioner and treasurer, is duly authorized and empowered by a resolution adopted by the regular annual council of said Indians, held on the 17th day of November, A. D. 1881, to employ such attorneys at law to assist in the prosecution of the claim of said Indians against the United States hereinafter mentioned, and to contract therewith in writing for their services actually rendered,

and at such compensation as he may deem proper and for the best interests of said Indians), with John T. Heard, an attorney at law, of Sedalia, in the State of Missouri, as follows: Whereas the said Joel M. Bryan, as commissioner and treasurer as aforesaid, did heretofore employ the said John T. Heard as an attorney at law to assist in the prosecution of the claim of the said "Old Settler" or Western Cherokee Indians against the United States arising from and growing out of treaty stipulations and the laws of Congress relating thereto, before the appropriate committees of Congress and the Court of Claims; and whereas the said John T. Heard, as such attorney under said employment, has heretofore rendered valuable services for said claimants before said committees of Congress and the Court of Claims, for which he has received no compensation; and whereas at the time of his employment, as aforesaid, by the said Bryan, as such commissioner and treasurer, as aforesaid, no written agreement was executed and given to him by said Bryan as such commissioner and treasurer, as aforesaid, stipulating the amount of compensation he, the said Heard, should receive from said claimants for his services in their behalf, as aforesaid: Now, therefore, the said Joel M. Bryan, as such commissioner and treasurer, for and on behalf of said "Old Settler," or Western Cherokee Indians, hereby stipulates, promises, and agrees, with the said John T. Heard, to pay him for the services heretofore rendered by him for said Indians, as aforesaid, up to and including this date, the sum of twenty-two thousand and five hundred dollars (\$22,500.00), which said sum shall be in full for all his services rendered as aforesaid, and which shall be paid out of the proceeds of said claim when the same shall be collected: *Provided*, That, in case a sum, of principal, less than two hundred and sixty-six thousand nine hundred and ninety-four $\frac{7}{100}$ dollars shall be collected on said claim, then the said compensation to be paid to the said Heard shall be reduced proportionately; but in case a greater sum, of principal, than that last mentioned, shall be collected on said claim, then the said compensation, to be paid said Heard, shall be increased proportionately.

In testimony whereof the said Joel M. Bryan, as the commissioner and treasurer, as aforesaid, has hereunto set his hand this the day and year first above written.

J. M. BRYAN,

As Commissioner and Treasurer of the "Old Settler" or Western Cherokee Indians.

JNO. T. HEARD.

Attest:

W. W. WILSHIRE,

