

TRANSFER OF JURISDICTION OVER INDIAN AFFAIRS.

L E T T E R

FROM

THE SECRETARY OF THE TREASURY,

RELATIVE TO

The transfer to the Interior Department of jurisdiction over certain Indian affairs now exercised by the Treasury Department.

FEBRUARY 19, 1868.—Referred to the Committee on Indian Affairs and ordered to be printed.

TREASURY DEPARTMENT,

February 18, 1868.

SIR: The supervision of matters relating to Indian affairs belongs, under the fifth section of the act of March 3, 1849, (9 Stat., 395,) to the Secretary of the Interior. There are, however, two subjects under this head that have been and still are controlled by the Secretary of the Treasury:

1st. *The Chickasaw national fund*, created by the eleventh article of the treaty of Pontotoc, October 20, 1832. The Secretary of the Treasury was made the custodian of this fund, by order of the President, in March, 1833, and charged with the duty of making investments by subsequent regulations, established in November, 1835. Copies of those documents are enclosed herewith. The securities belonging to this fund have been ever since held by the Treasury Department; all other securities of Indian funds are in the custody of the Interior Department, and I know of no reason why these should form an exception. On the contrary, there are, in my judgment, many potent and obvious reasons why all Indian affairs should be administered by a single department.

2d. *Interest payable Cherokees of North Carolina*. The act of 29th of July, 1848, section 4, (9 Stat., 265,) required the Secretary of War to prepare a list of Cherokees remaining in North Carolina, under the twelfth article of the treaty of New Echota, December 29, 1835, (7 Stat., 483,) and the Secretary of the Treasury to set apart \$53 33 for every individual named in such list, as a permanent trust fund, and annually to pay the interest on the same at six per cent. Interest has been paid by the Treasury Department, accordingly, up to July 29, 1859; since then no payments have been made, owing to causes growing out of the late war.

By the same act of 1848, section 5, provision was made for a withdrawal from this fund of individual portions for a specific purpose by the Secretary of War, under certain circumstances; and that power was by the act of 1849, above cited, transferred from the Secretary of War to the Secretary of the Interior. Subsequent legislation (10 Stat., 701) conferred additional powers upon the Secretary of the Interior, with a view to extinguish the fund by payment of the

principal, but I am not aware that any actual reduction has taken place. Up to the time when payments ceased, the roll upon which they were made by this department continued to bear all the names originally placed upon it.

Many inconveniences naturally attend such a divided jurisdiction, and the question of payment of arrears of interest coming up a year ago, it was proposed to the Secretary of the Interior to take full charge of the whole matter, as it was thought he might properly do under the organic act of his department. He was, however, of the opinion that he could not legally do so, and no change has consequently been made.

I need not enlarge upon the propriety of uniting all these duties in a single department, nor upon the manifest impropriety of permitting the Secretary of the Treasury to exercise functions within the appropriate sphere of the Secretary of the Interior. A form of a bill is herewith submitted, designed to do away with the existing anomaly, and is respectfully and earnestly commended to favorable attention.

Very respectfully,

H. McCULLOCH,
Secretary of the Treasury.

HON. SCHUYLER COLFAX,
Speaker of House of Representatives.

The Secretary of War has the honor to submit to the President of the United States the following project for carrying into effect the treaty concluded with the Chickasaw Indians, on the 20th and 22d days of October, 1832 :

1. That the lands ceded by said treaty be surveyed under the direction of the Commissioner of the General Land Office, in the same manner as the public lands of the United States are surveyed ; and that in the execution of this duty the said Commissioner be governed by the acts of Congress, and by the rules and regulations of the Treasury Department respecting the survey of the public lands, so far as the same shall be applicable and not inconsistent with the provisions of the said treaty.

2. The said lands shall, in like manner, be sold in the same mode as is now provided by law and Treasury regulations for the public lands of the United States, subject to the treaty limitations before named.

3. All the necessary accounts, records, documents and files of papers shall be kept separate and apart from all other papers in the office of the said Commissioner ; and the said Commissioner shall audit and adjust the accounts thereof quarterly, and shall submit the same to the First Comptroller of the Treasury for his approbation and decision.

4. In the performance of the duties hereby required, the Commissioner of the General Land Office will be governed by such instructions as he may from time to time receive from the President of the United States through the Secretary of War.

5. All moneys received from the sales of the said land shall be deposited by the receiver to the credit of the Treasurer of the United States, and a special account thereof shall be opened and kept on the books of the treasury ; and all such funds shall be paid by the said Treasurer on the warrant of the Secretary of the Treasury, in pursuance of a requisition from the Secretary of War.

6. Accurate accounts shall be kept in the War Department of the receipts and disbursements under the said treaty ; and all appropriations made by Congress to carry the said treaty into effect shall be charged to the proceeds of the said treaty, and refunded therefrom.

7. The Commissioner of the General Land Office is authorized to allow the sum of \$250 per annum to such clerk as he shall designate to take charge of the

surveys, township plats, and other documents, returns and accounts of the survey of the said land, and the sum of \$250 to such other clerk as he shall designate to superintend the lands sold, and the adjustment of the same, which sums shall commence as soon as the respective duties of said clerks commence.

8. Such other contingent expenses as may be necessary in the execution of the duties hereby enjoined, such as the purchase of books, papers, parchment, stationery, printing, furniture, &c., will be allowed by the Secretary of War to be charged to the proceeds of said lands.

9. Should the prosecution of these duties require other clerks, provision therefor will be made when necessary by the Secretary of War.

10. Semi-annual statements of the receipts and expenditures of the said fund, and of all proceedings under the said treaty, will be submitted by the War Department to the President of the United States for his consideration, and likewise for transmission to the said Chickasaw tribe, for their information and satisfaction.

11. These regulations are founded upon the duty of the Executive to carry into effect the treaty with the Chickasaws. The United States having undertaken to receive the funds arising from the sale of the lands ceded thereby, and to vest a portion of the same in some productive stock, for their use, are responsible for the safety and application of the money; so far, therefore, as respects its receipt, accountability and disbursement, it may be considered in the same light as other funds of the government, and temporarily subject to the same management.

It follows that no officer executing any duty prescribed by these regulations will be entitled to or receive any percentage or other emolument or compensation therefor, with the exception of such clerks as may be necessarily employed, and whose allowance will be previously fixed by the Secretary of War.

12. Such other regulations as may from time to time be found necessary, in order to carry into execution the said treaty, and to insure the faithful application of the funds created by it, shall be submitted by the Secretary of War to the President of the United States for his consideration and approval.

LEWIS CASS.

DEPARTMENT OF WAR, *March 23, 1833.*

Approved March 23, 1833:

ANDREW JACKSON.

WAR DEPARTMENT, *November 22, 1833.*

SIR: In conformity with your verbal suggestion, I have the honor to enclose a copy of the regulations, approved by the President, for the execution of the Chickasaw treaty.

Very respectfully, yours,

LEWIS CASS.

Hon. R. B. TOUCEY,
Secretary of the Treasury.

Additional instructions for carrying into effect the Chickasaw treaty of July 1, 1834.

1. The accounts of receipts from the sales of the Chickasaw lands, and the instructions, correspondence, &c., with registers and others concerning them, will be kept in separate books in the Treasury Department, by a clerk who will perform the whole duty, and who will also prepare and attend to all letters

concerning the investment of funds derived from the sales of said lands; and the duty of investing the same is hereby assigned to the Secretary of the Treasury, under such special directions as may be hereafter given by the President of the United States.

2. The said clerk will also keep a record of all the investments from time to time, their amounts, cost, character, &c., and will file certificates of stock with the Treasurer of the United States for safe keeping. He will be appointed by the Secretary of the Treasury, and will receive for the performance of his duties the annual compensation of two hundred and fifty dollars, which will commence on the first of January next.

3. Semi-annual statements of the said fund will be submitted by the Secretary of the Treasury to the President, which will exhibit the amount of said funds on hand, the character of the stock, and when redeemable, its cost and actual and par value, and amount of dividends on hand.

4. A similar statement will be semi-annually forwarded by the Secretary of the Treasury to the Secretary of War, which will also show the receipts and expenditures under the said treaty, and the balance of principal and interest then due to the Chickasaws, which statement will be transmitted through the proper agent to the Chickasaw chiefs for the information of their people, agreeably to the eleventh article of the said treaty.

5. As soon as dividends are at any time received, the Secretary of the Treasury will advise the Secretary of War thereof, who will annually issue a requisition for the amount, and cause the same to be paid to the Chickasaws at their expense, in the same manner as Indian annuities are paid.

Submitted for the approval of the President :

LEWIS CASS.

WAR DEPARTMENT, *November 4, 1885.*

Approved November 4, 1835 :

ANDREW JACKSON.

DECEMBER 23, 1835.

To the Senate of the United States:

I hereby submit for the advice and sanction of the Senate the enclosed proposal by the Secretary of the Treasury for the investment of the proceeds of the sales of lands in behalf of the Chickasaw Indians, under the treaties therein mentioned.

ANDREW JACKSON.

TREASURY DEPARTMENT,
December 23, 1835.

The Secretary of the Treasury, under the authority specially devolved on him as to the investment of the money in behalf of the Chickasaw Indians from the sales of land under the treaties concluded at Pontotoc, October 20, 1832, and at Washington city, May 24, 1834, has the honor to submit the following propositions for the consideration and sanction of the President, and (if deemed requisite) of the Senate of the United States :

First. That the money, soon as the sales take place and their proceeds can be transmitted without expense to the proper points for use, be invested in such State bonds or State stocks as are at or above par in the market; provided, the investment can be made in such mode as probably to yield an increase or interest at the rate of four and one-half per cent.

Second. In case such an investment at such rate cannot be made, that bank stock now at or above par may be purchased at the market prices; provided, it would at those prices probably yield five per cent.

Third. That a broker be employed at the usual rates for the purchase of stock and investment of said money whenever deemed necessary by the Treasury Department, and the evidences of said investment be deposited for safe keeping with the Treasurer of the United States, he giving the Secretary a receipt therefor, to be lodged with the other papers and records relating to the execution of said treaties.

All of which is respectfully submitted.

I have the honor to be your obedient servant,

LEVI WOODBURY,
Secretary of Treasury.

IN THE SENATE OF THE UNITED STATES,
January 20, 1836.

Resolved, The Senate do advise the President, and hereby consent, that he have the moneys arising from the sales of the Chickasaw lands, and which are or may be due to said nation of Indians, invested in stock in the manner and at the periods proposed by the Secretary of the Treasury in his communication to the President, dated December 23, 1835, and by him transmitted with his message to the Senate under the same date.

Attest:

WALTER LOWRIE,
Secretary.

Referred to the Secretary of the Treasury to be carried into effect.

ANDREW JACKSON.

JANUARY 21, 1836.

TREASURY DEPARTMENT,
April 23, 1867.

SIR: In relation to the matter of payment of interest to Cherokee Indians in North Carolina, under the act of 29th July, 1848, regarding which oral communication was had with you a few days since, I would say that in accordance with the provisions of the said act, there was prepared, by J. C. Mullay, in 1849 or 1850, a list comprising the names (1,516 in number) of all who were entitled to the benefits of the fourth and fifth sections of the act, and that by this list, the original of which is understood to be on file in the office of the Commissioner of Indian Affairs, all payments have been regulated.

Advances have been made for the payment of the interest up to the 29th July, 1859, substantially upon the principles laid down in the instructions given to the first agent intrusted with the matters, a copy of which is herewith transmitted; but in consequence of the late troubles in that region, the agent employed to make the more recent disbursements prior to that date has rendered no final account of them, though he asserts that they have been made.

During the war of course no payments were made, but within the past year an agent, Mr. Powell, has been despatched to North Carolina to prepare a roll on which payment might be made to such Cherokees as have remained loyal throughout.

A copy of the report of this agent is herewith transmitted; the roll which he has prepared is on file at this department, but for its accuracy I am unable to speak, since it has not been compared with the roll of Mullay, which is the only

authorized basis of settlement. Thus far the matter has been subject to the control of this department, but I now propose, if you consent, to yield up to your department all control over the ascertainment of the parties entitled, and the payments hereafter to be made. All matters of that nature relating to Indian affairs are subject to your supervision, and I am unable to perceive in the law of 1848 anything which can have the effect to place this matter beyond the reach of the provisions of the act of March 3, 1849, whereby (section five) all payments of money out of the treasury on account of Indian affairs are required to be made on requisitions signed by the Secretary of the Interior.

This, as far as I am informed, is the only anomalous case, and I shall be happy to transfer it formally to you with the documents pertaining thereto, whenever you shall signify your readiness to receive it.

As an additional reason for making the transfer at once, I may say that it is understood that some of these Indians desire to avail themselves of the provisions of the fifth section of the act of 1848, and to remove to the west, and the superintendence of such removal would necessarily belong to your department.

I am, sir, very respectfully,

H. McCULLOCH,
Secretary of the Treasury.

HON. O. H. BROWNING,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 30, 1867.

SIR: I have the honor to acknowledge the receipt of your letter of the 23d ultimo, in relation to the payment of interest to the Cherokee Indians in North Carolina, under the act of July 29, 1848, and the transfer to this department of all control over the ascertainment of the parties entitled thereto, and the payment hereafter to be made. The 4th section of that act (Statutes at Large, vol. 9, p. 264) is in these words: "And be it further enacted, That the Secretary of War cause to be ascertained the number and names of such individuals and families, including each member of every family of the Cherokee nation of Indians that remained in the State of North Carolina at the time of the ratification of the treaty of New Echota, May twenty-three, eighteen hundred and thirty-six, and who have not removed west of the Mississippi, or received the commutation for removal and subsistence, and report the same to the Secretary of the Treasury, whereupon the Secretary of the Treasury shall set apart, out of any moneys in the treasury not otherwise appropriated, a sum equal to fifty-three dollars and thirty-three cents for each individual ascertained as aforesaid, and that he cause to be paid to every such individual, or his or her legal representatives, interest at the rate of six per cent. per annum on such per capita, from the said twenty-third day of May, eighteen hundred and thirty-six, to the time of the passage of this act, and continue annually thereafter said payment of interest at the rate aforesaid." The duty of causing the payment to be made to the parties thereunto entitled is thus specifically devolved upon the Secretary of the Treasury, and I have serious doubts whether it can be devolved upon the Secretary of the Interior without authority from Congress.

The act of 1849, organizing this department, confers upon the Secretary of the Interior in regard to Indian affairs, and signing requisitions for the advance or payment of money out of the treasury on estimates or accounts, no power other or greater than that which had been theretofore vested in the Secretary of War.

It cannot, in my opinion, be construed as modifying the act of 1848, and I

respectfully submit that it has no bearing upon the question. Such has been the practical construction given to the act. All such payments to these Indians have been made by an agent appointed by and responsible to the Secretary of the Treasury, and Congress, by the acts of May 31st and August 3d, 1854, (Statutes, vol. 10, pp. 291 and 558,) appropriated funds to enable him to compensate the agent.

I have the honor to suggest that no change or transfer of the business in question be made until the requisite legislation be obtained. This department will cheerfully co-operate in inviting the attention of Congress to the subject.

I am, sir, very respectfully, your obedient servant,

W. T. OTTO, *Acting Secretary.*

Hon. HUGH McCULLOCH,
Secretary of the Treasury.

A BILL to transfer to the Department of the Interior certain powers and duties, now exercised by the Secretary of the Treasury, in connection with Indian affairs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the powers and duties devolving upon the Secretary of the Treasury under and by virtue of the fourth section of the act entitled "An act making appropriations for the current and contingent expenses of the Indian department, and for fulfilling treaty stipulations with the various Indian tribes, for the year ending June thirtieth, eighteen hundred and forty-nine, and for other purposes," approved July 29, 1848, and the powers and duties devolving upon him under and by virtue of the laws relating to the investment of the money, in behalf of the Chickasaw Indians, from the sales of land under the treaties concluded at Pontotoc, October 20, 1832, and at Washington city, May 24, 1834, as also all other supervisory and appellate powers and duties in regard to Indian affairs which may now by law be vested in the said Secretary of the Treasury, shall, from and after the 1st July, 1868, be exercised and performed by the Secretary of the Department of the Interior.