

MEMORIAL
OF
THE LOYAL CREEK INDIANS

WITH REFERENCE TO

The awards made to those Creeks who enlisted in the Federal Army, loyal refugees and freedmen, and asking the action of Congress upon that subject.

FEBRUARY 24, 1885.—Referred to the Committee on Indian Affairs and ordered to be printed.

To the Senate and House of Representatives of the United States of America in Congress assembled:

The undersigned, loyal Creek Indians of the Creek Nation, are charged by those loyal Creeks who enlisted in the Federal Army, loyal refugees and freedmen, with the duty of presenting and urging upon the attention of Congress the claim of those individuals against the United States, by virtue of an award made to them by a commission composed of the agent of the Creeks and the superintendent of Indian affairs for the Southern superintendency, which award was duly approved by the Commissioner of Indian Affairs and the Secretary of the Interior. To accomplish that object, we beg leave to present this memorial, and thus respectfully, but earnestly, urge Congress to pay said awards and thereby not only do that justice promised by our treaties, but relieve our people and enable them to pursue their efforts of civilization and progress.

A short history of the Creek Nation becomes necessary to show the reasons for their views, to explain their conduct, and to show the security they felt in the treaty of 1856, that the legality of the claim shall be beyond controversy, and its equity be startlingly apparent.

While the Creek Nation was in Alabama it was divided into two bands and known as the Upper and Lower Creeks, but better known among the nation as the McIntosh and Ho-po-thle-ya-ho-la bands. In the war of 1814 the McIntosh band joined the forces of the United States, and fought and conquered the Ho-po-thle-ya-ho-la band. At that time our nation was comparatively uncivilized, with no property save ponies and huts. Yet at the conclusion of that war the Congress of the United States paid the individuals of the McIntosh band \$195,000 for the loss of property, which they sustained by reason of their joining the forces of the United States and making war upon the Ho-po-thle-ya-ho-la band; this, too, without any treaty stipulations requiring it. Our nation subsequently removed to their present locality. In the traditionary history of all their councils it is clearly shown that the subject which engaged their attention most was how to obtain guarantees from the United States for protection against domestic violence

and aggression from other Indians or white men, and to secure indemnity for losses sustained, if any should occur. Their hopes were consummated in the treaty of 1856, by the insertion of article 18 of the treaty, as follows, to wit :

The United States shall protect the Creeks and Seminoles from domestic strife, from hostile invasion, and from aggression from other Indians and white persons not subject to their jurisdiction and laws; and for all injuries resulting from such invasion or aggression, full indemnity is hereby guaranteed to the party or parties injured out of the Treasury of the United States, upon the same principles and according to the same rules which white persons are entitled to indemnity for injuries or aggressions upon them, committed by Indians.

The last clause of this article brings the Indians within the jurisdiction of the act of June 30, 1834, known as the intercourse law. That law provides, in substance, that where a white person shall have his property stolen or destroyed by an Indian, such white person shall receive full pay therefor out of the annuities of the nation of Indians to which the Indian or Indians belong who stole or destroyed the property; but if they have no annuity, then out of the Treasury of the United States.

If, then, upon this principle and this rule the United States agrees to pay this indemnity to the Creeks and Seminoles, it must be paid out of the Treasury of the United States. Or, if our people are to come under sections 2154 and 2155 of the Revised Statutes (compiled section of act of 1834), still it must be paid out of the Treasury of the United States. For those sections provide, in substance, that where a white person shall be convicted of the commission of any offense against an Indian, he shall be sentenced to pay double the value of any property stolen or destroyed; and if the person cannot be convicted the individual Indian whose property has been stolen or destroyed shall receive pay therefor out of the Treasury of the United States. But such individual Indian shall not receive pay for such losses if he or any member of the tribe to which he belongs has committed any act of revenge of which his misfortune was the result. Those Creeks who enlisted in the Federal Army, loyal refugees and freedmen, are clearly entitled to indemnity within the provisions of these sections, for they lost their property mostly by those white persons whose cause they have espoused, as will more clearly appear hereafter, none of the nation having committed any act of hostility against the whites for revenge.

In 1861, contrary to the treaty stipulations, the United States withdrew all protection from the Creeks, and to obtain that protection which the United States had guaranteed, a part of the Creek Nation treated with the so-called Southern Confederacy; and this, too, was the McIntosh band, which, in the war of 1814, joined their fortunes with the United States against the Ho-po-thle-ya-ho-la band, while the Ho-po-thle-ya-ho-la band, relying in good faith upon the guarantees of their treaty with the United States of 1856, separated from their brothers, leaving homes, property, and country, sought the lines of the Federal Army for that protection which they had failed to receive at home. All the able-bodied men of those who went north joined the Federal Army, leaving the old men, women, and children to be cared for by the agents of the United States.

The following extracts in addition to the guarantees of the treaty of 1856, which induced these loyal Creeks to abandon their homes and property and enlist in the cause of the Union :

By the papers inclosed you will also see that "a talk" has already been had with some of these chiefs, who represent the Seminoles, Chickasaws, and Creeks, and that they have fully set forth the artifices by which they have been deceived, and express

the belief that the Indians will readily continue their dependence upon the United States when persuaded that the Government is still maintained, and that it will not only give them all necessary protection, but faithfully perform all its treaties with them, and as soon as its agents can be established in their midst will in good faith continue their annuities; upon which last point especially you are requested to give them the strongest assurances. It is particularly desired that this belief should be impressed upon their minds in the most effectual manner, so that upon their return to their tribes they may report the facts. And it is believed that by this means the falsehood and deception practiced upon them by the agents of the rebellious States may be successfully exposed. You will, of course, understand the importance of having this promptly done, because, if it is not, these deluded people may be induced to join the Confederate forces and take up arms against the United States. The President's consciousness of this fact has prompted him to indicate you as the most suitable person to do this; an opinion in which I fully concur. (See report of the Commissioner of Indian Affairs for the year of 1861, page —.)

Also the following :

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
June 5, 1862.

SIR: I return herewith a resolution adopted by the House of Representatives, in the following words, calling for information from you relative to the Southern Refugee Indians who are now in Kansas; which resolution was, on the 29th instant, referred by you to this office for the information sought.

I cannot, perhaps, better give the information desired than by reporting the action of this office more or less in detail. On the 9th day of January last I received information that the disloyal Indians in the territory west of Arkansas, aided by a considerable force of white troops from Texas and Arkansas, had attacked the Union or loyal Indians of that territory.

The Union Indians, as nearly as I could ascertain, were composed of three fourths of the Creeks, one-half or two-thirds of the Seminoles, and members from all other tribes in said Territory, except, perhaps, the Choctaws and Chickasaws, of whom very few, if any, adhered to the Government.

Notwithstanding the abandonment of all the forts of the Territory by the United States troops, and treachery of the superintendent and agents first appointed by the present Administration, these Indians stood firmly to their treaty obligations with the United States, and under the renowned Ho-po-thle-ya-ho-la met their opponents upon the battle-field. Twice they succeeded in repulsing the combined forces of whites and Indians arrayed against them, but in the third battle, which took place early in January last, they were defeated and compelled to flee from the country with their families, leaving everything in the way of property that would impede their flight. They reached Kansas about the middle of that month. When in December last, and previous to any knowledge of their defeat, I learned of the noble struggle then being made by Ho-po-thle-ya-ho-la and the Creeks, Seminoles, and other Indians under him. I renewed through you my application to the War Department for troops for their relief, which resulted in authority being given to General Hunter to organize and arm four thousand loyal Indians, to accompany the expedition then proposed to be sent into the Indian country under General Lane. On the 3d day of January last I received your communication (copy herewith marked A), authorizing me to assist General Hunter in the organization of these Indians. After advising with the President and yourself I proceeded to Fort Leavenworth, in Kansas, which point I reached late in January last.

On my arrival I was informed by General Hunter that Ho-po-thle-ya-ho-la had been defeated, and was, with five or six thousand of his people, in Southern Kansas in a most deplorable condition—men, women, and children naked, starving, and without shelter. Numbers of them had been wounded in battle, and very many being bare-footed, and otherwise exposed, were badly frozen. The sick and feeble, the dead and dying, were scattered along their route for a hundred miles or more. I had no information until I reached Kansas of these disasters.

On the 6th day of February I received a communication from General Hunter, with accompanying documents (copies herewith marked B, C, D), advising me that he could only supply the people with provisions temporarily; that the provisions made by the officers under his command for their support would be exhausted by the 15th day of February, and from that time I would be expected to make provision for them. I could but feel that the responsibility was great. The numbers had been accumulating, until it was estimated that they amounted to eight thousand to be provided for, and these lying upon the ground, which was covered with snow and ice, and the weather intensely cold. General Hunter advised me that he had no authority to furnish them clothing, but that Superintendent Coffin, acting under his advice, had purchased some \$10,000 worth of blankets and other necessaries. It will be seen that

this purchase amounted to no more than \$1.25 to \$1.50 for each person, and left them about as destitute as before. They were, therefore, not only to be fed, but also clothed. I had no funds applicable to the purpose, and was powerless to relieve them except by purchases made on the faith of an appropriation to be at the discretion of Congress. The superintendent was in Southern Kansas, so that I could not consult or reach him with instructions as to the immediate wants of the Indians. I therefore appointed Dr. William Kile, of Illinois, who, being commissioned by the President to act upon General Lane's staff, was then in Kansas, and had been detailed by that officer as brigade quartermaster, as a special agent to act temporarily in supplying the necessities of these wards of the Government (see copy of instructions herewith, marked E). On the same day I telegraphed to you as follows: "C. B. Smith, Secretary of the Interior: Six thousand Indians driven out of Indian Territory naked and starving. General Hunter will only feed them until 15th. Shall I take care of them on the faith of an appropriation?" To which I received the following reply: "Go on and supply the destitute Indians. Congress will supply the means. War Department will not organize them." I was also advised by you that difficulties had arisen in the way of organizing Indians into the Army; that General Lane's expedition had been countermanded, but that it was not expected that it would be abandoned, but would go forward under command of General Hunter, with whom I arranged verbally for the protection of the Indians to their homes whenever it should proceed.

On my return to Washington I advised you fully as to the condition of these people, and then learned that Congress had authorized the application of their annuities to their relief. Still, being anxious that they should immediately return to their homes, in order to plant crops in season for their support during the coming year, I again, with your hearty concurrence, urged upon the War Department the propriety of arming a home guard of Indians, who, with a sufficient escort of white troops, should return with these people to their homes and protect them there while raising a crop. This resulted in an order from the War Department to General Halleck, directing him to detail two regiments of white troops to accompany two thousand Indians, to be armed for the purpose above stated. I also obtained an order upon the commandant at Fort Leavenworth for two thousand rifles, and suitable ammunition to arm the two thousand Indian home guards. That there might be no delay in the execution of these orders, Judge Steele was appointed a special messenger to bear them to their destination. What action was taken by General Halleck, under the order delivered to him, I am unable to say. The order for the rifles and ammunition was honored at Leavenworth, and on the 16th of April they were delivered to the superintendent in Southern Kansas.

For some time but little was heard of the expedition, but on the 16th day of May I received a communication from Colonel Furnas, of the First Indian Regiment, inclosing an order issued by General Sturgis, for the arrest of all officers and others engaged in executing the order of the War Department relating to Indian home guards. I mention these particulars to show that I had reason to consider these people as only temporarily in Kansas, and to expect from week to week that they would be on their way home.

After the order to arrest the officers engaged in organizing the Indian home guards, the changes in the command of the Kansas military department were so rapid that I have been unable to keep pace with the proceedings; but, from the best information I have, I believe the expedition, if not already started, will soon be en route for its destination.

Superintendent Coffin estimates the per diem expense of subsisting these Indians at 15 cents each. An estimate furnished to me by Captain Turner, chief of the commissary department at Fort Leavenworth, was the basis of my instructions to Agent Kile and Superintendent Coffin. (In this connection, see paper marked F.) Learning that Mr. Collamore was in this city, and had recently visited these Indians and made careful investigation as to their number and condition, and believing that information derived from him would be reliable, as at the commencement of the rebellion he was selected as State agent and quartermaster, to provide subsistence and forage for the Kansas troops, I have procured from him a report of the numbers and the various tribes comprising these refugees, and his estimate of the cost of clothing and subsistence necessary for a given time, a copy of which is herewith, marked G. I have no means other than the estimates to even approximate the daily expense of feeding and clothing these Indians. Some \$25,000 of accounts for purchases have been forwarded here, examined, and paid. From \$50,000 to \$55,000 have been forwarded to Superintendent Coffin, but no account of his disbursements has yet reached me, though I learn by telegraph that his accounts for the past quarter are on the way. I have, as instructed by you, ordered the accounts for the present quarter to be forwarded to this office for examination before payment.

Special Agent Kile is still employed under his original instructions, as I have seen no reason to change them, and do not know what day the removal of the Indians will enable me to dispense with his services.

For your information I will state the mode of distributing the articles purchased, whether of clothing or provisions. Agent Kile makes no disbursements but turns over to Superintendent Coffin all purchases, taking his receipt therefor. No claims or account is allowed except such as are certified by Agent Kile and Superintendent Coffin. Mr. Culter, of Kansas, agent for the Creeks, Mr. Coleman, of Indiana, agent for the Choctaws and Chickasaws, Mr. Chatterton, of Illinois, agent for the Cherokees, Mr. Shaw, of Indiana, agent for the Seminoles, and Mr. Carruth, of Kansas, agent for the Wichitas, are upon the ground, acting as commissaries for their respective tribes, and to them the goods are delivered for distribution by Superintendent Coffin, he taking their receipts for the same. When funds are in the hands of Superintendent Coffin he may pay accounts; otherwise they are forwarded to the office for adjustment; and in this connection it is proper to state that all expenses incident to the support and relief of these Indians are paid from their annuities, under authority of the act of Congress above mentioned.

Very respectfully, your obedient servant,

WM. P. DOLE,
Commissioner.

Hon. C. B. SMITH,
Secretary of the Interior.

During the entire war none of the annuities were paid for any purpose designated by treaty, but all their annuities, with those of other Indian nations, were gathered into one vast sum and used for the purpose of feeding and clothing refugees from the Indian country. The Indians were poorly clothed and poorly fed, but they bore this without complaint. All that was done with reference to the diversion of annuities from 1861 to 1866, inclusive, was done without authority of treaty, and had to be remedied by treaty, which was made in 1866. The Creeks had been in their country for a long time, and in lieu of being uncivilized they were comparatively civilized. They had good houses, large farms, inclosed with good fences; they had immense herds of cattle and horses, and all the comforts and many of the luxuries of civilized life. They could have gone with the McIntosh band and saved all their property; but they chose obedience to their treaty obligations and loyalty to that Government which had guaranteed protection to them and indemnity for all losses of property which they might sustain by so doing. Remembering that the individuals of the McIntosh band were indemnified for their losses when they joined the United States against the Ho-po-thle-ya-ho la band, when no law or treaty required it, they felt doubly secure when a positive treaty obligated the United States to do for the Ho-po-thle-ya-ho la band in this case that which they voluntarily did in 1814 for the McIntosh band.

Our houses were burned, our fences destroyed, and our fields laid waste by those who were hostile to us for going north, and our vast herds of cattle and horses were stolen and taken north and sold to feed and supply the Army of the United States, and to cattle-brokers to speculate upon our misfortunes. So extensive did this matter become that to read the report of Superintendent Sells, made to the Commissioner of Indian Affairs in 1865, you must conclude that in order to be respectable in those days men had to steal some Indian cattle. In that report he estimates the value of cattle stolen out of the Indian country and taken to be \$4,500,000. With this amount of property stolen (although we know he did not approximate to the value of the property which was taken north) and with the vast sum of annuities which were diverted during the six years, it became necessary that some settlement should be made to do justice to the loyal Indians, &c.

The expedient of a treaty was resorted to, and in 1866 our nation was requested to meet a commission of the United States for the purpose of making a new treaty. Those who had been south had returned; they were the most learned and sagacious in all such matters; they were sus-

picious of wrong-doing and sensitive for the welfare of the whole nation, but their counsels and protests were unheeded by the commissioners of the United States, while those who had been loyal to their treaty stipulations, and had been in the Army of the United States, confiding implicitly in the good faith of the United States, selected three delegates to represent them in the council to make a new treaty—three men, neither of whom could speak one word of English, and for an interpreter a freedman who could neither read nor write. Under these circumstances and with these delegates the treaty of 1866 was made and explained and signed. They forced us to sell nearly one-half of our national domain for less than half per acre than was paid the Cherokees and Osages for land not half as good. When it was discovered a wrong had been committed against the Osages the whole power of the Government was brought into requisition to do them full justice, but not so with the loyal Creek Indians. The \$100,000 to be paid to those who enlisted in the Federal Army, loyal refugees and freedmen, "proportionate to their losses," was explained to them to mean that it was only a payment in part; and the fourth article was explained to them to mean a manner by which their losses could be ascertained, and that they should be paid in full; that the eleventh article provided only a settlement of any controversy which might arise with reference to the annuities which had been diverted, or any kindred national claim; and that article 14 confirmed all their rights under article 18 of the treaty of 1856; under these circumstances they signed that treaty of 1866. Under article 4 of the treaty of 1866, the United States agent of the nation and the superintendent of Indian affairs for the southern superintendency made the investigation of the losses of the loyal Creek Indians. Those who had lost filed a statement of the precise property lost and its value, under oath, with these two officers. The amount of claims thus filed amounted to over \$5,000,000, the agent and superintendent acting as a commission on the part of the United States.

After a careful scrutiny of each claim an award was made of the amount due each individual, the aggregate of which was \$1,900,000. These awards were approved by the Commissioner of Indian Affairs and the Secretary of the Interior, and are now on file in the Department of the Interior. About 5 per cent. of this amount has been paid. The balance remains unpaid.

That the Ho-po-thle-ya-ho-la band of the Creek Nation were loyal to the United States is not denied; that they lost \$1,900,000 is the verdict of a Commission composed of United States officers, and that verdict is approved by the Commissioner of Indian Affairs and the Secretary of the Interior. The United States owe these individuals that sum of money, or the treaty of 1866 was made to protect the respectable thieves (as Superintendent Sells calls them in his report of 1865), and to leave these Indians in poverty and distress because they were Indians. The young men of the Ho-po-thle-ya-ho-la band joined the Federal Army, not as scouts or Indians, but as soldiers, and did valiant service, many of them giving their lives to the cause. They were swindled out of most of their bounty and first payment of their pension by an agent of the United States, but no reparation is made to the soldier, or widow, or orphan.

This award is in no sense a national claim, but an individual claim of the "party or parties" referred to in Article 18 of the treaty of 1856, and there is nothing in the treaty of 1866 with which it conflicts. That their claim is legal there can be no question; that all the equity is with them is beyond the shadow of a doubt. Their poverty in consequence

of their losses is more than oppressive; civilization has been retarded for years, and they almost look upon their present condition as a penalty for their loyalty. Therefore we ask in their behalf your early and favorable action upon the subject, and a settlement of the whole matter. We beg at your hands action upon this matter now, that the suffering of those who have lost may be relieved, and that the claim may not lie dormant for years, until the real sufferers are dead, and the claim, like many others similar to it, will be met with the complaint that it has become stale and therefore cannot be considered.

Finally, at the close of the late war, and before the treaty of 1866 was made, the United States was obligated by treaty to pay to the "party or parties" whatever they had lost by the "aggression of other Indians and white persons." By the "aggressions of other Indians and white persons" the Ho-po-thle-ya-ho-la band of the Creek Nation lost houses, their fences, and their farming implements; by the aggression of white men from Kansas and other border States they lost their vast herds of cattle and horses, and the United States had agreed to pay them by article 18 of the treaty of 1856, and in which these Indians felt perfect security. Those individuals of the Ho-po-thle-ya-ho-la band of Indians had a vested right in that contract which could not have been treated away without their consent or the full payment. The treaty of 1866 does not interfere with those vested rights, but confirms them. Article 4 of the treaty of 1866 provides a means by which the exact amount each individual had lost could be ascertained and guarantees payment therefor. Article 14 of said treaty confirms the existence of article 18 of the treaty of 1856. Under article 4 of the treaty of 1866, a commission was created to examine the claims and make an award. They did so after a most critical examination, and made an award to each individual, the aggregate of which was \$1,900,000. One hundred thousand dollars has been paid them out of the funds belonging to the nation; there is still due them \$1,800,000 out of the Treasury of the United States.

The United States paid the McIntosh band \$195,000 out of the Treasury for property lost, because of their loyalty in 1814. They had but little property to lose, and the United States were not required by law or treaty to pay them. The United States have paid the Ho-po-thle-ya-ho-la band only \$100,000, and this out of the fund belonging to the Creek Nation, for their loyalty, notwithstanding the fact of a treaty in which it is stipulated that all such loss should be paid out of the Treasury of the United States; the United States have acknowledged that at the lowest possible estimate their losses were \$1,900,000. Is the comparison a fair or just one? We in their behalf ask that it be paid and paid to the individuals who lost, or their legal representatives, a list of whose names is on file in the Department of the Interior, together with the amounts awarded.

That there may be early and favorable action is the prayer of your petitioners.

L. C. PERRYMAN,
FI E MAHT LA,

Representatives of the Loyal Creeks and Delegates of Creek Nation of Indians.