

MEMORIAL
OF
THE CHEROKEE DELEGATION,

PROTESTING

*Against the settlement proposed by the Commissioner of Indian Affairs
under the treaty of 6th August, 1846.*

JUNE 13, 1848.

Referred to the Committee on Indian Affairs, and ordered to be printed.

*To the honorable the Senate and House of Representatives of the United
States:*

The undersigned, duly appointed delegates from the Cherokee nation, would respectfully represent to your honorable bodies, that they were instructed by the general council of their nation to visit the city of Washington, in order to look after the interest of the Cherokees in the final settlement about to be made between them and the United States, as required by the treaty of 1846. This treaty guaranties that the United States shall make "a just and fair settlement" with the Cherokees, in relation to the expenditure of the amounts provided to be paid by the treaty of 1835, and the supplement of 1836, and the subsequent appropriations made by Congress to carry into effect the treaty of 1835. The undersigned had hoped and believed that the government of the United States would go into this settlement, if not in a spirit of liberality towards the Cherokees, at least with a spirit of fairness and justice; that the plain provisions of the treaty of 1846 would govern and control the settlement; and as, in their opinion, the whole matter depended upon a calculation of figures, that no difference of opinion would arise, and that both parties would agree upon the amount due the Cherokees under the treaty of 1835, as construed and explained by the treaty of 1846. In this respect, however, the undersigned have been grievously disappointed. The report of the Commissioner of Indian Affairs, as submitted to Congress by the President of the United States, so far from being, what it was required to be by the treaty of 1846, "a just and fair statement," &c., is nothing; or but little more, than an elaborate effort to prove that neither the commissioners on the part of the United States, nor the Cherokee delegates who negotiated that treaty, knew anything of the matters about which they were treating; and that so far as the government party of Cherokees are concerned, the treaty of 1846 is an absolute nullity, meaning nothing and settling nothing; or, in other words, that the plain provisions of the treaty of 1846 are to be set aside, because the Commissioner of Indian Affairs considers them incon-

sistent with the treaty of 1835, as he understands that treaty. The great effort of the Commissioner seems to have been not to "make a just and fair settlement," but so to mystify and confuse the facts of the case as to render the arrival at any conclusion, different from his own, exceedingly difficult, if not impossible, and to find the smallest possible amount to be due to the Cherokees. The undersigned are far from imputing improper motives to the Commissioner of Indian Affairs, for whom they have the highest respect; but they must be permitted to say that his views of the case are altogether one-sided, and cautiously expressed, so as to prevent a "just and fair settlement," as required by the treaty of 1846. Without attempting to follow the Commissioner through all his tortuous wanderings and attempts to get over the plainly expressed words and obligations of the treaty of 1846, the undersigned deem it only necessary to call the attention of your honorable bodies to the circumstances which brought about that treaty. It is well known that the treaty of 1835 was never sanctioned or approved by a large portion of the Cherokee people; that they repudiated its provisions, and opposed its execution, so long as it could be done without coming to open and undisguised hostility with the United States; and it was only submitted to from the necessity of the case, and from the pledges of the Executive of the United States, which, though not embodied in the form of a treaty, are equally binding upon the United States, that some of the constructions which had been placed upon that instrument should be essentially modified.

Under these pledges, reduced to writing, and now among the published documents of your honorable bodies, the emigration took place. On their arrival in the west, feuds between the different portions of the Cherokee nation, known as the old settlers, the treaty party, and the government party, sprang up, and seriously threatened the peace and safety of the tribe. Various efforts were made to quiet these dissensions until the year 1846, when delegations from these various portions of the tribe presented themselves in Washington, properly authorized to negotiate a treaty, having for its objects the settlement of these "serious difficulties," and the adjustment of the claims of the various portions of the Cherokee nation of Indians against the United States. The President of the United States, anxious to restore peace and harmony to this distracted people, appointed commissioners on the part of the United States to treat with these delegations; and the result was the treaty of 1846. The 9th article of this treaty is the only part of that instrument to which the undersigned think it at all necessary to call your attention; for if it be admitted, as contended by the Commissioner of Indian Affairs, that mistakes and errors occurred, and that the facts are misstated in the 3d article, still the 9th article is plain and explicit, and points out, in a mode not to be misunderstood, the manner in which the settlement is to be made between the Cherokees and the United States, and how the account is to be stated, and the balance due to the Cherokees is to be ascertained. No matter what was intended by the treaty of 1835 and the supplement of 1836, and the act of Congress of the 12th June, 1838, appropriating \$1,047,067, by the 9th article of the treaty of 1846 these were all to be amalgamated, and to form an aggregate sum of \$6,647,067, and to it was to be charged all sums paid for "improvements, ferries, spoliations, removal and subsistence, and commutation therefor; debts and claims upon the Cherokee nation of Indians, for the additional quantity of land ceded to said nation, and the several

sums provided in the several articles of the treaty to be invested as the general funds of the nation, and also all sums which may hereafter be allowed under the provisions of the treaty of 1835." This, notwithstanding all the special pleading of the Commissioner of Indian Affairs, is a true statement of the 9th article, and these constitute all the charges which can be brought against the Cherokees, and which are properly chargeable against the fund of \$6,647,067. This forms the basis of the settlement; and one page would have been sufficient upon which to have made this statement, had it been the object of the Commissioner to have made "a just and fair settlement" between the parties, as the United States, by the treaty, promises shall be done. Let the account be thus stated, and then the treaty of 1846 will be fairly construed; and in no other way can it be done, so that the views of the United States commissioners and the Cherokees will be honestly carried out in accordance with the intention of the parties. Adopt this construction, and this long litigated and perplexed question between the Cherokees and the United States will be finally settled, and peace and harmony among the various portions of the tribe be restored.

Taking this view of the case, a full and fair settlement under the treaty of 1846 would stand thus:

Whole amount appropriated to carry out the treaty of 1835	-	\$6,647,067 00
From which deduct as proper charges, as ascertained and settled by the 9th article of the treaty of 1846—		
For amount allowed for improvements and ferries	-	\$1,574,270 85
For amount allowed for spoliation	-	226,950 23
For amount paid for removal and subsistence, and commutation therefor	-	2,739,479 45
For amount allowed the United States for the additional 800,000 acres of land west	-	500,000 00
For amount invested for general national fund	-	500,000 00
For amount paid national due bills	-	17,561 00
Amount paid citizens of the United States on account of national debts	-	59,574 25
		<u>5,617,836 19</u>

In order to show that this is the just and fair settlement required by the treaty of 1846, and that all the charges allowed to be brought against the fund of \$6,647,067 by the treaty of 1846 have been fairly stated, the undersigned beg leave to call the attention of your honorable bodies to the third article of the same treaty, wherein are enumerated the charges admitted by the United States to have been improper, and which they undertake and agree to reimburse. They are embraced under the following general heads: "rents," "reservations," under which term is also included the amount paid for pre-emptions, "and all other sums paid to any agent of the government." An examination of the report of the Second Auditor will show the following amounts improperly paid, as settled by the 3d article:

Amount paid to various agents of the United States	\$163,296 58
Pre-emptions	15,589 00
Expenses of conductors, agents, &c.	175,662 13
Reservations	256,440 01
Cherokee committee	22,026 89
Rents	212,145 12
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	849,159 53
Balance admitted in the treasury by the Commissioner of Indian Affairs	184,071 28
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Amount due government party	1,029,230 81
If to this be added the sum properly chargeable under the ninth article of the treaty of 1846	5,617,836 19
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It will make the sum of 6,647,067 00

Being the exact amount provided by the treaty of 1835, the supplement of 1836, and the act of Congress of the 12th June, 1838.

The undersigned admit that the Commissioner of Indian Affairs deserves great credit for the ability and for the ingenuity which he has exhibited in making his report; but he will certainly gain but little character for fairness from any one who will take the trouble to examine his report and compare it with the treaty of 1846. That instrument is by him, so far as the government party of Cherokees are concerned, entirely set aside, and the amount which he finds due to them is precisely the same—the very exact sum to which they would have been entitled had that treaty never been made. But the undersigned beg leave to call your attention further to one fact, which, although it seems entirely to have escaped the notice of the Commissioner of Indian Affairs, was still to have been found in his office, and, in the opinion of the undersigned, ought not to have been passed over by him without observation. The undersigned conceive that the fact to which they allude has an important bearing upon the matters at issue, and is perfectly conclusive of the correctness of their views, and that the mode and manner of making the “just and fair settlement” is the one adopted by them. The undersigned refer to a decision made by the Attorney General of the United States on the 14th day of September last. How the Commissioner of Indian Affairs came to overlook so important a paper, while searching into all the long-forgotten documents that could by possibility throw any light upon the subject, is not for the undersigned to determine; but they ask for it from your honorable bodies an attentive examination. The Attorney General says, “The true exposition of the thirteenth article of the treaty of 1835, so far as it bears upon the point under consideration, (which was, whether the accounting officers are authorized to direct the payment of the claim of Betsy McIntosh, a Cherokee woman, for a reservation, and which had been allowed by commissioners under the seventeenth article of the treaty, out of any of the appropriations made by Congress in execution of the treaty, and especially those made by the acts of 2d July, 1836, and 12th June, 1838,) was given by Mr. Butler in his opinion before referred to, (6th December, 1837.) He says the 13th article closes with the following provision: “It is expressly understood by the parties to this treaty that the amount to be allowed for reservations

under this article shall not be deducted out of the consideration money allowed to the Cherokees for their claims for spoliations and the cession of their lands, but the same is to be paid for independently by the United States." That reservations were not payable out of the \$600,000 appropriated by the 3d article of the supplement, as contended for by the Commissioner of Indian Affairs, the Attorney General says: That appropriation was made for the removal of the Cherokees and for spoliations, according to the 3d supplementary article of that treaty, and it is specifically confined to these objects by direct words, and cannot be diverted to any other purpose without a clear violation of law. The opinion of the Attorney General is equally clear, that reservations were not payable out of the appropriation of the 12th June, 1838. Up to the date of the treaty of the 6th August, 1846, all similar claims had been paid out of the aggregate sum of \$6,647,067. But, says the Attorney General, "error should be corrected, when practicable, as soon as discovered." Moreover, all the previous errors in this respect were corrected by the 3d article of the treaty of '46, and provision made for reimbursing the fund for the amount thus paid for this class of reservations.

And, again, even were the views of the Commissioner of Indian Affairs correct in the exposition which he has made of the treaty of 1835, and the supplement and the act of Congress of the 12th June, 1838— which the undersigned by no means admit, but, on the contrary, think that they have shown them to be radically wrong—still, according to the opinion of the Attorney General, the treaty of 1846 must govern the settlement, and that, too, irrespective of the constructions which have been put on the treaty of 1835, heretofore, at the departments. In relation to this, the Attorney General says: "In correcting the previous errors, it is manifest that the parties themselves, as well as the President and Senate, must have adopted the construction that none of the appropriation acts before referred to authorized the payment of these claims. After the parties have adopted this construction, and secured its benefits in the form of a new treaty stipulation, it is too late to insist upon the opposite view of their right. The United States and the Indians are bound by this construction," &c.

The opinion of the undersigned covers the whole ground; and establishes the fact for which the undersigned contend, viz: that by the treaty of 1846 the amount paid for reservations, pre-emptions, rents, and all expenses of officers, agents, &c., are to be borne by the United States, and are not to be charged to the fund of \$6,647,067; and if they have been so charged, that the United States are bound to reimburse the amount. The undersigned cannot doubt that your honorable bodies will agree with them in the views which they have taken, fully sustained as they are by the opinion of the Attorney General; and with this decision they will be satisfied.

Respectfully submitted.

R. TAYLOR,
R. B. DANIEL,
Delegates.