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REMOVAL OF EASTERN CHEROKEE INDIANS.

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M E S S A G E

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

*A communication from the Secretary of the Interior relative to the removal of certain members of the eastern band of Cherokee Indians to the Indian Territory.*

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MARCH 4, 1882.—Referred to the Committee on Appropriations and ordered to be printed.

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*To the Senate and House of Representatives :*

I transmit herewith a communication from the Secretary of the Interior, dated the 2d instant, with accompanying papers, submitting an estimate of appropriation for the payment of expenses of removal of certain eastern Cherokee Indians to the Indian Territory.

The subject is presented for the consideration of Congress.

CHESTER A. ARTHUR.

EXECUTIVE MANSION,  
March 3, 1882.

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DEPARTMENT OF THE INTERIOR,  
Washington, March 2, 1882.

SIR: I have the honor to transmit herewith a report of the Commissioner of Indian Affairs, with accompanying papers, together with an estimate of appropriation for the payment of the expenses of removal and subsistence of certain members of the eastern band of Cherokee Indians who have removed to the Indian Territory during the past year, as well as those who may hereafter desire to remove to said Territory.

Agreeably to the recommendation of the Commissioner, I respectfully request that the subject may be transmitted to Congress for the consideration and action of that body.

I have the honor to be, sir, very respectfully, your obedient servant,

S. J. KIRKWOOD,

*Secretary.*

The PRESIDENT.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, February 11, 1882.

The honorable the SECRETARY OF THE INTERIOR :

SIR: I have the honor to submit herewith, a copy of a communication, dated Washington, D. C., January 20, 1881, from Daniel H. Ross, and R. M. Wolfe, Cherokee delegates, and Col. W. A. Phillips, special agent and counsel of Cherokee Nation, requesting that an amendment be made to the Indian appropriation bill to secure to the Cherokees the removal and subsistence money belonging to them under the provisions of the treaties of 1835, 1836, 1846, and an act of Congress approved July 29, 1848 (9 Stats., p. 264).

By the 8th article of the New Echota treaty of December 29, 1835, with the Cherokees (7 Stats., p. 482), the United States agreed to remove these Indians west, the price for removal being fixed at \$20, and one year's subsistence at \$33.33 for each of such persons who might prefer to remove themselves.

By the 3rd article of the supplementary treaty of March 1, 1836 (7 Stats., 488), the sum of \$600,000 was allowed to the Cherokees in lieu of all claims of every nature and description against the United States, including the expense of their removal.

By the 11th article of the treaty of August 6, 1846 (9 Stats., 673), the question whether the amount expended for the one year's subsistence should be paid out of government or Cherokee funds was submitted to the Senate for decision, as also the question if the Cherokees were to pay whether the subsistence should be charged at a greater rate than \$33.33 per head.

The 4th section of the act of July 29, 1848 (9 Stats., 264), directed the Secretary of War to ascertain the number of Indians remaining at the ratification of the New Echota treaty (May 23, 1836) and the Secretary of the Treasury to set apart a sum equal to \$53.33 for each individual reported by the Secretary of War, upon which interest was to be paid at 6 per cent. per annum on such per capita.

The 5th section provided for the payment of the \$53.33 for the removal and subsistence of such individual members, as might thereafter desire to remove, upon their removal west, which amount was to be charged to the general Cherokee fund, and reimbursed therefrom.

This fund, under the act of March 3, 1875 (18 Stats., 447), was applied, for the education, improvement, and civilization of these Indians, after certain specific acts and payments had been effected, and, under the act of August 15, 1876 (19 Stats., 197), the balance of this fund, after certain payments therefrom was placed to their credit upon the books of the Treasury Department, to bear interest at the rate of five per cent. per annum, and the Secretary of the Interior is authorized to use annually, for agricultural implements, and for educational purposes among said Indians so much of the principal of said fund, as with the interest annually accruing thereon, shall amount to \$6,000.

In view of the fact that Congress has determined the uses to which this fund must be applied, and the Indians are without means for their removal, I am of the opinion, as expressed in my annual report for 1881, pages LXIII-LXV, that Congress should now furnish the necessary means to enable the department to effect their removal, as stipulated in the eighth article of the treaty of 1835. One hundred and sixty one Indians have, during the past year, been removed to Indian Territory, and the sum of \$2,930 has been expended in their removal, and others desire to follow them. I therefore respectfully recommend that Congress be asked to appropriate, out of any moneys in the Treasury of the United States not otherwise appropriated, the sum of \$20,000, or so much thereof as may be necessary, for the removal and subsistence of those members of the tribe who have removed during the past year, as well as those who may now or hereafter desire to remove, at the rate of \$53.33 per head, provided that the sum of \$2,930.50 expended out of the "civilization fund" in the removal of the 161 members aforesaid, be reimbursed to said fund, from said appropriation, and provided, further, that the per capita amount expended in the removal of the said 161 Indians shall be deducted from the \$53.33 to which each individual was entitled under the treaty of 1835.

I inclose herewith, a copy of paper dated Hot House, N. C., January 14, 1882, from Cherokees of North Carolina, to the Cherokee delegates, giving the number, names, and ages of certain persons who have accepted the Cherokee national invitation of December 3, 1880, and who desire to remove to the Cherokee Nation in Indian Territory, but await transportation, which said delegates request shall be submitted with this report.

A copy of this report is herewith submitted.

Very respectfully, your obedient servant,

H. PRICE,  
Commissioner.

*Estimate of appropriation required for the removal and subsistence of those members of the eastern band of Cherokees who have removed during the past year, as well as those who may now or hereafter desire to remove to the Cherokee country in Indian Territory.*

For this amount, to be expended under the direction of the Secretary of the Interior, for the removal and subsistence of those members of the eastern band of Cherokees who have removed during the past year, as well as those who may now or hereafter desire to remove to the Cherokee country, Indian Territory, at the rate of \$55.33 per head, provided that the sum of twenty-nine hundred and thirty dollars and fifty cents, expended out of the civilization fund in the removal of one hundred and sixty-one members, be reimbursed to said fund from this amount, and provided further, that the per capita amount expended in the removal of the one hundred and sixty-one Indians shall be deducted from the \$55.33 for each individual, being the amount specified in the 8th article of the treaty of December 29, 1835, or so much thereof as may be necessary, \$20,000.

HOT HOUSE, N. C., *January 14, 1882.*

GENTLEMEN: Please find herewith inclosed the number, names, and ages of myself family, and others, who have accepted the national invitation December 3, 1880. We desire to remove to the Cherokee Nation, in the Indian Territory, within one month, and must have transportation as provided for by act July 29, 1848. There are others ready and waiting transportation. We hope you will do all in your power for us, and inform us what can be done, or what we may rely upon hereafter.

Our names are as follows, to wit:

Thomas Payne, age 37.  
Liddy M. Payne, age 30.  
Mary E. Payne, age 12.  
William E. Payne, age 9.  
James M. Payne, age 5.  
Theodosia E. Payne, age 3.  
Emily J. Payne, age 3 months.  
J. R. Robinson, age 25.  
Sarah Robinson, age 26.  
Mary Robinson, age 8.  
Edward Robinson, age 6.  
Willis O. Robinson, age 1.  
Catharine Taylor, age 39.  
Thomas E. Taylor, age 3.  
Mary Payne, age 60.

These are the grandchildren of Thomas Raper, and the said Mary Payne is the daughter of Thomas Raper.

Please direct your reply to Hot House P. O. N., Cherokee County, N. C.

THOMAS PAYNE.

Hon. D. H. ROSS and R. M. WOLF,  
*Cherokee Delegates.*

[Indorsement.]

WASHINGTON, D. C., *January 23, 1882.*

Respectfully referred to Hon. Hiram Price, Commissioner of Indian Affairs, being a petition just received from Cherokees of North Carolina, and we ask that it be referred with the papers in the case we submitted in reference to the North Carolina transportation and subsistence money.

DAN'L H. ROSS,  
R. M. WOLFE,  
*Cherokee Delegation.*

W. A. PHILLIPS,  
*Special Agent and Counsel.*

WASHINGTON, D. C., *January 20, 1882.*

SIR: Under the provision of the treaty of 1835-'6, between the United States and the Cherokee Nation, provision was made for the expenses of the Cherokees who should remove west. Under the treaty of 1846, and the act of Congress of 1848, certain moneys were set aside for the removal and subsistence of such Cherokees remaining east as should remove west. This was an amount of \$53.33 for each person who should

remove west. An appropriation for the necessary, or estimated amount, was made, and it was provided that the interest on the same, until they removed, should be paid. This was an *individual benefit*, and no part of it employed or used for any other purpose could exempt the United States from paying it to these individuals.

Of late years some division of these funds has been made by which they have been used for other and general purposes. For every dollar so applied the United States is responsible. It is simply money belonging to these persons which no other person or interest has a right. One of these divisions is an appropriation of interest and part of principal for a school at Asheville, N. C. The school in question is of no benefit to the great bulk of the people whose money it misapplies, but, even if it had been, such confiscation of individual property is entirely unwarranted. Many Cherokees, nearly one-half of those remaining east a few years ago, desirous of securing, have moved west. They have asked for the removal and subsistence money belonging to them. Many more are anxious to go and demand it. The legislature of the Cherokee Nation made it part of our duty to secure it for them, and we ask you to recommend an amendment to the Indian appropriation bill, which will secure the payment, and beg leave to submit the following form:

"And it is further provided that each Cherokee of North Carolina, his heirs or assigns, who have removed or may remove to the Cherokee Nation west of the Mississippi River, shall receive, under the provisions of the treaty and the act of Congress of July 29, 1848, the sum of fifty-three dollars and thirty-three cents, being the proper *pro rata* proportion due each of said persons, and the same shall be paid from said amount appropriated."

We inclose herewith an opinion of the Solicitor-General on the subject, which we desire you send with these papers. Under the opinion in question it is held that the money of that fund is not available for the benefit of those to whom it belongs. Without concurring in the opinion, but as it takes a ground under which these people have been refused their money, we submit it, because it shows the necessity for legislation. It is hardly necessary to inform you that this individual allowance is not a gratuity, but part of the price of certain lands ceded to the United States. We desire that these papers be forwarded with your recommendation, as early as practicable, so as to be before the subcommittee when they frame the Indian appropriation bill.

We are very respectfully,

DAN'L H. ROSS,  
R. M. WOLFE,  
*Cherokee Delegation.*

HON. HIRAM PRICE,  
*Commissioner of Indian Affairs.*

DEPARTMENT OF JUSTICE,  
*Washington, April 16, 1881.*

SIR: The memorial of James Taylor on behalf of certain North Carolina Cherokees, addressed to yourself, upon the 5th instant, and subsequently referred to the Attorney-General, by his direction has been considered by me, and herewith I submit a reply.

The memorial in brief sets forth that about eighty of the Indians above-mentioned have left their homes and are now "at and near Loudon, Tenn., in a destitute and suffering condition," having been lead to believe that upon reaching that point they would be furnished by the United States with transportation to the lands owned by their tribe in the Indian Territory.

Thereupon, application is made to you, under, as is said, the provisions of the treaty of 1835-'36 (7 Stats., 478), and the act of July 29, 1848 (9 Stats., 264).

Upon this case you ask whether under existing legislation there be any power to make the removal requested.

I have examined the matter, and am of opinion that there is no such power.

Mr. Taylor suggested that inasmuch as the above-cited act of 1848 authorized the payment of \$53.33 and interest to each one of certain North Carolina Cherokees therein particularly described who should "hereafter" remove to the country west of the Mississippi, such statute became operative for all time thereafter, and therefore is in force now.

Admitting that in general the meaning of the act would be as is thus suggested, it is observable that even before the passage of certain statutes to which I will call attention further on, Congress seems to have treated the above disposition as obsolete, so far as the principal sum is devoted to purposes of transportation. For the Revised Statutes fail to make any *permanent appropriation* for paying out this principal, at the same time that they contain such an appropriation for the *interest* which, by the act of 1848, is payable thereupon. Section 3698, p. 728, near bottom.

This presumption is confirmed by the act of 1875, chapter 132 (18 Stats., 447) which directs the fund created by the act of 1848 shall be used in paying certain costs and

expenses incident to recent litigation on behalf of the North Carolina Cherokees, and then "for the education, improvement, and civilization of said Indians." See also, to same purpose, the acts of 1876, chapter 289 and 1877, chapter 101 (19 Stats., 197 and 201).

It is not necessary in this place to discuss the power of Congress to give this new direction to the fund in question. For whatever may be urged against such power, it is enough to say here that the acts are effective at all events to prevent any present appropriation for the purposes to which the principal money was set apart by the act of 1848.

A waiver of this discussion will be understood as without prejudice to the assertion of such power.

Mr. Taylor suggests also that the late act of March 3, 1881 (sec. 4), contains an appropriation applicable to the purposes of his prayer. But upon an inspection of that section, it is plain that the sum therein mentioned is to be applied to certain contingent subsistence only, and that as regards tribes and in other respects, wholly unconnected with the matter in hand.

Another intimation by Mr. Taylor is important in another aspect of this question, *i. e.*, that such principal is due under the provisions of the treaty of 1835-'36, above cited. For in that case an appropriation might be found in section 2094 of the Revised Statutes. But this intimation is met by decisions to the contrary made before the passage of 1848, cited above, by both the Commissioner of Indian Affairs and the Attorney-General. (See Report of Commissioner, appended to President's message of April 13, 1846, and 4 opinions, &c., p. 435.)

The title to the sums in question rests originally upon the act of 1848, which is remedial, and was passed, as seems probable, because of a suggestion in the opinion of the Attorney-General, just cited.

I have replied to these latter points, specifically, although in the presence of the acts of 1875, 1876, 1877, mentioned above, it was hardly required.

Upon the whole I submit that there is no power under existing legislation to effect the removal in the manner supposed.

Very respectfully, your obedient servant,

S. F. PHILLIPS,  
*Solicitor-General.*

The President.

NO. 311 PENNSYLVANIA AVENUE, WASHINGTON, D. C.,  
April 5, 1881.

HON. JAMES A. GARFIELD,  
*President of United States:*

SIR: There are now at and near Loudon, Tenn., in a destitute and suffering condition, about eighty North Carolina Cherokee Indians, awaiting transportation under the provisions of the treaty of 1835-'36.

March 21, 1881, on behalf of these Indians, I made application to the Secretary of the Interior for the means of transportation, and urged the necessity of prompt action; but up to present date can get no satisfaction. That you may fully understand this case I state:

1. (Articles 8 and 9, treaty of 1835-'36) the government agrees to provide the means of transportation and subsistence for one year. Article 9 makes the furnishing of the means discretionary with the President.

2. Article 12 provides that any Indians averse to removing may elect to remain in North Carolina without forfeiting any of their rights under the treaty, including the per capita transportation and subsistence, \$53.33.

3. The act of July 29, 1848 (Stat. at L., vol. 9, pp. 264 and 265), provides for the payment of \$53.33 per capita to the Indians remaining, and funds it at 6 per cent., subject to *this use* and no other, in the hands of the Secretary of the Treasury.

4. Instead of doing and maintaining this status by the act of July 27, 1868, all the powers of the Secretary of the Treasury were transferred to the Secretary of the Interior.

Under this new deal our funds, amounting to \$77,179.85, with \$14,000 still due on an imperfect census, and \$29,535 stolen by the government special, agent S. H. Swetland and confederates, with interest on the whole, have been squandered and perverted by the Interior Department until only about \$40,000 remain to our credit, and this amount has been again returned to the Treasury, at the instance of the Interior Department, the rates of interest reduced from 6 to 5 per cent., and the whole perverted to purposes wholly foreign to the treaty, the original statutes as quoted, and the wishes of the Indians; and this our printed protest filed with the Interior Department and laid on the desk of every member of Congress, and thus was this infamy consummated.

5. Under articles 8 and 9 of the treaty, the President may order their removal, and the payment of the same out of any money in the Treasury not otherwise appropriated.

6. Section 4, act of March 3, 1881, "making appropriations, &c., Indian service," provides a contingent fund of \$50,000, out of which these expenses can be paid, until such time as there can be a full investigation and correction of these constitutional and intentional blunders.

7. This case is greatly aggravated by the fact that the government (Interior Department) sent a commissioner to Qualla and Graham County, North Carolina, to confer with two commissioners from the Cherokee Nation, in an effort to induce these people to go west. Since the action of this commission, the commissioner of the government (Fardon) has written a letter to the recognized chief encouraging this emigration, and telling the deluded victims of the deceptive policy of the government; that it is all right; thus making the government criminal in the matter of the suffering of these Indians; and delay in responding to our request aggravates the wrong, as the number is increasing. The government should certainly and promptly disabuse the minds of the Indians of the fallacy of depending upon the promise of its agents.

This dilemma is not our creation in any degree whatsoever. They have responded in good faith to the urgent request of the government; they are naked, hungry, and subsisting upon the charity of the people who now occupy the lands wrested from us by fraud and violence. For further and detailed information in regard to special cases, I respectfully refer you to my letter of February 9, 1881, to Secretary Schurz, and March 21, to the present Secretary of the Interior.

The case is one of great gravity, and I fully appreciate the gravity of the charges comprehended in this statement. Nevertheless, I am willing to meet the full measure of the responsibility, and ask a thorough investigation and prompt action. The government ought to notify these deluded creatures that it does not intend to execute solemn treaties, or fulfill the promises of its agents.

It seems to me that this is a fit subject for Cabinet consideration. I am willing that the entire Cabinet shall question and cross-question me to its fullest capacity and desire.

Having failed in obtaining any relief, I appeal to the President, as the court of final resort. I beg of you, in the name of our common humanity, the plighted faith and honor of this great nation, not to mock at our calamity by delaying the relief we pray, which we have the right to demand.

Respectfully,

JAMES TAYLOR,

*For himself, as a member of the band, and on behalf of the sufferers.*

LOUDON COUNTY, TENNESSEE,  
April 4, 1881.

SIR: We all want to get off this spring. We are got nothing to go on. We want you all help us out to west; and we want to get the nation this spring. Ples writ to us and tell us ware we going to get of or not.

JOHN ROSS,  
*Chief of the N. C. Band.*

And 62 others.