

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1896.—Referred to the Committee on Indian Affairs and ordered to be printed.

Mr. PRITCHARD presented the following

MEMORIAL BY AND ON BEHALF OF THE EASTERN BAND OF CHEROKEE INDIANS, IN THE MATTER OF THE INTERESTS OF THE MEMBERS OF THE EASTERN BAND OF CHEROKEE INDIANS IN AND TO CERTAIN MONEYS DUE AND PAYABLE TO THE CHEROKEES, UNDER TREATIES AND LAWS HEREINAFTER SPECIFIED.

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

The Secretary of the Interior, in pursuance of the provision of the third subdivision of the agreement dated December 1, 1891, entered into by the United States with the Cherokee Nation of Indians, in the Indian Territory, and ratified by the act of Congress of March 3, 1893 (27 Stat., 643), has rendered an account of moneys due and payable by the United States to the "Cherokee Nation," under the treaties and laws specified in said agreement, and has reported the same to Congress by letter dated January 7, 1895, as set forth in full in House Ex. Doc. No. 182, Fifty-third Congress, third session.

It further appears, and is set forth in said executive document, that the Cherokee Nation, in the Indian Territory, has, by an act of its national council, approved December 1, 1894, accepted said account so rendered and stated, and has requested therein that the Congress of the United States make an immediate appropriation for the payment of the money so reported to be due and payable to the "Cherokee Nation."

Upon an examination of the account so stated and rendered, it is found that those Cherokee Indians residing east of the Mississippi River and comprising what is now known as the Eastern Band of Cherokee Indians, being those Cherokees and their descendants who elected, under the provisions of the treaty of 1835, to remain in the old homes of the Cherokee Nation in the States east of the Mississippi River have, under the provisions of the treaties made by the United States with the Cherokee Nation and the laws of Congress for carrying them into effect, a per capita interest in and to the moneys so stated and reported to be due and payable from the United States to the "Cherokee Nation."

In view of this fact, and in order to properly look after the interest and to prosecute the claims of the members of the Eastern Band of Cherokee Indians in and to said moneys, the said Eastern Band of Cher-

okee Indians, by their regular council of 1895, held at the council grounds at Cherokee, in the State of North Carolina, adopted resolutions setting forth the rights, interests, and claims of the Cherokee Indians residing east of the Mississippi River in and to said moneys, and provided in said resolutions for the employment of attorneys to defend the rights and prosecute the claims of said Indians in and to said moneys. The said resolutions are of record in the Office of Indian Affairs, at Washington, D. C., in connection with the contract made in accordance therewith with our attorneys, Hon. Robert V. Belt, of Washington, D. C., and Hon. W. T. Crawford, of Waynesville, N. C., approved by the Commissioner of Indian Affairs December 12, 1895, and by the Secretary of the Interior January 6, 1896.

Our attorneys promptly, after the execution of the contract for their employment in the matter, presented a brief in behalf of the Cherokee Indians residing east of the Mississippi River to the Attorney-General of the United States, to whom the account of moneys stated to be due and payable to the Cherokee Nation was referred by Congress for consideration and report, by a clause in the act of March 2, 1895 (28 Stat., 795). A copy of the brief thus presented is herewith set forth, as showing the rights, interests, and claims of the members of the Eastern Band of Cherokee Indians in and to said money so reported to be due and payable by the United States under the laws and treaties specified in said agreement of December 19, 1891.

Before the Hon. Judson Harmon, Attorney-General of the United States:

In the matter of the "Account of moneys due the Cherokee Nation," under certain specified treaties and laws, submitted to Congress by the Honorable Secretary of the Interior, as set forth in House Ex. Doc. No. 182, Fifty-third Congress, third session, in accordance with a provision in the agreement with the Cherokee Nation of Indians, and the act of Congress ratifying the same (27 Stat., 643).

By a clause in the act of March 2, 1895, the said "Account of moneys due the Cherokee Nation" is referred to the Attorney-General, and he is thereby "authorized and directed to review the conclusions of law reached by the Department of the Interior in said account and report thereon to Congress at its next regular session," etc. (28 Stat., 795).

The clause of the agreement between the United States and the Cherokee Nation of Indians of the Indian Territory, dated December 19, 1891, requiring the rendering of said account of moneys due said Nation, is as follows:

"Third. The United States shall without delay render to the Cherokee Nation, through any agent appointed by authority of the national council, a complete account of moneys due the Cherokee Nation under any of the treaties ratified in the years 1817, 1819, 1825, 1828, 1833, 1835-36, 1846, 1866, 1868, and any laws passed by the Congress of the United States for the purpose of carrying said treaties, or any of them, into effect; and upon such accounting, should the Cherokee Nation by its national council conclude and determine that such accounting is incorrect or unjust, then the Cherokee Nation shall have the right within twelve (12) months to enter suit against the United States in the Court of Claims, with the right of appeal to the Supreme Court of the United States by either party, for any alleged or declared amount of money promised but withheld by the United States from the Cherokee Nation, under any of said treaties or laws, which may be claimed to be omitted from, or improperly or unjustly or illegally adjusted in, said accounting; and the Congress of the United States shall, at its next session after such case shall be finally decided and certified to Congress according to law, appropriate a sufficient sum of money to pay such judgment to the Cherokee Nation, should judgment be rendered in her favor; or, if it shall be found upon such accounting that any sum of money has been so withheld, the amount shall be duly appropriated by Congress, payable to the Cherokee Nation upon the order of its national council, such appropriation to be made by Congress if then in session; and if not, then at the session immediately following such accounting." (27 Stat., 643.)

By the act of Congress ratifying the said agreement (act of March 3, 1893, 27 Stat. 643) provision is made for the employment of "such expert person or persons to properly render a complete account to the Cherokee Nation of moneys due said Nation as required in the fourth (third) subdivision of article 2 of said agreement.

The report of the expert persons appointed under the said agreement and law, for the purposes therein provided, is dated April 28, 1894; and the conclusions stated in said report, as to moneys due, are as follows:

The foregoing statement covers, it is believed, every point of issue which can be raised under the treaties described in the articles of agreement, and the result of the finding is submitted in the following schedule:

Under the treaty of 1819:

Value of three tracts of land containing 1,700 acres, at \$1.25 per acre, to be added to the principal of the "school" fund..... \$2, 125. 00
 With interest from February 27, 1819, to date of payment.

Under the treaty of 1835:

Amount paid for removal of Eastern Cherokees to the Indian Territory, improperly charged to treaty fund..... 1, 111, 284. 70
 With interest from June 12, 1838, to date of payment.

Under treaty of 1866:

Amount received by receiver of public moneys at Independence, Kans., never credited to the Cherokee Nation..... 432. 28
 With interest from January 1, 1874, to date of payment.

Under act of Congress March 3, 1893:

Interest on \$15,000 of Choctaw funds, applied in 1863 to relief of indigent Cherokees, said interest being improperly charged to Cherokee national fund 20, 406. 25

With interest from July 1, 1893, to date of restoration of the principal of the Cherokee funds held in trust in lieu of investments. (See House Ex. Doc. No. 182, Fifty-third Congress, third session, p. 31, 32).

The account thus rendered to the Cherokee Nation was considered by the national council of that nation, which passed an act, approved December 1, 1894, accepting said accounting, and enacting further:

"That the principal chief of the Cherokee Nation at once notify the Secretary of the Interior and the Commissioner of Indian Affairs of the acceptance by the national council of the Cherokee Nation of said report of accounting agents, and request the Secretary of the Interior to so notify the Congress of the United States, and ask for an immediate appropriation in accordance with the act of March 3, 1893, for the ratification of the sale of the Cherokee lands west of the Arkansas River, known as the Cherokee outlet." (Ibid., p. 32.)

It is not the purpose of this brief to call in question the accuracy of the account thus rendered, or the correctness of the conclusions of law reached in the statement of that account, so far as they affect the facts as to the amount of money due under the specified treaties and laws. In other words, no examination or consideration is pretended to have been given to the question as to what is the correct accounting called for under said treaties and laws as to the amount of money due thereunder from the United States. It is the purpose of this brief to submit for the consideration of the honorable Attorney-General the question: To whom are due the moneys, or such sums as shall be found to be due from the United States, under said treaties and laws?

From what has already been set forth hereinbefore it is clear that the moneys reported to be due from the United States, as per the papers and reports set out in House Ex. Doc. 182, above referred to, are claimed by the Cherokee Nation as moneys due and payable to that nation.

The agreement with the Cherokee Nation, as has been shown, calls for "a complete account of moneys due the Cherokee Nation" under the treaties and laws specified.

The experts in their report speak of the several items, sums, or balances as money due the "Cherokee Nation." The Secretary of the Interior reports the findings of said experts to Congress as "a complete account of moneys due the Cherokee Nation" under the treaties and laws specified.

The Cherokee Nation, by the act of its national council, makes the request that Congress make an immediate appropriation for payment of the account accepted by "the national council of the Cherokee Nation."

The items of money in the stated account reported to be due from the United States under the treaties of 1819 and 1866, and under the law of Congress of March 3, 1893, viz, \$2,125, \$432.28, and \$20,406.25, respectively, are passed over in this brief without special consideration.

The particular and important matter intended to be submitted at this time for the consideration of the honorable Attorney-General is as to the interest of the members of the Eastern Band of Cherokee Indians in and to the money reported to be due from the United States under the treaty of 1835, being "amount paid for removal of Eastern Cherokees to the Indian Territory, improperly charged to treaty fund, \$1,111,284.70, with interest from June 12, 1838, to date of payment."

That item of the account is shown, by the report made, to be a balance due of the sums stipulated in the treaty of 1835-36 to be paid to the Cherokee Indians as consideration for the lands ceded to the United States east of the Mississippi River. The amount of that consideration was stipulated in article 1 of that treaty "to be expended, paid, and invested in the manner stipulated and agreed upon in the following articles." (7 Stat., 479.)

After stipulating for the payment, investment, etc., of specified amounts from the consideration agreed to be paid by the United States for the ceded lands, etc., the treaty provides as follows:

"ARTICLE 15. It is expressly understood and agreed between the parties to this treaty that after deducting the amount which shall be actually expended for the payment for improvements, ferries, claims for spoliations, removal, subsistence, and debts and claims upon the Cherokee Nation, and for the additional quantity of lands and goods for the poorer class of Cherokees, and the several sums to be invested for the general national funds provided for in the several articles of this treaty, the balance, whatever the same may be, shall be equally divided between all the people belonging to the Cherokee Nation east according to the census just completed; and such Cherokees as have removed west since June, 1833, who are entitled by the terms of their enrolment and removal to all the benefits resulting from the final treaty between the United States and the Cherokees east, they shall also be paid for their improvements according to their approved value before their removal, where fraud has not already been shown in their valuation." (Ibid., 485.)

The \$1,111,284.70, being the item of the stated account now under consideration, is found to be a balance of the consideration money agreed upon in the treaty of 1835-36, for the cession of land, etc., therein made by the Cherokees to the United States. All of the amounts specified in the treaty to be drawn from the "consideration fund having been taken therefrom and applied as the treaty prescribed, the said balance, so found to be due to the Cherokees from the United States is a portion of "the balance, whatever the same may be," which by article 15 of the treaty, hereinbefore set out, it is provided "shall be equally divided between all the people belonging to the Cherokee Nation east according to the census just completed." It is therefore submitted that whatever may be the sum or amount of the consideration fund remaining due to the Cherokee Indians by the United States, it falls within this last-quoted stipulation of the treaty, and the same must be disposed of in accordance therewith.

THE RIGHTS OF THE MEMBERS OF THE EASTERN BAND OF CHEROKEE INDIANS
IN AND TO MONEYS REPORTED DUE FROM THE UNITED STATES UNDER THE
TREATY OF 1835-36.

Under article 16 of the treaty of 1835 (7 Stat., 485) the Cherokee Indians agreed to remove to their new homes east of the Mississippi River within two years from the ratification of the treaty.

That treaty, however, contains this clear stipulation:

"ARTICLE 12. Those individuals and families of the Cherokee Nation that are averse to a removal to the Cherokee country west of the Mississippi and are desirous to become citizens of the States where they reside and such as are qualified to take care of themselves and their property shall be entitled to receive their due portion of all the personal benefits accruing under this treaty for their claims, improvements, and per capita as soon as an appropriation is made for this treaty." (7 Stat., 483.)

The per capita, which by the said provision of the treaty is specifically secured to those individuals and families of the Cherokee Nation who elected to remain east of the Mississippi River, is their proportionate share of the "balance, whatever the same may be," which by article 15, as above shown, it is stipulated "shall be equally divided between all the people belonging to the Cherokee Nation east according to the census just completed."

The treaty of 1846, made for the purpose of composing the difficulties then existing between different portions of the Cherokee people, for the adjustment of their rights and interests in the lands of the nation, and in and to certain claims against the United States, the settlement of which was therein stipulated for, contains the following articles:

"ARTICLE IX. The United States agree to make a fair and just settlement of all moneys due to the Cherokees, and subject to the per capita division under the treaty of twenty-ninth December, eighteen hundred and thirty-five, which said settlement shall exhibit all money properly expended under said treaty, and shall embrace 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 be hereafter properly allowed and paid under the provisions of the treaty of eighteen hundred and thirty-five. The aggregate of which

said several sums shall be deducted from the sum of six millions six hundred and forty-seven thousand and sixty-seven dollars, and the balance thus found to be due shall be paid over per capita, in equal amounts, to all those individuals, heads of families, or their legal representatives, entitled to receive the same under the treaty of eighteen hundred and thirty-five, and the supplement of eighteen hundred and thirty-six, being all those Cherokees residing east at the date of the said treaty and the supplement thereto.

"ARTICLE X. It is expressly agreed that nothing in the foregoing treaty contained shall be so construed as in any manner to take away or abridge any rights or claims which the Cherokees now residing in States east of the Mississippi River had, or may have, under the treaty of eighteen hundred and thirty-five and the supplement thereto." (9 Stat., 875.)

In the light of these clear, specific, direct, and explicit stipulations of the treaties on the subject, there can be no question as to the existence and preservation of the rights and claims of those Cherokees now residing in the States east of the Mississippi River in and to their per capita shares of whatever sum or sums may be found to be due to the Cherokee people from the United States as a balance of the consideration agreed to be paid for lands, etc., ceded by the Cherokees by the treaty of 1835-36.

Under the unsatisfactory adjustment of these treaty matters, heretofore made by the United States, a balance of \$914,026.13 was stated to remain of the appropriations made for carrying out the treaty of 1835, after all the charges on said appropriations, specifically made by that treaty, were taken therefrom; said balance was, as provided in the treaty, "equally divided between all the people belonging to the Cherokee Nation east according to the census just completed."

The distribution of that amount, \$914,026.13, did not take place until 1850-51, whereas the removal of the Cherokees to their lands west of the Mississippi River, under the treaty of 1835-36, was effected prior to 1839.

Of the said amount of \$914,026.13, so distributed in per capita payments, the sum of \$129,851.48 was distributed in per capita payments in 1850-51 "to the Cherokees still remaining in the east, but entitled to participate in the distribution," and the remainder was distributed in per capita payments "to the Eastern Cherokees then in the west." (See House Ex. Doc. No. 182, Fifty-third Congress, third session, p. 22.)

"The total number of Cherokees participating in this distribution was 16,231, of whom 14,098 were Cherokees in the west and 2,133 remained east. The per capita amount was \$92.79." (Ibid, p. 22.)

The same provisions of treaties and laws that governed and regulated the disposition and distribution of the sum of \$914,026.13, which is now shown to have been only a portion of the "balance whatever the same may be" which is dedicated by the treaties of 1835-36 and 1846, to be "equally divided between all the people belonging to the Cherokee Nation east according to the census just completed," must apply with equal force to the remainder of that balance now ascertained to be due from the United States, the principal of which is reported to be \$1,111,284.70. And therefore those Cherokees and their descendants, or their legal representatives, who elected to remain and did remain east of the Mississippi River, and who were recognized in 1850-51 as entitled to their per capita shares of the partial and incomplete balance of the said treaty fund, then ascertained and distributed according to the terms of the treaties, are also entitled to their per capita shares of so much of said treaty "balance" as remains unpaid and undistributed, whatever the amount thereof may be; and "as soon as an appropriation is made for this treaty" money, in payment of the claim for said unpaid balance, they will be entitled to receive their just and proper per capita shares thereof.

The status of those Cherokees, who did not remove to the lands west of the Mississippi River, is shown by the provisions of the treaties relating to them which are hereinbefore referred to, and to the frequent acts of legislation by Congress for their welfare.

The act of July 29, 1848, directed the Secretary of War to "cause to be ascertained the number and names of such individuals and families, including each individual 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 was required to set apart a fund equal to their commuted removal and subsistence allowance, the interest thereon, at 6 per cent, to be paid to said individuals or their legal representatives, etc. (9 Stat., 264.)

In the act of July 27, 1868, it is provided as follows:

"Sec. 2. And be it further enacted, That the Secretary of the Interior shall cause a new roll or census to be made of the North Carolina or Eastern Cherokees, which shall be the roll upon which payments due said Indians shall be made.

"SEC. 3. *And be it further enacted*, That hereafter the Secretary of the Interior shall cause the Commissioner of Indian Affairs to take the same supervisory charge of the Eastern or North Carolina Cherokees as of other tribes of Indians." (15 Stat., 228.)

In the act of August 7, 1882 (22 Stat., 328), provisions are made for the employment of "an agent for the Eastern Band of Cherokee Indians," in accordance with the act of July 27, 1868; for enabling "the Secretary of the Interior to cause the census to be taken and a new roll to be made of all the Cherokee Indians remaining east of the Mississippi River;" and to enable the Secretary of the Interior to investigate and report to Congress what in his opinion would be an equitable settlement of all matters of dispute between the Eastern Band of Cherokee Indians (including all Cherokees residing east of the Mississippi River) and the Cherokee or nation west, etc.

The census and enrollment made under that law shows that there were at that time 2,956 individuals comprising the Eastern Band of Cherokee Indians. Of that enrollment, the Commissioner of Indian Affairs states in his annual report for 1884, that:

"It contains the names of 1,881 members residing in North Carolina, 758 in Georgia, 213 in Tennessee, 71 in Alabama, 11 in Kentucky, 8 in New Jersey, 5 in Virginia, 3 each in Kansas (at present) and South Carolina, and 1 each in California, Colorado, and Illinois (at present), making a total membership of 2,956.

It gives the English and Indian names (when they have both), the age and sex of each, and the residence or post-office address of every family or single person, together with the relationship of each member of a family to the head thereof. Reference is also made to the numbers opposite their names, or the names of their ancestors on the previous rolls above noted, that they may be identified there, and there are such marginal references and explanatory notes as special cases seemed to require. Thus no person's name was enrolled on this list whose name or the name of whose ancestor does not appear on some one of the previous lists, and all except 47 on the previous lists are accounted for, either as dead, as having gone West to reside with the Nation in the Indian Territory, or by enrollment as now residing east of the Mississippi River. These 47 persons whose whereabouts could not be ascertained are believed by their friends and relatives to have either died, gone West, or to be now known by different names from those under which they were previously enrolled. A list of the 47 names is given with this census. While the agent was engaged in the work various persons presented themselves to him, claiming to be Eastern Cherokees or their descendants, whom he declined to enroll, not believing the evidence they submitted sufficient to sustain their claims. He files with the census a list of their names, accompanied by all the papers and information he had received or could obtain in reference to them, which may be useful in case any of those so rejected in future claim that they have been wronged.

"The census list, together with all evidence and information available pertaining to it, was laid before a council of the Eastern Cherokees at their request (due notice having been given to the Cherokee Nation in the Indian Territory to be present by delegates if they so desired), and after having been carefully scrutinized by said council was fully approved by them. A certificate signed by the council to that effect accompanies the list, which list, after having been carefully examined and compared with the previous rolls in this office, was on my recommendation approved by the Department on the 4th of last February." (See pp. li and lii, Annual Report of the Commissioner of Indian Affairs for 1884.)

The report made to Congress by the Secretary of the Interior, as to adjustment of differences between the Eastern and Western Cherokees, under and in pursuance of the law of August 7, 1882, may be found in House Ex. Doc. No. 79, Forty-seventh Congress, second session.

If any legislation resulted from the investigation and report thus made to Congress, it is the clause in the deficiency appropriation act of March 3, 1883 (22 Stat., 585), whereby "the Eastern Band of Cherokee Indians is hereby authorized to institute a suit in the Court of Claims against the United States to determine the rights of the said band in and to the moneys, stocks, and bonds held by the United States in trust for the Cherokee Indians, accruing out of sales of lands lying west of the Mississippi River; and also in a certain other fund, commonly called the permanent annuity fund, to which suit the Cherokee Nation, commonly called the Cherokee Nation west, shall be made a party defendant."

The said law also contains provisions as to the procedure for said suit, as to evidence, as to jurisdiction, as to appeal to the Supreme Court of the United States, etc.

The suit was instituted and tried by the Court of Claims, and was appealed to the Supreme Court, resulting in both courts holding that the petitioners (the Eastern Band of Cherokee Indians) have no rights in law or in equity in and to the money, stocks, and bonds held by the United States in trust for the Cherokees, arising out of the sales of lands lying west of the Mississippi River, nor in and to a certain

other fund, commonly called the permanent annuity fund, mentioned in the act of March 3, 1883. (22 Stat., 585.) (See 20 C. Cls., 483; and 117 U. S. Reports, 288.)

These decisions cover and relate only to the funds concerning which the suit was authorized to be brought, and which are specifically referred to therein. It will be observed that the suit was not authorized to include any money claimed to be due from the United States for land ceded by the Cherokees east of the Mississippi River; that no such money or claim therefor was included in said suit, and no such claim or money was therefore covered by the decisions of the courts upon the case thus litigated.

In the decision of the Supreme Court on the case just referred to, after describing or stating the status of the Cherokees comprising what is now the Eastern Band of Cherokees, the court—Justice Field rendering the decision—makes statements pertinent to the matter now under consideration as follows:

“Nor is the band, organized as it now is, the successor of any organization by any treaty or law of the United States. Individual Indians who refused to remove west, and preferred to remain and become citizens of the States in which they resided, were promised certain moneys, but there is no evidence that the petitioners have succeeded to any of their rights. The original claimants have probably all died, for fifty years have elapsed since the treaty of 1835 was made, and no transfer from them or their legal representatives is shown. But assuming that the petitioners represent all rightful demands of the Cherokees living in North Carolina when the treaty was made, what were those demands? As designated by articles 12 and 15 of the treaty, these Cherokees were to receive ‘their due portion of all the personal benefits accruing under the treaty for their claims, improvements, and per capita.’ The term ‘claims’ had reference to demands for spoliations of their property which existed prior to the treaty. The improvements were those made on the property ceded. By per capita was meant the proportionate amount given to each Cherokee east not choosing to emigrate of the money received on the cession of the lands east of the Mississippi after deducting certain expenditures mentioned in article 15. Whatever may have remained for the per capita distribution mentioned, it is plain that it constituted no portion of the moneys that formed the fund which the petitioners seek by this suit a proportionate part. By the treaty of 1846 certain sums were allowed in addition to the \$5,000,000 specified in the treaty of 1835, and from the whole amount certain items other than those three designated were to be deducted, and the balance was to be paid over per capita in equal amounts to all the individuals, heads of families, or their legal representatives, entitled to receive it under that treaty.” (117 U. S. Reports, 310.)

The Supreme Court could not have been more explicit as to the rights of the members of the Eastern Band of Cherokees, or their legal representatives, in and to their per capita shares of the balance of the money found to be remaining due to the Cherokee people for lands ceded to the United States under the treaties of 1835-36 and 1846, if it had had that question directly before it in the suit then pending. Their rights are so clear and so explicitly defined by the treaties that there can be no room for dispute on the matter.

The clause in the Cherokee agreement, and the law of Congress ratifying the same, requiring the accounting by the United States, calls for “a complete account of moneys due the Cherokee Nation,” under the treaties and laws specified; and it further provides: “If it shall be found upon such accounting that any sum of money has been so withheld, the amount shall be duly appropriated by Congress, payable to the Cherokee Nation upon the order of its national council.”

It will also be observed that, notwithstanding the clear and definite provisions of the treaties as to the disposition to be made of the “balance, whatever the same may be,” that is owing by the United States to the Cherokee people from the amounts constituting the consideration for cession of lands, etc., made under the treaties of 1835-36 and 1846, the national council of the Cherokee Nation, in its act approved December 1, 1894, makes a request that the Congress of the United States make “an immediate appropriation, in accordance with the act of March 3, 1893, for the ratification of the sale of the Cherokee lands west of the Arkansas River, known as the Cherokee ‘outlet.’” (See House Ex. Doc. 182, Fifty-third Congress, third session, p. 32.)

In other words, the national council of the Cherokee Nation ask that the whole amount of the money reported, as per the accounting thus rendered, to be due from the United States be appropriated by Congress and be made “payable to the Cherokee Nation upon the order of its national council.”

The Secretary of the Interior, in reporting the matter to Congress, as per the report and papers set out in House Ex. Doc. 182, Fifty-third Congress, third session, does not call attention to the fact that a portion of the money so reported by him to be due from the United States, and which the Cherokee Nation ask to be appropriated and be made “payable to the Cherokee Nation, upon the order of its national council,” inures, under specific treaty provisions, to certain of the Cherokee people who

have now no direct or immediate connection with the Cherokee Nation in the Indian Territory, but who reside in the East, having refused to remove West, and who would, therefore, receive no benefits from any money paid by the United States over to the national treasurer of the Cherokee Nation in the Indian Territory.

If the United States should pay the whole amount of money reported to be due under the treaty of 1835 to the "Cherokee Nation, upon the order of its national council," the claims under that treaty of those individuals, heads of families, or the legal representatives of the Cherokee people who elected to remain in the East, for their per capita shares of said money would still remain unsettled, unadjusted, and undischarged, and would continue to exist as a charge against the United States until settled and paid as prescribed by the treaties of 1835-36 and 1846.

It is therefore respectfully urged that the honorable Attorney-General, in rendering his report upon the accounting, as he is required by Congress to do, as hereinbefore shown, set forth the facts and the provisions of treaties and laws bearing upon the rights, claims, and interests of those individuals, heads of families, or their legal representatives, of the Cherokee people who reside in the east, and who now comprise what is known as the Eastern Band of Cherokee Indians, to the end that, when the appropriation shall be made for the payment of the "balance, whatever the same may be," that shall be ascertained to be due and payable by the United States, under the treaties of 1835-36 and 1846, proper provision may be made therein by Congress for the per capita payment of the proportionate share of said money to those individuals, heads of families, or their legal representatives, of the Cherokee Indians who remained in the east, under the provisions of said treaties, and who yet reside in the east.

The Cherokees residing in the east have no concern and do not wish to interfere with the manner of the payment of so much of the money as shall be ascertained, reported, and appropriated to be due from the United States under the treaties of 1835-36 and 1846 as shall inure and be payable to those Cherokees in the west, and entitled to receive the same under said treaties; but they do object to and protest against so much of the said money as inures to them being paid to the "Cherokee Nation, upon the order of the national council," or to said Cherokee Nation otherwise; on the contrary, they insist that their proportionate share of said money, when appropriated, shall be paid to them directly, as the treaties prescribe, under the supervision of the Secretary of the Interior, or such other officer of the United States as Congress may direct.

This right and proper request can be complied with by Congress by providing, in the proper clause of law making the appropriation, somewhat as follows:

"Provided, That so much of said amount as is necessary to make the per capita payments to those individuals, heads of families, or their legal representatives, of the Cherokee Indians residing east of the Mississippi River, of their proportionate share of the money hereby appropriated to be due and payable under the treaty of 1835, shall be held in the Treasury of the United States to the credit of the Eastern Band of Cherokee Indians, the same to be paid as soon as practicable, under the direction of the Secretary of the Interior, to those persons 'entitled to receive it' under the provisions of the treaty governing the distribution thereof, less such amount as shall be necessary to pay the claims for legal services and expenses incurred by the attorneys employed by the said Eastern Band of Cherokee Indians, by contract duly executed and filed in the Department of the Interior, for the prosecution of their claim for their proportionate amount of the said money so found and reported to be due to the Cherokee Indians under the treaty of 1835."

We respectfully request on behalf of our clients, the Cherokees living east of the Mississippi River, that the question of their right to and interest in a proportionate share of said moneys so reported to be due from the United States may receive your consideration, and that when you comply with the law of March 2, 1895, which requires the Attorney-General "to review the conclusions of law reached by the Department of the Interior in said account and report his conclusions thereon to Congress at its next regular session," a clear exposition will be made on the question to whom are due the moneys so reported to be due from the United States under the provisions of the treaties and laws required to be considered in rendering the account.

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WASHINGTON, D. C., December 7, 1895.

It subsequently appeared by the record of Congressional proceedings that the report of the Attorney-General upon the matter was laid before the Senate on December 9, 1895. As that report bears date

December 2, 1895, it was apparently closed and perhaps in the hands of the proper officers of the Senate before the brief of our attorneys was laid before the Attorney-General, on the 7th of December, 1895.

In view of these facts, and as the subject-matter is now before the Congress for its consideration and action, we beg leave to present this memorial for the purpose of bringing to the attention of the Congress the rights, interests, and claims of the members of the Eastern Band of Cherokee Indians in and to the said moneys so reported by the Secretary of the Interior to be due and payable by the United States, under the treaties and laws specified in the agreement of December 19, 1891, with the Cherokee Nation of Indians.

It is respectfully requested that in any legislation that shall be enacted by the Congress of the United States making an appropriation of said moneys, and for the payment thereof, that provision be made as indicated in the brief of our said attorneys, or in any other appropriate manner to effect the purpose, for the payment to the members of the Eastern Band of Cherokee Indians of their per capita shares of such moneys, according to their rights and interests therein, as provided in the treaties and laws governing the matter; or that, if any other legislation shall be enacted on the subject, due and appropriate provision be made therein respecting, including, and covering the rights and interests of the members of the Eastern Band of Cherokee Indians.

And your memorialists will ever pray.

JULIAN W. HADDON, *Witness.*

JAMES BLYTHE, *Witness.*

BIRD SOHONEETA,*
Chairman of Council.

ANDY STANDINGDEER,*
Chief.

R. B. SMITH,
Assistant Chief.

ROBERT V. BELT, *Washington, D. C.,*

W. T. CRAWFORD, *Waynesville, N. C.,*

Attorneys for the Eastern Band of Cherokee Indians.

Interpreted by James Blythe, interpreter.

CHEROKEE, N. C., *January, 1896.*

* Signatures in Cherokee characters.