

M E S S A G E

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A communication of 3d instant, with accompanying papers, from the Secretary of the Interior, being a partial report upon the Cherokee Indian matters, required under a clause in the sundry civil appropriation of August 7, 1882.

FEBRUARY 8, 1883.—Read and referred to the Committee on Appropriations and ordered to be printed.

To the Senate and House of Representatives :

I transmit herewith a communication of 3d instant, with accompanying papers, from the Secretary of the Interior, being a partial report upon the Cherokee Indian matters, required under a clause in the sundry civil appropriation act of August 7, 1882.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, *February 7, 1883.*

DEPARTMENT OF THE INTERIOR,
Washington, February 3, 1883.

SIR: The Secretary of the Interior is required by an item (copy inclosed) in the sundry civil bill, approved August 7, 1882, to investigate and report to Congress on certain matters relating to the Cherokee Indians.

Mr. C. C. Clements was appointed special agent by this department to make the investigation required. He has made several reports on the subject, two of which I have the honor to submit herewith, viz:

Report No. 2.—This report relates to the claims of all the Cherokee Indians residing east of the Mississippi River at the time of the treaty of 1835 against the United States for moneys yet due them under the provisions of the treaties of 1835 and 1846.

Mr. Clements reports as the result of his investigation of this branch of the subject of inquiry that there is due from the United States to the claimants the sum of \$334,297.75, with interest at 5 per centum per annum from June 12, 1838.

Report No. 3.—This report relates to the claims of the "Old Settler" or Western Cherokee Indians against the United States, based upon alleged errors committed by the officers of the government having

charge of and stating the accounts between the "Old Settlers" and the United States in relation to their interest in the proceeds of the sale of the Cherokee lands east of the Mississippi River under the treaty of 1835.

Mr. Clements reports that there is a balance due from the United States to the "Old Settler" Cherokees amounting to \$421,653.68, together with interest at 5 per centum per annum from September 22, 1851.

This report, No. 3, is intended to take the place of a report on the same subject by Mr. Clements, dated December 12, 1882, which was transmitted by me to the President of the Senate *pro tem.*, December 16, 1882, in compliance with a Senate resolution calling therefor. (Printed in Ex. Doc. 17, Forty-seventh Congress, second session.)

These reports, Nos. 2 and 3, have been carefully examined by the Commissioner of Indian Affairs, who reaches the same conclusions as does Mr. Clements, as shown by the closing statements of his report thereon dated January 31, 1883, as follows :

It must be understood that all the figures used in this report are as of the date of the several settlements and for the purpose *only* of determining what amount is due each class of claimants; and after making all deductions for payments properly chargeable to the several funds, and allowing proper credits, it appears that there is due (not including interest) as follows: Cherokees, exclusive of "Old Settlers," the sum of \$334,297.75; "Old Settlers," \$421,653.68.

I have given these reports such careful examination and consideration as time and opportunity would permit, and am of opinion that they present fair and just bases of settlement of the claims. The parties interested appear satisfied with the results reported.

A report, No. 1, made by Mr. Clements on the claim of the eastern band of North Carolina Cherokee Indians against the Cherokee Nation of Indians west, for a pro rata interest in all the common property of said nation of Indians under treaties with the United States, has been submitted to me, but is withheld for further consideration. I respectfully recommend that the accompanying papers be presented for the consideration of the Congress.

Very respectfully, your obedient servant,

H. M. TELLER,
Secretary.

To the PRESIDENT.

CHAP. 433.—An act making appropriation for sundry civil expenses of the government for the fiscal year ending June 30, 1883, and for other purposes.

* * * * *

The Secretary of the Interior shall 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 the Cherokees residing east of the Mississippi River) and the Cherokee tribe or nation west; also, all matters of dispute between other bands or parts of the Cherokee Nation; also, all matters between any of said bands, or parts thereof, and the United States, arising from or growing out of treaty stipulations, or the laws of Congress relating thereto; and what sum or sums of money, if any, should, in his opinion, be paid under such settlement; and the sum of two thousand five hundred dollars is hereby appropriated for such investigation. (Pamph. Edition Stats. 1881-'82, page 328).

* * * * *

Approved August 7, 1882.

[Extract copy.]

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 31, 1883.

SIR: * * * * *

Report No. 2.—This report covers the claim of the Eastern Cherokees—those residing east at the date of the treaty of 1835—against the United States.

By the first article of the treaty of 1835 (7 Stat., 450) the Cherokees ceded all their lands east of the Mississippi to the United States for the sum of \$5,000,000. By the eighth article of said treaty the United States agreed to remove the Cherokees, and such of them as were capable of removing themselves were allowed to do so. Those that removed themselves were to be allowed \$20 for each member of their families; and in lieu of one year's rations they were to be allowed \$33.33, if they preferred it.

By the third article of the supplemental treaty of 1836, \$600,000 was allowed for removal and all other claims against the United States not otherwise therein provided for, and to be in lieu of the \$300,000 allowed for spoliations, described in the first article. This amount was appropriated by act of July 2, 1836. Of this amount the government expended \$560,700 for removal and the other objects specified in said article, leaving a balance of \$39,300. Those removed cost the government \$61.70 per head. By the act of June 12, 1838, an appropriation was made of \$1,047,067 in full of all objects specified in the third article of the treaty of 1836, and to aid in subsisting the Indians for one year after removal.

These three sums being added together make the sum of \$6,647,067.

By the ninth article of the treaty of 1846 (9 Stat., 875) the United States agreed to make a fair and just settlement of all moneys due the Cherokees and subject to per capita division under the treaty of 1835, which was to include all moneys properly expended under the said treaty (1835), and to embrace all sums paid for spoliations, removal, subsistence and commutation thereof, debts, and claims upon the Cherokee Nation, for the additional quantity of land and the several sums provided in the several articles of the treaty, to be invested as the general fund of the nation; and also all sums that might thereafter be allowed and paid under the treaty of 1835. The aggregate of these several sums was to be deducted from the \$6,647,067, and the balance found due was to be paid over per capita to those persons entitled to receive the same under the treaty of 1835 and the supplemental treaty of 1836.

Under this settlement there were charged against this fund several items, amounting in the aggregate to \$6,019,463.05, which being deducted from the original fund, left \$627,603.95.

The agents of the Cherokees claim that some of the expenditures going to make the aggregate charges were not properly chargeable to that fund, and particularly the sum of \$96,999.42 for removal.

By the act of February 27, 1851 (9 Stat., 572), an appropriation was made of \$724,603.37 to bear interest at 5 per cent. from June 12, 1838, until paid; but no interest was to be paid after April 18, 1851, on any balance that might remain undrawn. This sum was to be in full of all claims and demands under any treaty theretofore made. On the payment of this sum the Cherokees were to execute and deliver to the United States a final discharge of all claims, excepting such annuities

or specified articles of property as the government may by any treaty be bound to pay; and also such moneys and lands as the United States might hold in trust for the Cherokees. This sum of \$96,999.42, claimed by the Cherokees not to be chargeable to the original fund, added to the amount found due on the settlement under the treaty of 1846 (\$627,603.95) makes the sum appropriated by the act of 1851 (\$724,603.37), so that this claim has no foundation.

It is also claimed by the Cherokees that in the settlement under the treaty of 1846 a large sum was improperly charged to the account of the Eastern Cherokees on account of their removal and subsistence.

By article 8 of the treaty of 1835, as has before been seen, the United States agreed to remove the Cherokees and to subsist them for one year after removal, &c., and by the third article of the treaty of 1836 \$600,000 was allowed for this and the other purposes therein named. By the act of July 2, 1836 (5 Stat., 73), this sum was appropriated. The expense of removal and subsistence, it appears, was not to be charged against the original \$5,000,000 fund, otherwise Congress would not have appropriated this additional sum.

It appears that the Cherokees were dissatisfied and desired to effect their own removal, and John Ross and others submitted a proposition to the Secretary of War to do so. The Secretary of War accepted the proposition and submitted to Congress certain estimates, accompanied by the proposition of Ross *et al.*, which formed the basis of the appropriation of \$1,047,067 by the act of June 12, 1838, hereinbefore referred to, and which was not to be chargeable against the \$5,000,000.

This added to the sum of \$600,000 appropriated by the act of July 2, 1836, together with the amount of \$189,422.76 appropriated by the act of September 30, 1850, makes \$1,836,489.76. Take from this \$500,700 used by the government out of the \$600,000, and we have \$1,275,789.76 applicable to removal and subsistence, &c.

Ross *et al.* removed 13,149 persons, and this sum proved entirely inadequate, the entire expense of removal and subsistence amounting to \$2,952,196.26, of which \$972,844.78 was expended for subsistence, and of the latter the sum of \$172,316.47 was furnished for the relief of destitute Indians, with the understanding that this sum should be deducted from the money due them under treaty, leaving the sum of \$800,528.31 actually expended for subsistence.

As before stated, it cost the government \$61.70 per head for each person removed, and it is presumed that the removal was made as economically as possible, and I do not think that those removing themselves should be compelled to do so at a less sum.

Therefore, taking these figures as a just and equitable basis of settlement, we find that the removal of 13,149 Indians at \$61.70 per head, actually cost \$811,293.30, and the subsistence of the same number for one year cost the sum of \$800,528.31, the two sums aggregating \$1,611,821.61.

This sum, in my opinion, is equitable and just, and should be allowed. The account would, therefore, stand thus:

The United States in account with the Eastern Cherokee Indians.

	DR.	CR.
By amount agreed to be paid for lands under article 1, treaty of 1835.....		\$5,000,000 00
By amount expended by the United States for removal, &c., out of the \$600,000 appropriated in accordance with third article, treaty of 1836.....		560,700 00

	DR.	CR.
By removing 13,149 Indians, at \$61.70 per head.....		\$811,293 30
By subsisting 13,149 Indians for one year		800,528 31
To amount appropriated by act of July 2, 1836, for lands under article 1, treaty 1835.....	\$4,500,000 00	
To amount due the United States for the purchase of additional land.....	500,000 00	
To appropriation, act July 2, 1836, in accordance with third article, treaty 1836.....	600,000 00	
To amount appropriated for removal, &c., by act June 12, 1838.....	1,047,067 00	
To amount appropriated for subsistence, &c., by act September 30, 1850.....	189,422 76	
	6,836,489 76	7,172,521 61
Deduct.....		6,836,489 76
Balance due Cherokees.....		336,031 85

The Cherokees also claim that large sums of money were expended under the heads of improvements, spoliations, reservations, &c., not properly chargeable to their fund.

In a report from this office dated May 10, 1848, the aggregate amount chargeable on this account is stated to be \$500,919.01. Under the final settlement their fund was reimbursed \$502,653.11.

Taking the statement made by this office as correct, which I think it is, an overpayment of \$1,734.10 was made. Deduct this from the amount heretofore found due, and there remains \$334,297.75, with interest thereon at 5 per cent. from June 12, 1838, to April 18, 1851, as provided by the act of February 27, 1851 (9 Stat., 572).

Report No. 3.—This report is supplemental to, or rather intended to take the place of Mr. Clements's report of December 12, 1882, upon the claim of the "Old Settlers" or Western Cherokees, against the United States, which claim is based upon alleged errors committed by the officers of the government having charge of and stating the account between the "Old Settlers" and the United States in relation to their interest in the proceeds of the sale of the Cherokee lands east of the Mississippi River, under the treaty of 1835.

The facts and figures are given in full by Mr. Clements in his report on this subject, and his report No. 2, and it is not deemed necessary to restate them here. It is sufficient to say that—

1st. They received credit under the settlement made under the treaty of 1846, for one-third of the fund and were chargeable with one-third of the items properly chargeable thereto.

2d. Independent of article 4 of the treaty of 1846, the "Old Settlers" were not chargeable with removal out of the \$5,000,000 fund.

3d. Independent of that article, they should not be charged out of the \$5,000,000 with the removal of the Eastern Cherokees for three reasons: (1) The "Old Settlers" removed themselves at their own expenses; (2) the Eastern Cherokees were not required to reimburse the "Old Settlers" under the treaty of 1835; and (3) the government was required to remove the Eastern Cherokees.

4th. They were not properly chargeable with the removal of the Ross party of 13,148, because (1) the United States were to remove them; (2) an appropriation of \$1,047,067 was made for that purpose, and for which the "Old Settlers" received no credit in the settlement under the treaty of 1846.

5th. They having received credit for their proportion of the \$600,000, under article 3 of the treaty of 1836, were chargeable with their proportion of that fund used for removal, &c., *i. e.*, 2,495 Indians, at \$53.33 per head, amounting to \$133,058.35.

6th. The Eastern Cherokees were properly chargeable with the removal of the Ross party, and therefore they received credit for the \$1,047,067 appropriated by the act of June 12, 1838.

7th. In the settlement the \$5,600,000 fund was charged with the removal and subsistence of 18,026 Indians, at \$53.33½ per head, amounting to \$961,386.66. The account would therefore stand thus:

Account with the whole Cherokee people.

	DR.	CR.
By amount appropriated by act of July 2, 1836, for lands under first article, treaty of 1835.....		\$5,000,000 00
By amount appropriated under third article, treaty 1836, by act of July 2, 1836.....		600,000 00
By amount erroneously charged for removal of 2,495 Indians, at \$53.33½ per head.....		961,386 66
To amount paid for improvements.....	\$1,540,572 27	
To amount paid for ferries.....	159,572 12	
To amount paid for spoliations.....	264,894 09	
To removal and subsistence of 18,026 Indians, at \$53.33½ per head.....	961,386 66	
To debts, &c.....	101,348 31	
To additional land purchased.....	500,000 00	
To amount invested as a permanent fund.....	500,880 00	
	4,028,653 45	6,561,386 66
Deduct.....		4,028,653 45
Balance due as of date June 12, 1838.....		2,532,733 21
Of which amount the "Old Settlers" are entitled to one-third.....		844,244 40
"Old Settlers'" account.....		844,244 40
To one-third of unexpended balance of \$600,000 appropriated under article 3, treaty 1836, viz, \$39,300.....	\$13,100 00	
To one-third of the cost of removing 2,495 Indians, at \$53.33 per head, \$133,058.35.....	44,352 78	
	57,452 78	844,244 40
Deduct.....		57,452 78
Balance due.....		786,791 62
By interest on balance (\$786,791.62), at 5 per cent. from June 12, 1838, to September 22, 1851.....		522,342 21
To appropriation by act September 22, 1851.....	532,896 90	
To interest allowed under same act.....	354,583 25	
	887,480 15	1,309,133 83
Deduct.....		887,480 15
Balance due "Old Settlers".....		421,653 68

I may add that in the former report on this subject, the investigation was confined to alleged errors committed by the accounting officers of the government in the matter of calculation.

It seems, however, that in the examination of the claim of the Eastern Cherokees against the United States, Mr. Clements concluded that it was not intended by the eighth article of the treaty of 1835, and the supplementary articles thereto, or subsequent Congressional legislation, that the \$5,000,000 fund should be used to defray any expenses for removal and subsistence where made under the supervision and control of the United States; or for any *reasonable* expenses incurred by the Cherokees in removing themselves. These conclusions necessarily affected his former report and changed the balance found due the "Old Settlers" under the settlement provided by the fourth article of the treaty of 1846.

It must be understood that all the figures used in this report are as of the date of the several settlements, and for the purpose *only* of determining what amount is due each class of claimants; and after making all deductions for payments properly chargeable to the several funds, and allowing proper credits, it appears that there is due (not including interest) as follows: Cherokees, exclusive of "Old Settlers," the sum of \$334,297.75; "Old Settlers," \$421,653.68.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

HON. SECRETARY OF THE INTERIOR.

REPORT No. 2.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 20, 1883.

SIR: I have the honor to submit the following report on the claim of the Eastern Cherokee Indians against the United States.

This claim is made in behalf of all the Cherokees who resided east of the Mississippi River at the time the treaty of 1835 was concluded between their nation and the United States, and is based upon alleged improper payments made by the officers of the government having charge of and stating the account between them and the United States in relation to their interest in the common fund of the Cherokees arising under and growing out of said treaty and the settlement with them under the treaty of 1846.

By the first article of the treaty of 1835 the Cherokee Nation ceded, relinquished, and conveyed to the United States all the lands owned, claimed, or possessed by them east of the Mississippi River, and released all their claims upon the United States for spoliations of every kind, for and in consideration of the sum of five millions of dollars, to be expended, paid and invested in the manner stipulated and agreed upon in that treaty. (Rev. Ind. Treaties, p. 67.)

By the third article of the supplementary articles of that treaty the sum of \$600,000 was allowed the Cherokees, the same to include the expense of their removal and all claims of every nature and description against the United States, not therein otherwise expressly provided for, and to be in lieu of the pre-emptions and reservations and the sum of \$300,000 for spoliations described in the first article of the treaty. (*Ib.*, p. 78.)

On the 12th of June, 1838, Congress appropriated the further sum of \$1,047,067, in full for all objects specified in said third article, and for further object of aiding in the subsistence of said Indians for one year after their removal west. (5 St., p. 242.)

Thus, to the \$5,000,000 allowed to the Cherokees by the first article of the treaty of 1835, for all their lands and possessions east of the Mississippi, the United States afterwards added the further sum of \$1,647,067, making in all a common fund of \$6,647,067.

By the ninth article of the treaty of August 17, 1846, the United States agreed "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 29th December, 1835, 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 1835; the aggregate of which said several sums shall be deducted from the sum of \$6,647,067, 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 1835 and the supplement of 1836, being all those Cherokees residing east at the date of said treaty and the supplement thereto. (Rev. Ind. Treaties, p. 84.)

The settlement made in accordance with the principles established by the treaty of 1846 is hereinafter shown as follows:

TREASURY DEPARTMENT, *December 3, 1849.*

"SIR: The proper accounting officers of the Treasury having been required by the

joint resolution of the 7th of August, 1848, to make a just and fair statement of the claims of the Cherokee Nation of Indians, according to the principles established by the treaty of August, 1846, between the United States and said Indians, do now, as required by said resolution, report that they have caused a full and thorough examination to be made of all the accounts and vouchers of the several officers and agents of the Government of the United States, who have disbursed money appropriated to carry into effect the treaty with the Cherokee Nation of 1835, and also of the claims that have been admitted at the Treasury. As the result of said examination, it appears that there has been paid—

For improvements the sum of.....	\$1, 540, 572 27
For ferries the sum of.....	159, 572 12
For spoiliations the sum of.....	264, 894 09
For removal and subsistence, and commutation therefor, including \$2,765 84 expended for goods for the poorer classes of Cherokees, as mentioned in the fifteenth article of the treaty of 1835-'36, and including, also, necessary incidental expenses of enrolling agents, conductors, commissaries, medical attendance, and supplies, &c., the sum of....	2, 952, 196 26
For debts and claims upon the Cherokee Nation the sum of.....	101, 348 31
For the additional quantity of land ceded to said nation the sum of....	500, 000 00
For amount invested as the general fund of the nation the sum of.....	500, 880 00
	<hr/>
The aggregate of which general sums is.....	6, 019, 463 05
And which being deducted from the sum of.....	6, 647, 067 00
	<hr/>
Agreeably to the directions of the ninth article of the treaty of 1846, leaves a balance due to the Cherokee Nation of.....	627, 603 95

"As it is contended by the agents of the Cherokee Nation that sundry items of expenditure embraced in the foregoing statement are not properly chargeable upon the nation under the treaty of 1846, particularly a portion of the incidental expenses connected with the removal, amounting to \$96,999.42, the undersigned report herewith a particular statement of those expenses, showing the amount thereof in detail, in order that the question thus raised on the part of the Cherokees may be decided by Congress.

"Which is respectfully submitted.

"ALBION K. PARRIS,
"Second Comptroller.
"P. CLAYTON,
"Second Auditor."

"To the PRESIDENT of the Senate of the United States."

(Ex. Doc. 6, Senate, 31st Cong., 1st sess.)

An act of Congress, approved February 27, 1851 (9 Stat., pp. 572-3), appropriated "for payment to the Cherokee Nation the sum of seven hundred and twenty-four thousand six hundred and three dollars and thirty-seven cents, and interest on the above sum, at the rate of five per centum per annum, from twelfth day of June, eighteen hundred and thirty-eight, until paid; * * * but no interest shall be paid after the first of April, eighteen hundred and fifty-one, if any portion of the money is then left undrawn by the said Cherokees: *Provided, however,* That the sum now appropriated shall be in full satisfaction and a final settlement of all claims and demands whatsoever of the Cherokee Nation against the United States, under any treaty heretofore made with the Cherokees. And the said Cherokee Nation shall, on the payment of said sum of money, execute and deliver to the United States a full and final discharge for all claims and demands whatsoever on the United States, except for such annuities in money or specific articles of property as the United States may be bound by any treaty to pay to said Cherokee Nation, and except, also, such moneys and lands, if any, as the United States may hold in trust for said Cherokees: *And provided, further,* That the money appropriated in this item shall be paid in strict conformity with the treaty with said Indians of sixth August, eighteen hundred and forty-six."

It appears therefore that the sum of \$96,999.42, mentioned in the report of the Second Auditor and Second Comptroller, was allowed by Congress, as that sum, together with the balance of \$627,603.95, made the sum of \$724,603.37 appropriated to the Cherokee Nation.

It is contended by the Cherokees that in this settlement a large sum of money was improperly charged to the account of the Eastern Cherokees for and on account of their removal and subsistence.

Under the eighth article of the treaty of 1835 the United States stipulated and

agreed "to remove the Cherokees to their new homes, and to subsist them one year after their removal there," and by the terms of the third supplementary article of that treaty an allowance of \$600,000 was made, and on July 2, 1836, appropriated, "to include the expense of their removal," and for other purposes. (Rev. Ind. Treaties, 70.)

It was the opinion of some of the Senators, at least, who voted upon the question that the sum of \$5,000,000, fixed by the Senate as the value of the Cherokee lands and possessions east of the Mississippi, was not intended to include the amount required to remove those Indians, and it would seem that the Senate concurred in their views by providing for an additional allowance to meet such expenses. (Second sup. art., *Ib.*, p. 78.) In the talk which was sent by President Jackson to the Indians to explain the advantages of the treaty he mentions that the stipulations offered "provide for the removal at the expense of the United States of your whole people, and for their subsistence a year after their arrival in their new country." It may be mentioned also that such has been the almost invariable policy of this government, and that the neighboring tribes of the Chickasaws, Choctaws, Creeks, and Seminoles were removed and subsisted at the expense of the United States. (Rep. 176, Senate Com., 31st Cong., 1st sess.) In the further investigation of this question, I find that the treaty of 1835 was concluded, in defiance of the protest of a large majority, with a small minority of the nation, and by its provisions the Cherokees were required to remove within two years from the date it was ratified. The large majority of the nation, adopting the counsels of John Ross, one of their principal chiefs, repudiated its obligations and denounced it as a fraud upon the nation. In the mean time the United States had appointed its agents, under the treaty, and collected a large military force to enforce the execution of the treaty. The State of Georgia had adopted a system of hostile legislation, intended to drive the Indians from the country. In this posture of affairs the Cherokees made new proposals to the United States for the sale of their country and emigration to the West. They proposed among other things that they should be allowed to take charge of their own emigration, the expenses thereof to be borne by the United States. On the 18th of May, 1838, the Secretary of War, in reply to these propositions said: "If it be desired by the Cherokee Nation that their own agents should have charge of their emigration, their wishes will be complied with, and instructions be given to the commanding general in the Cherokee country to enter into arrangements with them to that effect. With regard to the expense of this operation, which you ask may be defrayed by the United States, in the opinion of the undersigned, the request ought to be granted; and an application for such further sum as may be required for this purpose shall be made to Congress."

An application was made, and a resolution of the House of Representatives adopted, inquiring how much would be required for that purpose. The Secretary of War replied to this resolution on the 25th of May, 1838, in a letter, from which the following is an extract:

"The payment of the expenses of removing the remaining Cherokees, estimated at 15,840, at \$30 a head.....	\$175,200
Amount applicable to that purpose.....	39,300
Balance to be provided for	335,900

"If it should be deemed proper to make any further provision for the payment of the subsistence of the emigrants for one year after their arrival in the West, it requires, estimating the whole number at 18,335, thereby including those who have already emigrated, and allowing the amount stipulated to be paid by treaty, viz, \$33.33 a head, \$611,105.55."

These estimates, with a message containing the provisional arrangement with John Ross, were communicated to Congress and received its sanction by the act of June 12, 1838, in the following language: "That the sum of \$1,047,067 be appropriated out of any money in the Treasury not otherwise appropriated, in full for all objects specified in the third article of the treaty of 1835 between the United States and the Cherokees; and for the further object of aiding in the subsistence of the Indians for one year after their removal West: *Provided*, That no part of the said sum of money shall be deducted from the \$5,000,000 stipulated to be paid to said tribe of Indians by said treaty: *And provided further*, That the said Indians shall receive no benefits from said appropriation unless they shall complete their emigration within such time as the President shall deem reasonable, and without coercion on the part of the government."

Here was a clear legislative affirmation of the terms offered by the Indians, and acceded to by the Secretary of War. The Secretary agreed to consider the expenses of removal and subsistence, as intended by the treaty of 1835, to be borne by the United States, and Congress affirmed his act by providing that no part of the \$1,047,067 should be taken from the treaty fund. It was made auxiliary to the \$600,000 provided for in the third supplemental article, a fund provided for removal and other expenditures independent of the treaty, and in full for these objects. But, as respected subsistence,

it was *in aid* of the *expense* for that purpose, a discharge *pro tanto* of the obligation of the government to subsist them, and not final satisfaction, as in the case of removal. The fund proved wholly inadequate for these purposes. The entire expense of removal and subsistence amounted to \$2,952,196.28, of which the sum of \$972,844.78 was expended for subsistence, and, of this last amount, \$172,316.47 was furnished to the Indians when in great destitution, upon their own urgent application, after the expiration of the one year, upon the understanding that it was to be deducted from the moneys due them under the treaty. This leaves the net sum of \$800,528.31 paid for subsistence and charged to the aggregate fund. Of this sum the United States provided, by the act of June 12, 1838, for \$611,105.55, leaving unpaid, or rather overcharged, the sum of \$189,422.76, which was appropriated by act of September 30, 1850. (Rep. 176, Senate Com., 31st Cong., 1st sess., and 9 Stat., p. 556.)

But, if the claim of the Eastern Cherokees be considered on grounds independent of the treaty of 1835, there would yet seem to be good reasons for allowing them a further sum on account of removal and subsistence, and to these I now call your attention.

By taking the estimates of the Secretary of War as a guide, it is found that the number of Cherokees removed and subsisted prior to May 25, 1838, was about 2,495. On the other hand, the Cherokee census of 1835 places the whole number of that tribe then east of the Mississippi at 16,743. (Senate Doc. 120, p. 535, 25th Cong., 2d sess.) Of this number, John Ross removed about 13,149 after June 12, 1838 (Ex. Doc. 65, p. 17, 30th Cong., 1st sess.), and the number then remaining was 1,517, according to the Mully roll on file in the Indian Office. This would make about 2,077 removed prior to the emigration under Ross.

The appropriation of \$1,047,067, on June 12, 1838, was based upon the estimates submitted by the Secretary of War in so far as they related to the number of Indians then to be removed, and it would seem that the conditions were then more favorable for ascertaining the actual population of the nation than when the census was taken.

However it is not deemed important for the purposes of this settlement to determine the actual number removed prior to the date of the Secretary's estimates; for, whatever that number may have been, it is evident that those Indians were removed and subsisted at the expense of the United States, out of the allowance of \$600,000 made and appropriated for that and other objects, and that after those expenses were defrayed there remained an unexpended balance of \$39,300. (Rep. 176, Senate Com. p. 6., 31st Cong., 1st sess.)

The extravagant expenses incurred in the emigration of the Ross party is the subject of the report of the House Committee on Indian Affairs of March 2, 1843. (Rep. 288, 27th Cong., 3d sess.), and in making a comparison of those expenses with others for a similar purpose, the committee state: "Instead of \$65.88, for which Mr. Ross and the members of the delegation agreed to remove each Cherokee, he asks to be allowed a fraction over \$103.25, while the treaty-party, already referred to, were removed under their own agent, John A. Bell, with Lieutenant Deas as disbursing agent, at the same time, under the same circumstances, with the same improved rations, under General Scott's orders to Lieutenant Deas, (see journal of the latter), and the same wagon and horse facilities, at a fraction less than \$61.70." (*Id.*, p. 23.)

In thus referring to the expenses incurred by the treaty-party, I am led to infer that the committee regarded them as both ample and reasonable, and that the cost of removal, including subsistence en route, was actually and necessarily about \$61.70 per capita.

If we assume that the expenses of the treaty-party in this case were proper and reasonable, then the estimates of the Secretary of War and subsequent allowance of \$30 a head for the removal under Ross and others, were insufficient, and to limit their expenses to that sum while allowing the other party \$61.70 was unfair and unjust.

From what appears, I am of the opinion that the Secretary's estimates for the removal of the Ross party should have been the same as the sum allowed for the removal of the other Cherokees, and therefore, for the purposes of an equitable settlement with the Eastern Cherokees, I would state the account as follows:

Eastern Cherokees, Cr.

By removal and subsistence en route of 13,149 Indians, at \$61.70 a head . . .	\$811,293 30
From which deduct the amount estimated and provided	475,261 45
	336,031 85

If, on the other hand, it *should* be conceded that the government was bound by the terms of the treaty to remove and subsist the Cherokees at the expense of the United States, it would not affect the result; for it cannot be maintained, under the circumstances attending the removal, that the government was under any obligation, legal

or equitable, to defray any expenses other than those that were reasonable and just.

As before stated, one of the conditions insisted upon by the Cherokees under Ross in their removal West was that they should be allowed to take charge of their own emigration. To avoid the use of military force in the execution of the treaty, and for other good and sufficient reasons, the United States assented to this condition. Thereupon, the committee and council and people of that nation adopted a resolution authorizing John Ross and his associates, "on the part of the Cherokee Nation, to make and enter into any and all such arrangements with Major General Winfield Scott, on the part of the United States, which they may deem necessary and proper for effecting the entire removal of the Cherokee people from the east to the west side of the Mississippi River; and also to enter into such further arrangements with the commanding general in relation to the payment of such sums of money by the United States as may be needed for the removal and subsistence of all the Cherokee people." (Rep. 288, p. 7, H. R., 27th Cong., 3d sess.)

General Scott recognized the authority conferred upon John Ross and others by the above resolution (*Ib.*, p. 8), and called for an estimate of the expenses of such emigration. In response they were submitted July 31, 1838, and were at the rate of \$65 88 for every Indian removed. (*Ib.*, p. 9.) This General Scott regarded as extravagant, and he requested them to reconsider their proposition, informing them that "the whole expense of the emigration is to be paid out of appropriations already made by Congress, the general surplus of which is to go to the Cherokee Nation in various forms," and that they had therefore "a direct general interest in conducting the movement as economically as comfort will permit." Instead of reducing, they increased the amount, which the general sanctioned, for the reason that the people were exclusively interested in the cost as well as the comfort of their removal. (*Ib.*, pp. 11, 12.) The Secretary of War, in a communication to General Scott upon the subject, said that whatever sum over and above the amount appropriated, "that may be expended for this purpose will have to be deducted from the original purchase-money agreed to be paid them by the treaty of New Echota (the \$5,000,000), and this must be fully explained to the chiefs and headmen, and ought to be understood by the nation;" that the Executive could not "recommend to Congress to increase the appropriations made, believing, as it does, the amount already given to be sufficient for the objects proposed." (Ex. Doc. 65, p. 17, 30th Cong., 1st sess.)

The Cherokees would not agree to a more economical arrangement, and as it appeared to be the only way of effecting a general and satisfactory emigration, if not of avoiding the use of military force and the effusion of blood, the arrangement was agreed to and carried out. Some time after the emigration had been completed John Ross, who was at the head of the committee that entered into the arrangement with General Scott, presented a claim for the alleged cost of emigrating the Cherokees, under that arrangement, over and above the amount stipulated, amounting to the large sum of \$581,346.884.

This claim was fully examined into and rejected by the Commissioner of Indian Affairs and the Secretary of War. It was nevertheless subsequently reopened by another Secretary of War, and the whole amount allowed and paid. It will be seen, however, that this allowance and payment was influenced in a great measure by the fact stated by General Scott that Mr. Ross and the delegation charged with making the arrangements for the removal were fully apprised that any excess of expenditure incurred therein would be a charge upon the nation, and by the circumstance that the national council authorized Mr. Ross to prosecute the claim and receive the money in behalf of the nation. There was thus paid to John Ross for the removal of about 13,149 Cherokees the large sum of \$1,357,745.86, or \$103.25 for each individual man, woman, and child. Whether this sum was actually absorbed in the mere removal of the Indians or not, it was paid on the demand of the Cherokees themselves; and they must be considered as having enjoyed the benefit of it in that or some other way. (*Ib.*, p. 17.)

The Cherokees have not, therefore, any just claim against the United States for these extravagant expenditures.

IMPROVEMENTS, SPOILIATIONS, ETC.

It is also contended by the Cherokees that large sums of money were expended under the heads of improvements, spoiliations, reservations, &c., and erroneously charged to and paid from the five million dollars fund. Reference is made to the third article of the treaty of 1846 in support of this statement, which provided as follows: "Whereas certain claims have been allowed by the several boards of commissioners heretofore appointed under the treaty of 1835, for rents, under the name of improvements and spoiliations, and for property of which the Indians were dispossessed, provided for under the sixteenth article of the treaty of 1835; and whereas the said claims have been

paid out of the \$5,000,000 fund; and whereas said claims were not justly chargeable to that fund, but were to be paid by the United States, the said United States agree to reimburse the said fund the amount thus charged to said fund, and the same shall form a part of the aggregate amount to be distributed to the Cherokee people, as provided in the ninth article of this treaty; and whereas a further amount has been allowed for reservations, under the provisions of the thirteenth article of the treaty of 1835, by said commissioners, and has been paid out of the said fund, and which said sums were properly chargeable to, and should have been paid by, the United States, the said United States further agree to reimburse the amounts thus paid for reservations to said fund; and whereas the expenses of making the treaty of New Echota were also paid out of said fund, when they should have been borne by the United States, the United States agree to reimburse the same, and also to reimburse all other sums paid to any agent of the government, and improperly charged to said fund; and the same also shall form a part of the aggregate amount to be distributed to the Cherokee people, as provided in the ninth article of this treaty." (Rev. Ind. Treaties, pp. 80-81.)

The report of the Commissioner of Indian Affairs, dated May 10, 1848, states the amounts of those expenditures, which the United States agreed to reimburse, as follows:

1st. Amount for reservations, except that class which, like spoliations, are specifically and in terms provided for in the third article of the supplement	\$125,477 51
2d. "Rents," viz, amounts allowed for dispossession of improvements prior to treaty	164,549 02
3d. Amounts allowed for same during two years they were permitted by the treaty to remain	47,596 10
4th. Amount paid for valuing agents, enrolling and removing agents, commissaries and interpreters, &c., and for services of Cherokee committee	163,296 38
Total	500,919 01

(Ex. Doc. 65, p. 22, 30th Cong., 1st sess.)

If the settlement proposed by the Commissioner in his report be compared with the statement herein, upon which a final settlement was made, it will be seen that in the latter the whole amount deducted from the items enumerated in the third article of the treaty of 1846 was \$502,653.11, instead of \$500,919.01; so that the Cherokees have received credit in the way of reimbursements for \$1,734.10 more than they were entitled to under the Commissioner's statement, and, therefore, this sum should be deducted from the principal sum found due the Cherokees for and on account of removal and subsistence. The account would then be as follows:

Balance due the Eastern Cherokees on account of removal and subsistence	\$336,031 85
From which deduct the overpayment on account of improvements, spoliations, &c., under the third article of the treaty of 1846.....	1,734 10
Balance due.....	334,297 75

together with interest thereon at 5 per cent. per annum from June 12, 1838, as provided by Senate resolution of September 5, 1850. (Cong. Globe, vol. 21, part 2, p. 1760, 1849-'50.)

All of which is respectfully submitted.

C. C. CLEMENTS,
Special Agent.

The honorable the SECRETARY OF THE INTERIOR.

REPORT NO. 3.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 24, 1883.

SIR: Referring to my report of December 12, 1882, to your department, upon the claim of the "Old Settler" or Western Cherokee Indians against the United States, the Commissioner of Indian Affairs, in his letter of transmittal of the 14th ultimo, stated: "The subject-matter treated of in this report, and the amount found due, may be very materially affected and changed when the other three questions connected

with this one are examined. Mr. Clements, who makes this report, agrees with me in this. In view of these facts, I think it would be much safer for the government and more equitable to all parties concerned to delay all Congressional action until all of the questions involved in which the Cherokee people are parties, either as between themselves or the government, can be examined and reported upon. I therefore recommend that no Congressional action be had until the report is made an entirety upon the questions specified in the act of Congress authorizing their settlement, believing that to be the only safe course for the government to pursue."

Subsequent investigations of other matters of dispute mentioned in his communication proved the wisdom of the Commissioner's recommendation. As stated in my former report, this claim is based upon alleged errors committed by the officers of the government having charge of and stating the account between the "Old Settlers" and the United States in relation to their interest in the proceeds of the sale of the Cherokee lands east of the Mississippi River, as provided in the treaty of 1835, between the United States and the Cherokee Indians.

By the terms of the fourth article of the treaty of 1846, concluded between the United States and the Cherokee Indians, a basis of settlement of this claim was agreed upon as follows: "All the investments and expenditures which are properly chargeable upon the sums granted in the treaty of 1835, amounting in the whole to five millions six hundred thousand dollars (which investments and expenditures are particularly enumerated in the fifteenth article of the treaty of 1835), to be first deducted from said aggregate sum, thus ascertaining the residuum or amount which would, under such marshaling of accounts, be left for per capita distribution among the Cherokees emigrating under the treaty of 1835, excluding all extravagant and improper expenditures, and then allow to the "Old Settlers," or Western Cherokees, a sum equal to one-third part of said residuum, to be distributed per capita to each individual of said party of "Old Settlers," or Western Cherokees. It is further agreed that, so far as the Western Cherokees are concerned, in estimating the expense of removal and subsistence of an Eastern Cherokee, to be charged to the aggregate fund of five millions six hundred thousand dollars above mentioned, the sums for removal and subsistence stipulated in the eighth article of the treaty of 1835, as commutation money in those cases in which the parties entitled to it removed themselves, shall be adopted. And as it affects the settlement with the Western Cherokees, there shall be no deduction from the fund above mentioned in consideration of any payments which may hereafter be made out of said fund; and it is hereby further understood and agreed that the principle above defined shall embrace all those Cherokees west of the Mississippi who emigrated prior to the treaty of 1835." (Rev. Ind. Treaties, pp. 81-82.)

The investments and expenditures to be deducted from the \$5,600,000 fund, as enumerated in article fifteen of the treaty of 1835, are for improvements, ferries, claims for spoliations, removal, subsistence, debts and claims upon the Cherokee Nation, additional quantity of land, goods for the poorer class of Cherokees, and the several sums for the national fund. (*Ib.* p. 75.)

By the fourth article of the supplementary articles to the treaty of 1835, the one hundred thousand dollars appropriated in that treaty for the poorer classes of Cherokees was added to the permanent national fund, thereby increasing it to five hundred thousand dollars. (*Ib.* p. 78.)

In the settlement with the "Old Settlers," or Western Cherokees, under the treaty of 1846, the eighth article of the treaty of 1835, to which reference is therein made, fixed the amount for removal and subsistence to be charged to the aggregate fund at \$53.33 per capita. (*Ib.* p. 70.)

The joint resolution of August 7, 1848, required the accounting officers of the Treasury to make to Congress a just and fair statement of the claims of the Cherokee Nation of Indians, according to the principles established by the treaty of August, 1846, between the United States and those Indians. This statement was submitted December 3, 1849 (Senate Ex. Doc. 176, 31st Cong., 1st sess.), and was recognized and adopted by Congress in making a final settlement with said nation under the act of February 27, 1851 (9 Stat., p. 572-3), which appropriated the sum of \$724,603.37, with interest, for that purpose. The same statement was also adopted by Congress, so far as applicable under the provisions of the fourth article of the treaty of 1846, in effecting a final settlement with the "Old Settlers" under the act of September 30, 1850 (9 Stat., p. 536), appropriating the sum of \$532,896.90, with interest, in payment of their account against the United States. (Rep. 176, Senate Com., 31st Cong., 1st sess.)

In adopting the above statement made by the accounting officers of the Treasury, the "Old Settlers" are charged by the Senate committee "for removal and subsistence of 18,026 Indians, at \$53.33 $\frac{1}{2}$ per head, \$961,346.66." I am satisfied that this is an overcharge. The eighth article of the treaty of 1835 provides that "the United States also agree and stipulate to remove the Cherokees to their new homes, and to subsist them one year after their arrival there." (Rev. Ind. Treaties, p. 70.) This language imports pecuniary responsibility on the part of the government, and, in the talk which

was sent by President Jackson to the Cherokees to explain the advantages of that treaty, he mentions that the stipulations offered "provide for the removal, at the expense of the United States, of your whole people, and for their subsistence a year after arrival in their new country." It would seem that the Indians so understood this matter, and that the Senate recognized the fact that all expenses incurred by them for and on account of removal and subsistence should be borne by the United States. In support of this proposition articles 2 and 3 of the supplementary articles to the treaty of 1835 provide that "whereas the Cherokee people have supposed that the sum of five millions of dollars fixed by the Senate in their resolution of — day of March, 1835, as the value of the Cherokee lands and possession east of the Mississippi River was not intended to include the amount which may be required to remove them, nor the value of certain claims which many of their people had against citizens of the United States, which suggestion has been confirmed by the opinion expressed to the War Department by some of the Senators who voted upon the question; and whereas the President is willing that this subject should be referred to the Senate for their consideration, and if it was not intended by the Senate that the above-mentioned sum of \$5,000,000 should include the objects herein specified, that in that case such further provision should be made therefor as might appear to the Senate to be just. It is therefore agreed that the sum of \$600,000 shall be, and the same is hereby, allowed to the Cherokee people, to include the expense of their removal and all claims of every nature and description against the Government of the United States not herein otherwise expressly provided for, and to be in lieu of the said reservations and pre-emptions (provided for in articles 12 and 13 of the treaty), and of the sum of \$300,000 for spoiliations described in the first article of the above-mentioned treaty. This sum of \$600,000 shall be applied and distributed agreeably to the provisions of the said treaty, and any surplus which may remain after removal and payment of the claims so ascertained shall be turned over and belong to the education fund." (*Ib*, p. 78.)

Hon. Casey A. Harris, Commissioner of Indian Affairs, in his letter of July 25, 1836, to the Board of Commissioners authorized by the 17th article of the treaty to examine and adjudicate Cherokee claims, refers to the above supplementary article as follows: "The sum of \$300,000 is appropriated to pay claims for spoiliations; if they should fall short of this sum, the balance will be applicable to the expenses of removing the Cherokees."

Again, in his letter of January 25, 1838, to Lieutenant Van Horne, disbursing agent for the removal and subsistence of those Indians, the Commissioner says: "The claims for which requisitions have been made by the commissioners amount to \$210,000, and the remittances which have been made for your use are \$300,000. There will then be a balance of \$90,000, applicable to other objects than the payment for abandoned improvements, &c., and which you will apply to the satisfaction of claims for commutation of subsistence and others of a similar character." (See Records Indian Office.)

There is further evidence in support of the proposition that the treaty of 1835-'36 contemplated that the expense of removal and subsistence should be paid by the United States, and that the "Old Settlers," or Western Cherokees, were "properly chargeable" only with the number actually removed and subsisted out of the \$600,000 allowed by the third supplementary article to the treaty of 1835 for that and other purposes, and to this evidence I will now call your attention.

The treaty of 1835-'36 was finally ratified on the 23d of May, 1836, and by its provisions the Cherokees were required to remove within two years. (Rev. Ind. Treaties, pp. 75, 79.) The time elapsed May 23, 1838. It had been concluded, in defiance of the protest of a large majority, with a small minority of the nation, who saw no other escape from threatened ruin. Within that period those who had favored the treaty had mostly emigrated to the West under its provisions. The large majority of the nation, adopting the counsels of John Ross—a man represented as of unlimited influence among them—had obstinately withstood all the efforts of the government, to induce them to adopt the treaty and emigrate under its provisions. Ross and his party had constantly repudiated its obligations and denounced it as a fraud upon their nation. In the mean time, the United States had appointed its agents under the treaty, and collected a large military force to enforce the execution of the treaty. The State of Georgia had adopted a system of hostile legislation, intended to drive them from the country. She had surveyed the country, and disposed of the homes of the Cherokees by lottery, dispossessed them of their lands, subjected them to her laws, while she disqualified them to hold any political or civil rights. In this posture of affairs the Cherokees, who had never abandoned the vain hope of remaining in the country, or obtaining better terms from the United States, through John Ross and others, made new proposals to the United States for the sale of their country and emigration to the West. Still pursuing the idea that they were aliens to the treaty of 1835, and unfettered by its provisions, they proposed to release all claim to their country, and emigrate for a named sum of money, in connection with other conditions, among which was the stipulation that they should be allowed to take charge

of their own emigration, and that the United States should pay the expense of their removal. To avoid the necessity of enforcing the treaty at the point of the bayonet, and to relieve itself of its counter obligations to Georgia by the compact of 1802, and to the Cherokees by the treaties of 1817 and 1819, the proposal was readily acceded to. On the 18th of May, 1838, Mr. Poinsett, then Secretary of War, addressed a reply to the proposals of the Cherokee delegation, in which he says: "If it be desired by the Cherokee Nation that their own agents should have the charge of their emigration, their wishes will be complied with, and instructions be given to the commanding general in the Cherokee country to enter into arrangements with them to that effect. With regard to the *expense of this operation*, which you ask may be defrayed by the United States, in the opinion of the undersigned the request ought to be granted: and an application for such further sum as may be required for this purpose shall be made to Congress." The application was made, and a resolution of the House of Representatives adopted, inquiring how much would be required for that purpose. The Secretary of War replied to this resolution on the 25th of May, 1838, from which the following is an extract:

"The payment of the expenses of removing the remaining Cherokees, estimated at 15,840, at \$30 a head.....	\$475, 200
"Amount applicable to that purpose.....	39, 300
"Balance to be provided for.....	335, 900

"If it should be deemed proper to make any further provision for the payment of the *subsistence* of the emigrants for one year after their arrival in the West, it requires, estimating the whole number at 18,335, thereby including those who have already emigrated, and allowing the amount stipulated to be paid by treaty, viz, \$33.33 a head, \$611,105.55."

These estimates, with a message containing the provisional arrangement with John Ross, were communicated to Congress and received its sanction by the act of June 12, 1838, in the following language:

"That the sum of \$1,047,067 be appropriated out of any money in the Treasury not otherwise appropriated, in full for all objects specified in the third article of the treaty of 1835 between the United States and the Cherokees, and for the further object of aiding in the *subsistence* of the Indians for one year after their removal west: *Provided*, That no part of the said sum of money shall be deducted from the \$5,000,000 stipulated to be paid to said tribe of Indians by said treaty: *And provided further*, That the said Indians shall receive no benefits from said appropriation unless they shall complete their emigration within such time as the President shall deem reasonable, and without coercion on the part of the government."

Here was a clear legislative affirmation of the terms offered by the Indians and acceded to by the Secretary of War. It was agreed by the Secretary of War to consider the expenses of removal and subsistence, as *intended* by the treaty of 1835, to be borne by the United States, and Congress affirmed his act by providing that no part of the \$1,047,067 should be taken from the treaty fund. It was made auxiliary to the \$600,000 provided for in the third supplemental article, a fund provided for removal and other expenditures independent of the treaty fund and in full for these objects.

It will be observed that the act of June 12, 1838, provides that a part of the sum appropriated was for the "object of *aiding in the subsistence* of the Indians for one year after their removal west. The actual expense of subsistence was found to be \$800,528.31, being in excess of the estimate on which the appropriation was based, of \$189,422.76, and this excess was provided for by the act of September 30, 1850. (9th Stat., p. 556, and Rep. 176, Senate Com., 31st Cong. 1st sess.)

Here, then, was a total allowance and appropriation of \$1,836,489.76, mainly to pay the expenses incurred by the removal and subsistence of the Cherokees.

Notwithstanding the circumstances which surrounded these last appropriations, it is not, perhaps, fair to assume nor reasonable to suppose that in their action Congress was influenced solely by considerations of public policy. It would seem, rather, that they recognized the fact that the Cherokees had some grounds, at least, for the interpretation of the treaty of 1835, making it obligatory upon the United States to emigrate them to their new homes and subsist them for one year after their removal.

Now, if the government was bound by the terms of that treaty to remove and subsist those Indians at the expense of the United States no part of the \$5,000,000 fund was properly chargeable with those expenditures; but the \$600,000 allowed by the third supplementary article to that treaty, appropriated July 2, 1836, the appropriation of \$1,047,067 on July 12, 1838, and the appropriation of \$189,422.76 on September 30, 1850, alone alone available for these purposes.

I assume that the "Old Settlers" were properly chargeable with all expenses incurred for removal and subsistence which were paid out of the \$600,000 fund, and for these expenses alone; otherwise, they would have been entitled to credit

for the subsequent appropriations made to meet those expenditures. The appropriation of \$1,047,067 in June, 1838, was for a specific purpose. It was in full for the removal and to aid in the subsistence of the Cherokees then east of the Mississippi. The Cherokees then east were properly chargeable with those expenses, at least to the extent of that appropriation, and therefore in the settlement with them, under the ninth article of the treaty of 1846, they were entitled to credit for that amount. If the "Old Settlers" were to be charged with the removal and subsistence of the Cherokees who emigrated after June 12, 1838, I am unable to understand why they were not also entitled to a credit for the appropriation made for their emigration and subsistence.

To determine, then, the number of Cherokees removed prior to June 12, 1838, under the provisions of the treaty of 1835, is deemed important in arriving at a fair and equitable settlement of the claim of the Western Cherokees, and this has been found exceedingly difficult. According to the estimates made by the Secretary of War in his letter of May 25, 1838, to Congress, the number was about 2,495. On the other hand, the Cherokee census of 1835 shows that the whole number of Indians then east of the Mississippi was about 16,743. (Senate Doc. 120, p. 535, 25th Cong., 2d sess.) Of this number John Ross removed about 13,149 after June 12, 1838 (Ex. Doc. 65, p. 17, H. R., 30th Cong., 1st sess.), and the number then remaining, as shown by the Mully roll in the Indian Office, was 1,517. This would make about 2,077 removed prior to the emigration under Ross.

For the purposes of this settlement, I have adopted the estimates of the Secretary of War. The appropriation of June 12, 1838, was based upon these estimates in so far as they related to the number of Indians then to be removed, and it would seem that the conditions were then more favorable for ascertaining the actual population of the nation than when the census was taken.

I am, therefore, inclined to the opinion that a fair and equitable statement of the "Old Settlers," or Western Cherokee Indians, against the United States would be as follows:

CR.

By the fund provided by the treaty of 1835-'36.....	\$5,600,000 00
From which are to be deducted, under the fourth article of the treaty of 1846, the sums "properly chargeable" under the fifteenth article of the treaty of 1835, which, according to the report of the accounting officers, (except for removal and subsistence), will stand thus:	
For improvements	\$1,540,572 27
For ferries	159,572 12
For spoliations	264,894 09
For removal and subsistence of 4,495 Indians, at \$53.33 a head	133,058 35
Debts and claims upon the Cherokee Nation, viz:	
National debts (tenth article)	18,062 06
Claims of United States citizens (tenth article)	61,073 49
Cherokee committee (twelfth article)	22,212 76
	101,348 31
Amount allowed United States for additional quantity of land ceded	500,000 00
Amount invested as general fund of the nation	500,880 00
Unexpended balance of the \$600,000 appropriation	39,300 00
Making in the aggregate the sum of	3,239,625 14
Which, being deducted from the treaty fund of \$5,600,000, leaves the residuum, contemplated by the fourth article of the treaty of 1846, of	2,360,374 86
Of which amount one-third is to be allowed to the "Old Settlers," being	786,791 62
Together with interest thereon at 5 per cent. per annum from June 12, 1838, to September 22, 1851, when a payment of \$532,896.90, with interest, was made. (Cong. Globe, p. 1760, 31st Cong. 31st sess., and act September 30, 1850, 9th Stat., p. 556)	522,342 21
Deduct above payment with interest as credited	887,480 15
Balance due the "Old Settlers"	421,653 68

Together with interest thereon at 5 per cent. per annum from September 22, 1851, as provided by Senate resolution of September 5, 1850. (Cong. Globe, vol. 21, part 2, p. 1760, 1849-'50)

Respecting the collection and distribution of the moneys due these Indians, it appears that, acting under the authority of that clause of the second article of the

treaty of 1846 which provides that "all party distinctions shall cease, except so far as they may be necessary to carry out this convention or treaty," the "Old Settlers" held a convention or council November 22, 1875, at Tablequah, the capital of the Cherokee Nation, for the consideration and determination of the best course to pursue and means to be adopted by them to secure a fair and just settlement with the United States of all matters under or growing out of said treaties. That convention resolved to prosecute their claim to a speedy, just, and final settlement and payment of what should upon such a settlement be found due them from the United States, and to that end appointed three of their own people as commissioners, with full power and authority to represent them in the prosecution of their claim. These commissioners were also authorized to employ such legal assistance as they might deem necessary to a successful prosecution of the claim, and for the purpose of defraying all the expenses of said prosecution the convention or council set apart and appropriated 35 per cent. of whatever sum might thus be recovered or secured to said Indians, "or so much thereof as might be necessary" for that purpose. A duly attested copy of the proceedings of that convention is now on file in this department.

A similar council of these Indians was held at the same place on April 28, 1877, when J. M. Bryan, esq., one of their commissioners, was appointed their treasurer, and authorized to receive from and receipt to the proper officer or officers of the government for the 35 per cent. thus set apart for the purposes above stated. This authority conferred upon Mr. Bryan as their commissioner and treasurer was reaffirmed and continued by similar councils held at the same place November 20, 1880, November 17, 1881, and October 13, 1882. By the resolutions of their council of November 17, 1881, the objects for which the sum of 35 per cent. was set apart and appropriated by the council of 1875 are specifically enumerated as follows, namely:

"To pay the expenses of the several councils held by their people for the purpose of considering and directing the collection of their claim from 1875 until the same should be collected and final payment and full settlement made with their treasurer. To repay moneys borrowed by the 'Old Settlers' for the purpose of prosecuting their claim. To pay their commissioners for their services and expenses. To pay their treasurer for his services, and to pay attorneys employed by their commissioner and treasurer according to contracts with them for services actually rendered in the prosecution of their claim."

At the last council held by the Indians, on October 13, 1882, the following resolutions were unanimously adopted, viz: "Whereas we, the 'Old Settler' or Western Cherokee Indians, have ever since about the year 1851 been appealing either to the Department of the Interior of the United States or Congress, praying for the settlement and payment of our claims arising against the general government growing out of the treaties between our people and the United States and the several acts of Congress in relation thereto: Therefore,

"1st. *Be it resolved by the 'Old Settler' or Western Cherokee Indians in general council assembled,* That we fully and highly appreciate the action of Congress in inserting a provision in the bill making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1883, and for other purposes, authorizing and directing the Hon. 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 any bands or parts of the Cherokee Indians and the United States, arising from or growing out of treaty stipulations or the laws of Congress relating thereto; and that, though our claims have been long deferred, we hereby express our thanks to Congress for thus providing for a just and equitable settlement with us.

"2d. *Be it resolved,* That we respectfully but earnestly request that Congress, in making necessary appropriations to pay whatever amount may be found to be due us as such 'Old Settler' or Western Cherokee Indians upon such investigation and report by the Hon. Secretary of the Interior, shall direct the payment of the same to be made in accordance with the resolution for that purpose adopted by the general council of the said 'Old Settler' or Western Cherokee Indians on the 22d of November, 1875, and which has been reaffirmed by said Indians by like general councils held respectively in 1876, 1877, 1879, 1880, 1881, and which we do hereby again reaffirm, and ask that the per cent. therein named be paid to Col. J. M. Bryan, our special commissioner to prosecute our said claims, and our treasurer, to be applied by him as stipulated and provided in said resolution of November 22, 1875, and that the said J. M. Bryan be, and he is hereby, authorized and fully empowered to receive from the proper disbursing officer or officers of the United States the amount of said per cent. upon whatever sum may be allowed said Indians and appropriated by Congress as aforesaid, and to execute a receipt in full thereof to the United States for and on behalf of all of said 'Old Settler' or Western Cherokee Indians and that the balance of such amount so found due and to be distributed per capita to each and every 'Old Settler' or Western Cherokee Indian, according to the fourth article of the treaty of 1846: *Provided,* That before the said J. M. Bryan, treasurer and commissioner of the 'Old Settler' Cherokees

draws the amount of (35 per cent.) 35 per cent., as above provided, he shall be required to file a bond to the satisfaction of the Secretary of the Interior, conditioned upon disbursing the said money according to the authority granted him by the 'Old Settlers' conventions of 1875 to 1882, inclusive."

Duly certified copies of the proceedings of the several councils, as above mentioned, are now on file in the Interior Department.

Therefore, in view of all the facts stated in this report, I recommend that an appropriation be made to pay the said sum of \$421,653.68 with interest, so found due the 'Old Settler' or Western Cherokee Indians, and that the same be paid in accordance with their request, as expressed by them in their several resolutions above mentioned and the fourth article of the treaty of 1846.

Very respectfully,

C. C. CLEMENTS,
Special Agent.

The Hon. SECRETARY OF THE INTERIOR.

[Senate Report No. 353. Forty-seventh Congress, first session.]

MARCH 29, 1882.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Indian Affairs, submitted the following report, to accompany bill S. 321 :

The Committee on Indian Affairs, to whom was referred the bill (S. 321) to refer the claim of the Western Cherokees, or "Old Settlers," to the United States Court of Claims for adjudication, have considered the same, and report thereon as follows :

A bill, of which this is a copy, was considered by the Senate Committee on Indian Affairs at the last session of Congress, and it was reported favorably from that committee by Senator Logan.

The report made by Senator Logan was as follows, viz :

"It appears from the papers submitted to us that the claim presented by the memorial is based upon the stipulations contained in treaties between these Indians and the United States, dated respectively in the years of 1835, 1836, and 1846. The 'Old Settlers or Western Cherokee Indians,' so called, consist of that portion of the Cherokee Indians who emigrated, at an early day in this country's history, west of the Mississippi River. Indeed, many of them emigrated to that country while it belonged to France, and after the United States had acquired that territory, President Jefferson encouraged these Indians to emigrate there, by his letter of January 9, 1809. Between that date and the year of 1817, so large a number of the Cherokees had emigrated to and settled upon lands west of the Mississippi that they assumed a national or tribal character, and in July of the latter year a treaty was entered into between General Andrew Jackson, Governor Joseph McMinn, and General David Meriwether, as commissioners on the part of the United States, and deputies from the Cherokee Indians east, and those west of the Mississippi River, in what is now the State of Arkansas. By this treaty the *final division* of the tribe, previously agreed upon, was consummated. It was stipulated in the third, fourth, and fifth articles that they should thereafter hold their property separately, under the names of the 'Cherokee Nation east of the Mississippi River' and the 'Cherokee Nation west of the Mississippi River.' By the terms of that treaty, in consideration of lands ceded by the Western Cherokees to the United States east of the Mississippi River, the United States bound themselves 'to give to that part of the Cherokee Nation on the Arkansas River as much land on said river and White River as they had or might thereafter receive from the Cherokee Nation east of the Mississippi, acre for acre, as the just portion due that part of the nation on the Arkansas River, agreeably to their numbers'; the boundaries of which were described by the fifth article.

"That the treaty of 1817 was concluded to carry into effect in an efficient and binding manner the arrangement agreed upon in 1808-'9, is clearly shown in its preamble. At the time of making that treaty, the Cherokees on the Arkansas did not exceed two thousand souls, and in order to ascertain what number intended to emigrate and join the western nation, the third article of the treaty provided 'that a census shall be taken of the whole Cherokee Nation during the month of June, 1818,' in the following manner, viz : that the 'census of those on the east side of the Mississippi River who declare their intention of removing, shall be taken by a commissioner appointed by the Cherokees on the Arkansas River; and the census of the Cherokees on the Arkansas River, and those removing there, and who at that time declared their intention of

removing there, shall be taken by a commissioner appointed by the President of the United States and one appointed by the Cherokees east of the Mississippi River.'

"We have been thus particular in referring to the treaty of 1817, as it is the first official or binding compact entered into between the United States and the Cherokees for the establishment of a *nation* west of the Mississippi. It appears manifest from a careful examination of this instrument that two *nations* of Cherokees were established. Thus, that part of the Cherokees who decided to become part of the Cherokees on the Arkansas ceded their portion of the Cherokee lands east of the Mississippi River in exchange for lands west of that river, acre for acre. Not one dollar was paid them. By this treaty the separation of the tribe of Cherokees, and a division of their *common property*, was put in legal form. The stipulation that a census should be taken of all who had emigrated or intended to remove west and become citizens of the western nation clearly shows that the 'country on the Arkansas' was not intended to be given to the *whole nation*, but to *that portion* of it who had arrived there, or who would express their intention of removing there on or before a certain day. It was then agreed that the *common property* of the whole should be equitably divided and thereafter held separately. This treaty it seems was looked upon as the groundwork of the future removal of the Indian population from the South and Southwestern States beyond the Mississippi, and every means were used by the government to induce emigration under its provisions.

"Afterwards the Hon. John C. Calhoun, then Secretary of War, entered into a convention with those delegates, by which a new treaty with the Eastern Cherokees was concluded February 27, 1819. In this treaty or convention the Western Cherokees were not represented. It was negotiated and concluded between the United States and the Eastern Cherokees exclusively; but by its terms the separate and independent character and rights of the Western Cherokees were distinctly recognized and preserved.

"The sixth article of this treaty specially stipulates and defines the separate and relative rights of the two nations of Cherokees. It provides that 'the contracting parties agree that the annuity of the Cherokee Nation shall be paid, *two-thirds* to the Cherokees east of the Mississippi and *one-third* to the Cherokees west of that river, as it is estimated that those who have emigrated and have enrolled for emigration constitute *one-third* of the whole nation.'

"Here is a clear and unequivocal declaration made by the United States and the Cherokees east, that there was at that time a *nation* of Cherokees west of Mississippi; that the property they formerly held in *common* was *divided*.

"The Western or 'Old Settler' Cherokees consented to the stipulations of this latter treaty so far as the same related to them and their property rights.

"The territory assigned and conveyed to them in Arkansas was surveyed and marked off, embracing about four million two hundred thousand acres, with the pledge from the Government of the United States that the lands *west of their western boundary* should be attached thereto as soon as they could be purchased from the aboriginal occupants. The annuities were thereafter divided as agreed upon, *viz*, *one-third* paid to the Cherokee Nation west, and *two-thirds* to the Cherokee Nation east of the Mississippi River. They had separate agents appointed by the United States, and from that time were treated as separate and distinct nations, each holding its own property.

"In the year of 1828 the government, desiring to extinguish the title of the Western Cherokees to their lands in what is now the State of Arkansas, entered into another treaty with them for that purpose. By the second article of that treaty the United States solemnly guaranteed to that nation of Indians 7,000,000 acres of land west of the western boundary of Arkansas, the boundaries of which are specifically defined by that article. The same article further guaranteed to those Indians as follows: 'In addition to the *seven millions of acres* thus provided for and bounded, the United States further *guarantee* to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country lying west of the western boundary of the above-described limits, and as far west as the sovereignty of the United States and their right of soil extends.' So it will be seen that the title to the lands embraced and described in the second article of the treaty of 1828, in the 'Old Settler' or Western Cherokees, was solemnly confirmed by the United States.

"This same guarantee is contained in the first article of the treaty with them in the year of 1833, with some slight and unimportant changes in the boundaries.

"The views of the committee in regard to the rights of the Western Cherokees, acquired under the treaties of 1817, 1819, and 1828, are sustained by the correspondence between the contracting parties to them, to be found among the documents on that subject in the Executive and War Departments anterior to the treaty of 1835, as well as the preambles to the treaties of 1828 and 1833 between the United States and the Western Cherokees; all of which show that the treaty of 1819 was regarded by all parties as a final measure, and that thereafter the Eastern and Western Cherokees were to be separate nations, entirely independent of each other.

"Thus the separate nationality of the Western Cherokees, and their exclusive title to their lands referred to, stood until 1835, when the treaty of that year was concluded between the United States and the Cherokee Indians.

"By the first article of this latter treaty the Cherokees, in consideration of the sum of five million dollars, ceded, relinquished, and conveyed to the United States all their lands east of the Mississippi River, and released all their claims upon the United States for spoliations of every kind.

"The second article of this treaty makes the first attempt to deprive the Western Cherokees of their absolute right as a separate part of the Cherokees to the lands guaranteed to them by the treaty of 1828, and reaffirmed by the treaty of 1833, and it will be observed that only two of the Western Cherokees signed this treaty, namely, John Smith and James Rogers, who, it will be seen by reference to the statement prefixed to their signatures to the treaty of 1835, were only visitors from the Western Cherokees to the Cherokees east of the Mississippi, to give assurance of the friendly disposition of their people towards the Eastern Cherokees, &c., and not as delegates of the Western Cherokees authorized to negotiate and sign treaties.

"It will also be seen by reference to the report of Mr. Medill, Commissioner of Indian Affairs (Ex. Doc. 65, page 15, first session Thirtieth Congress), that in the settlement made with the Eastern Cherokees they are charged with the sum of \$1,500 '*paid to John Smith and James Rogers, delegates from the Western Cherokees, present at the negotiation of treaty of 1835-'36 for their trouble and expenses.*' This payment would seem to have been made as an inducement to Smith and Rogers to sign that treaty, because there is no other item charged against the Eastern Cherokees to pay for the trouble and expenses of any other of the delegates that negotiated that treaty. By the terms of the treaty of 1835 the Eastern Cherokees were to be removed west of the Mississippi River and settled upon the land formerly granted and guaranteed to the Western Cherokees.

"Under the fifteenth article of this treaty there was authorized to be deducted from the fund due these Indians 'the amount which shall be actually expended for the payment for improvements, ferries, claims, for spoliations, removal and subsistence, and debts and claims upon the Cherokee Nation, and for additional quantity of land and goods for the poorer of Cherokees, and the several sums to be invested for the general national funds provided for in the several articles of that 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.'

"By the second article of the supplement to this latter treaty it is provided and declared 'that the sum of five millions of dollars fixed by the Senate in their resolution of — day of March, 1835, as the value of the Cherokee lands and possessions east of the Mississippi River was not intended to include the amount which may be required to remove them, nor the value of certain claims which many of their people had against the United States.'

"The third article of the supplement to that treaty allows these Indians the sum of \$600,000 to meet the foregoing items, and the balance of this latter sum, that 'may remain after removal and payment of the claims so ascertained shall be turned over and belong to the educational fund.'

"After concluding the last-named treaty and the supplement thereto it seems that serious difficulties arose between portions of the people constituting and organized as the Cherokee Nation of Indians, growing out of charges to be made against the Western Cherokees, and to be deducted from the \$5,000,000 fund, as the purchase of their lands east of the Mississippi River, under the treaty of 1835. To settle these difficulties and to bring about a final and amicable settlement of all these causes of differences the treaty of August 6, 1846, was entered into between both the Eastern and Western Cherokees and the United States.

"By the first article of this treaty all the lands formerly granted to and held and occupied by the Western Cherokees were to be occupied and enjoyed by all the Cherokees in common.

"And, to settle and have definitely understood what claims or charges that should, and what should not, be made against the \$5,000,000 fund (the proceeds of the sale of their land east), the third article of this latter treaty provides that—

"Whereas certain claims have been allowed by the several boards of commissioners heretofore appointed under the treaty of 1835 *for rents under the name of improvements and spoliations, and for property of which the Indians were dispossessed, provided for under the sixteenth article of the treaty of 1835;* and whereas the said claims have been paid out of the \$5,000,000 fund; and whereas said claims were not justly chargeable to that fund, but were to be paid by the United States, the said United States agree to reimburse the said fund *the amount thus charged to said fund*—and the same shall form a part of the aggregate amount to be distributed to the Cherokee people—as provided in the ninth article of this treaty; and whereas a further amount has been allowed for *restitutions under the provisions of the thirteenth article of the treaty of 1835* by said commission-

ers, and has been paid out of said fund, and which said sums were properly chargeable to, and should have been paid by, *the United States*, the said United States further agree to reimburse the amounts thus paid for reservations to said fund; and whereas the expenses of making the treaty of New Echota *were also paid out of said fund, when they should have been borne by the United States*, the United States agree to reimburse the same, and also to reimburse all other sums paid to any other agent of the government and improperly charged to said fund, and the same shall form a part of the aggregate amount to be distributed to the Cherokee people as provided for in the ninth article of this treaty.'

"By the fourth article of the last named treaty the 'Old Settler' or Western Cherokees became entitled to one-third of the proceeds of the Cherokee lands east of the Mississippi River, freed from the charges mentioned in and specially excepted as charges to be made by the third article of that treaty.

"The terms 'excluding all extravagant and improper expenditures,' contained in the fourth article, evidently meant the items specified in the third article, which declares that the items therein mentioned should not be chargeable to the \$5,000,000 fund, but be borne by the United States. It is provided by the fourth article that 'so far as the Western Cherokees are concerned, in estimating the expense of removal and subsistence of an Eastern Cherokee, to be charged to the aggregate fund of five millions six hundred thousand dollars above mentioned, the sums for removal and subsistence stipulated in the eighth article of the treaty of 1835, as commutation money in those cases in which the parties entitled to it removed themselves, shall be adopted.'

"The eighth article of the treaty of 1835 fixes those sums at \$53.33 per head.

"The fourth article of the treaty of 1846 further provides that so far as the settlement with the Western Cherokees is concerned, 'there shall be no deduction from the fund before mentioned in consideration of any payments which may hereafter be made out of said fund; and it is hereby further understood and agreed that the principle above defined shall embrace all of those Cherokees west of the Mississippi who emigrated prior to the treaty of 1835.'

"This article and the third article of the treaty of 1846 define the basis of the settlement to be made with the 'Old Settlers' or Western Cherokees, and fixes the sum from which the charges proper to be made against them shall be deducted at \$5,600,000.

"The ninth article of this treaty fixes the basis of settlement with the Eastern Cherokees, and the sum from which charges against them shall be deducted, at \$6,647,067.

"The eleventh and only remaining article of the treaty of 1846, affecting the claim of the Western Cherokees, provides as follows:

"Whereas the Cherokee delegates contend that the amount expended for one year's subsistence of the Eastern Cherokees after their arrival in the West is not properly chargeable to the treaty fund: it is hereby agreed that the question shall be submitted to the Senate of the United States for its decision, which shall decide whether the subsistence shall be borne by the United States or the Cherokee fund, and if by the Cherokees, then to say whether the subsistence shall be charged at a greater rate than thirty-three thirty-three one-hundredths dollars per head; and also the question whether the Cherokee Nation shall be allowed interest on whatever sum may be found to be due the nation, and from what date and at what rate per annum.'

"The twelfth article of this treaty was stricken out by the Senate upon the ratification of the treaty, which was assented to by the Cherokees.

"The questions submitted to the Senate of the United States by the eleventh article were settled by the Senate, and thereby became a part of the treaty stipulations by the adoption of the following resolutions, September 5, 1850 (Cong. Globe, vol. 21, part 2, 1849-'50, page 1760):

"Resolved by the Senate of the United States, That the Cherokee Nation of Indians are entitled to the sum of \$189,422.76 for subsistence, being the difference between the amount actually paid and that expended by the United States, and which excess was improperly charged to the "treaty fund" in the report of the accounting officer of the Treasury.

"Resolved, That it is the sense of the Senate that interest at the rate of 5 per cent. per annum should be allowed upon the sums found due the Eastern and Western Cherokees, respectively, from the 12th day of June, 1838, upon the treaty of 1846.'

"By the second of the above resolutions it was declared that the Cherokees were entitled to interest upon any sums due them under the treaties of 1835 and 1846, from the 12th day of June, 1838.

"The committee find that among the items of the claim of the Western Cherokees there is one that is a manifest error in settling with these Indians, namely, the item of 'removal and subsistence, at the rate of \$53.33 per head, \$909,313.34,' found on page 19, Report of the Commissioner of Indian Affairs, Ex. Doc. 65, 1st session 30th Congress. This item in the Commissioner's statement of the account does not state the number of Indians removed and subsisted at that rate, but on page 17 of that

report the number is stated at 13,149. That number at the rate of \$53.33 per head would amount to the sum of \$701,236, instead of \$909,313.34, as charged, making an error against the Western Cherokees of \$208,077.34 in the simple matter of calculation.

"Besides this item, these Indians claim that by a fair construction of the treaties with them, and the acts of Congress relating to their rights under these treaties, they should not be charged, as was done by the accounting officers of the government, in their settlements, with the items—

"First. The charge for claims of citizens of the United States of \$59,574.25.

"Second. The charge for claims of individual Cherokees, \$17,561.41.

"Third. The charge for compensation to Cherokee committee, \$22,026.89.

"Fourth. The charge for spoliation, rents, and damages, \$434,861.85.

"Fifth. The charge for reservations, allowed, \$116,882.50.

"Sixth. The charge for pre-emptions, \$15,589.

"Seventh. The charge for and on account of removal and subsistence, \$32,666.65.

"There is a peculiarity about the last of the above items that throws some doubt around its correctness, for the cost of subsistence and removal to be borne by the Western Cherokees, as above shown, had not only been charged to them, but over-charged, and the fact that it took just this latter sum to effect a balance of the account with these Indians seems to furnish the reason for the doubt about the correctness of this last item.

"The claimants contend, and the committee are of opinion, that the receipt by these Indians of the sum of \$523,782.18, appropriated by the act of September 30, 1850, in the manner in which they received it, does not preclude them from making their claim for any other sum that may be justly due them under a fair and proper interpretation of the treaties with them. Though the act making that appropriation provides 'that the Indians who shall receive the said money shall first respectively sign a receipt or release acknowledging the same to be in full of all demands under the fourth article of said treaty,' it appears that before these Indians would consent to receive the said sum thus appropriated they were assured by the agent of the government sent to make the payments, Mr. John Drennon, that they could receive the money under protest and thereby preserve their rights under the treaties between them and the United States for any amounts that might be due them by a just and equitable construction of said treaties.

"It also appears that these Indians, before receiving any part of that appropriation, did formally and in writing deliver to said agent their solemn protest against receiving the same as a full settlement of all their claims against the United States under said treaties, which protest, as appears by the records of the Interior Department, was forwarded to the Commissioner of Indian Affairs at Washington City.

"The facts necessary to determine the justness of the claim preferred by these Indians consist almost, if not entirely, of the public treaties, proceedings of the Senate, acts of Congress, and the records of the several departments of the government, all of which are preserved.

"The committee are of opinion that the claim of these Indians possesses sufficient merit to demand a careful and thorough investigation of the same; that such an investigation involves a judicial interpretation of the several treaties between them and the United States, the construction of the several acts of Congress in relation thereto, and the examination of all settlements made and accounts stated with them under these treaties and acts of Congress; that such an investigation cannot be made by a committee of Congress in the limited time allowed such committee by the performance of the ordinary legislative duty imposed upon its members; and that this case should receive a full investigation by the courts.

"The committee therefore report the accompanying bill, and recommend its passage.

⁴² Copy of proceedings of the council of the Old Settler or Western Cherokee Indians, November 30, 1880.

"TALEQUAH, CHEROKEE NATION, November 20, 1880.

"At a meeting of the Old Settler Cherokees, held in the council room of the capital, there were present Rev. W. A. Duncan, Mr. J. M. Bryan, H. D. Reese, W. C. Woodall, D. C. Duncan, Caleb Starr, Wm. McCracken, J. M. Smith, and John Hendricks, George Drum, B. H. Severe, Simon Girty, George Crittenton, Charles Johnson, L. C. Woodall, Wm. Hendricks, members of council; J. M. Duncan, and other old settlers.

"W. A. Duncan was called to preside, and H. D. Reese appointed secretary.

"Mr. J. M. Bryan was requested to make his report as to the present status of the claim for which he is agent, &c.

"Mr. Bryan made his report to the meeting, and made known that the said claim of the Old Settlers against the United States was now before the Indian Committee of the Senate, and that for various causes has been delayed to be reported to the Senate.

"Report was interpreted and adopted. It was moved and seconded that a committee be appointed by the chair to report resolutions reiterating the powers granted Mr. Bryan by a former meeting. Adopted.

"The chair appointed Messrs. H. D. Reese, W. C. Woodall, and John Hendricks said committee, who submitted the following, to wit:

"To the Old Settler council now in session:

"Whereas, according to notice published in the Cherokee Advocate by J. M. Bryan, William Wilson, and William Hendricks, our commissioners appointed in 1875 to prosecute the 'Old Settler' Cherokee claim against the Government of the United States for balances due said 'Old Settler' Cherokees, as provided for mainly by Cherokee treaty of 1846; and

"Whereas our said commissioners in their reports have given general satisfaction up to the time of the present council: Therefore,

"Resolved, That we this day ratify and confirm all the action taken in the premises by our said commissioners, and hereby confirm all contracts made with attorneys by our said commissioners for the services rendered in the prosecution of our said claim.

"Be it further resolved, That J. M. Bryan, our special commissioner and attorney, who is himself a citizen of the Cherokee Nation and an 'Old Settler,' and by our former council was duly made treasurer for the amount of 35 per cent. of the amount of the claim that may be allowed. The first council creating said commission was in 1875, at which council 35 per cent. of the whole claim was set apart to pay the expense of former Old Settlers' councils, to pay the expenses of our commissioners, to pay the expenses of attorneys employed to help prosecute said claim, or as much thereof as might be necessary.

"Therefore, we again reiterate that J. M. Bryan is fully authorized to receive the said amount of 35 per cent. of the whole amount allowed on said claim, as the 'Old Settler' Cherokee treasurer, and to receipt to the proper authorities of the United States for said amount, which shall be the 'Old Settler' Cherokees' receipt for the same.

"Submitted by—

"H. D. REESE,
 "W. C. WOODALL,
 "JOHN HENDRICKS,
 "Committee.

"The above resolution being interpreted and put to vote was unanimously adopted.

"W. A. DUNCAN,
 "President.

"H. D. REESE,
 "Secretary.

"I hereby certify that the above is a true copy of the proceedings had by the 'Old Settlers' council.

"Given under my hand and seal of office, at Tahlequah, Cherokee Nation, I. T., this 23d day of November, 1880.

"ALLEN ROSS, Clerk,
 Tahlequah Dist., C. N., I. T.

"Approved November 26, 1880.

"D. W. BUSHYHEAD,
 "Principal Chief, Cherokee Nation.

"I hereby certify that this is a true copy of the original.

"DELOZIER DAVIDSON,
 "Notary Public.

"WASHINGTON, D. C., January 3, 1881."

Your committee concur in and adopt this report, and report back the bill with the recommendation that it do pass.

[Senate Report No. 849, Forty-sixth Congress, third session.]

FEBRUARY 9, 1881.—Ordered to be printed.

Mr. LOGAN, from the Committee on Indian Affairs, submitted the following report [to accompany bill S. 2164]:

The Committee on Indian Affairs, to whom was referred the memorial of the "Old Settlers or Western Cherokee Indians," have had the same under consideration, and submit the following report thereon:

It appears from the papers submitted to us that the claim presented by the memorial is based upon the stipulations contained in treaties between these Indians and the United States, dated respectively in the years of 1835, 1836, and 1846. The "Old Settlers, or Western Cherokee Indians," so called, consist of that portion of the Cherokee Indians who emigrated at an early day in this country's history west of the Mississippi River. Indeed, many of them emigrated to that country while it belonged to France, and after the United States had acquired that territory President Jefferson encouraged these Indians to emigrate there by his letter of January 9, 1809. Between that date and the year of 1817 so large a number of the Cherokees had emigrated to and settled upon lands west of the Mississippi that they assumed a national or tribal character, and in July of the latter year a treaty was entered into between General Andrew Jackson, Governor Joseph McMinn, and General David Merriweather, as commissioners on the part of the United States, and deputies from the Cherokee Indians east, and those west of the Mississippi River, in what is now the State of Arkansas. By this treaty the *final division* of the tribe, previously agreed upon, was consummated. It was stipulated in the 3d, 4th, and 5th articles that they should thereafter hold their property separately, under the names of the "Cherokee Nation east of the Mississippi River" and the "Cherokee Nation west of the Mississippi River." By the terms of that treaty, in consideration of lands ceded by the Western Cherokees to the United States east of the Mississippi River, the United States bound themselves "to give to that part of the Cherokee Nation on the Arkansas River as much land on said river and White River as they had or might thereafter receive from the Cherokee Nation east of the Mississippi, acre for acre, as the just portion due that part of the nation on the Arkansas River, agreeably to their numbers;" the boundaries of which were described by the 5th article.

That the treaty of 1817 was concluded to carry into effect in an efficient and binding manner the arrangement agreed upon in 1808-09 is clearly shown in its preamble. At the time of making that treaty the Cherokees on the Arkansas did not exceed two thousand souls, and in order to ascertain what number intended to emigrate and join the Western Nation, the 3d article of the treaty provided "that a census shall be taken of the whole Cherokee Nation during the month of June, 1818," in the following manner, viz, that "the census of those on the east side of the Mississippi River who declare their intention of removing shall be taken by a commissioner appointed by the Cherokees on the Arkansas River; and the census of the Cherokees on the Arkansas River, and those removing there, and who at that time declared their intention of removing there, shall be taken by a commissioner appointed by the President of the United States and one appointed by the Cherokees east of the Mississippi River."

We have been thus particular in referring to the treaty of 1817, as it is the first official or binding compact entered into between the United States and the Cherokees for the establishment of a nation west of the Mississippi. It appears manifest from a careful examination of this instrument that two nations of Cherokees were established. Thus that part of the Cherokees who decided to become part of the Cherokees on the Arkansas ceded their portion of the Cherokee lands east of the Mississippi River in exchange for lands west of that river, acre for acre; not one dollar was paid them. By this treaty the separation of the tribe of Cherokees and a division of their *common property* was put in legal form. The stipulation that a census should be taken of all who had emigrated or intended to remove west and become citizens of the Western Nation clearly shows that the "country on the Arkansas" was not intended to be given to the *whole nation*, but to *that portion* of it who had arrived there, or who would express their intention of removing there on or before a certain day; it was then agreed that the *common property* of the whole should be equitably divided and thereafter held separately. This treaty, it seems, was looked upon as the groundwork of the future removal of the Indian population from the South and Southwestern States beyond the Mississippi, and every means were used by the government to induce emigration under its provisions.

Afterwards the Hon. John C. Calhoun, then Secretary of War, entered into a convention with those delegates, by which a new treaty with the Eastern Cherokees was concluded February 27, 1819. In this treaty, or convention the Western Cherokees

were not represented. It was negotiated and concluded between the United States and the Eastern Cherokees exclusively; but by its terms the separate and independent character and rights of the Western Cherokees were distinctly recognized and preserved.

The sixth article of this treaty specially stipulates and defines the separate and relative rights of the two nations of Cherokees. It provides that the contracting parties agreed that the annuity of the Cherokee Nation shall be paid, *two-thirds* to the Cherokees east of the Mississippi and *one-third* to the Cherokees west of that river, as it is estimated that those who have emigrated and have enrolled for emigration constitute *one-third* of the whole nation."

Here is a clear and unequivocal declaration made by the United States and the Cherokees east that there was at that time a nation of Cherokees west of the Mississippi; that the property they formerly held in common was divided.

The Western or "Old Settler" Cherokees consented to the stipulations of this latter treaty so far as the same related to them and their property rights.

The territory assigned and conveyed to them in Arkansas was surveyed and marked off, embracing about four million two hundred thousand acres, with the pledge from the Government of the United States that the lands west of their western boundary should be attached thereto as soon as they could be purchased from the aboriginal occupants. The annuities were thereafter divided as agreed upon, viz, *one-third* paid to the Cherokee Nation west and *two-thirds* to the Cherokee Nation east of the Mississippi River. They had separate agents appointed by the United States; and from that time were treated as separate and distinct nations, each holding its own property.

In the year 1828 the government, desiring to extinguish the title of the Western Cherokees to their lands in what is now the State of Arkansas, entered into another treaty with them for that purpose. By the second article of that treaty the United States solemnly guaranteed to that nation of Indians 7,000,000 acres of land west of the western boundary of Arkansas, the boundaries of which are specifically defined by that article. The same article further guaranteed to these Indians as follows: "In addition to the *seven millions of acres* thus provided for and bounded, the United States further guarantee to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country lying west of the western boundary of the above described limits and as far west as the sovereignty of the United States and their right of soil extends." So it will be seen that the title to the lands embraced and described in the second article of the treaty of 1828, in the Old Settler or Western Cherokees, was solemnly confirmed by the United States.

This same guarantee is contained in the first article of the treaty with them in the year of 1833, with some slight and unimportant changes in the boundaries.

The views of the committee in regard to the rights of the Western Cherokees, acquired under the treaties of 1817, 1819, and 1828, are sustained by the correspondence between the contracting parties to them, to be found among the documents on that subject in the Executive and War Departments anterior to the treaty of 1835, as well as the preambles to the treaties of 1828 and 1833, between the United States and the Western Cherokees; all of which show that the treaty of 1819 was regarded by all parties as a final measure, and that thereafter the Eastern and Western Cherokees were to be separate nations, entirely independent of each other.

Thus the separate nationality of the Western Cherokees, and their exclusive title to their lands referred to, stood until 1835, when the treaty of that year was concluded between the United States and the Cherokee Indians.

By the first article of this latter treaty the Cherokees, in consideration of the sum of five million dollars, ceded, relinquished, and conveyed to the United States all their lands east of the Mississippi River, and released all their claims upon the United States for spoliations of every kind.

The second article of this treaty makes the first attempt to deprive the Western Cherokees of their absolute right as a separate part of the Cherokees to the lands guaranteed to them by the treaty of 1828, and reaffirmed by the treaty of 1833, and it will be observed that only two of the Western Cherokees signed this treaty, namely, John Smith and James Rogers, who, it will be seen by reference to the statement prefixed to their signatures to the treaty of 1835, were only visitors from the Western Cherokees to the Cherokees east of the Mississippi, to give assurance of the friendly disposition of their people towards the Eastern Cherokees, &c., and not as delegates of the Western Cherokees authorized to negotiate and sign treaties.

It will be seen by reference to the report of Mr. Medill, Commissioner of Indian Affairs (Ex. Doc. 65, page 15, 1st session, 30th Congress), that in the settlement made with the Eastern Cherokees they are charged with the sum of \$1,500 "*paid to John Smith and James Rogers, delegates from the Western Cherokees, present at the negotiation of the treaty of 1835-'36, for their trouble and expenses.*" This payment would seem to have been made as an inducement to Smith and Rogers to sign that treaty, because there is no other item charged against the Eastern Cherokees to pay for the trouble and expenses of any others of the delegates that negotiated that treaty. By the terms of the treaty

of 1835 the Eastern Cherokees were to be removed west of the Mississippi River and settled upon the land formerly granted and guaranteed to the Western Cherokees.

Under the fifteenth article of this treaty there was authorized to be deducted from the fund due these Indians "the amount which shall be actually expended for the payment for improvements, ferries, claims for spoiliations, removal and subsistence, and debts and claims upon the Cherokee Nation, and for additional quantity of land, and goods for the poorer of Cherokees, and the several sums to be invested for the general national funds provided for in the several articles of that 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."

By the second article of the supplement to this latter treaty it is provided and declared "that the sum of five millions of dollars fixed by the Senate in their resolution of — day of March, 1835, as the value of the Cherokee lands and possessions east of the Mississippi River was not intended to include the amount which may be required to remove them, nor the value of certain claims which many of their people had against the United States."

The third article of the supplement to that treaty allows these Indians the sum of \$600,000 to meet the foregoing items, and the balance of this latter sum that "may remain after removal and payment of the claims so ascertained shall be turned over and belong to the educational fund."

After concluding the last-named treaty and the supplement thereto it seems that serious difficulties arose between portions of the people constituting and organized as the Cherokee Nation of Indians, growing out of charges to be made against the Western Cherokees, and to be deducted from the \$5,000,000 fund, as the purchase of their lands east of the Mississippi River, under the treaty of 1835. To settle these difficulties and to bring about a final and amicable settlement of all these causes of differences the treaty of August 6, 1846, was entered into between both the Eastern and Western Cherokees and the United States.

By the first article of this treaty all the lands formerly granted to and held and occupied by the "Western Cherokees" were to be occupied and enjoyed by all the Cherokees in common.

And, to settle and have definitely understood what claims or charges that should, and what should not, be made against the \$5,000,000 fund (the proceeds of the sale of their land east), the third article of this latter treaty provides that—

"Whereas certain claims have been allowed by the several boards of commissioners heretofore appointed under the treaty of 1835 *for rents under the name of improvements and spoiliations and for property of which the Indians were dispossessed, provided for under the 16th article of the treaty of 1835*; and whereas the said claims have been paid out of the \$5,000,000 fund; and whereas said claims were not justly chargeable to that fund, but were to be paid by the United States, the said United States agree to reimburse the said fund the amount thus charged to said fund—and the same shall form a part of the aggregate amount to be distributed to the Cherokee people—as provided in the 9th article of this treaty; and whereas a further amount has been allowed for *reservations under the provisions of the 13th article of the treaty of 1835* by said commissioners, and has been paid out of said fund, and which said sums were properly chargeable to, and should have been paid by, *the United States*: the said United States further agree to reimburse the amounts thus paid for reservations to said fund; and whereas the expenses of making the treaty of New Echota were also paid out of said fund, when they should have been borne by the United States; the United States agree to reimburse the same, and also to reimburse all other sums paid to any other agent of the government and improperly charged to said fund, and the same shall form a part of the aggregate amount to be distributed to the Cherokee people as provided for in the ninth article of this treaty."

By the fourth article of the last-named treaty the Old Settlers or Western Cherokees became entitled to one-third of the proceeds of the Cherokee lands east of the Mississippi River, freed from the charges mentioned in and specially excepted as charges to be made by the third article of that treaty.

The terms "excluding all extravagant and improper expenditures," contained in the fourth article, evidently meant the items specified in the third article, which declares that the items therein mentioned should not be chargeable to the \$5,000,000 fund, but be borne by the United States. It is provided by the fourth article that "so far as the Western Cherokees are concerned, in estimating the expense of removal and subsistence of an Eastern Cherokee, to be charged to the aggregate fund of five millions six hundred thousand dollars above mentioned, the sums for removal and subsistence stipulated in the eighth article of the treaty of 1835, as commutation money in those cases in which the parties entitled to it removed themselves, shall be adopted."

The eighth article of the treaty of 1835 fixes those sums at \$53.33 per head.

The fourth article of the treaty of 1846 further provides that, so far as the settlement with the Western Cherokees is concerned, "there shall be no deduction from the fund

before mentioned in consideration of any payments which may hereafter be made out of said fund; and it is hereby further understood and agreed that the principle above defined shall embrace all of those Cherokees west of the Mississippi who emigrated prior to the treaty of 1835."

This article and the third article of the treaty of 1846 defines the basis of the settlement to be made with the Old Settlers or Western Cherokees, and fixes the sum from which the charges proper to be made against them shall be deducted at \$5,600,000.

The ninth article of this treaty fixes the basis of settlement with the Eastern Cherokees, and the sum from which charges against them shall be deducted, at \$6,647,067.

The eleventh and only remaining article of the treaty of 1846, affecting the claim of the Western Cherokees, provides as follows:

"Whereas the Cherokee delegates contend that the amount expended for one year's subsistence of the Eastern Cherokees after their arrival in the West is not properly chargeable to the treaty fund, it is hereby agreed that the question shall be submitted to the Senate of the United States for its decision, which shall decide whether the subsistence shall be borne by the United States or the Cherokee fund, and if by the Cherokees, then to say whether the subsistence shall be charged at a greater rate than thirty-three thirty-three one-hundredths dollars per head; and also the question whether the Cherokee Nation shall be allowed interest on whatever sum may be found to be due the nation, and from what date and at what rate per annum."

The twelfth article of this treaty was stricken out by the Senate upon the ratification of the treaty, which was assented to by the Cherokees.

The questions submitted to the Senate of the United States by the eleventh article were settled by the Senate, and thereby became a part of the treaty stipulations by the adoption of the following resolutions, September 5, 1850 (Cong. Globe, vol. 21, part 2, 1849-'50, p. 1760):

"Resolved by the Senate of the United States, That the Cherokee Nation of Indians are entitled to the sum of \$189,422.76 for subsistence, being the difference between the amount actually paid and that expended by the United States, and which excess was improperly charged to the 'treaty fund' in the report of the accounting officer of the Treasury.

"Resolved, That it is the sense of the Senate that interest at the rate of 5 per cent. per annum should be allowed upon the sums found due the Eastern and Western Cherokees, respectively, from the 12th day of June, 1838, upon the treaty of 1846."

By the second of the above resolutions it was declared that the Cherokees were entitled to interest upon any sums due them under the treaties of 1835 and 1846 from the 12th day of June, 1838.

The committee find that among the items of the claim of the Western Cherokees there is one that is a manifest error in settling with these Indians, namely, the item of "removal and subsistence, at the rate of \$53.33 per head, \$909,313.34," found on page 19, Report of the Commissioner of Indian Affairs, Ex. Doc. 65, 1st session 30th Congress. This item in the Commissioner's statement of the account does not state the number of Indians removed and subsisted at that rate, but on page 17 of that report the number is stated at 13,149. That number at the rate of \$53.33 per head would amount to the sum of \$701,236 instead of \$909,313.34, as charged, making an error against the Western Cherokees of \$208,077.34 in the simple matter of calculation.

Besides this item, these Indians claim that by a fair construction of the treaties with them, and the acts of Congress relating to their rights under these treaties, they should not be charged, as was done by the accounting officers of the government in their settlements, with the items—

First. The charge for claims of citizens of the United States of \$59,574.25.

Second. The charge for claims of individual Cherokees, \$17,561.41.

Third. The charge for compensation to Cherokee committee, \$22,026.89.

Fourth. The charge for spoliation, rents, and damages, \$434,861.85.

Fifth. The charge for reservations, allowed, \$116,882.50.

Sixth. The charge for pre-emptions, \$15,589.

Seventh. The charge for and on account of removal and subsistence, \$32,666.65.

There is a peculiarity about the last of the above items that throws some doubt around its correctness, for the cost of subsistence and removal to be borne by the Western Cherokees, as above shown, had not only been charged to them, but overcharged, and the fact that it took just this latter sum to effect a balance of the account with these Indians seems to furnish the reason for the doubt about the correctness of this last item.

The claimants contend, and the committee are of opinion, that the receipt by these Indians of the sum of \$523,782.18, appropriated by the act of September 30, 1850, in the manner in which they received it, does not preclude them from making their claim for any other sum that may be justly due them under a fair and proper interpretation of the treaties with them. Though the act making that appropriation provides "that the Indians who shall receive the said money shall first respectively

sign a receipt or release acknowledging the same to be in full of all demands under the fourth article of said treaty," it appears that before these Indians would consent to receive the said sum thus appropriated, they were assured by the agent of the government sent to make the payments, Mr. John Drennon, that they could receive the money under protest and thereby preserve their rights under the treaties between them and the United States for any amounts that might be due them by a just and equitable construction of said treaties.

It also appears that these Indians, before receiving any part of that appropriation, did formally and in writing deliver to said agent their solemn protest against receiving the same as a full settlement of all their claims against the United States under said treaties, which protest, as appears by the records of the Interior Department, was forwarded to the Commissioner of Indian Affairs at Washington City.

The facts necessary to determine the justness of the claim preferred by these Indians consist almost, if not entirely, of the public treaties, proceedings of the Senate, acts of Congress, and the records of the several departments of the government, all of which are preserved.

The committee are of opinion that the claim of these Indians possesses sufficient merit to demand a careful and thorough investigation of the same; that such an investigation involves a judicial interpretation of the several treaties between them and the United States, the construction of the several acts of Congress in relation thereto, and the examination of all settlements made and accounts stated with them under these treaties and acts of Congress; that such an investigation cannot be made by a committee of Congress in the limited time allowed such committee by the performance of the ordinary legislative duty imposed upon its members; and that this case should receive a full investigation by the courts.

The committee therefore report the accompanying bill, and recommend its passage.

Copy of proceedings of the council of the Old Settler or Western Cherokee Indians, November 30, 1880.

TAHLEQUAH, CHEROKEE NATION, *November 20, 1880.*

At a meeting of the Old Settler Cherokees, held in the council room of the capitol, there were present Rev. W. A. Duncan, Mr. J. M. Bryan, H. D. Reese, W. C. Woodall, D. C. Duncan, Caleb Starr, William McCracken, J. M. Smith, and John Hendricks, George Drum, B. H. Severe, Simon Girty, George Crittenton, Charles Johnson, L. C. Woodall, William Hendricks, members of council; J. M. Duncan and other old settlers.

W. A. Duncan was called to preside, and H. D. Reese appointed secretary.

Mr. J. M. Bryan was requested to make his report as to the present status of the claim for which he is agent, &c.

Mr. Bryan made his report to the meeting, and made known that the said claim of the Old Settlers against the United States was now before the Indian Committee of the Senate, and that for various causes has been delayed to be reported to the Senate.

Report was interpreted and adopted. It was moved and seconded that a committee be appointed by the chair to report resolutions reiterating the powers granted Mr. Bryan by a former meeting. Adopted.

The chair appointed Messrs. H. D. Reese, W. C. Woodall, and John Hendricks said committee, who submitted the following, to wit:

To the OLD SETTLER COUNCIL now in session:

Whereas, according to notice published in the Cherokee Advocate by J. M. Bryan, William Wilson and William Hendricks, our commissioners appointed in 1875 to prosecute the "Old Settler" Cherokee claim against the Government of the United States for balances due said "Old Settler" Cherokees, as provided for mainly by Cherokee treaty of 1846; and

Whereas our said commissioners in their reports have given general satisfaction up to the time of the present council: Therefore,

Resolved, That we this day ratify and confirm all the action taken in the premises by our said commissioners, and hereby confirm all contracts made with attorneys by our said commissioners for the services rendered in the prosecution of our said claim.

Be it further resolved, That J. M. Bryan, our special commissioner and attorney, who is himself a citizen of the Cherokee Nation and an "Old Settler," and by our former council was duly made treasurer for the amount of 35 per cent. of the amount of the claim that may be allowed. The first council creating said commission was in 1875, at which council 35 per cent. of the whole claim was set apart to pay the expense of former Old Settlers' councils, to pay the expenses of our commissioners, to pay the expenses of attorneys employed to help prosecute said claim, or as much thereof as might be necessary.

Therefore, we again reiterate that J. M. Bryan is fully authorized to receive the said amount of 35 per cent. of the whole amount allowed on said claim, as the "Old

Settler" Cherokee treasurer, and to receipt to the proper authorities of the United States for said amount, which shall be the "Old Settler" Cherokees' receipt for the same.

Submitted by—

H. D. REESE,
W. C. WOODALL,
JOHN HENDRICKS,
Committee.

The above resolution being interpreted and put to vote was unanimously adopted.
W. A. DUNCAN,
President.

H. D. REESE,
Secretary.

I hereby certify that the above is a true copy of the proceedings had by the "Old Settlers" council.

Given under my hand and seal of office, at Tahlequah, Cherokee Nation, Ind. T., this 23d day of November, 1880.

ALLEN ROSS, *Clerk,*
Tahlequah Dist., C. N., I. T.

Approved November 26, 1880.

D. W. BUSHYHEAD,
Principal Chief, Cherokee Nation.

I hereby certify that this is a true copy of the original.

DELOZIER DAVIDSON,
Notary Public.

WASHINGTON, D. C., *January 3, 1881.*

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