

MEMORIAL

OF THE

“OLD SETTLER,” OR “WESTERN” CHEROKEE INDIANS,

PRAYING

For a settlement and payment of the balance claimed to be due them from the United States under the treaties of 1835-'36 and 1846.

JANUARY 29, 1879.—Referred to the Committee on Claims and ordered to be printed.

WASHINGTON, D. C., January 29, 1879.

To the honorable the Congress of the United States :

I have the honor herewith of transmitting for your consideration the accompanying petition, numerously signed by the Cherokee people, praying for an early settlement of the claim of the “Old Settler,” or “Western” Cherokees, pending before your honorable body, and by reference now before the honorable Committee on Claims of the Senate. I ask that this petition or memorial be referred to said committee and printed, and become a part of the records now before the committee in relation to said claim.

I have the honor to be, very respectfully, your obedient servant,
J. M. BRYAN,
“Old Settler,” Cherokee Commissioner.

To the honorable the Congress of the United States :

The undersigned, the people of the Cherokee Nation, Indian Territory, composing that portion of the people known and recognized by the government as the “Old Settlers,” or “Western” Cherokees, and estimated to represent one-third of the population of the Cherokee people, would respectfully represent that the said “Old Settler” Cherokees hold a just debt against the Government of the United States, for a balance due them of the *per capita* fund due the Cherokee people for their lands east of the Mississippi River, under your treaties with the Cherokees of 1835-'36 and 1846; that a part of the original amount claimed was arbitrarily withheld from the said Cherokees when a partial payment was made to them of the original fund by the United States disbursing officer in 1851-'52; that at the time of said payment said Cherokees filed with said disbursing officer a *written protest*, claiming the remainder of said funds due them, which is on record in the departments at Washington; that since the withholding of the said balance due the said claimants, from time to time, ever since have made efforts by attorneys and otherwise to recover from the United States Government the said balance due; that circumstances over which we had

no control, growing out of the late war of the rebellion, for the time being suspended the prosecution of said claim; that soon after said war the claimants took steps to renew the prosecution of their said claim under the provision of the Cherokee treaty of 1866, which *reaffirms* the provisions of the aforesaid treaties of 1835-'36 and 1846, under which the claim originated; that accordingly, from time to time since the said war, the claimants have adopted measures for the prosecution of their claim, and have employed attorneys to attend to the business before your government; that as an indorsement of the justice of the claim, the national council of the Cherokee Nation had instructed its delegation to Washington, D. C., at different times, to call the attention of the government to the claim, and last year, July 15, 1875, the then Cherokee delegation filed a memorial before the government, asking for a payment of the claim; that for the more successful prosecution of their claim delegates of the "Old Settler" Cherokees met in convention at Tahlequah, Cherokee Nation, last November, 1875, in pursuance of the Cherokee treaty of 1846, and passed resolutions appointing Messrs. William Wilson, J. M. Bryan, and John L. McCoy as special commissioners to prosecute said claim before the United States Government; that subsequently, in 1875, the national council of the Cherokee Nation again indorsed the claim, and instructed its present delegation, now in Washington, to assist the "Old Settler" Cherokees in the prosecution of the claim before your government.

The special commissioners referred to of the "Old Settler" Cherokees and the delegates of the Cherokee Nation are now in the city of Washington, whose duty, among other things, is to prosecute the said claim. As an expression of our wishes in support of the efforts of these, we respectfully petition your honorable bodies to make the necessary appropriation to settle the claim of said "Old Settler" Cherokees as set forth by said commissioners. The funds to pay the amount claimed have already been appropriated by Congress, as will appear by reference to your appropriation bills, but have been covered back into the Treasury or used by the government. We have done without the funds due us for a long period of years, while your government has had the use of them. Our people have been made wretchedly poor by the effects of the late war, and this fact and the justice of the claim must be our apology for pressing this matter upon you for early action.

In conclusion, we beg leave to assure you that we, as the "Old Settler" Cherokees, fully indorse the action of our convention of 1875, already referred to, and the resolutions then adopted, under which the said William Wilson, J. M. Bryan, and John L. McCoy were constituted a commission to prosecute our said claim before your government; and we accordingly ask that their action and efforts in the premises be fully accredited, and that all due respects be paid to them as our representatives.

And your humble petitioners will ever pray.

APPENDIX.

To the honorable Committee on Claims of the Senate. :

"Old Settlers'" separate explanation on removal and subsistence, as charged by the accounting-officers of the government. And which is a violation of the treaty of 1835-'36 and 1846, and the acts of Congress.

FACTS.

Fourth article of the Cherokee treaty of 1846: The "Old Settlers" were to be charged \$53.33 per head for expense of removal and subsistence of an Eastern Cherokee to

the Cherokee Nation west. Now, what is this charge to be brought against the "Old Settlers" for?

Answer. Because the "Old Settlers" were to participate in the general funds provided by the fourth article of the 1846 treaty, as appropriated to the treaty of 1835-'36.

Second reason.

By the eighth article of the Cherokee treaty of 1835, the United States agreed to remove the Eastern Cherokees to their new homes in the West, and subsist them twelve months after their arrival. The United States did remove and subsist the Eastern Cherokees accordingly, (For full proof see Senator Sebastian's Report, dated August 6, 1846, and the acts of Congress dated June 12, 1838.) Senator Sebastian's report, so far as removal and subsistence are concerned, became a part of the treaty of 1846, which will be seen by reference to the eleventh article of said treaty, that being a question left to the Senate to settle by the contracting parties.

Question. Where is the wrong done the "Old Settlers" by charging them with removal and subsistence at the rate of \$53.36 per head?

Answer. The "Old Settlers" are charged with subsistence and removal of 18,026 Indians \$961,386.66, when the actual number was only 13,149, as shown by report of Commissioner Medill, May 10, 1848. (Ex. Doc., vol. 8, H. R. First session Thirtieth Congress, page 17.) The actual and complete census of all ages, sexes, Indians and whites, show 13,743. Of this number, 594, it seems, did not move west; either remained east of the Mississippi or died. (See complete census roll, Senate Doc., 25th Congress, Report 120, page 535.) It will therefore be seen that 3,000 were included who emigrated, before the treaty of 1835, under the provision of the treaty of 1828.

The "Old Settlers" cannot be honestly charged for removal and subsistence for those Indians who emigrated under the treaty of 1828, as is explained by the fourth article of the 1846 treaty, because that expense was connected alone with the treaty of 1835, and brought into the settlement with the "Old Settlers" for the purpose of making a little pitiful remuneration for nine millions of acres of land taken by the government for the use of the Eastern Cherokees.

Question. How were the "Old Settlers" to be benefited by having removal and subsistence charged to them at \$53.33 per head?

Answer. Because removal and subsistence at \$53.33 per head for 13,149 or for 13,743 Indians (calculating the greater number) amounts to only \$732,914.19. Also, because the appropriation specially provided for that special purpose and for certain claims was first by the third supplemental article of the treaty of 1835, \$600,000; by acts of Congress of June 12, 1838, \$1,147,067; aggregating \$1,747,067.

By the above act of Congress, a special provision that not one dollar is to be deducted from the \$5,000,000 fund, the price of the eastern lands. Then, upon an honest settlement, the "Old Settlers" would be entitled to the one-third of any balance of the \$1,747.67 that might be left after removal and subsistence was deducted therefrom, and after the proper deduction was made for the payment of such claims as are defined by the treaty of 1835-'36, and more fully explained by the third article of the 1846 treaty; because, by the fourth article of the 1846 treaty the "Old Settlers" are to participate in the general funds connected with the treaty of 1835-'36. Then, assuredly, any balance left, estimating removal and subsistence at \$53.33 per head, the "Old Settlers" would be entitled to their proportionate part of that balance.

Question. Upon what ground do the "Old Settlers" object to paying for removal and subsistence of 18,026 Indians which was charged to them by the accounting officers?

Answer. Because there were only 13,743 Indians that could have been removed under the treaty of 1835-'36. (See census roll.) The balance to make up the 18,026 Indians were those who emigrated under the treaty of 1828. (Please see eighth article Cherokee Treaty of 1828.)

Question. By what authority and how were those 4,283 Indians removed west just previous to the Cherokee treaty of 1835, and how was their expense of removal and subsistence to be paid?

Answer. By the terms of the Cherokee treaty of 1828, with the Western Cherokees, emigration was opened for Eastern Cherokees to remove west. By the eighth article of that treaty the United States agree to give each head of a family a rifle gun, brass kettle, blanket, and five pounds of tobacco, and pay the expense of their removal west, and subsist each emigrant twelve months after their arrival at their new homes. Yet, please see, this expense is charged to the "Old Settlers" by the accounting officers.

Question. What is the entire amount charged for and on account of removal and subsistence, as exhibited by the accounting officers?

Answer. There is charged to the Eastern Cherokees, by the Second Auditor and Second Comptroller, \$2,823,191.93; also to the Western Cherokees, "Old Settlers," \$961,386.93; amounting to \$3,784,579.59. The claimants have never been heard. The claimants

could not help themselves. The whole exhibit is a put up job. The claimants are a party to the contract, and have as much right to make an exhibit as the government, there being no person authorized by the treaty specially to make the settlement. Yet the treaty of 1846 declares the "Old Settlers" to have the right to discuss their rights, but up to now the "Old Settlers" have never had a hearing and settlement.

Then please find by the fourth article, treaty of 1846, that all those who emigrated under the treaty of 1828 and before the treaty of 1835 were made "Old Settlers."

By reference to Senator Sebastian's report, you will please see where the 18,026 Indians were erroneously brought into the account against the "Old Settlers" by the accounting officers perhaps not knowing that those Indians were removed under another treaty and at the expense of the United States.

You will please see that the rate the "Old Settlers" stand charged for removal and subsistence would be \$204.83 for each head, when they were to be charged only \$53 per head.

Please have the account straightened.

Very respectfully,

J. M. BRYAN,
"Old Settler" Cherokee, Commissioner.

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