

"OLD SETTLERS" OF THE CHEROKEE NATION OF INDIANS.

MEMORIAL

OF

W. S. COODEY AND JOHN DREW,

Representatives of the "Old Settlers" of the Cherokee Nation of Indians.

FEBRUARY 10, 1849.

Laid upon the table, and ordered to be printed.

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

The undersigned were elected delegates to represent that portion of the Cherokee nation known as "Old Settlers," by a convention of their people, assembled at the "old council ground," mouth of Illinois river, on the 7th day of December, 1848. They have already had the honor of making known to the Committee of Indian Affairs of your honorable body* the peculiar condition of their people; which required an appropriation of whatever amount might be found due them under the provisions of the treaties of 1846 and 1835, to be made during the present session of Congress. They acknowledge with heartfelt gratitude, not only on behalf of the "Old Settlers," but of the whole Cherokee people, the great blessing conferred upon them by the action of the Senate of the United States in passing that appropriation, and humbly trust that it will meet with like favor in the House of Representatives.

The undersigned have another duty to perform in obedience to their instructions, part of which will appear in the enclosed memorial, signed by a committee of "Old Settlers," and dated December 8, 1848. The part of the memorial to which they allude, has reference to the payment of certain debts, which the memorialists set forth, as follows:

"The debts of your memorialists, as adjudicated and allowed by them, amounting to \$30,000, and set forth in their memorial to the last preceding session of Congress, they are willing and anxious to have paid, and respectfully ask your honorable bodies to cause that amount to be set apart from the general fund and paid to the creditors whose claims have been so adjudicated and allowed, which said claims are already before your honorable bodies, and certificates thereof have been duly issued to the said creditors."

No schedule of the claims above referred to have been placed in the

Tippin & Streeper, printers.

*The Senate Committee.

hands of the undersigned. The memorial alone has been committed to them for submission to Congress. They are unable to say whether the debts referred to were contracted by the "Old Settlers" in their *collective* or *aggregate* capacity for the benefit of the whole people, in the prosecution of their claim, (which has resulted in the treaty of 1846,) or otherwise. If they have been so contracted, and each claim appears, upon satisfactory proof, to be just and reasonable, then they ought to be paid out of the *general fund* before the *per capita* money is sent West; and, in support of this declaration, the undersigned beg leave to assign their reasons, which they humbly trust will be satisfactory to your honorable body.

It is known to you, that anterior to the treaty concluded between the United States and the Cherokee nation east of the Mississippi, in December, 1835, there existed another Cherokee tribe of Indians west of the Mississippi, designated the "*Cherokee nation west of the Mississippi river.*" They had been treated with as such by the United States, as will be seen by the treaties of 1828 and 1833. They had a country of their own, a government of laws, with a *national fund*, subject to their control. By the operation of the treaty of 1835, to which they were not a party, they were dispossessed of all these, and were made a component part of the "Cherokee nation," which had been removed from the east side of the Mississippi. They could then only hold meetings as *citizens of another nation*, to petition the authorities of the United States for redress of grievances, which required a restoration of their country and their government, or to be allowed a fair remuneration for being forcibly dispossessed of them.

The first formal and regular meeting, at which a memorial and resolutions were adopted, was convened at the "forks of Verdigris and Grand rivers," near Fort Gibson, on the 10th day of April, 1842. At that meeting, Capt. John Rogers, one of the last chiefs of the old western Cherokee nation presided. They counselled together from day to day, until the 16th day of the same month, when they adopted resolutions expressing the determination of the Cherokees who had composed the "old nation," above referred to, to stand firmly together until justice could be obtained. They adopted a memorial, addressed to the President of the United States, setting forth their grievances and praying for redress, and appointed a delegation to proceed to Washington to represent their interests in their *collective capacity*.

At this period, as has been shown, these people, then called "*Old Settlers,*" had no separate national existence—they had no national fund, no annuities at their disposal—and were compelled to pledge their faith *individually* and *collectively*, to defray all the expenses which might be incurred in the presentation of their grievances and the prosecution of their claim before the government of the United States, out of such moneys as might be awarded to them upon an adjudication of that claim. They were entirely destitute of means, and the barrier interposed to their success by the treaty of 1835 made it difficult even to raise funds sufficient to carry the delegation to Washington. Every contract, therefore, necessary to be made to enable them to present their case, and prosecute it to a successful issue, had to be made *contingent* depending upon that issue. It was absolutely necessary in the very outset to employ counsel, incur expenses, incident to their holding conventions, sending delegations elected to represent them at Washington, as well as to

contract other debts; all of which were unavoidable. A delegation was again appointed the next year, and each succeeding year, until the conclusion of the treaty in August, 1846. Every convention by which these delegates were appointed ratified the proceedings of the preceding ones, and each delegation confirmed, in the most solemn manner, all contracts made by their predecessors for the benefit of the "Old Settlers" in their collective or aggregate capacity. The old chief, Capt. Rogers, was at the head of every delegation until his death, which occurred in this city in 1846, sometime before the treaty of that year (which exhibits the results of all the efforts of the Old Settlers to obtain the settlement of their claim) was negotiated.

With this brief statement of facts in reference to the origin and progress of the prosecution of the claim of the Old Settler Cherokees, the undersigned, now the representatives of these people, very respectfully submit the following propositions, to which they earnestly solicit the attention of your honorable body:

1st. The western Cherokees, or Old Settlers, having no national existence in April, 1842, when they made their first effort to obtain payment for their lands, of which they believed they had been unlawfully dispossessed—or in August, 1846, when the treaty, which makes a settlement of their claim for these lands, was concluded—and consequently having no *national* or *general* fund out of which they could pay the expenses of prosecuting that claim, each and every individual became bound, by the act of their chosen representatives, for the payment of all proper and necessary expenses incurred in its prosecution.

2d. The delegation of "Old Settlers" who signed the treaty of 1846 were the *sole representatives of the old western Cherokees, in their collective character*. The treaty was considered binding upon every *individual* man, woman, and child, upon which it conferred benefits. It was not deemed necessary to refer it to these individuals for their sanction to make it binding upon the contracting parties. The sanction of the delegation was deemed sufficient. The treaty creates no *general fund*, and by the act of the United States it is made to bear the construction that all the moneys found due the "Old Settlers," in consequence of the long and laborious efforts made as above described, must be paid to the *individual recipients*, without first deducting therefrom the expenses incurred in obtaining aid and assistance, which procured this very money for them.

The undersigned therefore entertain, and unhesitatingly express their opinion, that all *contracts* fairly and openly made by either of the delegations representing the "*Old Settlers*," anterior to the conclusion of the treaty of 1846, should be sacredly complied with on the part of the Indians: Provided, always, that such contracts were made *for the benefit of the Old Settlers in the prosecution of their general claim*, and not on *individual* account; and, also, that the services, aid, and assistance, required by, or subsistence furnished under such contracts, were well and faithfully performed and complied with by the *other parties*.

The undersigned also humbly suggest, that the individual Cherokees *who are recipients under the treaty*, have not the *power* to decide what debts or claims shall or shall not be paid, where such amount is to be deducted from the *per capita* fund. The power to do this was conferred upon their *representatives* who made the treaty, and no provision of that

treaty can be changed now by *individual* Cherokees. If all the men, women, and children entitled to the *per capita* money could be assembled, and would *unanimously* agree that a certain sum should be retained from the share of each to be applied to the payment of certain debts, the government might be justified in retaining that amount, and paying it as requested. But it is entirely out of the question that every individual could be procured to enter into such arrangement, and if a single one would not attend, or refuse assent, the *general fund* cannot be touched. Most certainly, then, the *power* to direct what debts contracted in the prosecution of the claim out of which the money comes, *shall or shall not* be paid out of this general fund, cannot exist in a *committee* appointed by a small minority of those entitled to the *per capita* distribution.

The undersigned are aware that they have no power to do anything more than to advise and recommend, in a respectable manner, the adoption of such measures as will preserve the integrity of the "Old Settler people," and carry out the intention of their representatives who negotiated the treaty of August, 1846. They believe their people, as a body, possess as much moral honesty as can be found to exist in any other community; they know they never violated their faith, pledged by those appointed to represent them, in any compact entered into with the government of the United States, and they are alike averse to do so in a contract with individuals. With regard to the inducement offered to them to do this, by the wording of the treaty of 1846, the undersigned solemnly believe they have no desire to take advantage of it; but, on the contrary, they desire that every contract fairly made in the prosecution of their claim, which resulted to their benefit, should be fully complied with.

The undersigned are not acquainted with the character of all the claims referred to in the memorial which is herewith enclosed, amounting in the aggregate to \$30,000. They know that some of their own people have claims for services rendered and provisions furnished during the prosecution of their claim which was settled by the treaty of 1846, but of the nature or validity of the residue of the debts, which swells the amount to \$30,000, they have no accurate information. They are aware of the existence of contracts entered into at an early period of the prosecution of the claim of the "Old Settlers" against the United States with Samuel C. Stambaugh and Amos Kendall, to whom the management of their business was confided. These contracts speak for themselves; every Old Settler Cherokee who had any knowledge of their business as it progressed, knew of their existence, and were satisfied with their conditions. The services required by these contracts were faithfully performed. The treaty as it exists will bear such construction as will prevent the fulfilment of these contracts, and *all others*, unless some legislative action be taken by the United States, in virtue of their power as trustee for the recipients for whom it provides.

The undersigned will respectfully say, in conclusion, that whilst *JUSTICE—the preservation of the integrity of the Cherokee people—*requires that all the just debts incurred under written contract, or otherwise, in the prosecution of their claim, which resulted in the treaty of 1846, should be deducted from the *general fund* appropriated under the provisions of that treaty; yet they would earnestly urge that the greatest care and vigilance should be observed in the adjudication of the claims which may be thus pre-

sented. The amount of money now to be appropriated is the first the "Old Settlers" have ever received out of the moneys appropriated to carry into effect the treaty of 1835, and it is hoped that not one dollar of it will be unjustly taken from them. The undersigned therefore pray that your honorable body will so amend the appropriation bill, or pass some declaratory resolution, as to provide for the settlement of all just debts contracted by the representatives of the "Old Settlers," in their *collective capacity*, pending the prosecution of their claim which was adjusted by the treaty of August, 1846. And they would respectfully recommend that all contracts entered into, with the proofs to sustain them, should be referred to the Secretary of War, or any other tribunal of your government for adjudication, and payment be made if such claims are founded in justice. In regard to the claims held by citizens of the Cherokee nation against the fund of the "Old Settlers," incurred by them in their collective capacity, the undersigned would respectfully suggest that they shall be referred to a committee selected by said "*Old Settlers*" at a general council to be convened for that purpose, of which due notice shall be given by the United States agent for the Cherokee nation, excepting such as may be held by delegates representing said "*Old Settlers*" at Washington, on account of their services, which shall be referred for settlement to the Secretary of War.

All of which is very respectfully submitted for the consideration of your honorable body.

W. S. COODEY,
JOHN DREW,

Representatives of the "Old Settler Cherokees."

WASHINGTON CITY, January 31, 1849.