

CLEMENTS, BRYAN, & Co.

[To accompany bill S. No. 97.]

FEBRUARY 12, 1841.

Mr. RUSSELL, from the Committee of Claims, made the following

REPORT:

*The Committee of Claims have had under consideration Senate bill (No. 97) entitled "An act for the relief of Clements, Bryan, & Co.," and make thereon the following report:*

The bill provides "That the Secretary of War be, and he is hereby, authorized and required to adjust and settle the claim of Clements, Bryan, & Co., arising out of a contract entered into between them and Captain John Page on the twelfth day of June, one thousand eight hundred and thirty-eight, upon the principles of equity and justice; and the amount which may thus be found due to them shall be paid out of any money in the Treasury not otherwise appropriated."

This claim was presented at the first session of the present Congress; and a bill for the petitioners' relief was introduced and passed the Senate, and sent to the House of Representatives for their concurrence, and was there referred to the Committee of Claims; and, after a minute and laborious investigation, that committee agreed upon the report hereunto annexed; after which, and on the 7th July, 1840, the committee received from the War Department a communication in writing, of which the following is a copy:

WAR DEPARTMENT,  
*Office Indian Affairs, July 7, 1840.*

SIR: The Secretary of War having referred to me the bill and report of the Committee of Claims of the Senate, (in reference to the claim of Messrs. Clements, Bryan, & Co., for indemnity for losses, &c., sustained under their contract for provisioning Cherokees while on the route of emigration,) directing that an estimate be made out of the probable amount that would be coming to them, settled upon the principles contained in the bill referred to, I have to request that all the papers in the case may be sent to this office, as without them the direction of the Secretary cannot be complied with. They will be returned without unnecessary delay.

Very respectfully, your most obedient servant;

T. HARTLEY CRAWFORD.

Hon. D. RUSSELL,  
*Chairman Committee of Claims, H. R.*

On the 13th of July the committee received from the petitioners a communication in writing, of which the following is a copy :

WASHINGTON CITY, July 13, 1840.

SIR: Understanding that testimony has been recently taken in our case now pending before you, of which we had no notice, and no opportunity for cross-examination; and not having been apprized, until very recently, that your committee contemplated an inquiry on their part as to the amount of damages which the undersigned have sustained under their contract with the Government; the undersigned believe that it has become absolutely necessary for them to take further testimony in support of their claim, which it is apparent they cannot do during the present session. Apprehensive that a report made on *ex parte* evidence, and before they have had an opportunity to introduce testimony on their part, would have a very unfavorable influence on the future action of Congress on their claim, they respectfully request that no report be made until the next session of Congress, by which time they can be ready with all their testimony in the case. The Senate's bill seemed to contemplate that all the evidence should be prepared and submitted to the War Department; but, if it be the pleasure of the committee to hear it themselves, and decide on the case, they will make suitable exertions to lay the same before them at an early day of the next session.

Respectfully, your most obedient servants,

CLEMENTS, BRYAN, & Co.

Hon. D. RUSSELL,

*Chairman Committee of Claims.*

On the day of the date of this letter, in answer to one from the War Department of the 7th July, the papers, with a printed copy of the bill and the report made thereon in the Senate, together with a copy of the report agreed upon by the Committee of Claims in the House of Representatives hereinbefore referred to, with the testimony of General Scott, John C. McCain, and Colonel Thomas C. Hindman, were sent to said department, to enable the department to be possessed of all the testimony relating to the claim, and the views taken thereof. On a reference of the bill under consideration to this committee, at the present session of Congress, many of the documents which had been sent to the War Department were not found among the papers accompanying the bill from the Senate, particularly the testimony of General Scott, Colonel Hindman, and Mr. McCain, as also the report of the Committee of Claims in the House of Representatives of the last session. On inquiry at the department for the absent papers, and for a copy of the report, (if any had been made on the claim,) by Mr. Crawford, the officer at the head of the Bureau of Indian Affairs, the committee received for answer, that none of the papers were in that department, and that they had *all* been returned. A copy of Mr. Crawford's report to the Secretary of War was communicated to the committee, which is in the following words :

WAR DEPARTMENT,

*Office Indian Affairs, July 14, 1840.*

SIR: I have the honor to report, on the letter of the Hon. Messrs. A. V. Brown and H. L. Turney to you, of 12th instant, on the subject of the

claim of Messrs. Clements, Bryan, & Co. They observe, that the bill now pending before the House of Representatives, for the relief of said firm, provides for the settlement of their claim "on the principles of equity and justice," and that the committee of the Senate who reported the bill, set forth "that the parties are entitled to full indemnity," &c. "We entertain the opinion," say Messrs. Brown and Turney, "that, if said bill should pass, the claimants will be clearly entitled to at least the price allowed by the contract on all the provisions, &c., which they may show they actually purchased at the agency and on the line, in order to be in condition to fulfil their contract. Entertaining this opinion, we respectfully desire your department to make an estimate on this principle, and furnish us with the amount."

In conformity with your direction and the above request, I submit an estimate on the principle set forth by those gentlemen, the adoption of which for this purpose they ask.

The contract which Captain Page entered into with Clements, Bryan, & Co., on 12th June, 1838, in pursuance of instructions from General Nathaniel Smith, superintendent of Cherokee removal, stipulated that they should furnish rations to the Indians from the east to the west, at 16 cents per ration; and corn for Indian teams and ponies, at \$1 per bushel; the ration to consist of one pound of fresh beef, or fresh pork, or  $\frac{2}{3}$  of a quart of corn, or corn-meal, or one pound of wheat-flour; and four quarts of salt for every 100 rations. This is as much of the contract as it is material, for the purposes of this communication, to recite.

The principle of Messrs. Brown and Turney requires that it be ascertained what Messrs. Clements, Bryan, & Co. purchased under this contract.

By the affidavit of William L. Young, it appears that he contracted to furnish the said firm 13,500 pounds beef, at 4 cents per pound; but it is not shown that the contract was carried into execution on either side.

Robert Morrison proves that he sold them between 900 and 1,000 head of beef cattle, for which he received 4 cents per pound, to be delivered at Tennessee river. There is no evidence of the average weight of those cattle; but the drove sold by J. C. McConnel are put at 300 pounds each, which may therefore be fairly assumed for those—say 900, at 300 pounds, make 270,000 pounds, at 4 cents, and amount to	\$10,800 00
F. Kincannon swears that he and Matthew Kincannon sold them between 90 and 95 head of cattle. Neither weight nor price is given. Assuming both as above, and the weight of each animal to be 300 pounds, there would be (say 92 head) 27,600 pounds, at 4 cents	1,104 00
E. Bates swears that he sold them 60 head; but neither weight nor price is given. Assuming both as above, there would be 18,000 pounds, at 4 cents, making	720 00
Thomas Eldrige testifies that he sold them 82,425 pounds, at 4 cents; equal to	3,297 00
James Spenlock, agent for George D. Gordon, proves that he contracted with Clements, Bryan, & Co. for from 500 to 800 head of beef cattle, at \$4; but there is no evidence that the contract was executed on either side.	
J. C. McConnel proves that he sold them a drove of 2,200 head of beef cattle, which averaged 300 pounds, at 4 cents	

per pound, and 1,000 bushels of corn, and 375 bushels of meal, at \$1 per bushel. The cattle amounted to	\$26,400 00
Corn and meal	1,375 00
Jesse Chatton sold them, as he testifies, 1,000 bushels of corn and meal; received therefor, delivered	900 00
George E. Mountcastle proves that he sold them, on the 15th June, 1838, salt and camp equipage, to carry out their contract; but he does not name either quantity, or articles, or price.	
Aggregate cost of provisions furnished, as far as the proof enables me to ascertain it	<u>44,596 00</u>
The aggregate amount of beef proved to have been sold is 1,058,025 pounds, which would make as many beef rations. The aggregate of corn and meal is 2,375 bushels, which would make 101,333 $\frac{1}{2}$ corn or meal rations; but one-third of them ought to be deducted for corn to be furnished to horses and ponies, which will leave 67,555 $\frac{2}{3}$ full rations of corn; if to this, on Mountcastle's testimony, we add the salt, we will have 67,555 $\frac{2}{3}$ entire rations, at 16 cents, equal to	10,778 88
Add the one-third of the corn and meal, at \$1 per bushel, for horses and ponies, which is 791 $\frac{2}{3}$ bushels, equal to	791 66
	<u>11,570 54</u>
There remains, of the beef part of the rations, 990,469 $\frac{1}{3}$ , to be added at a proper proportion of price. The beef cost 4 cents per pound; the corn would make 42 $\frac{2}{3}$ rations per bushel, which would cost, at the price above named, within the smallest fraction of 2 $\frac{1}{3}$ cents per ration; and the salt would cost—I have no means of saying what; but, for the sake of concluding the calculation, add for it (which is, I presume, more than it would cost) what will bring up the whole ration to 7 cents. The principle of Messrs. Turney and Brown would give the claimants $\frac{4}{7}$ of 16 cents for all the beef parts of rations that remain, viz: 990,469 $\frac{1}{3}$ , equal to	90,557 56
	<u>102,128 10</u>
There was, however, a second contract made by Captain Page with Clements, Bryan, & Co., on 27th June, 1838, to furnish beef alone, at 6 $\frac{1}{2}$ cents per pound; and they were paid by him therefor	58,278 67
Which, deducted from the foregoing aggregate, leaves a balance of	<u>43,849 43</u>

This, I believe, if the principle assumed by Messrs. Brown and Turney should be adopted, would be the result.

Very respectfully, &c.,

T. HARTLEY CRAWFORD.

Hon. J. R. POINSETT,  
Secretary of War.

Two days after this report bears date, and on the 16th day of July, 1840, the Secretary of War communicated a letter to the honorable A. V. Brown and H. L. Turney, members of the House of Representatives, of which the following is a copy :

WAR DEPARTMENT, *July 16, 1840.*

GENTLEMEN: In answer to your letter of the 12th instant, requesting an estimate of the amount that will be coming to Messrs. Clements, Bryan, & Co., on their claim, if settled upon principles of equity and justice; I beg leave to refer you to the accompanying report of the Commissioner of Indian Affairs, of the 14th instant, giving the information desired.

Very respectfully, your most obedient servant,

J. R. POINSETT.

Hon. A. V. BROWN and }  
H. L. TURNEY, } *House of Representatives.*

And, on the 13th of August thereafter, the said Secretary made a communication to the claimants, of which the following is a copy :

WAR DEPARTMENT, *August 13, 1840.*

GENTLEMEN: In reply to your letter of the 12th instant, asking my opinion of the equity of your claim for remuneration for losses sustained by you in consequence of your contract having been set aside by the authority of the Government, I have the honor to state, that, in my opinion, you are entitled to an equitable remuneration; which, in the event of an appropriation for that purpose being made by Congress, will be calculated upon the principle set forth in the report of the Commissioner of Indian Affairs, a copy of which has been furnished you. Having carefully examined that report, I have no hesitation in saying that I concur in it fully, and, in the event of an act passing for your relief, apprehend no difficulty in the final adjustment of your account as therein set forth, retaining the sum of \$1,227 25, assigned by you to Henry M. Morfit of this city.

Very respectfully, your most obedient servant,

J. R. POINSETT.

MESSRS. CLEMENTS, BRYAN, & Co.,  
*City of Washington.*

The bill under consideration is general in its provisions, submitting the liquidation of the claim to the adjustment of the Secretary of War, "upon principles of equity and justice." The report of Mr. Crawford, Commissioner of Indian Affairs, hereinbefore referred to, bearing date the 14th July, 1840, specifies the particulars, and amount of relief to which, upon the principle assumed, the petitioners are entitled. And in the communication of the Secretary of War to the Hon. Aaron V. Brown and the Hon. Hopkins L. Turney, in answer to their communication of a previous date, requesting "an estimate of the amount that will be coming to Messrs. Clements, Bryan, & Co., on their claim, if settled upon principles of equity and justice," he says: "I beg leave to refer you to the accompanying report of the Commissioner of Indian Affairs, of the 14th instant, *giving the information desired.*" And in the communication made to Clements, Bryan, & Co., hereinbefore mentioned, he says: "In my opinion, you are entitled to an equitable remuneration; which, in the event of an appropriation for

that purpose being made by Congress, *will be calculated upon the principle* set forth in the report of the Commissioner of Indian Affairs, a copy of which has been furnished you. *Having carefully examined that report, I have no hesitation in saying that I concur in it fully*; and, in the event of an act passing for your relief, apprehend no difficulty in the final adjustment of your account, as therein set forth."

From the bill itself, it does not appear how extensive an appropriation is required to meet the demand made on the Treasury under it; but, by reference to Mr. Crawford's report to the Secretary, he states the amount, upon the principle assumed by Messrs. Turney and Brown, and which Mr. Crawford adopts, and which the Secretary of War sanctions, to be \$102,128 10. This renders the appropriation specific, and shows that the bill appropriates, in effect, \$102,128 10, to remunerate the petitioners for their supposed loss. But Mr. Crawford states, in his said report, that there was another contract made by Captain Page, with Clements, Bryan, & Co., on the 27th June, 1838, to furnish beef alone, at 6½ cents per pound; under which they did furnish 896,595 pounds, and were paid by him, therefor, \$58,278 67; which, deducted from the foregoing aggregate, leaves a balance of \$43,849 43. However erroneous the principle may be which forms the basis of the estimate referred to, it shows the manner in which this bill, if passed into a law, is to be executed. The dangerous extent to which the revenues of the Government would be compromised (unjustly, if this principle be sanctioned) only requires consideration to be condemned. The principle assumed is, that the United States are liable for all property purchased by a contractor with the Government, for supplying the various departments thereof, whatever disposition shall have been made of the property by such contractor, and without holding him to any accountability whatever for the property so acquired. It is a principle which should be universal, and strictly applied to all public agents—that of rigid accountability; and the principle is not less applicable to persons occupying relations to the Government such as the present claimants do, than to others. They claim to have purchased large quantities of provisions, for the use of the emigrating Indians, under the contract alleged to have been made on the 12th June, and between that day and the 18th of June, (when they received notice that the contract was suspended or abandoned on the part of Government,) or for purchases made at some other time. At the last session of Congress, when the bill from the Senate was before the Committee of Claims, that committee wished to be informed, specifically, what property had been purchased; its value; where deposited; what disposition had been made of it; whether, upon a re-sale of the same property, the petitioners had sustained any loss, and under what circumstances and to what amount: or whether the property was yet on hand; and, if so, where it was; or if sold, at what price, and whether a profit had been realized by the petitioners thereon. The testimony which was then before the committee, and which is herewith submitted, shows, that from the month of June, 1838, through that year, articles of the kind enumerated in the contract of the 12th June continued to advance in price in the Cherokee country; and that, upon all judicious purchases made about that time, reasonable diligence would have secured the purchasers reasonable profits, upon a re-sale of such articles. Whatever may have been the duties of the petitioners between the 12th and 18th June, after that period they were under no obligations to retain the

property for the United States; they then being informed that it would not be wanted under the contract of the 12th. Under such circumstances, is it not reasonable to conclude that this property was disposed of by the petitioners? And yet, in the *estimate* by Mr. Crawford, no account of it is given or required; but the *estimate* is predicated upon the supposition that the whole amount of purchases was a total loss, and the Government subjected to the sacrifice of the \$102,128 10, upon the hypothesis, without proof, that such had been the extent of the purchases; and this, too, in disregard of the evidence hereinbefore referred to, which shows, that for the beef purchased and turned over to the Government, under their contract of the 27th of June, 1838, the petitioners must have made a profit of \$22,414 87½. But Mr. Crawford, in his said *estimate*, states, that from the \$102,128 10 should be deducted the sum of \$58,278 67, which was paid them under a contract made by Captain Page with the petitioners, on the 27th of June, 1838, to furnish beef alone, at 6½ cents per pound; and that under that contract they did furnish 896,595 pounds, and were paid therefor \$58,278 67. From any thing appearing upon this *estimate*, it would be difficult to arrive at any satisfactory reasons for deducting this amount, which, if the estimate was correct, the petitioners were entitled to receive. But if resort be had to a letter written by Captain Page to the Commissioner of Indian Affairs, on the 13th of July, 1838, the reason for it is rendered manifest. He says: "Clements & Bryan have incurred considerable expense in making contracts, on the road, for corn and beef; and that the contract of the 27th of June was made to relieve the contractors of the beef they had on hand under the contract of the 12th; and that a higher price was allowed them, in consequence of the disappointment made in this contract. The price paid was 6½ cents per pound." From this, it is evident that the beef taken at the station was that which had been purchased with a view to the execution of the contract of the 12th of June, and which was turned over to the United States under the contract of June 27, and for which the \$58,278 67 were paid. But after the Committee of Claims at the last session of Congress had adopted the aforesaid report, and after the petitioners were informed thereof, the letter hereinbefore referred to was received, bearing date the 13th July, 1840, from the petitioners to the committee, in which they say, among other things: "Understanding that testimony has been recently taken in our case, now pending before you, of which we had no notice, and no opportunity for cross-examination; and not having been apprized, until very recently, that your committee contemplated an inquiry, on their part, as to the amount of damages which the undersigned have sustained under their contract with the Government; the undersigned believe that it has become absolutely necessary for them to take further testimony in support of their claim, which it is apparent they cannot do during the present session." And the committee, not less anxious to do equal justice to the petitioners than to the United States, yielded to their request; and though additional testimony has now been submitted, it does not, in the opinion of the committee, obviate the objections heretofore taken to the claim. If at the last session of Congress, the petitioners were right in supposing it was absolutely necessary for them to take further testimony in the case, it is equally so now. The specifications required then, are not made now; and until they are, the committee cannot yield their assent to the bill from the Senate. It is, however, now suggested that the required proof can be furnished

before the proper accounting officers of the Treasury Department, if the claim is referred there for adjustment. And to secure the petitioners their just claim, if any they have, against the United States, and to enable them to furnish the required specifications and proof, the committee propose to amend the bill, by striking out all after the enacting clause, and inserting a provision which will secure to the petitioners an equitable adjustment of their claim; and, with such amendment, the committee recommend the passage of the bill.

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JULY 21, 1840.

Laid upon the table.

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*The Committee of Claims, to which was referred the bill from the Senate (No. 278) entitled "An act for the relief of Clements, Bryan, & Co.," make the following report :*

The bill directs "the Secretary of War to adjust and settle the claim of Clements, Bryan, & Co., arising out of a contract entered into between them and Captain John Page, on the twelfth day of June, one thousand eight hundred and thirty-eight; upon the principles of equity and justice; and the amount which may thus be found due them to be paid out of any money in the Treasury not otherwise appropriated."

This bill is accompanied with a petition and several documents, which are herewith submitted, and make part of this report. There is, also, a report from the Committee of Claims in the Senate; on which, the bill passed that body. (See Senate Report No. 289, 1st session 26th Congress.) The petitioners state, that on the 12th of June, 1838, they entered into a contract, in writing, with Captain John Page, of the United States army, and principal disbursing agent for the emigration of the Cherokee Indians west—acting in obedience to the orders of General Winfield Scott, commander in chief, and General Nathaniel Smith, superintendent of said emigration. A copy of said contract is hereunto annexed, marked A. That, immediately after entering into said contract, and in conformity with the duties and obligations thereof, they faithfully and zealously proceeded to procure and furnish the requisite quantity of provisions and supplies necessary to enable them fully to comply with their engagements; to accomplish which, they were compelled, at great sacrifices, to raise large sums of money, and necessarily had in their employ a great many agents and hands; that they made large purchases of provisions and supplies, and were at great expense and trouble in having the same ready for the proper stations, to comply with their said contract; that, on their part, they did and performed every thing necessary and proper, in full compliance with their said contract; that, after entering into said contract, and after they had thus proceeded to the discharge of its duties and obligations, General Scott changed the entire emigration from a military removal, to that of one to be conducted by the Indians themselves; and, for that purpose, transferred the superintendency of the emigration to John Ross, principal chief of the nation. That, in this arrangement, their contract with the Government was entirely disregarded; their rights and interests sacrificed; and they subjected to inordinate expenses, loss, and

damage, without any default on their part, and in violation of the just obligations of their contract, and against their consent. That they have made application to the appropriate department, for compensation for their losses and damages, but have not been able to obtain any; and they now ask the passage of a law directing the Secretary of War to settle their claim for losses and damages, upon just and equitable principles. The correspondence relating to the Cherokee emigration also accompanies the bill, and is herewith submitted.

On the 11th of June, 1838, General Nathaniel Smith wrote to Captain Page. From this letter, which is annexed to this report, the following extracts are made:

"It is my intention, so soon as the Indians are collected, and the transportation provided, to start from the Cherokee agency six parties, of one thousand each, in wagons, by land, by the upper route, *via* McMinnville, Nashville, and Golconda; to cross the Mississippi river at or near Cape Girardeau; thence by the most practicable route through the State of Missouri, to the upper part of the Cherokee nation west, according to the judgment and discretion of the conductors of the parties. For the subsistence of each of the abovenamed six parties, I must ask you to make contracts by the ration, with suitable persons, to furnish daily, upon the requisition and under the inspection of the conductor of the party, the requisite number of rations; same persons to give bond and security for the faithful performance. The residue, not included in the above arrangement, will be sent from this place in wagons to Waterloo, in Alabama, where they will be embarked on board, and taken to Boonville, on Missouri river, where they will be debarked and sent by wagons the remainder of the way. I must, therefore, request that a disbursing agent, with the requisite funds, be sent to Boonville, to furnish transportation for three thousand Indians from that point to the nearest part of the Cherokee nation west."

In the letter written by Captain Page to General N. Smith, bearing date the 14th of June, 1838, he says: "I made all the arrangements yesterday. This became necessary, as I am sure General Scott *will*, on his arrival here on the 18th, make a military movement, and take the power into his own hands, if he finds arrangements are not made to start the Indians immediately; and it is evident preparations for several thousand Indians cannot be made, for subsistence on the route designated, unless great exertions are made. Suppose, on the 20th or 21st, a party of 1,500 starts; and, in a few days, another party starts; and, in a few days, another party starts; and so on: think of the immense labor and exertion to supply those people. If the stands are not supplied, what is the result? Major Clements started the same day we left the landing, and Mr. Bryan has been contracting for 250 beef cattle to make a start on. I have also contracted for corn, to be delivered at this place, for the teams as they arrive."

The committee have been furnished with a copy of a communication made by the Commissioner of Indian Affairs to the Secretary of War, under date of the 1st of March, 1839, from which the following extracts are taken:

"On the 16th of June, a letter from Captain Page to Messrs. Clements, Bryan, & Co., informs me that, 'in pursuance of General Scott's order, I shall start two parties of Cherokee Indians, about one thousand each, on the 18th instant. You will, therefore, be ready to subsist them, agreeably to contract.' And, in his letter of the 18th of June: 'I have just received your letter of the 18th instant, notifying me you are ready to

give the necessary security required for the faithful fulfilment of your contract dated the 12th instant; also, your readiness to commence the issues to Cherokee emigrants, as required. I have to inform you, since orders to you of the 16th instant, *General Scott has suspended the emigration until the 1st September next.*

"Afterwards, Captain Page informed me 'advertisements were inserted in different newspapers, by General Scott's orders, for supplies;' and that he assured Messrs. Clements, Bryan, & Co., that all other things being equal, and their proposals being as low as others, they should be preferred. Before, however, the day of contracting arrived, the entire business of Cherokee removal, it is well known, was turned over to John Ross and others, by an arrangement with them for that purpose. The advertisements were, of course, recalled."

"On the 13th of July, Captain Page wrote to C. A. Harris, Esq., Commissioner of Indian Affairs, that, 'as Messrs. Clements, Bryan, & Co. had incurred considerable expense by making contracts on the road, for corn, beef, and bacon,' and as they were pressed, and were pressing him (Page) for money, he had arranged with them to take what beef they had at the agency, at 6½ cents per pound; but that he could do nothing with the road contracts, and that they held him accountable. From Mr. Harris, a letter was received by Captain Page, dated the 7th of August, in which he was told: 'in relation to the claim of Clements, Bryan, & Co., for damages and losses sustained by them in consequence of the suspension of emigration, I have to say that this office does not now authorize you to make any payments on these claims. Any claim on this account will be referred to this office for adjustment.'" There is no exhibit of particular items of disbursements accompanying the application; nor does it appear what amount of money was disbursed—at what time previous to the 18th of June, 1838, any disbursement was made—what property in particular was purchased—where deposited—who the individuals were, who were in the service of the petitioners; nor is there any specification which would enable the committee to arrive at the probable result of the operations of the petitioners, on the subject of the claim in question. It is not sufficient for the petitioners to allege, generally, that they entered into a contract with the Government; and, with a view to its fulfilment, that they made large purchases, disbursed large sums of money, employed numerous individuals, and made various deposits at separate depots. All these allegations are susceptible of specification and proof; and it is essential to the security of the Government that such specification and proof should accompany the application, that it may be known, when legislating upon such claims, to what extent the revenues of the country are to be compromised. Under these circumstances, and to relieve the claim from the embarrassment arising from a want of testimony in detail to establish it, without the relaxation of long established regulations, the committee addressed communications to the Secretary of War, to the Commissioner of Indian Affairs, to General Winfield Scott, and to several others from whom, it was believed, correct information could be obtained relating to the merits of the claim; and solicited answers to the annexed interrogatories, which, it was supposed, might furnish the details; which, with the respective answers, are herewith presented, and made a part of this report. In pursuing the investigation, it becomes desirable to ascertain who the applicants were—who

composed the firm of Clements, Bryan, & Co.; and though some of the confidential agents of the applicants have been examined, it may yet be considered an unsettled question who compose said firm. This, the committee apprehend, should not be left in doubt. Without knowledge of this fact, the parties interested might be used as witnesses to establish important facts, to the prejudice of the Government. The persons interested are known to the applicants, and should be disclosed; and though it is not to be presumed, in the absence of all testimony, that the agent of the Government, who was acting for the Government, and who negotiated this contract, was one of the firm, and interested as contractor; yet, from an attentive examination of the accompanying documents, none will doubt that some, who were known to be parties in interest, believed and declared that Captain Page was interested as contractor therein. There is evidence, derived from the sources above referred to, which admonishes the committee that this claim should be examined with great care, as well for the protection and defence of the Government, as from a desire to arrive at the just rights of the petitioners. The first question which is presented in this case, is, whether the contract of the 12th of June, 1838, was consummated or fully executed on that day; or whether it existed merely in proposition, until the security for the performance on the part of the petitioners was given? It appears, from the accompanying documents, that no security was ever given.

An arrangement was made between the Government and the Cherokee nation of Indians to change the manner of emigration west, of that tribe, by a military force, to that of a peaceful manner, to be conducted by the tribe themselves. In consequence of this arrangement, the emigration by land, as was contemplated on the 12th of June, was abandoned, and notice thereof given to the petitioners on the 18th of June; and on the same day the petitioners offered the required security, and stated that they were ready to commence issues of rations; and the reason why the security was not given, probably, was, that an arrangement for emigrating the tribes had been made with the nation, which superseded the necessity of consummating the execution of the contract with the petitioners. If, as stated by the Commissioner of Indian Affairs, the instructions to the agents were to require security in all cases of the kind, the agent had no discretion on the subject; and no agreement could be obligatory on the Government, until the necessary security was given. In similar cases, it has been held by this committee, and approved by Congress, that contracts unaccompanied by security, when, by the regulations of the Government, security was required, were not obligatory until the security was given; and the committee can discover no good reason for discriminating between this and other similar cases. But if the contract had been fully executed on the 12th of June, 1838, six days afterwards, and on the 18th of June, the petitioners were informed, by letter from Captain Page, *that the emigration would not take place as had been contemplated*, but that it would be suspended until the 1st of September thereafter. When the emigration was suspended, there were large numbers of the Indians collected at the Cherokee agency and at Ross's landing, in the Cherokee country, which required supplies; and to relieve and secure Clements & Bryan from loss or injury, which they might otherwise be subjected to, growing out of the arrangement of the 12th June, on the 27th June, 1838, an agreement was entered into, (a copy of which is hereto annexed.)

by which they were to furnish fresh beef to the Indians at six and a half cents per pound; that, under this contract, the beef which they had purchased, with a view to the fulfilment of their arrangement of the 12th June, was received and paid for. Under this contract of the 27th June, the contractors furnished the Government eight hundred and ninety-six thousand five hundred and ninety-five pounds of beef, and were paid therefor the sum of \$58,278 67, which, at the current price, would give to the contractors a clear profit of \$22,414 87½. At this time beef was plenty at that place at four cents per pound; and the contractors received from Government six and a half cents for the aforesaid quantity.

In a communication from General Winfield Scott, who then commanded in the Cherokee country, in answer to the question put to him by the committee, whether the petitioners sustained a loss, or realized a profit, on their purchases, &c., he says:

“I know, from many sources, whilst in that country, that there was a steady but moderate advance on the prices of June, by reason of the draught, on all such supplies as are mentioned in the contract, (that of the 12th of June,) as well in the Cherokee country as all along the route of emigration; it seems to me, therefore, that a profit must have been made on the judicious purchase of all such supplies taken in June, both on account of the draught, and increased consumption caused by the collection, of the emigrating Indians.”

Under this view of the case, it appears clear to the committee, from the facts now submitted, that the claimants have sustained no loss, but, on the contrary thereof, have realized a large profit on the purchases and sales made by them. But, to investigate this claim more minutely, the petitioners allege that, immediately after entering into the contract of the 12th June, they proceeded to procure and furnish the requisite quantity of provisions and supplies necessary to enable them fully to comply with their engagements. These allegations are not sufficiently sustained by evidence: it does not appear what amount of supplies have been obtained; at what particular place they were deposited; with whom deposited; from whom purchased; the names of the agents employed; the prices paid, or agreed to be paid; nor, indeed, is there such a detail given as will enable the Government to protect itself against fraud and imposition. But it does appear that if the whole six thousand Indians, whose emigration appears from the correspondence to have been contemplated, had all emigrated, (allowing eighty days as the time necessary to have performed the travel,) only about 480,000 pounds of beef would have been required; and, in the absence of specific proof, it will not be believed that, within the six days, that is, (from the 12th to the 18th June, 1838,) the contractors had purchased the whole amount of this article of supplies necessary for the eighty days' emigration. A brief reference to the facts presented, and a calculation predicated thereon, shows that the claimants could not have been sufferers. The beef for the six thousand persons for eighty days, (the time necessary to perform the travel west,) would have been 480,000 pounds: this cost, at the then current price, \$19,200. The whole quantity of 480,000 pounds was furnished the Government, under the contract of the 27th June, 1838, at six and a half cents per pound; making a total of \$31,200—giving to the contractors a clear profit, on this quantity, of \$12,000. It appears also from the communication hereto annexed, from T. H. Crawford, the Commissioner of Indian Affairs, that, under the contract of the 27th June,

the contractors furnished 896,595 pounds of beef, and were paid therefor the sum of \$58,278 67. Here was then furnished to the Government, under this last contract, 416,595 pounds of beef more than would have been required under the contract of the 12th June for the six thousand emigrants, if the same had been obligatory and fully performed, and no greater number had emigrated. The current price of beef at the time, in the Cherokee country, was four cents per pound; and Captain Page says in his letter, "that the contract of the 27th of June was made to relieve the contractors of the beef they had on hand under the contract of the 12th; and that a higher price was allowed them, in consequence of the disappointment made in this contract." Upon these facts, and with a view to their relief from the consequences of the contract of the 12th June, the one of the 27th was entered into, under which the contractors realized a profit of \$22,414 87. With these views, the committee apprehend that the bill from the Senate ought not to pass, and therefore recommend its rejection.

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No. 1.

Articles of agreement made on the 12th of June, in the year of our Lord eighteen hundred and thirty-eight, between Reuben E. Clements, Needham A. Bryan, & Co., of the one part, and Captain John Page, disbursing agent for the removal and subsistence of Cherokee and Creek Indians, of the other part.

This agreement witnesseth: That the said Captain John Page, disbursing agent for the removal and subsistence of Cherokee and Creek Indians, for and on behalf of the United States of America, and the said Reuben E. Clements, Needham A. Bryan, & Co., for themselves, their heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other, in manner following, to wit:

1st. That the said Reuben E. Clements, Needham A. Bryan, & Co., do promise and agree to furnish the emigrating Cherokees and Creeks with rations, from this place to their new country west of the Mississippi, at sixteen cents per ration; corn for teams and Indian ponies at one dollar per bushel, and eight pounds of fodder to each work horse, (when it can be reasonably obtained,) at two dollars per one hundred pounds; the ration to consist of one pound of fresh beef or fresh pork, or three-quarters of a pound of salt pork, three-quarters of a quart of corn or cornmeal, or one pound of wheat flour, and four quarts of salt for every one hundred rations; for each work horse eight pounds of hay or fodder, and eight quarts of corn, or twelve quarts of oats, for each animal per day, and for each Indian pony one gallon per day.

Captain John Page, disbursing agent for the removal and subsistence of Cherokee and Creek Indians, for and on behalf of the United States of America, doth promise and agree to pay the said Reuben E. Clements, Needham A. Bryan, & Co., sixteen cents per ration; one dollar per bushel for corn furnished to work horses and Indian ponies; and two dollars per one hundred pounds of fodder, on certified returns from the conductor that they have been received. That the United States will be responsible for no accidents arising under, or growing out of, the foregoing stipulations.

In witness whereof, the parties have hereunto placed their hands and seals the day and date above written.

CLEMENTS, BRYAN, & Co.,  
JOHN PAGE,  
*Captain, Principal Disbursing Agent.*

Witnesses : A. C. PECK,  
ALEX. H. SOMERVILLE.

The within is a true copy of the original contract, part in print and part in writing.

JAMES YOUNG,  
*Clerk Committee of Claims.*

A.

Know all men by these presents, that we, Reuben E. Clements, Needham A. Bryan & Co., are held and firmly bound to the United States of America in the sum of twenty thousand dollars, lawful money of the United States; for which payment well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators; for and in the whole, jointly and severally, firmly by these presents.

Sealed with our seals; dated the twelfth day of June, in the year of our Lord eighteen hundred and thirty-eight.

The condition of this obligation is such, that if the above bounden Reuben E. Clements, Needham A. Bryan, & Co., their heirs, executors, or administrators, or any of them, shall and do in all things well and truly observe, perform, fulfil, accomplish, and keep, all and singular the covenants, conditions, and agreements whatsoever, which, on the part of said Reuben E. Clements, Needham A. Bryan, & Co., their heirs, executors, or administrators, are or ought to be observed, performed, fulfilled, accomplished, and kept, comprised or mentioned in certain articles of agreement or contract bearing date the twelfth of June, one thousand eight hundred and thirty-eight, between Captain John Page, disbursing agent for the removal and subsistence of Cherokee and Creek Indians, and the said Reuben E. Clements, Needham A. Bryan, & Co., concerning according to the true intent and meaning of the said articles of agreement or contract, then the above obligation to be void; otherwise, to remain in full force and virtue.

In presence of

The above is a true copy of the bond, but not executed by Clements, Bryan, & Co.

JAMES YOUNG.

Articles of agreement made on the twenty-seventh day of June, eighteen hundred and thirty-eight, between Captain John Page, United States army, and principal disbursing agent Cherokee removal, of the one part, and Clements & Bryan, of the other part.

This agreement witnesseth: That the said Captain John Page, United

States army, and principal disbursing agent Cherokee removal, for and on behalf of the United States of America; and the said Clements & Bryan, for themselves, heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other, in manner following, to wit:

1st. That the said Clements & Bryan bind themselves to furnish, for the use of the Cherokee Indians, at such points as may be required, fresh beef of a good quality, in such quantities and at such periods as may be directed by said Captain John Page, United States army, and principal disbursing agent Cherokee removal.

2d. That said Clements & Bryan further bind themselves to slaughter said beef in butcherlike manner, and to deliver the quantity of beef required, on the day designated for delivery, to the commissary or agent authorized to receive said beef, at any depot that may be designated by said Page, within the Cherokee nation east of the Mississippi river. It is understood, that if the said Clements & Bryan should at any time unavoidably have a surplus over the quantity of beef required, it shall be issued, and deducted from the next issue. For such quantity of beef as the said Clements & Bryan may deliver according to the above stipulation, the said Captain John Page, United States army, and principal disbursing agent Cherokee removal, binds himself, on the part of the United States, to pay to the said Clements & Bryan the sum of six and a half cents for every pound of beef delivered as above stated. It is further understood between the parties, that if the said Page should determine to discontinue the issue of beef to the Indians, he is at liberty to do so, by giving the said Clements & Bryan at least two days' notice of his intention of doing so. That the United States will be responsible for no accident arising under, or growing out of, the foregoing stipulations.

In witness whereof, the parties have hereunto placed their hands and seals, the day and date above written.

CLEMENTS & BRYAN,  
JOHN PAGE,  
*Captain and Disbursing Agent.*

Witnesses: NOAH FELTON,  
THOMAS H. STEPHENSON.

Approved: NAT. SMITH, *Superintendent.*

Know all men by these presents, that we, R. E. Clements, of the county of Lincoln, State of Tennessee, and N. A. Bryan, of the county of Marshall, and State of Mississippi, are held and firmly bound to the United States of America in the sum of ten thousand dollars, lawful money of the United States of America; for which payment well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, for and in the whole, jointly and severally, firmly by these presents.

Sealed with our seals; dated the twenty-seventh of June, in the year of our Lord eighteen hundred and thirty-eight.

The condition of this obligation is such, that if the above bounden R. E. Clements and N. A. Bryan, their heirs, executors, or administrators, or any of them, shall and do in all things well and truly observe, perform, fulfil,

accomplish, and keep, all and singular the covenants, conditions, and agreements whatsoever, which, on the part of the said R. E. Clements and N. A. Bryan, their heirs, executors, or administrators, are, or ought to be observed, performed, fulfilled, accomplished, and kept, comprised or mentioned in certain articles of agreement or contract bearing date the twenty-seventh day of June, one thousand eight hundred and thirty-eight, between Captain John Page, United States army, and principal disbursing agent Cherokee removal, and the said R. E. Clements and N. A. Bryan, concerning a contract for furnishing beef for the Cherokees, according to the true intent and meaning of the said articles of agreement or contract, then the above obligation to be void; otherwise, to remain in full force and virtue.

R. E. CLEMENTS,  
N. A. BRYAN,  
JOHN A. McPHAIL,  
G. E. MOUNTCASTLE.

In presence of—

NOAH FELTON,  
THOMAS H. STEPHENSON.

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

The petition of Reuben E. Clements and Needham A. Bryan & Co., citizens of the States of Tennessee and Mississippi,

**RESPECTFULLY REPRESENTS TO YOUR HONORABLE BODY :**

That they (your petitioners) and Captain John Page, of the United States army, the principal disbursing agent for the emigration of the Cherokee Indians west, acting in obedience to the orders of Major General Winfield Scott, commander-in-chief, and General Nat. Smith, superintendent of said emigration, on the 12th day of June, 1838, entered into the contract in writing, herewith submitted, (marked No. 1.)

Your petitioners represent to your honorable body, that immediately after entering into said contract, and in conformity with the duties and obligations it imposed on their part, they (your petitioners) faithfully and zealously proceeded to procure and furnish the requisite quantity of provisions and supplies necessary to enable them fully to comply with their said engagements; that, to accomplish which, they were compelled, at great sacrifice, to raise large sums of money; that they necessarily had in their employ a great many agents and hands; that they made large purchases of provisions and supplies, and were at great expense and trouble in having the same ready for the proper stations, to comply with their said contract; that, on their part, they performed every thing necessary and proper, in full compliance with their said contract.

Your petitioners represent to your honorable body, that, after entering into the said contract, and after they had thus proceeded to the discharge of its duties and obligations, Major General Winfield Scott, commander-in-chief, considering the same to be the correct public policy, saw fit to change the entire emigration, from a military removal, to that of one to be conducted by the Indians themselves; and, for that purpose, transferred

the superintendency of the entire emigration to John Ross, the principal chief of the nation.

Your petitioners state that, in the arrangements aforesaid, their contract with the Government was entirely disregarded and annulled, their rights and interests greatly sacrificed, and they subjected to inordinate expense, loss, and damages, without any default on their part, and in violation of the just obligations of said contract, and against their consent.

Your petitioners state, that the Commissioner of Indian Affairs, considering them entitled to indemnity on account thereof, directed the claim of your petitioners for loss and damages to be referred to that department for adjustment; that the same was accordingly presented, for examination and allowance; but that the Secretary of War having decided that the breach of the contract on the part of the Government, and the consequent damages, was no proper item in the expense of the Cherokee removal, nor chargeable to the Cherokee fund, your petitioners beg leave to invoke the appropriate interposition of your honorable body.

Your petitioners take leave, also, to refer to the papers filed in the original application made by them at the last session, (and which are marked as Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 19,) which show the facts and views in relation to the whole case, embracing the orders which were issued by the competent authority, and the general action of the Government upon the subject.

They pray the passage of an act authorizing and requiring the Secretary of War to adjust and settle the claim of your petitioners for loss and damages, on just and equitable principles; and that the amount to which they may be entitled be paid out of any money in the Treasury not otherwise appropriated.

And, as in duty bound, they will ever pray.

CLEMENTS, BRYAN, & CO.

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No. 1.

Articles of agreement, made on the 12th June, in the year of our Lord 1838, between Reuben E. Clements, Needham A. Bryan, & Co., of the one part, and Captain John Page, U. S. A, and principal disbursing agent for the removal of the Cherokee Indians, of the other part.

This agreement witnesseth: That the said Captain John Page, U. S. A., principal disbursing agent for the removal of the Cherokees, for and on behalf of the United States of America, and the said Reuben E. Clements, Needham A. Bryan, & Co., for themselves, heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other, in manner following, to wit:

1st. That the said Reuben E. Clements, Needham A. Bryan, & Co., do promise and agree to furnish the emigrating Cherokees with rations, from this place to their new country west of the Mississippi river, at sixteen cents per ration; corn, for teams and Indian ponies, at one dollar per bushel; and eight pounds of fodder to each work-horse, (when it can be reasonably obtained,) at two dollars per one hundred pounds. The ration to consist of one pound of fresh beef or fresh pork, or three-quarters of a

pound of salt pork; three-fourths of a quart of corn or corn meal, or one pound of wheat flour; and four quarts of salt for every one hundred rations. For each work-horse, eight pounds of hay or fodder, and eight quarts of corn or twelve quarts of oats, for each animal, per day; and for each Indian pony, one gallon per day.

2d. Captain John Page, U. S. A., principal disbursing agent for the removal of the Cherokees, for and on behalf of the United States of America, doth promise and agree to pay the said Reuben E. Clements, Needham A. Bryan, & Co., sixteen cents per ration, and one dollar per bushel for corn furnished to work-horses and Indian ponies, and two dollars per one hundred pounds of fodder, on certified returns from the conductor of the party that they have been received.

When bacon is required, or in part, the conductor of the party will give the contractors timely notice, and it shall be furnished.

That the United States will be responsible for no accidents arising under, or growing out of, the foregoing stipulations.

In witness whereof, the parties have hereunto placed their hands and seals, the day and date above written.

CLEMENTS, BRYAN, & CO.

JOHN PAGE,

*Captain, and Principal Disbursing Agent.*

Witnesses: A. C. PECK,

ALEX. H. SOMERVILLE.

Approved:

NAT. SMITH,

*Superintendent Cherokee Removal.*

No. 2.

HEADQUARTERS, E. DIVISION,

*Cherokee Agency, June 4, 1838.*

SIR: Under the advice given in my printed address, and stimulated by the application of force in Georgia, and the arrangements for its application everywhere, after the 11th instant many Indians are coming in, and thousands may be expected to present themselves for voluntary emigration in the course of the next eight days. Captures by the troops will commence and rapidly proceed, after this day week, in North Carolina, Tennessee, and Alabama; and by that time but few will remain to be collected in Georgia.

I give you this information, in order that you may make corresponding arrangements for receiving and transporting the emigrants by land and water. Humanity will require that there will be no delay at the emigrating depôts, or on the routes.

The Tennessee river, I learn, is again rising; and the Arkansas may be expected to be found navigable, perhaps, throughout this month. I have, however, great doubts as to the number and goodness of your steamboats. I will therefore urge you to supply any deficiency in your means of water transportation as speedily as possible; adding, that, in

my opinion, it will be too late in the season, in respect to health, to start parties of emigrants to go up the Arkansas *after the 20th instant*, even in the best steamboats. The same objection applies to either of the lower land routes. After that date, it appears to me that you can have the choice of but two other lines:

1. By water and land to Florence or Tuscumbia; thence, in steamboats, to Cape Girardeau, on the Mississippi, or Boonville, on the Missouri; and thence, by land, to the Cherokee country west. 2. By land, crossing the Ohio at Golconda, and the Mississippi at Cape Girardeau; thence by the ridge which divides the waters of White river from those which fall into the Mississippi above and into the Missouri. In my judgment, the latter route ought to be preferred after an early day in July.

I have no wish to interfere with your duties, except in the way of advice, or on your own solicitation. Should it, however, become necessary, I will, to aid you, send, after their arrival, three or four officers of the regular army to purchase provisions on account of the Indian Department, and to establish dep ts at convenient distances all along the second route indicated, [whom I may be] able to detach upon the arrival of the remainder of the troops expected from Florida; but I recommend that you do not wait for them.

Hoping soon to learn that your means of transporting and subsisting the emigrants, in comfort, to their new country in the west, are fully adequate,

I remain, with much respect, your obedient servant,

WINFIELD SCOTT.

Gen. N. SMITH,

*Superintendent of Cherokee Emigration, Ross's Landing.*

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No. 3.

HEADQUARTERS, E. DIVISION,

*Cherokee Agency, June 5, 1838.*

SIR: I am directed by the major general commanding to say that he received, by the last mail, a communication from the Secretary of War, on the subject of the enforcement of the treaty. The major general desires that you will, until further advice, continue your arrangements for the prompt and comfortable removal of the Cherokees, paying no attention to whatever rumor or report you may hear, or find circulated in newspaper publications.

You will be early advised of any changes which instructions from Washington may require.

General Scott does not expect to leave this place perhaps in several days.

I am, sir, respectfully, your obedient servant,

ROBERT ANDERSON,

*Lieut. and A. D. C.*

Gen. N. SMITH,

*Superintendent Cherokee Emigration.*

No. 4.

HEADQUARTERS, E. DIVISION,  
Cherokee Agency, June 6, 1838.

SIR: I wish to set out, on the 9th instant, (in the morning,) for Fort Butler; and am very anxious, in the mean time, to learn your progress and prospects in respect to sending off the emigrants.

All the Georgia Indians, except a few families and fugitives in the mountains, will, I think, be in our hands by the 10th instant; and we shall begin vigorously to make collections in the other three States on the 12th. You will therefore have your hands full, in this and the ensuing month, as well as at present.

I hope to learn that your means of sending off the Indians, both by water and land, will enable you to despatch parties as fast as they arrive at the depots, as the health of the emigrants must suffer from delays.

Colonel Lindsay reports to me that Captain Drane and Lieutenant Whitely (both now at Ross Landing) have tendered their services to accompany parties of Indians. They shall, therefore, be successively put at your disposition, as soon as they may be wanted.

How will it do to send off the whole or part of the North Carolina Indians from Fort Armistead direct? From that neighborhood to Nashville and Ross Landing is about the same distance. If you cannot come up before Saturday next, (the 9th instant,) please let me hear from you.

My orders from Washington require that the collection of the Indians for emigration shall go on, and it shall.

With respect, I remain yours,

WINFIELD SCOTT.

General N. SMITH.

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No. 5.

HEADQUARTERS, E. DIVISION,  
Cherokee Agency, June 6, 1838.

SIR: I have received your two letters, dated, respectively, the 6th and 7th instant. I am glad to learn that you have already despatched a party of emigrants, and expect to send off another by the 20th instant.

Lieutenant Whitely, or some other officer now at Ross Landing, will be ordered to report to you to accompany the second detachment; and Captain Drane, from this place, the third. Other officers shall be supplied for the same service before the 20th. I am pleased that you have detained for a time certain Indians whose families are broken, to await the arrival of absent members. The distress caused the emigrants, by the want of their bedding, cooking utensils, clothes, and ponies, I much regret; as also the loss of their property, consequent upon the hurry of capture and removal. All this I am sorry for; and much of it, I am persuaded, was unavoidable, so far as the troops were concerned. The fault was mainly in the Indians themselves, who believed in Mr. John Ross's assurances, and gave the lie to my address. Hence, they waited for the arrival of the troops, and were even then wholly unprepared for removal. I am not angry with

them, but infinitely regret their infatuation. I endeavored in my printed order (No. 25) to guard against that infatuation, by directing that the troops should allow the Indians to gather up whatever could be used on the route to the west, and desiring you to devise the means of securing for their benefit all other articles of property left or abandoned. I recall all this to show that I have done every thing in my power to save the unfortunate Indians from loss and distress.

I give it as my belief that nearly all the Indians from Georgia will be at the emigrating depots by the 15th instant, and that the greater part of those in the three adjoining States will be at the same places by the 30th, if not the 25th, of this month. And, on the part of humanity, I must protest against sending off a single party of emigrants to ascend the Arkansas river seventeen days after this date. In the mean time, as subsequently, I hope you will be able to despatch parties weekly, at least, by the land route heretofore indicated. To this effect, it will give me pleasure to learn that you have engaged the wagons, and made the depots of subsistence which are already required. I shall set out to-morrow morning for Fort Butler, and expect to be back here before the 18th instant, when it will give me pleasure to meet and confer with you on all matters interesting to the service.

With much respect, I remain, sir, your obedient servant,

WINFIELD SCOTT.

General N. SMITH.

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No. 6.

INDIAN CAMP, NEAR ROSS LANDING, *June 11, 1838.*

SIR: I have the honor to inform you of my determination to despatch the remainder of the Cherokee tribe to their new homes in the west, according to the following order:

Out of the whole number, from the best estimate which I am able to make, there are two-thousand that will be considered capable of removing themselves.

I expect to start a party of one thousand in boats from Ross Landing on to-morrow, to which Lieutenant Whitely, of the 2d artillery, has been assigned as conductor and disbursing agent; and two thousand more within the next six days; and I must request that you provide a suitable number of disbursing officers, with the requisite amount of funds, to be ready when called on.

It is my intention, so soon as the Indians are collected and the transportation provided, to start from the Cherokee agency six parties, of one thousand each, in wagons, by land, by the upper route via McMinnville, Nashville, and Golconda, to cross the Mississippi river at or near Cape Girardeau; thence by the most practicable route through the State of Missouri, to the upper part of the Cherokee nation west, according to the judgment and discretion of the conductors of parties. For the subsistence of each of the abovenamed six parties, I must ask you to make contracts by the ration, with suitable persons, to furnish daily, upon the requisition and under the inspection of the conductor of the party, the requisite number of rations: same persons to give bond and security for the faithful performance.

The residue, not included in the above arrangements, will be conveyed from this place in wagons to Waterloo, in Alabama, where they will be embarked on board and taken to Boonville, on the Missouri river, where they will be debarked and sent by wagons the remainder of the way. I must therefore request that a disbursing agent, with the requisite funds, be sent to Boonville, to furnish transportation for three thousand Indians from that point to the nearest part of the Cherokee nation west.

In order to carry into effect the above arrangements, I must request that you have in readiness at this place, on or before the 25th instant, forty wagons and teams, and forty more on the 28th of the same instant, and forty more on the 1st day of July; and that you have purchased, and deposited at or near Ross Landing, five days' forage for each of the above lots of teams.

I must further request that you have in readiness at the Cherokee agency, at the following dates, two hundred wagons and teams, viz: forty on or before the 25th instant, forty more on the 28th instant, forty more on the 1st day of July, forty more on the 4th, and the remainder on the 8th of the same month; and that five days' forage for same teams be purchased and deposited at or near the Cherokee agency: the teams to be employed to be composed of five horses each, with a suitable wagon, and subject to the inspection of the wagon-master, to travel twelve miles per day, and to carry three thousand pounds if required, and the drivers thereof to be under the orders of the conductors of parties.

All other communications that may be rendered necessary will be made to you from time to time.

Very respectfully, your most obedient servant,

NAT. SMITH,  
*Superintendent Cher. Em.*

Captain JOHN PAGE, U. S. A.,  
*Principal Disbursing Agent Cher. Em.*

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No. 7.

CALHOUN, TENNESSEE, June 14, 1838.

SIR: I have just received your communication of the 12th instant. I made all the arrangements yesterday. This became necessary, as I am sure General Scott *will*, on his arrival here on the 18th, make a military movement, and take the power in his own hands, if he finds arrangements are not made to start the Indians immediately. And it is evident preparations for several thousand Indians cannot be made for subsistence on the route designated, unless great exertions are made. Suppose on the 20th or 21st a party of 1,500 starts, and in a few days another party starts, and in a few days another party starts, and so on: think of the immense labor and exertion to supply those people. If the stands are not supplied, what is the result? Major Clements started the same day we left the Landing, and Mr. Bryan has been contracting for 250 beef cattle to make a start on. I have also contracted for corn, to be delivered at this place, for the teams as they arrive. Rely, general, the hint General Scott gave me when he left was for a *rapid movement*; "or I will—(he says)—*understand me.*" I told him all I wanted was your requisition, and then the fault might rest on me if I had not done all in my power.

I have made no arrangements for the subsistence of the Indians you are starting off. I am sure they will have to take land before they arrive at their homes. I presumed you had made all the arrangements, as nothing in your letter of instructions was named of it; but all instructions in your letter I have complied with. The next morning after I arrived here, as there was no time to lose, I closed the contract immediately.

You say, in your letter of instructions, that Captain Grant will report to me. I have never seen or heard from him. What shall be done in this case? His services are much wanted at this time. Please tell me what to do.

Respectfully, your obedient servant,

JOHN PAGE,

*Capt. and Prin. Dis. Agent.*

General NAT. SMITH,

*Sup't Cherokee Emigration.*

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No. 8.

CHEROKEE AGENCY, *June 16, 1838.*

GENTLEMEN: In pursuance to General Scott's orders, I shall start two parties of Cherokee Indians (about one thousand each) on the 18th inst. You will, therefore, be ready to subsist them agreeably to contract.

Respectfully, your obedient servant,

JOHN PAGE,

*Capt. and Prin. Disbursing Agent.*

MESSES. CLEMENTS, BRYAN, & Co.

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No. 9.

CHEROKEE AGENCY EAST, *June 18, 1838.*

SIR: We are now prepared to give you any security you may require of us, for the faithful fulfilment of our contract; and, also, (according to your order of the 16th instant,) we report ourselves ready to commence the issue of rations to the emigrating parties of Cherokees.

Very respectfully, your most obedient servants,

CLEMENTS, BRYAN, & Co.

Capt. J. PAGE, *U. S. A.,*

*Principal Disbursing Agent Cherokee Removal.*

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No. 10.

CHEROKEE AGENCY, *June 18, 1838.*

GENTLEMEN: I have just received your letter of the 18th instant, notifying me that you are ready to give the necessary security required for the faithful fulfilment of your contract dated 12th instant; also, your readiness to commence the issues to Cherokee emigrants, as required. I have to

inform you that, since my orders to you of the 16th instant, General Scott has suspended the emigration until the 1st of September next.

With respect, I am your obedient servant,

JOHN PAGE,

*Captain and Principal Disbursing Agent.*

MESSRS. CLEMENTS & BRYAN.

No. 11.

CHEROKEE AGENCY EAST, *June 22, 1838.*

GENTLEMEN: I shall leave this morning for Fort Gibson, Arkansas, and expect to return before the 1st of September, when it is my intention to commence vigorously the removal of the Cherokees, (both by land and water;) and I shall expect you to be fully prepared to subsist all who may remove by land, agreeably to your contract.

Very respectfully, your obedient servant,

NATHANIEL SMITH,

*Superintendent Cherokee Em.*

MESSRS. CLEMENTS & BRYAN,

*Contractors, &c.*

No. 12.

CHEROKEE AGENCY EAST, *November 10, 1838.*

An extract from a letter written by Captain John Page, of the United States army, and principal disbursing agent of the Cherokee removal, to the Commissioner of Indian Affairs, bearing date the 13th July, 1838, in which he says:

"I have advertised for proposals to subsist the Cherokees on their route west, in six different papers in Alabama, Georgia, and Tennessee. The company with whom I made the contract, which I notified you of, hold me accountable for the damages sustained, and still claim the contract; but, as the emigration was suspended, and I had time sufficient to give notice in the papers, I felt bound to do so. Messrs. Clements & Bryan incurred a considerable expense, by making contracts on the road for corn, beef, and bacon; and the people calling on them for pay, and the contractors calling on me, I entered into an agreement to take what beef they had here at six and a half cents per pound; but I could not do any thing with the arrangement on the road. They hold me accountable for damages. In this manner the business stands. I do not know whether they intend to proceed against me or not; they are responsible and correct men."

No. 13.

CHEROKEE AGENCY EAST, *November 10, 1838.*

An extract from a letter written by the Commissioner of Indian Affairs to Captain John Page, of the United States army, and principal disburs-

ing agent of the Cherokee removal, bearing date 7th August, in which he says :

"In relation to the claims of Messrs. Clements & Bryan, for damages and losses sustained by them in consequence of the suspension of emigration, I have to say that this office does not now authorize you to make any payments on those claims. Any claims on this account will be referred to this office for adjustment.

"Very respectfully, your most obedient servant,

"C. A. HARRIS,

"Commissioner."

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WAR DEPARTMENT,  
*Office Indian Affairs, March 1, 1839.*

SIR: The claim of Messrs. Clements, Bryan, & Co., presented to the War Department, has been referred to this office for a report. It was your expectation that General Scott would be in Washington soon, and that a conference with him might be useful. He has been here; but the claimants being in Washington and very urgent for a decision, and Captain Page, who made the contract under General Scott's orders, having favored me with an interview, I have proceeded to express my views without calling upon the latter.

It appears, from a communication from General N. Smith to Captain Page, of 11th June, 1838, that the latter was required to contract for rations for the Indians on their travel west. The following is an extract from the requisition: "It is my intention, as soon as the Indians are collected and the transportation provided, to start from the Cherokee agency six parties, of one thousand each, in wagons, by land, by the upper route, via McMinnville, Nashville, and Golconda, to cross the Mississippi river at or near Cape Girardeau; thence, by the most practicable route, through the State of Missouri, to the upper part of the Cherokee nation west, according to the judgment and discretion of conductors of parties. For the subsistence of each of the abovenamed six parties, I must ask you to make contracts, by the ration, with suitable persons, to furnish daily, upon the requisition and under the inspection of the conductor of the party, the requisite number of rations: same persons to give bond and security for the faithful performance." On the next day, viz: 12th June, 1838, a contract was entered into between "Clements, Bryan, & Co.," the claimants, and "John Page, captain and principal disbursing agent," by which "Reuben E. Clements, Needham A. Bryan, & Co." promised and agreed "to furnish the emigrating Cherokees with rations from this place to their new country west of the Mississippi river, at sixteen cents per ration; corn for Indian teams and ponies at one dollar per bushel, and eight pounds of fodder to each work-horse (when it can be readily obtained) at two dollars for one hundred pounds; the ration to consist of one pound of fresh beef or fresh pork, or three-quarters of a pound of salt pork, three-fourths of a quart of corn or corn meal, or one pound of wheat flour, and four quarts of salt for every one hundred rations; for each work-horse eight pounds of hay or fodder and eight quarts of corn, or twelve quarts of oats, for each animal per day, and for each Indian pony one gallon per day. Captain John Page, United States army, and principal disbursing agent for Chero-

kee removal, for and on behalf of the United States of America, doth promise and agree to pay the said Reuben E. Clements, Needham A. Bryan, & Co. sixteen cents per ration, one dollar per bushel for corn furnished to work-horses and Indian ponies, and two dollars per one hundred pounds of fodder, on certified returns from the conductor of the party that they have been received. When bacon is required, or in part, the conductor of the party will give the contractors timely notice, and it shall be furnished. That the United States will be responsible for no accidents arising under, or growing out of, the foregoing stipulations."

There is on file a letter from Captain Page to General N. Smith, of 14th June, in which he says: "I made all the arrangements yesterday. This became necessary, as I am sure General Scott *will*, on his arrival here on the 18th, make a military movement, and take the power in his own hands, if he finds arrangements are not made to start the Indians immediately; and it is evident preparations for several thousand Indians cannot be made for subsistence on the route designated, unless great exertions are made. Suppose, on the 20th or 21st, a party of fifteen hundred starts; and in a few days, another party starts; and in a few days, another party starts; and so on: think of the immense labor and exertion to supply those people. If the stands are not supplied, what is the result? Major Clements started the same day we left the landing; and Mr. Bryan has been contracting for two hundred and fifty beef cattle to make a start on. I have also contracted for corn, to be delivered at this place, for the teams as they arrive."

On the 16th of June, a letter from Captain Page to Messrs. Clements, Bryan, & Co., informs me that, "in pursuance to General Scott's orders, I shall start two parties of Cherokee Indians, about one thousand each, on the 18th instant. You will, therefore, be ready to subsist them agreeably to contract." And in his letter of 18th June, "I have just received your letter of the 18th instant, notifying me you are ready to give the necessary security required for the faithful fulfilment of your contract, dated 12th instant; also, your readiness to commence the issues to Cherokee emigrants as required. I have to inform you that, since my orders to you of the 16th instant, General Scott has suspended the emigration until the 1st of September next."

They received, also, a letter from General N. Smith, superintendent Cherokee emigration, dated 22d June, 1838, saying, "I shall leave this morning for Fort Gibson, Arkansas, and expect to return before the 1st September, when it is my intention to commence vigorously the removal of the Cherokees, both by land and water; and I shall expect you to be fully prepared to subsist all who may remove by land, agreeably to your contract."

Afterwards, Captain Page informs me, advertisements were inserted in different newspapers, by General Scott's order, for supplies; and that he assured Messrs. Clements, Bryan, & Co. that, all other things being equal, and their proposals being as low as others, they should be preferred. Before, however, the day of contracting arrived, the entire business of Cherokee removal, it is well known, was turned over to John Ross and others, by an arrangement with them for that purpose. The advertisements were, of course, recalled.

On the 13th of July, Captain Page wrote to C. A. Harris, Esq., Commissioner of Indian Affairs, that, as Messrs. Clements & Bryan had incurred

“considerable expense by making contracts on the road for corn, beef, and bacon,” and as they were pressed, and were pressing him (Page) for money, he had arranged with them to take what beef they had at the agency, at six and a half cents per pound; but that he could do nothing with the road contracts, and that they held him accountable. From Mr. Harris, a letter was received by Captain Page, dated 7th August, in which he was told: “In relation to the claim of Messrs. Clements & Bryan, for damages and losses sustained by them in consequence of the suspension of emigration, I have to say that this office does not now authorize you to make any payments on those claims. Any claims on this account will be referred to this office for adjustment.”

I have thus stated the material facts, so far as they are known to me. From them, it seems that Messrs. Clements, Bryan, & Co. entered into a contract, with a recognised agent of the Government, for provisioning the Cherokees on a large scale, and immediately. The urgency of the occasion required energy and effort; and it appears that Messrs. Clements, Bryan, & Co. entered with zeal upon a compliance with their engagements. Their purchases were necessarily large; but of that, *nothing need be said now, as it is merely the right to receive something as damages that is under consideration; the amount to be settled by full proof.* Captain Page bought some of the beef they had purchased. *I do not think they should recover consequential damages—that is, damages beyond the actual direct loss. The measure of damages should be, I think, the difference between the outlay in purchasing provisions, and the sums for which they were sold.* Contractors with Government find their advantage in prompt payment, good funds, and generally liberal prices; and I do not think the Government should be subject to more than actual damages in a case like the present. The claimants must have suffered to some extent; for they contracted on 12th June, immediately purchased cattle, &c., in consequence, on the urgent representations of United States agents and officers that large bodies of emigrants would be immediately despatched; and, on the 18th, the emigration was suspended until 1st September. Advertisements were afterwards made for the September movements, and the claimants were told by General N. Smith, on 22d June, that he should prosecute the emigration vigorously after 1st September, and expect them to be ready to subsist, according to their contract, all Cherokees who chose to remove by land. Subsequently, the arrangement with John Ross and others took place, which rendered useless any preparations they may have made.

Whether the amount they are entitled to shall be great or small, must depend upon the proofs they may adduce. I am of opinion, whatever it may be, it cannot be paid out of the Cherokee fund, either under the treaty of 1835, or the law of July, 1838. The treaty, in no part of it connected with their emigration, authorizes such an application of this trust-fund. The expenses of the removal proper, the Cherokees were to defray; that is, their transportation and subsistence by the way. And, in the 8th article, we find the right to commute the expense of emigration for \$20 a head, if the Indians chose to remove themselves, and were deemed capable of doing so. The law of July, 1838, is no broader; but applies the sum appropriated, among other purposes, to the objects of the third supplemental article of the treaty, among which is the “*expense of their removal.*” The breach of a contract is scarcely a regular item in the ex-

pense of removal. If it is not, there is no authority for paying it out of the trust-fund referred to. I see no remedy for Messrs. Clements, Bryan, & Co., but a resort to legislative aid.

I think, therefore, the applicants should go to Congress to pass a law authorizing the adjustment of their claims by the Auditor, on such principles and vouchers as may be prescribed; and directing that whatever may be found due on those principles shall be paid out of the Treasury of the United States.

Very respectfully, your most obedient servant,  
T. HARTLEY CRAWFORD.

Hon. J. R. POINSETT,  
*Secretary of War.*

WAR DEPARTMENT, June 1, 1840.

SIR: I have the honor to transmit, herewith, a report of the Commissioner of Indian Affairs, together with copies of such of the papers as can be furnished by the department relative to the claim of Clements, Bryan, & Co., for indemnification for losses sustained by them under the contract for removing the Cherokees in 1838, asked for in your letter of the 24th ultimo.

Very respectfully, your most obedient servant,  
J. R. POINSETT.

Hon. D. RUSSELL,  
*Chairman Com. of Claims, House of Reps.*

STATE OF TENNESSEE, *Bradley county:*

I, William McMillin, do hereby certify upon oath, to the best of my recollection, that about the 20th of June, 1838, I sold to Clements, Bryan, & Co., who were public contractors for the subsistence of the Cherokee Indians upon their march west of the Mississippi river, one hundred and twenty-five head of beef cattle, which weighed seventy thousand pounds, to be delivered at Fort Foster, or Rattle Snake springs, for which I did receive four cents per pound upon the delivery of the beef at the above-named place.

WM. McMILLIN.

Sworn and subscribed to before me, this 26th day of October, 1840.

BENJAMIN FRANCISCO,  
*Justice of the Peace.*

STATE OF TENNESSEE, *Bradley county:*

I, John H. Robertson, clerk of the county court for the county aforesaid, do hereby certify that Benjamin Francisco, Esq., whose name appears to the within affidavit, as justice of the peace, is now, and was at the date thereof, one of the acting justices of the peace for said county and State, duly elected, commissioned, and sworn according to law; and that his official acts are entitled to due faith and credit in law or equity.

Given under my hand and seal of office, at the office in Cleveland, this [ L. s. ] 26th day of October, 1840.

JOHN H. ROBERTSON, *Clerk.*

STATE OF TENNESSEE, *Bradley county:*

I, Isaac Huffaker, chairman of the county court, hereby certify that John H. Robertson, Esq., whose name is subscribed to the above certificate, as clerk of the county court for Bradley county, was then, and is now, the clerk of said court, legally qualified to act as such; that full faith and credit be given to all his official acts as such; that his certificate is in due form of law; and that the seal thereto attached is the seal of said court.

Given under my hand and seal, this 26th day of October, 1840.

ISAAC HUFFAKER. [SEAL.]  
Chairman of the County Court.

STATE OF TENNESSEE, *Bradley county:*

I, Francis Kincannon, do hereby certify, on oath, to the best of my recollection, that Matthew Kincannon and myself sold to Clements, Bryan, & Co., who were contractors of the United States for the subsistence of the Cherokee Indians, between ninety and ninety-five head of cattle.

F. KINCANNON.

Sworn and subscribed to before me, this 11th day of November, 1839:

WILLIAM FORESTER,  
Justice of the Peace.

STATE OF TENNESSEE, *Bradley county:*

I, John H. Robertson, clerk of the county court for the county of Bradley and State of Tennessee, do certify that William Forester is an acting justice of the peace for said county and State, duly elected, commissioned, and sworn according to law as such; and that his official acts are entitled to due faith and credit, either in law or equity; and that the within signature appears to be in his own proper handwriting.

Given under my hand and seal of office, at the office in Cleveland, the [ L. s. ] 11th of November, 1839.

JOHN H. ROBERTSON, *Clerk.*

STATE OF TENNESSEE, *Bradley county:*

I, William Forester, do certify that John H. Robertson is clerk of the county court of Bradley county, duly elected and qualified into office; and that full faith and credit is given to all his official acts as such.

Given under my hand and seal, the 11th day of November, 1839.

WILLIAM FORESTER,  
Chairman County Court Bradley County.

STATE OF TENNESSEE, *Bradley county:*

I, Thomas Eldridge, of the county and State aforesaid, do hereby certify, upon oath, to the best of my recollection, that I sold to Clements, Bryan, & Co., who were contractors of the United States for the subsist-

ence of the Cherokee Indians, eighty-two thousand four hundred and twenty-five pounds of beef, for which I received four cents per pound.

THOMAS ELDRIDGE.

Sworn and subscribed to before me, this 6th day of November, 1839.

ISAAC DAY,

*Justice of the Peace for said county.*

STATE OF TENNESSEE, *Bradley county:*

I, John H. Robertson, clerk of the county court for the county of Bradley and State of Tennessee, do certify that Isaac Day is an acting justice of the peace for said county and State, duly commissioned and sworn as such; and that his official acts are entitled to due faith and credit as such, either in law or equity; and that the within signature appears to be in his own proper handwriting.

Given under my hand and seal of office, at the office in Cleveland, this [ L. s. ] 11th day of November, 1839.

JOHN H. ROBERTSON, *Clerk.*

STATE OF TENNESSEE, *Bradley county:*

I, William Forester, do certify that John H. Robertson is clerk of the county court of Bradley county, duly elected and qualified into office; and that due faith and credit is due to all his official acts.

Given under my hand and seal, the 11th day of November, 1839.

WILLIAM FORESTER,

*Chairman County Court Bradley County.*

STATE OF TENNESSEE, *Bradley county:*

I, Ezekiel Bates, do hereby certify, on oath, to the best of my recollection, that I sold to Clements, Bryan, & Co., who were contractors of the United States for the subsistence of the Cherokee Indians, sixty head of beef cattle, in the year 1838.

E. BATES.

Sworn to and subscribed before me, this 11th day of November, 1839.

WILLIAM FORESTER,

*Justice of the Peace.*

STATE OF TENNESSEE, *Bradley county:*

I, John H. Robertson, clerk of the county court for the county of Bradley, and State of Tennessee, do certify that William Forester is an acting justice of the peace for said county and State, duly commissioned and sworn as such, according to law; and that his official acts are entitled to due faith and credit as such, and that the within signature appears to be in his own proper handwriting.

Given under my hand and seal of office, at office in Cleveland, this [L. s.] 11th day of November, 1839.

JOHN H. ROBERTSON, *Clerk.*

STATE OF TENNESSEE, *Bradley county* :

I, William Forester, do certify that John H. Robertson is clerk of the county court of Bradley county; and that he was duly elected and qualified into office; and full faith and credit is given to all his official acts.

Given under my hand and seal, the 11th of November, 1839.

WILLIAM FORESTER,

*Chairman of the County Court of Bradley County.*

CHEROKEE AGENCY EAST, *November 1, 1838.*

I hereby certify that I sold to Clements, Bryan, & Co., who were public contractors, on the 15th June, 1838, salt and camp equipage, for the purpose of carrying out their contract.

G. E. MOUNTCASTLE.

STATE OF TENNESSEE, *Lincoln county* :

I, Samuel E. Gilliland, do hereby certify, on oath, that I loaned to Clements, Bryan, & Co., in the month of June, 1838, ten thousand dollars, in Tennessee and Alabama bank-notes, for the purpose of carrying into effect a contract made by them to subsist the Cherokee Indians upon their march west—to me to be refunded (in Treasury notes) within sixty days. I also certify that I made an arrangement to furnish them the means necessary to carry out their contract. I also certify that the exchange between the kinds of money above mentioned, as well as I recollect, was sixteen per cent. about that time.

S. E. GILLILAND.

Subscribed and sworn to before me, this 12th day of December, 1839.

JOHN LANIN, [SEAL.]

*Justice of the Peace.*

STATE OF TENNESSEE :

I, Charles Boyles, clerk of Lincoln county court, do certify that John Lanin, before whom the foregoing affidavit of S. E. Gilliland was made, and who has certified the same, then was, and yet is, an acting justice of the peace in and for said county.

In witness whereof, I have hereto set my name, and affixed the seal of [L. s.] said court, at office in Fayetteville, this 12th day of December, 1839.

C. BOYLES, *Clerk.*

STATE OF TENNESSEE, *Lincoln county* :

I, George W. Dennis, chairman of the county court of said county, do certify that Charles Boyles, who signed the foregoing certificate, is now, and then was, clerk of Lincoln county court; and that his certificate is in due form.

Given under my hand, this 12th day of December, 1839.

GEORGE W. DENNIS,

*Chairman of Lincoln County Court.*

STATE OF TENNESSEE, *Hamilton county* :

I, George W. Williams, do hereby certify, upon oath, to the best of my recollection, that, about the 25th of June, 1838, I sold to Clements, Bryan, & Co., who were public contractors for the subsistence of the Cherokee Indians upon their march west of the Mississippi river, one hundred and seventy head of beef cattle, which weighed fifty thousand pounds, to be delivered at Ross's Landing, on the Tennessee river; for which I did receive four cents per pound, upon the delivery of the beef at the above-named place.

G. W. WILLIAMS.

Sworn to and subscribed before me, this 27th day of October, 1840.

WM. M. DAVIS,

*An Acting Justice in and for the  
County and State aforesaid.*

STATE OF TENNESSEE, *Hamilton county* :

I, Ashael Rawlings, clerk of the county court of said county, do certify that William M. Davis, Esq., whose signature appears officially, in his own proper handwriting, to the certificate of probate within written, is now, and was at the time of the date thereof, an acting justice of the peace in and for said county, regularly commissioned and sworn into office.

In testimony whereof, I have hereunto affixed the seal of said county [L. s.] court, and subscribed my name, at office, this 28th day of October, A. D. 1840.

ASHAEL RAWLINGS, *Clerk.*

## STATE OF TENNESSEE :

I, John Anderson, chairman and presiding justice of the county court of Hamilton county, in the State aforesaid, do certify that Ashael Rawlings, whose name appears officially, in his own proper handwriting, to the last foregoing certificate, is now, on the day and at the time of signing and annexing the seal thereto, clerk of said county court, duly elected and sworn into office.

Given under my hand, this 28th day of October, 1840.

JOHN ANDERSON, *Chairman.*STATE OF TENNESSEE, *Bradley county, ss* :

I, John C. McConnell, of the county of Murray, and the State of Georgia, do hereby certify that I sold to Clements, Bryan, & Co., in the spring and summer of the year 1838, twenty-two hundred head of beef cattle, which averaged three hundred pounds per head, for which they paid me four cents per pound. I also sold them one thousand bushels of corn, and three hundred and seventy-five bushels of meal, for which I received one dollar per bushel.

JOHN C. McCONNELL.

Sworn and subscribed to before me, this 4th day of November, 1839.

ROBERT H. PHARRESS,

*Acting Justice of the Peace for said County.*

STATE OF TENNESSEE, *Bradley county, ss:*

I, John H. Robertson, clerk of the county court for the county of Bradley, and State of Tennessee, do certify that Robert H. Pharress is an acting justice of the peace for Bradley county, Tennessee, duly elected, commissioned, and sworn, according to law; and that his official acts are entitled to due faith and credit as such, either in law or equity; and that the within signature appears to be in his own proper handwriting.

Given under my hand and seal of office, at office in Cleveland, this [L. s.] 11th November, 1839.

JOHN H. ROBERTSON, *Clerk.*

STATE OF TENNESSEE, *Bradley county, ss:*

I, William Forrester, do certify that John H. Robertson is clerk of the county court of Bradley county, duly elected and qualified into office; and that full faith and credit is given to all his official acts as such.

Given under my hand and seal, this 11th day of November, 1839.

WILLIAM FORRESTER,

*Chairman of the County Court of Bradley County.*

STATE OF TENNESSEE, *Meigs county, ss:*

I, Jesse Chattin, do hereby certify, upon oath, to the best of my recollection, that I sold to Clements, Bryan, & Co., in June, 1838, who were public contractors for the subsistence of the Cherokee Indians, one thousand bushels of corn and meal, for which they paid me eight hundred and fifty dollars, and also paid me fifty dollars to deliver said corn and meal at the depot on the Tennessee river.

JESSE CHATTIN.

Sworn to and subscribed before me, this the 8th day of November, 1839.

JONATHAN FRIE,

*Justice of the Peace.*

STATE OF TENNESSEE, *Meigs county, ss:*

I certify that Jonathan Frie, whose name appears to the within certificate, is an acting justice of the peace in my county, and that due credit should be given to his official acts as such.

Given under my hand and private seal, (having no official seal at [L. s.] office in Decatur,) this 8th day of November, 1839.

WILLIAM KERR, *Clerk.*

By his deputy:

WILLIAM M. ROGERS.

STATE OF TENNESSEE, *Bradley county, ss:*

I, Robert Morrison, of the county and State aforesaid, do hereby certify, upon oath, to the best of my recollection, that I sold to Clements, Bryan, & Co., who were contractors of the United States for the subsistence of the Cherokee Indians in the year 1838, between nine hundred and one thousand head of beef cattle, for which I received four cents per pound, to be delivered at Tennessee river.

ROBERT MORRISON.

Sworn to and subscribed before me, this 6th November, 1839.

ISAAC DAY,

*Justice of the Peace for said county*

STATE OF TENNESSEE, *Bradley county, ss:*

I, John H. Robertson, clerk of the county court for the county of Bradley, and State of Tennessee, do certify that Isaac Day is an acting justice of the peace for said county and State, duly commissioned and sworn as such; and that his official acts are entitled to due faith and credit as such, either in law or equity; and that the within signature appears to be in his own proper handwriting.

Given under my hand and seal of office, at office in Cleveland, the  
[L. s.] 11th November, 1839.

JOHN H. ROBERTSON, *Clerk.*

STATE OF TENNESSEE, *Bradley county, ss:*

I, William Forrester, do certify that John H. Robertson is clerk of the county court of Bradley county, duly elected and qualified into office; and that due faith and credit is given to all his official acts, as such.

[L. s.] Given under my hand and seal, this 11th day of November, 1839.

WILLIAM FORRESTER,

*Chairman of the County Court of Bradley County.*

WASHINGTON, *January 24, 1841.*

Col. John L. Colborn being called on by Messrs: Clements, Bryan, & Co. to state the facts, so far as he knows, in relation to a contract made by them with Captain John Page, of the United States army, for the subsistence of the emigrating Cherokees, in the summer of 1838, states as follows, to wit:

I was at the Cherokee agency from about the 15th June until the 1st of September of that year. I went there for the purpose of obtaining the contract for subsistence which the above parties got. On my arrival, I was informed by Captain Page that he, as agent of the Government, had entered into a contract with Clements, Bryan, & Co. for said subsistence. I was well acquainted with Mr. Clements, and saw him almost daily. I was informed by him, and also by Mr. Gordon, who, I have since learned, was their agent, that they had made large purchases of the necessary provisions and forage for the subsistence of said Cherokees and their horses from that place to the Mississippi river, and that they had made all the necessary arrangements for executing their contract, and were perfectly competent to carry it out to the letter.

Some time in the month of August, the Cherokee removal having been stopped by General Scott during that time, a contract was entered into by Lewis Ross with John Ross, the principal chief of the Cherokee nation, for the subsistence of the emigrating Cherokees; which stopped the supplies of Clements, Bryan, & Co., and that great loss, in consequence thereof, was sustained by said parties by the violation of said contract with them.

I was well acquainted with Captain Page, and saw him every day during the whole time I was at the agency, and boarded with him at the same house; and if any thing like partnership had existed between said Page and the parties contractors, I should at that time have known it. I do not believe any such partnership did exist; on the contrary, I thought at times that much bad feeling existed between the contractors and Cap-

tain Page—they thinking themselves badly treated by the course he took in the breaking up their contract.

I emigrated all the Alabama Cherokees under a sub-contract with Lewis Ross; and was, perhaps, the first person who proposed to said Ross to take measures to get the new contract, which he afterwards got, for the emigration of the Cherokees.

The contract originally made by Clements, Bryan, & Co. with Captain Page was as low, or lower, than any other contract made for emigrating Indians from that part of the country. It was less than for the Creeks, or Chickasaws, or Choctaws, as I understood; and was less than that afterwards made with Lewis Ross.

There was considerable competition in the letting of said contract. Mr. Williams, of Ross Landing, Mr. Iverson, of Georgia, and others, (from report,) were competitors.

JOHN L. COLBORN.

CITY OF WASHINGTON, D. C.,  
January 25, 1841.

This day, personally appeared before me, David Russell, chairman of the Committee of Claims of the House of Representatives of the United States, the abovenamed John L. Colborn, who, being by me duly sworn, saith: That whatever is stated in the foregoing affidavit, to which he has subscribed his name, as being within his own knowledge, is true; and what is therein stated to be upon the information of others, he believes to be true.

D. RUSSELL.

*Deposition of George D. Gorden.*

STATE OF MARYLAND, *County of Frederick:*

Before me, William Lowe, an acting justice of the peace in and for said county, personally appeared George D. Gorden, now a citizen of the State of Illinois, of lawful age, who, being duly sworn, deposes and says: That he knows that a contract was made by Captain John Page, acting for the United States, with Clements, Bryan, & Co., for the subsistence of the emigrating Cherokee Indians, and of their horses and ponies, as [well as] of those employed in the transportation of the Indians. Deponent states that he was employed by said company to purchase provisions for them, to be furnished to the emigrants while encamped, previous to their starting west, and while on their route to the country assigned them. Deponent states that, as soon as orders were given by Captain Page, the said Clements, Bryan, & Co. made all sufficient and necessary arrangements for carrying their contract into full and complete effect. They purchased large quantities of corn, through the agency of this deponent, which was stationed at convenient distances, as far as Walden's ridge. They had other agents, who were sent on to make contracts for the delivery of provisions through the whole route; and this deponent has understood, and believes, that ample arrangements and contracts for supplies were made for the whole way, by the said Clements, Bryan, & Co. Deponent states, further, that he purchased for them eleven or twelve hundred head of beef

cattle. How many other cattle were bought for them by other agents; or were purchased by themselves, for the use of the emigration, this deponent does not know exactly; but he knows that as many as four thousand head were purchased in East Tennessee. Contracts were also made for the delivery of salt; and some bacon was also purchased—about twelve thousand pounds. Of the cattle contracted for, as stated above, not more than one hundred and fifty had been killed and fed away in rations, at the time the contract with Clements, Bryan, & Co. was broken up by General Scott. Deponent further states, that sometime in July, 1838, the contract with Clements, Bryan, & Co. was abrogated by General Scott, and a contract was made with Lewis Ross, for the performance of the same services which were to have been performed by Clements, Bryan, & Co. This was not done on account of any failure, inability, or neglect, on the part of the said Clements, Bryan, & Co., to execute their engagements, or to make the requisite preparations for so doing; for, as before stated, their preparations were ample. Clements, Bryan, & Co. did not acquiesce in the rescinding of the contract, but claimed the right, under their contract, to furnish the rations and perform the services required of them under it. They went to General Scott, and protested against his course with regard to them; but it had no effect. Before, and at the time, and after the contract with Clements, Bryan, & Co. was rescinded by General Scott, I heard numerous Indians express their confidence in the arrangements made by Clements, Bryan, & Co., and their willingness to be fed by them; and I never heard one of them express a different opinion. After the contract was rescinded, I heard many of them express their dissatisfaction, and their regrets that it had been done. Deponent further states, that he has no claim upon the said Clements, Bryan, & Co., for services rendered them; nor will he in any manner be gainer, or benefited, by any allowance which may be made them by the Government. Deponent further states, that after the contract was entered into with Lewis Ross, he became interested with the said Lewis Ross therein, to the extent of one-seventh part. Deponent made contracts for subsistence under the Ross contract; he purchased corn, salt, beef, sugar, and coffee, to be furnished to the emigrants. The average price paid for corn would not exceed eighty-six cents per bushel. Beef was purchased at an average of three and three-quarters cents per pound; salt at an average of one dollar and fifty cents per bushel; fodder and oats averaged about fifty cents per hundred. Deponent states that he frequently made a calculation, and is satisfied that the cost of the ration, under the Ross contract, to the contractors, did not exceed seven and a quarter cents. The cost of a ration for a horse or a pony was about twenty-five and a half cents. This calculation includes eight pounds of sugar and four pounds of coffee to every hundred rations; which Ross was required to furnish, under his contract, but which were not included in or required by the contract made by Clements, Bryan, & Co. Deponent states that the contracts made by him, as the agent of Clements, Bryan, & Co., were made upon as advantageous terms as those made for Ross; and he sees no reason why there should have been any difference through the whole route. Deponent states that upwards of twelve thousand Indians were emigrated by land, and were subsisted by Lewis Ross and his associates, under his contract; and, had Clements, Bryan, & Co. been permitted to have executed their contract, no doubt but the Ridge party, amounting to more than five hundred, would willingly have been sub-

sisted by them; and they refused to be subsisted by Ross. The number of horses and ponies exceeded six thousand, for which forage was furnished. Had Clements, Bryan, & Co. been permitted to have performed their contract, the amount of rations which they would have been required to have furnished to teamsters, conductors, &c., would have amounted to about two hundred and fifty per day, for eighty days. Deponent further states, that he sold out his interest in the contract to Lewis Ross, for fifteen thousand dollars, at Nashville, in Tennessee, and when the last party of emigrants were at Hopkinsville, Kentucky. The contract was not then half consummated; and, when he sold, he considered that he was selling for a less amount than he ought to have received, taking into consideration the profits then realized. Deponent states that he does not know what profits were realized by Lewis Ross; but, from his knowledge of the contracts made by and for him, he cannot estimate his profits at less than one hundred and fifty thousand dollars; and this, too, allowing him for only eighty days' subsistence. Deponent states, that after General Scott had rescinded Clements, Bryan, & Co.'s contract, and the contract was made by Lewis Ross, Clements, Bryan, & Co. offered Ross fifty thousand dollars, in Treasury notes, and in advance, if he would give up his contract to them; and they further offered, that the whole matter might be conducted in his name, if he would make the arrangement with them; but he refused to take it, believing that he could realize a much larger amount.

GEORGE D. GORDEN.

Sworn to and subscribed this 28th day of April, 1840, before me,

WILLIAM LOWE,

*A Justice of the Peace of the State of Maryland,  
in and for Frederick county aforesaid.*

STATE OF MARYLAND, *Frederick county, set:*

I hereby certify that William Lowe, gentleman, before whom the above affidavit appears to have been made, and whose name is thereunto subscribed, was, at the time thereof, a justice of the peace of the State of Maryland, in and for said county, duly commissioned and sworn; and to all his acts, as such, full faith and credit is and ought to be given, as well in courts of justice as thereout.

In testimony whereof, I have hereunto subscribed my name, and  
[SEAL.] affixed the seal of Frederick county court, this 30th day of April,  
1840.

HENRY SCHLEY, *Clerk.*

*Deposition of John C. McCain.*

DISTRICT OF COLUMBIA, *County of Washington:*

Before me, B. K. Morsell, an acting justice of the peace in and for said county, personally appeared John C. McCain, a citizen of the State of New York, of lawful age, who, being duly sworn, deposes and says: That sometime in the month of June, 1838, a contract was entered into by

Captain John Page, on behalf of the United States, and Clements, Bryan, & Co., for the subsistence of the emigrating Cherokee Indians, their horses and ponies, and those employed in the transportation of such Indians. Deponent was at that time residing at Fort Cass, (the Indian agency, at that time, for the eastern Cherokees,) and had an opportunity of knowing what was done in the emigration. He knows that, immediately after the contract above alluded to was made, Clements, Bryan, & Co. made strenuous efforts to have every thing in readiness, so that the emigrants might start whenever they were required to do so. They purchased, within the knowledge of this deponent, a large quantity of corn and beef cattle, and sent out their agents for the purpose of making contracts for such supplies as would be needed on the route to Arkansas; and, from what this deponent saw of the arrangements, he is satisfied that Clements, Bryan, & Co. had so acted as to have insured the carrying out of their contract, to the entire satisfaction of the Indians to be emigrated and the Government. Deponent states that he was at Fort Cass at the time the contract was abrogated by General Scott. Clements, Bryan, & Co. expressed a great unwillingness to have it done; and certainly it was not abrogated by the consent of the said Clements, Bryan, & Co. After the contract with Clements, Bryan, & Co. was rescinded by General Scott, and the emigration intrusted to John Ross, Lewis Ross obtained the contract for furnishing rations. Deponent was employed by Lewis Ross, to assist him in the business; and he kept a regular account of the receipts and disbursements of the said Lewis Ross, in carrying out his contract. Being charged with the payment of the various accounts for supplies furnished for the emigration, he is enabled to speak pretty accurately of the cost of the various articles composing the ration. The average price of corn for the first six thousand emigrants did not exceed eighty-six cents per bushel; and for the balance, it did not exceed an average of fifty cents. This difference in the price was owing to the fact, that when the first contracts for corn were made, the new crop had not been gathered, and, owing to drought, did not promise very well; and old corn was scarce. The subsequent contracts for corn were made after it was gathered. The average price for beef was three and three-quarters or four cents per pound. Salt did not average more than one dollar and fifty cents per bushel. Fodder did not average more than fifty cents. And the average price of the ration, as furnished by Lewis Ross, was about nine cents. Ross, however, was bound by his contract to furnish eight pounds of sugar and four pounds of coffee to every hundred rations. This increased the average price of the ration, and made the cost more than the ration required to be furnished by Clements, Bryan, & Co.; as they were not required, by their contract, to furnish sugar and coffee. Deponent states that, had Clements, Bryan, & Co. been allowed to carry their contract into effect, they could have purchased the necessary supplies upon terms equally as advantageous as they were procured by Lewis Ross; and the average price of the ration required to be furnished by them would not have exceeded seven cents. The number of Indians who emigrated by land exceeded twelve thousand; and, had Clements, Bryan, & Co. been permitted to have furnished the supplies under their contract, they would have had, in addition to those who were supplied by Ross, the party of emigrants known as the Ridge party, amounting to about six hundred. In addition to this, Clements, Bryan, & Co. were bound to furnish rations

for the teamsters, conductors, &c.; and these would have amounted to at least two hundred and fifty, over and above the Indians, that would have been entitled to rations. The average price of the ration for horses and ponies would not have exceeded twenty cents; and the number of horses and ponies was not less than five thousand. Deponent states that, after all the detachments arrived at Fort Gibson, deponent examined the accounts of disbursements; and, upon comparing them with the amounts which had been and were to be paid to Ross under the contract, he is satisfied that a clear profit of more than one hundred and fifty thousand dollars was realized by Ross and his copartners. Deponent states, that after Lewis Ross obtained the contract, and before he commenced making purchases, he was offered, by Clements, Bryan, & Co., forty thousand dollars for his contract. This Ross refused to take, under the expectation that he would realize a much larger amount. While the contract of Clements, Bryan, & Co. was subsisting, there were numerous Indians about the agency; and they all appeared to be well satisfied, that their supplies were to be furnished by the said Clements, Bryan, & Co. Deponent never heard dissatisfaction expressed by any Indian; on the contrary, after their contract was rescinded by General Scott, many of them were dissatisfied that it had been done, and one party refused to be subsisted by Lewis Ross.

And further this deponent saith not.

JOHN C. McCAIN.

Sworn to and subscribed before me, this 30th day of April, 1840.

B. K. MORSELL, J. P.

WAR DEPARTMENT,  
*Office Indian Affairs, May 23, 1840.*

SIR: I have the honor to report on the letter of the 24th instant of the Hon. Mr. Russell, chairman of the Committee of Claims of the House of Representatives, referred by you to this office:

Of the copies of papers asked for by the Hon. Mr. Russell in behalf of the committee, only the instructions to General Scott in 1838 to repair to the Cherokee country for the purpose therein indicated, can be furnished from this office. They will be found herewith, together with copies of subsequent instructions. The other papers—a copy of a petition or memorial signed by Messrs. Clements, Bryan, Nathaniel Smith, and others, soliciting a change in the mode of emigrating the Cherokee tribe to one previously adopted; with a copy also of General Scott's answer thereto—cannot be found on file; and it is believed, upon a careful examination of the register of papers received, have never been referred to this office.

To the inquiry made by the committee, "Previous to entering into contracts for subsisting the Indians, was the agent" (of this department) "required to give public notice of the time and place of letting, so as to secure competition?" I have to answer, in the language of Revised Regulations No. 5, 33d paragraph, that "It is desirable that all the important supplies should be procured by contracts upon previous public notice inviting proposals; and this rule will be adhered to where there are not strong reasons to the contrary." The contract with Clements, Bryan, & Co.,

for furnishing subsistence to emigrating Cherokee Indians, made with Captain John Page, agent in the removal of these Indians, was entered into between the parties on short notice, backed by the emergency requiring it. All the circumstances, the occasion for the making of the contract, its suspension, with the cause, &c., so far as they have come to the knowledge of this office, were the subject of a report to the Secretary of War of the 1st of March, 1839. Of the report, the Committee of Claims of the House have been furnished a copy; as also of other papers touching the investigation of the claim of Messrs. Clements, Bryan, & Co., for indemnity of loss sustained by them under their contract; and in my letter of 21st instant enclosing them to the committee, such other particular facts were furnished on the subject stated, as to include every thing supposed to be material on file and record in this and the office of the Second Auditor of the Treasury.

Very respectfully, your most obedient servant,

T. HARTLEY CRAWFORD.

Hon. J. R. POINSETT,  
*Secretary of War.*

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ATTORNEY GENERAL'S OFFICE, *March 20, 1839.*

SIR: Your letter of the 16th instant is before me, in which you ask my opinion upon the following point: Whether the money agreed by the United States to be paid for the cession of land made by the treaty of 1835 with the Cherokees, or the sum appropriated by the law of 12th of June last, is liable for the damages claimed in the three cases enumerated in your communication?

I have given to this subject a careful and anxious consideration, and now proceed to give you the result of my reflections.

The three cases are the following:

1. Williamson Smith made a contract with the Government for the removal of the Cherokees to the west of the Mississippi. He, at great expense, prepared himself to fulfil his agreement, and actually removed a portion of them, and was ready to proceed and effect an entire removal.

2. Clements, Bryan, & Co. made a contract for provisioning the Cherokees in their removal. To enable them to comply with their contract, they made large purchases of cattle, provisions, &c., which have been thrown upon their hands, much to their injury, &c.

3. Langtry & Jenkins contracted to deliver three thousand pairs of shoes for the Indians, at the Indian agency, at \$1 30 per pair. They purchased the shoes, and carried them to the agency, according to contract. They were not received, because John Ross, the new agent for the removal of the Cherokees, refused to receive them; by reason of which, a considerable loss has been sustained by Langtry & Jenkins.

All these contracts appear to have been fairly entered into, by persons authorized to make them on the part of the Government; and the contract with Williamson Smith was even approved by the Commissioner of Indian Affairs before its completion. If nothing more existed in these cases, the conduct of the Government would be indefensible in refusing to proceed in the fulfilment of its engagements. But a cause did exist, which, in the opinion of those to whom the constitution and laws in-

trusted the removal of the Indians, which required arrangements of a different character, and wholly inconsistent with those already made. There was a moral necessity—a high, overruling policy—which demanded that a removal of the Indians should be effected, if practicable, without bloodshed, or the destruction of those who, however misguided, however great their errors, are entitled to the paternal care of the General Government. This object could be accomplished, and (as was believed) could *only* be accomplished, by the employment of John Ross, one of the Cherokee chiefs, as removing agent. A contract was, accordingly, made with him; and this, of course, annulled all preceding contracts; and annulled them, too, without the consent of the individuals who were parties to the same. In this state of things, what should now be done? Justice and good faith both require, in my opinion, that prompt and full indemnity be made to those who have suffered loss by a failure of the Government to fulfil its contracts.

I have examined the treaty with the Cherokees, of the 29th December, 1835, the 15th article of which is as follows: "It is expressly understood and agreed between the parties to this treaty, that, after deducting the amount which shall be actually expended for the payment for improvements, ferries, claims for spoliations, removal, subsistence, and debts and claims upon the Cherokee nation, and for the additional quantity of lands and goods for the poorer class of Cherokees, and the several sums to be invested for the general national funds, provided for in the several articles of this treaty, the balance, whatever the same may be, shall be equally divided between all the people belonging to the Cherokee nation east," &c. The 3d supplemental article of the treaty gives the Cherokees \$600,000, "to include the expense of their removal, and all claims, of every nature and description, not herein otherwise provided for," &c. The 2d section of the act of 12th June, 1838, adds the further sum of \$1,047,067, for the same purposes as the 3d supplementary article above cited, "with the further object of subsisting them for one year after their removal west."

Neither in the treaty nor law can I discover any thing which would warrant an application of any portion of the Cherokee fund to the payment of damages sustained by individuals by the non-compliance, on the part of the United States, with contracts made with such individuals. My opinion, therefore, is, that although the demand for indemnity, made by the persons whose cases have been referred to me, is well founded, and should be promptly and liberally met, still, you have no power to apply any portion of the fund provided by the treaty or law to any such purpose.

I have the honor to be, &c.,

FELIX GRUNDY.

The Hon. SECRETARY OF WAR.

*Interrogatories to be administered to Captain John Page.*

1. Are you the person named in the contract, purporting to have been made with Clements, Bryan, & Co., on the 12th June, 1838, as the principal disbursing agent for the removal of the Cherokee Indians?

2. Are you acquainted with Clements, Bryan, & Co.? how long have you been so acquainted? where do the members of that firm respectively reside?
3. Was there any other contract entered into or subsisting, in June, 1838, between Clements, Bryan, & Co. and the United States, for the supply of the Cherokee Indians with supplies, &c.? and, if so, what was the date; who negotiated it; and were its stipulations fulfilled on the part of the respective parties to it?
4. Who were the individuals composing the firm of Clements, Bryan, & Co.?
5. Did Clements, Bryan, & Co. give security for the faithful performance of their contract?
6. What amount of security were they required to give, if any? and how many days were allowed them to procure their sureties, and furnish the supplies, after the said 12th of June?
7. Did Clements, Bryan, & Co., at any time, and when, furnish you with a statement of their claim? what was the amount thereof, and the items composing the same?
8. Who was the clerk or book-keeper of said firm, and where does he reside?
9. What was the value of fresh beef per hundred, in the Cherokee country and on the route of emigration, in the month of June, 1838? what means of knowledge have you relating thereto?
10. What quantity of provisions was furnished by Clements, Bryan, & Co., in the summer and autumn of 1838, for the subsistence of the Cherokee Indians in the Cherokee country? and what amount did they receive from the United States for the supplies so furnished, and when were the respective payments made therefor?
11. Were the provisions, or any part of them, which were purchased by Clements, Bryan, & Co. with a view to fulfil their supposed contract made with you on the 12th June, 1838, on behalf of the United States, turned over to the Government, under a contract made, through your agency, on the 27th June, 1838, with Clements, Bryan, & Co.; and, if any, to what amount were so turned over?
12. What would probably have been the amount of supplies required by Clements, Bryan, & Co., to have fulfilled the contract, on their part, of June 12, 1838?
13. At what time in the year 1838 did General Scott arrive in the Cherokee country, and take charge or command of the removal or emigration of the Cherokee Indians? and, from that time, had Nathaniel Smith, the former superintendent, any power or control over the emigration of said Cherokees?
14. Do you know, or have you heard, either (and which) of the members of the firm of Clements, Bryan, & Co., say who were the persons interested in the contract which purports to have been made on the 12th June, 1838?
15. Was public notice given of the time and place of letting or entering into the contract of the 12th June, 1838, for subsisting said Cherokees, with Clements, Bryan, & Co., so as to secure or invite competition? or was that contract entered into without such notice having been given?
16. Did General Scott refuse to approve the contract with Clements, Bryan, & Co., and for what reason?

17. At what places were the supplies deposited, which were provided by the petitioners under the contract of the 12th June? from whom purchased? and what was the amount of the petitioners' loss thereon?

18. How many agents had they employed? who were they? where do they reside? how long were they employed? and what compensation was agreed to be paid them respectively?

19. What kind of provisions were purchased? what amount of each kind? and where were the respective kinds deposited? was beef the principal article of provision purchased? and was that taken by the United States under the contract dated June 27, 1838?

20. Did said contractors purchase a large quantity of beef, in addition to the quantity purchased to be used in the contract of the 12th June? and was not the whole of their purchases of beef used under the contract of June 27, 1838?

21. Did they purchase any other articles, in consequence of having made said contract of the 12th June? if so, what were they? and at what place or places were they deposited or delivered on the route?

22. After the 12th of June, 1838, did you advertise for proposals to make a new contract, disregarding the one made on the 12th June? and was that contract treated and considered as a conditional one, until ratified and approved by General Scott?

23. Do you know any other matter or thing relative to said claim of Clements, Bryan, & Co., necessary or proper to be communicated to the committee, to enable them to form correct opinions of the merits or demerits of said claim? if so, please to relate the same.

D. RUSSELL.

DISTRICT OF COLUMBIA, *Washington county*, ss:

Before me, the subscriber, a justice of the peace in and for said county, personally appeared Captain John Page, who, being duly sworn true answers to make to certain interrogatories hereto attached touching the petition of Clements, Bryan, & Co., now pending before the Committee of Claims of the House of Representatives of the Congress of the United States, he, the said Captain John Page, answers and says:

To the 1st interrogatory, he answers: I am the person named in said contract as Captain John Page, U. S. A., and principal disbursing agent for the removal of the Cherokee Indians.

To the 2d interrogatory, he answers: I am acquainted with Clements, Bryan, & Co. I have known Reuben E. Clements and Needham A. Bryan since the first of the year 1837. I became acquainted with Jesse B. Clements in June, 1838. The two Clements reside in Fayetteville, Tennessee; and Bryan resides at Holly Springs, Mississippi.

To the 3d interrogatory, he answers: On the 27th June, 1838, after the contract of the 12th June had been taken from Clements, Bryan, & Co. by General Scott, I was instructed by General Scott to issue fresh beef to the Indians, instead of bacon; and I entered into a contract with the said Clements, Bryan, & Co., to furnish beef for the Indians while at the rendezvous at Fort Cass, until they were turned over to John Ross. The stipulations of this contract were fulfilled by the respective parties to it.

To the 4th interrogatory, he answers: At the time I made the contract, I did not know who constituted the company. I only knew R. E. Clements and Needham A. Bryan, and they told me that Jesse Clements was interested with them in the contract.

To the 5th interrogatory, he answers: Clements and Bryan wrote to me, and informed me that their securities were ready, and they also informed me of the fact personally, and told me who were to be their securities, and introduced them to me. These securities remained at the agency for several days, and I told the parties that I would prepare the bonds, and have them ready for signature by a particular time. After this conversation with them, General Scott informed me that he was induced to suspend the emigration, and I declined taking security from them. The reason assigned by General Scott for this suspension was, that the drought had been very severe, and that he had heard there was a scarcity of water on the route, and that he would not start any emigrants until it rained.

To the 6th interrogatory, he answers: I told them that I should require bond and security in the sum of \$500,000 for the faithful performance of their contract. I did not fix upon any number of days. Clements told me that he would go home for funds, and to get the securities required. He returned to the agency on the 16th or 17th June, 1838, and brought the securities with him, and tendered them to me; and I was perfectly satisfied, from letters and other information, that the security tendered was ample; and I should have had no hesitation in taking the persons so tendered as security, in full compliance with my requisition.

To the 7th interrogatory, he answers: Clements, Bryan, & Co. urged me frequently to settle their claim. But, under the circumstances, I did not feel authorized to do it, without reporting it to the War Department. I therefore never required from them a statement, in writing, of their claim; and I therefore cannot state what amount they claimed, nor the items composing the same. I reported the claim to the department, and they directed that the claim should be referred for settlement to the department.

To the 8th interrogatory, he answers: I do not know of their having any clerk or book-keeper. I was under the impression that they did their own writing, as I was frequently in their office or room.

To the 9th interrogatory, he answers: At the agency, the price of beef was from  $5\frac{1}{2}$  to  $6\frac{1}{2}$  cents per pound. I do not know the price on the route, as I purchased none.

To the 10th interrogatory, he answers: After the emigration was suspended by General Scott, as before stated, I made a contract with Clements, Bryan, & Co., for the supply of beef. Under this contract, according to my accounts in the War Department, they furnished about 896,595 pounds of beef, at  $6\frac{1}{2}$  cents per pound, and the amount paid them therefor was about \$58,278 67. The payment was made in the latter part of the year 1838, as well as I recollect.

To the 11th interrogatory, he answers: No part of said supplies were ever turned over to me by Clements, Bryan, & Co., or were received by me, as the agent of the United States. I had a large supply of provisions on hand belonging to the Government, which had been previously supplied for the troops, and by General Nathaniel Smith; and I made the contract, as before stated, for a supply of fresh beef, as required by General Scott.

To the 12th interrogatory, he answers: By the contract of the 12th June, 1838, Clements, Bryan, & Co. were required to furnish the emigrating Cherokees with rations from Fort Cass to their new country west of the Mississippi river; corn for teams and Indian ponies; eight pounds of fodder for each work-horse per day. The rations consisted of one pound of fresh beef or pork, or three-quarters of a pound of salt pork, three-quarters of a quart of corn or corn meal, or one pound of flour, and four quarts of salt for every hundred rations. For each work-horse, eight pounds of fodder or hay, and eight quarts of corn, or twelve quarts of oats for each animal per day; and for each Indian pony, one gallon per day. Eighty days were allowed or estimated as the time to be consumed in the emigration of each party. The number of Indians emigrated by the land route are stated by the Commissioner of Indian Affairs at about 14,000. Estimating the number at 14,000, and the time required for the emigration at 80 days, (which is the shortest time at which the journey could have been made,) the number of rations required would have been 1,120,000; and from 30,000 to 40,000 bushels of corn, and about 900,000 pounds of fodder or hay, would have been required.

To the 13th interrogatory, he answers: When I arrived at Fort Cass, (which, as well as I recollect, was the 7th June, 1838,) I found General Scott there; he, General Scott, having left Washington a few days before I did. I found General Smith acting as superintendent of Cherokees, and he was recognised by General Scott as such at the time I made the contract of the 12th June with Clements, Bryan, & Co.; and he directed me to consult with General Smith before I executed the contract with the said Clements, Bryan, & Co.

To the 14th interrogatory, he answers: As I before stated, at the time of making the contract I knew no persons as interested except R. E. Clements and N. A. Bryan; they told me that J. B. Clements was interested with them.

To the 15th interrogatory, he answers: As soon as I arrived at Fort Cass, I reported myself to General Scott, and he directed me to proceed immediately to Ross Landing, and consult with General Smith, and *forthwith* to make a contract with some responsible person or persons for the subsistence of the emigrating Cherokees. He stated that I must do the best that I could, as there was no time to advertise for proposals, as he was determined to commence the emigration on the 18th or 19th of June.

To the 16th interrogatory, he answers: After I made the contract of the 12th June, 1838, with Clements, Bryan, & Co., and after it was signed, General Scott sent his aid, Captain Anderson, to me for the contract. I sent the contract to him, and, shortly after, went for it; when General Scott asked me if they were responsible men who had executed the contract, and I informed him that they were. He then said it was all right, and directed me to urge upon them the necessity of a strict and speedy compliance with the duties required of them under the contract; and that there must be no failure on their part, as any delay would be highly detrimental to the service: which I accordingly did.

To the 17th interrogatory, he answers: Clements, Bryan, & Co. had large supplies of beef, corn, and other necessaries deposited at Fort Cass, under the contract of 12th June, 1838, and they reported themselves ready to comply with their contract on or about the 17th or 18th of June.

I am not able, from personal observation, to state at what other places they had supplies; but I know, that as soon as the contract was entered into, Bryan, one of the partners, and a number of agents, were sent forward to purchase supplies, and have them stationed at convenient distances for the use of the emigration. I cannot say what was the amount of loss sustained by them.

To the 18th interrogatory, he answers: I do not know how many agents they employed. I had entire confidence in the ability and determination of the contractors to execute their contract in good faith. I therefore did not inquire into the terms upon which their agents were employed, and I cannot say what was the compensation agreed to be paid to them.

To the 19th interrogatory, he answers: I have before stated that the contractors, Clements, Bryan, & Co., had a large quantity of beef, corn, and other supplies, at the agency. What amount they had collected or engaged on the route, I have no means of ascertaining other than from their reporting themselves ready. Under the contract of the 27th June, 1838, I received from Clements, Bryan, & Co. a quantity of beef, which was furnished to the Indians; but I took nothing else but beef from them, having a sufficiency of other articles composing the ration belonging to the Government.

To the 20th interrogatory, he answers: I have no doubt but they used what beef they (Clements, Bryan, & Co.) had at the agency, under the contract of the 12th June, 1838, in complying with their contract of the 27th June, 1838. Whether they bought other beef, I am unable to state.

To the 21st interrogatory, he answers: They purchased a large quantity of corn, salt, corn meal, and other supplies, at the agency at Fort Cass; but what precise amount I cannot tell. Nor do I know the amount purchased by them on the road; but I know they sent agents forward to procure the necessary supplies.

To the 22d interrogatory, he answers: The contract of the 12th June, 1838, I have before stated, was presented to General Scott. I always considered it a fair and bona-fide contract, and never considered it necessary for General Scott to approve it to make it binding. It was approved by General Smith, the superintendent; and General Scott, upon examination of it, said it was all right; and I do not know that it ever was treated or considered as a "conditional contract." After General Scott suspended the emigration on account of the drought, he directed me to advertise for proposals to furnish supplies. I asked him what was to become of Clements, Bryan & Co.: he said they should have the preference. After the advertisement for proposals was made and published for some time, I was ordered by General Scott to withdraw the advertisement, as he had determined to give up the emigration to Ross; consequently, no contract was made for subsistence by the Government agent. He thought, as he stated, that by giving it up to Ross, the Indians would go off better satisfied, and that it would prevent bloodshed.

To the 23d interrogatory, he answers: I know nothing further.

JOHN PAGE.

I certify that the foregoing answers were subscribed and sworn to before me, this 26th day of May, A. D. 1840.

W. THOMPSON, J. P.

FULLER'S HOTEL, *Washington, May 22, 1840.*

SIR: Your communication, dated 18th instant, was received on the 20th. You mention that "Clements, Bryan, & Co. have presented their claim to Congress, asking compensation for losses which they say they sustained on a contract made with Captain John Page, disbursing agent of the United States, for the removal and subsistence of the Cherokee and Creek Indians, on the 12th June, 1838. They allege that they purchased large quantities of grain, provisions, and cattle, which, in consequence of the failure of the Indians to emigrate, as was contemplated by the agreement, were left on their hands; and great losses were necessarily incurred by them." You also state, "their claim has been referred, in the House of Representatives, to the Committee of Claims, who are desirous of obtaining such information as will develop the true character of the claims;" and you solicit answers from me to fifteen interrogatories.

As I have thus officially been called upon, I have no hesitancy in conveying such information as I possess. I therefore proceed to answer as follows, viz:

Interrogatory 1. I reside at Jacksonville, Benton county, State of Alabama.

Interrogatory 2. I am personally acquainted with Captain John Page, of the United States army, who was known and recognised as the principal disbursing agent of the United States in the Cherokee country east of Mississippi river, at and about the time the Cherokees were collected, by order of the United States Government, by a military force under the command of Major General Winfield Scott, in the spring and summer of the year 1838.

Interrogatory 3. I am personally acquainted with Needham A. Bryan and Reuben E. Clements, who were reputed as part of the firm of Clements, Bryan, & Co., in the contract before alluded to; but cannot answer positively who composed the entire members of said firm of Clements, Bryan, & Co. I have been informed by N. A. Bryan, above named, that one George D. Gorden was one of said partners.

Interrogatory 4. I consider this interrogatory answered by the answer to the third interrogatory.

Interrogatory 5. R. E. Clements, I understand, resides in Lincoln county, Tennessee; N. A. Bryan at Holly Springs, Mississippi; and George D. Gorden at America, Alexander county, Illinois.

Interrogatory 6. I never was at any time in the employ or service of Clements, Bryan, & Co., in any capacity whatever; but was in the employ of Lewis Ross, contractor for subsisting the Cherokee emigration in their journey west, who made said contract with the authorities of the Cherokee nation, by virtue of an arrangement made with General Scott, about the 10th August, 1838, committing the entire management of their removal to themselves; and while in his service, as aforesaid, assisted in the purchase and issues of provisions and forage at the Cherokee agency to said Cherokees, from some time in August until early in November, 1838, and then left for the Cherokee country west, as an agent of said Lewis Ross, authorized to purchase subsistence and forage on the route for said emigrants; which duty I performed through the whole line. To the latter clause of this interrogatory, viz: "to what amount did they, and which of them, purchase cattle, grain, and provisions; what disposition did they make of the said cattle, grain, and provisions, so purchased;

did they realize a profit on such purchase and sale, and, if so, what amount; as near as you can ascertain; or did they sustain a loss, and, if any, to what amount?" my answer is, I cannot say Clements, Bryan, & Co. did not purchase cattle, grain, and provisions, as alleged by them; but, from the opportunity I had to form a correct opinion on this part of the subject, my conclusion is, they did not. My reasons for this opinion are, that I travelled the whole route travelled by said Cherokee emigrants, and was engaged in the purchase of provisions and forage for them, and I never heard any person speak of Clements, Bryan, & Co., or any agent for them, having made any purchase of any article whatever; therefore cannot believe they could have sustained any loss. But it may not be improper here to remark, that at the Cherokee agency, and in the vicinity of that place, and also at Ross Landing, where the Cherokees were encamped after their capture by the troops of the United States, Clements, Bryan, & Co. furnished the beef ration to said Cherokees for a considerable length of time, at the price of six and a half cents per pound, on which they must have realized considerable profit, as beef was plenty during said time for four cents; but I cannot say what the amount of profits were, as I do not know the precise date at which Clements, Bryan, & Co. commenced the issue of beef aforesaid. There were, in all, about sixteen thousand Cherokees in their country east of the Mississippi, collected by the troops of the United States, a part of which were sent off by water about the 1st of June, 1838; leaving, probably, fourteen thousand, or thereabouts, none of which left until about the 1st of September, and the last party, who went by land, not until early in November; and during a great part of that time those remaining after the early part of June received their beef ration from Clements, Bryan, & Co.; but I am not prepared to say whether the beef above mentioned was furnished under the contract referred to in your communication, or whether it was furnished on a separate contract, made also with Captain Page, but refer you to that officer for the particulars.

Interrogatory 7. The foregoing part of this interrogatory is answered; as fully as I can, in my answer to interrogatory 3d; but the latter part, viz: "and what proportion of interest each one had in the contract?" I answer, that I never heard either Clements or Bryan, or any other person who I believed was concerned, say what particular interest any one partner had.

Interrogatories 8 and 9. I have seen a paper writing, purporting to be a contract, made by and between Clements, Bryan, & Co., and Captain John Page, bearing date 12th June, 1838. The paper here alluded to was signed thus: "Clements, Bryan, & Co. John Page, capt., prin'l disburs'g agent." The signature of Captain Page is in his own proper handwriting; that of Clements, Bryan, & Co., I cannot say by whom signed, as I am unacquainted with the handwriting of both Clements and Bryan. The paper here alluded to bears the names of A. C. Peck and Alex. H. Somerville, as subscribing witnesses; and in all other respects is a copy of the one referred to in your communication; and on the 3d page of the same sheet there appears a bond, written out in full, purporting to bind Reuben E. Clements and Needham A. Bryan & Co., in the sum of twenty thousand dollars, "to the United States of America," for the faithful performance of a certain contract, or "articles of agreement," bearing date the 12th June, 1838, between said "Captain John Page, disbursing agent

for the removal and subsistence of Cherokee and Creek Indians, and the said Reuben E. Clements, Needham A. Bryan, & Co." To this bond there are no signatures; but I never have heard either R. E. Clements, or N. A. Bryan, or any other person known to me as composing any part of said firm of Clements, Bryan, & Co., speak of having given bail, or not having given it.

Interrogatory 10. Some time in the month of August or September, 1838, being in company with General Scott, and the subject of the contract with Clements, Bryan, & Co., above alluded to, being mentioned (as well as I now recollect) by John McGhee, General Scott remarked, that said contract never had, nor ever could have received his sanction; and my impression now is, that no bail was given, on the ground that the approval of said contract was to have been had before the bond was to be executed by Clements, Bryan, & Co., and that said contract depended on that contingency before it was to be considered obligatory on either party. And I also incline to the opinion, that one of the reasons why said contract was not approved, was, that no advertisement or public notice had been given of the time and place of letting contract and inviting competition.

Interrogatory 11. I am personally acquainted with George D. Gorden, of Alexander county, Illinois. All the knowledge I have of his being a partner in the firm of Clements, Bryan, & Co., aforesaid, was derived from N. A. Bryan, who stated to me that said Gorden was a partner; but to what extent his interest went, I am uninformed.

Interrogatory 12. I cannot answer, as of my own knowledge, that Captain Page had any interest in the contract aforesaid; and can only answer, that I had no personal knowledge of any of the members of the firm of Clements, Bryan, & Co., save R. E. Clements, N. A. Bryan, and George D. Gorden; and in relation to Page, only know it from report, said to have been stated to a few individuals confidentially by George D. Gorden.

Interrogatory 13. By referring to a printed address made by General Scott to the Cherokees, I find its date to be the 10th May, 1838; and also to a general order issued by the same officer to the troops then in the Cherokee country, dated 17th of the same month, I come to the conclusion that he assumed the command about the time those communications were issued, but did not commence active operations in collecting the Cherokees until immediately after the 23d May, 1838. In relation to the authority of General Scott superseding that of Captain Page, as to the right to contract for the furnishing supplies, I cannot answer; but, judging from the customary mode practised by Government officers, I would presume Captain Page was authorized to make any contracts within the sphere of his duty, subject, however, to the approval of the commanding general; but more correct information on this point can be had by calling on the War Department for the instructions given to General Scott in the Cherokee country.

Interrogatory 14. I have no knowledge of any public notice having been given of the letting of the contract before it was made with Clements, Bryan, & Co. I never heard of any such notice; but I did hear complaints uttered because notice was not given. Mr. John H. Lewis and others I know were at the Cherokee agency, and expressed a desire to bid; but did not succeed, as I understood, in consequence of a private contract having been made by Captain Page with Clements, Bryan, & Co.

Mr. Lewis was wealthy, and in every way competent to have carried out such a contract.

To the 15th and last interrogatory, I can only answer, that in my answers to the fourteen interrogatories I have stated all I can now recollect in relation to this matter, that would be calculated to aid the committee in arriving at a correct decision of the matter before them.

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

THOMAS C. HINDMAN.

HON. D. RUSSELL,

*Chairman of the Committee of Claims, Ho. of Reps.*

CITY OF WASHINGTON, D. C., *May 23, 1840:*

Personally appeared before me, David Russell, chairman of the Committee of Claims in the House of Representatives of the United States, this day, the abovenamed Thomas C. Hindman, who being by me duly sworn, saith, that whatever is stated in the foregoing answer, to which he has subscribed his name, as being within his own knowledge, is true; and what is therein stated upon information stated to have been derived from others, he verily believes to be true.

D. RUSSELL.

HOUSE OF REPRESENTATIVES, (D. C.,) *May 18, 1840.*

SIR: Messrs. Clements, Bryan, & Co. have presented their claim to Congress, asking compensation for losses which, they say, they sustained on a contract made with Captain John Page, disbursing agent of the United States for the removal and subsistence of the Cherokee and Creek Indians, on the 12th of June, 1838. They allege that they purchased large quantities of grain, provisions, and cattle, which, in consequence of the failure of the Indians to emigrate, as was contemplated by the agreement, were left on their hands, and great losses were necessarily incurred by them. This claim has been referred, in the House of Representatives, to the Committee of Claims, who are desirous of obtaining such information as will develop the true character of the claim; and being informed that you have a knowledge of the facts relating to it, solicit your answers to the interrogatories annexed. A copy of the contract is also annexed. It does not appear that any bail for the performance of the contract was given by the contractors.

1st. Where do you reside?

2d. Are you acquainted with Captain John Page, named in the annexed contract as being the disbursing agent of the United States?

3d. Are you acquainted with Clements, Bryan, & Co., named in said articles of agreement as contractors?

4th. Who compose the firm of Clements, Bryan, & Co?

5th. Where do they respectively reside?

6th. Were you at any time, and where, and when, a clerk or agent of said Clements, Bryan, & Co., or of any other person connected with the removal of Indians; and did you have charge of, or keep their books relating to the purchases made with reference to the said contract; to what amount did they; and which of them, purchase cattle, grain, and provisions; what disposition did they make of the said cattle, grain, and provis-

ions, so purchased; did they realise a profit on such purchase and sale, and, if so, what amount, as near as you can ascertain; or did they sustain a loss, and, if any, to what amount?

7th. Have you at any time, and when, heard either (and which) of said firm of Clements, Bryan, & Co. say who composed said company, and what proportion of interest each one had in the contract?

8th. Have you at any time, and when, seen the contract of which the annexed purports to be a copy?

9th. Do you know, or have you heard either (and which) of said firm of Clements, Bryan, & Co. say that no security had been given by said contractors for the faithful performance of the contract on their part?

10th. Did General Winfield Scott refuse to sanction or approve said contract; and, if so, for what reason?

11th. Do you know George D. Gorden, of Alexander county, Illinois; was he one of the company of Clements, Bryan, & Co.; and was he interested in said contract to the amount of one quarter?

12th. Was the said Captain John Page also interested in said contract to the amount of one other quarter; and did the said firm of Clements, Bryan, & Co., consist of Reuben E. Clements, Needham A. Bryan, John Page, and George D. Gorden?

13th. At what time did General Scott take charge of the emigrating Cherokees in 1838; and did his authority supersede the agency of Captain John Page as to the right to contract for the furnishing supplies?

14th. Was public notice given of the letting before the contract was made with Clements, Bryan, & Co.; or was it made with them without an opportunity being offered for competition?

15th. Do you know, or have you heard, any other matter or thing relating to the contract in question, or the execution thereof, proper or necessary to be communicated to the committee, to enable them to form correct opinions upon the merits of the claim?

Your early answer is requested; which please enclose to me, to the end that the claim may receive the attention of the committee without any unnecessary delay.

I am, with great respect,

D. RUSSELL.

Colonel THOMAS C. HINDMAN.

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HOUSE OF REPRESENTATIVES, (D. C.) *May 18, 1840.*

SIR: Clements, Bryan, & Co., have presented their claim to Congress, asking compensation for losses which, they say, they sustained on a contract made with Captain John Page, disbursing agent of the United States, for the removal and subsistence of the Cherokee and Creek Indians, on the 12th of June, 1838. They allege that they purchased large quantities of grain, provisions, and cattle, which, in consequence of the failure of the Indians to emigrate, as was contemplated by the agreement, were left upon their hands, and great losses were necessarily incurred by them. This claim has been referred, in the House of Representatives, to the Committee of Claims, who are desirous of obtaining such information as will develop the true character of the claim; and being informed that you have a knowledge of the facts relating to it, solicit your answers to the interroga-

ories annexed. A copy of the contract is also annexed. It does not appear that any bail for the performance of the contract was given by the contractors.

- 1st. Where do you reside?
- 2d. Are you acquainted with Captain John Page, named in the annexed contract as being the disbursing agent of the United States?
- 3d. Are you acquainted with Clements, Bryan, & Co., named in said articles of agreement as contractors?
- 4th. Who compose the firm of Clements, Bryan, & Co.?
- 5th. Where do they respectively reside?
- 6th. Were you at any time, and where, and when, a clerk or agent of said firm of Clements, Bryan, & Co., or of any other person connected with the removal of Indians; and did you have charge of or keep their books relating to the purchases made with reference to the said contract; to what amount did they, and which of them, purchase cattle, grain, and provisions; what disposition did they make of the said cattle, grain, and provisions, so purchased; did they realise a profit on such purchase and sale, and, if so, what amount, as near as you can ascertain; and did they sustain any loss, and, if any, to what amount?
- 7th. Have you at any time, and when, heard either (and which) of said firm of Clements, Bryan, & Co., say who composed said company, and what proportion of interest each one had in the contract?
- 8th. Have you at any time seen the contract, and when, of which the annexed purports to be a copy; in whose possession; and under what circumstances?
- 9th. Do you know, or have you heard either (and which) of said firm of Clements, Bryan, & Co., say that no bail had been given by said contractors for the faithful performance of the contract on their part?
- 10th. Did General Winfield Scott refuse to sanction or approve said contract; and, if so, for what reason?
- 11th. Do you know George D. Gorden, of Alexander county, Illinois; was he one of the company of Clements, Bryan, & Co.; and was he interested in said contract to the amount of one quarter?
- 12th. Was the said Captain John Page also interested in said contract to the amount of one other quarter; and did the said firm of Clements, Bryan, & Co., consist of Reuben E. Clements, Needham A. Bryan, John Page, and George D. Gorden?

D. RUSSELL.

Mr. JOHN C. McCAIN, No. 94½ *Fulton street, New York;*  
*care of O. S. Jennings.*

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- 1st. I reside at No. 75 Delancey street, New York.
  - 2d. I am acquainted with Captain John Page as being disbursing agent of the United States.
  - 3d. I am acquainted with Clements, Bryan, & Co., named in the said article of agreement as contractors.
  - 4th. Reuben E. Clements, Needham A. Bryan, and George D. Gorden, are all that I ever understood to compose the firm of Clements, Bryan, & Co., or as being interested in the said contract.
  - 5th. Reuben E. Clements resides in West Tennessee—I do not remem-

ber the county; Needham A. Bryan resides near Holly Springs, Mississippi; George D. Gorden resides in Alexander county, Illinois.

6th. I never was a clerk or agent for the firm of Clements, Bryan, & Co. I was agent for Lewis Ross & Co., after the contract for subsisting the Cherokees was given to that firm. The principal part of the business I did for Lewis Ross & Co., was at Fort Cass, Tennessee. I never had any thing to do with the books of Clements, Bryan, & Co., but believe that Bryan and Gorden did purchase cattle and other provisions for the use of the Indians. I do not know what disposition they made of the cattle and provisions so purchased, nor what profit, if any, they realised on the disposition of such cattle and provisions. I understood, at the time the contract for subsisting the Cherokees was given to Lewis Ross & Co., that Clements, Bryan, & Co. would lose a great deal, but do not recollect which of the company I heard say so; neither do I know the loss they did sustain, nor that they sustained any loss.

7th. I do not recollect of hearing either of the company say who composed said company; but I was under the impression, and believe, that the company consisted of only Clements, Bryan, and Gorden. Mr. Gorden told me his interest was one-fourth.

8th. I never saw the contract at all.

9th. I never heard that bail had been given by said contractors.

10th. I do not know whether General Winfield Scott refused to sanction or approve said contract.

11th. I do know George D. Gorden, of Alexander county, Illinois. He was one of the company of Clements, Bryan, & Co., and I believe he was interested in said contract to the amount of one-quarter.

12th. I never knew that Captain John Page was interested at all, and never understood the company consisted of any others than Reuben E. Clements, Needham A. Bryan, and George D. Gorden.

JOHN C. McCAIN.

UNITED STATES OF AMERICA, }  
Southern district of New York, } ss.

On the 27th day of May, in the year 1840, before me personally came John C. McCain, who, being by me duly sworn, did depose and say, that the preceding answers by him subscribed and made by him to the interrogatories addressed to him by the Committee of Claims of the House of Representatives of the United States of America, are true.

GEORGE W. MORTON,

*United States Commissioner.*

NEW YORK, May 27, 1840.

SIR: Enclosed herewith, I send you the answers of John C. McCain to the interrogatories addressed to him by the Committee of Claims.

It is proper to add, that Mr. McCain says that almost all the information he has, on the subject to which the inquiries relate, has been derived from the members of the firm of Clements, Bryan, & Co.

Mr. McCain will remain in this city a little more than a week longer, when he expects to go to the west. If the answers, for any cause, are

not satisfactory, or if you wish to push your investigation further with this witness, please communicate with me promptly.

I am, sir, very respectfully, your obedient servant,

B. F. BUTLER,  
U. S. Attorney.

HON. D. RUSSELL,  
Committee of Claims, H. R.

*Additional interrogatories to be administered to John C. McCain, relating to the claim of Clements, Bryan, & Co.*

1. Do you know Lewis Ross of the Cherokee nation?

2. Did you at any time, and when, inform said Lewis Ross that George D. Gorden told you that Captain John Page was interested in the contract of the 12th of June, 1838, made with Clements, Bryan, & Co., for supplying the Cherokees with provisions? If so, state when and where you were so informed by said Gorden: was it in the year 1838, while you were in the employ of said Lewis Ross? was said George D. Gorden an active member of the firm? and was it generally understood and known that Gorden was a member of said firm?

3. Do you know Jesse B. Clements? if so, where does he reside? had he any interest in said contract?

SOUTHERN DISTRICT OF NEW YORK, ss:

John C. McCain, of said district, being duly sworn, deposes and says, in answer to the preceding interrogatories, as follows:

To the 1st interrogatory, he saith: I do.

To the 2d interrogatory, he saith: That in the year 1838, during the time he was engaged with Lewis Ross in the Cherokee emigration, George D. Gorden did tell him (the witness) that Captain John Page was interested in the contract referred to in the said second interrogatory; and this deponent feels very confident that he told Lewis Ross what said Gorden had told him about said Page being interested in said contract. It was at Fort Cass where Gorden told me what I have stated. Said George D. Gorden was an active member of said firm of Clements, Bryan, & Co.; and it was generally known and understood that he was a member of said firm.

To the 3d interrogatory, he saith: He knows Jesse B. Clements by sight, but has no particular acquaintance with him. He does not know where said Clements resides. Deponent supposed that said Jesse B. Clements had some interest in said contract, from what he saw, and heard George D. Gorden say on the subject; but he cannot swear positively whether or not said Jesse B. Clements had such interest.

JOHN C. McCAIN.

Sworn before me, this 19th day of June, 1840.

GEO. W. MORTON,  
U. S. Commissioner.

FULLER'S HOTEL,  
Washington City, May 25, 1840.

SIR: Your note, dated 23d instant, was received on the same evening of its date. You request me to state "what would have been the expense of furnishing a ration in the Cherokee country, in June, 1838, such as was required in the contract made with Clements, Bryan, & Co., on the 12th June, 1838?"

I find some difficulty in answering this inquiry, as you will discover, by referring to the contract alluded to, that the items composing the ration may be varied. It may consist of fresh beef, corn, and salt; fresh pork, corn meal, and salt; salt pork, &c., or bacon, wheat flour, and salt: therefore, the expense would vary in proportion to the particular items furnished; and, in order to be as explicit as I can, have concluded to state what would have been the cost of the different articles mentioned in said contract, at the time referred to, viz: At the Cherokee agency (being the place where said contract was made) corn was selling at from ninety cents to one dollar per bushel; corn meal, one dollar per bushel; wheat flour, four cents per pound; fresh beef, four cents per pound, *and plenty*; fresh and salt pork, none in market; bacon, twelve and a half cents per pound; salt, one dollar and fifty cents for fifty pounds, (about thirty-two quarts.) At the prices above stated, a ration consisting of fresh beef, corn, and salt, would have cost a fraction less than seven cents; and a ration composed of bacon, wheat flour, and salt, about thirteen and three-fourths cents—making the average between the two extremes a little over ten cents.

Very respectfully, your obedient servant,

THOMAS C. HINDMAN.

Hon. D. RUSSELL.

HEADQUARTERS, EASTERN DIVISION,  
Elizabethtown, N. J., June 11, 1840.

SIR: I have had the honor to receive your letter of the 21st ultimo, submitting a paper of interrogatories touching a contract, with a copy of the latter.

Premising, in the way of apology for delay, that I have been absent from my office, on a special service of great labor, for four weeks, in which I am still engaged, I proceed, to the best of my memory, to answer the interrogatories in question.

INTERROGATORIES AND ANSWERS.

*Interrogatory 1.* "Are you acquainted with Captain Page, named in the annexed contract as the disbursing agent of the United States?"

*Answer.* I am. I saw him, as the United States principal disbursing agent for Cherokee emigration, almost daily, in the late Cherokee country, from about the middle of June, 1838, to about the middle of November of the same year. At that time he was not under my orders or command; nor was N. Smith, the superintendent of Cherokee emigration, to whom Captain Page was sent out by the War Department. The latter acted under the instructions of the former, and both were independent of me; although, in some instances, which will be noticed in the sequel, I assumed the power of controlling their several acts or arrangements. My

sphere of duty was limited by the War Department to the command of the troops, and to the collection of the Cherokee Indians. As collected, they were to be turned over to the superintendent for emigration, and I was to lend him the aid of such military escorts, on the route to the west, as might be required and as I might deem necessary. The operation commenced on this footing. Beginning late in May, I had already collected, in a few large camps conveniently situated for emigration, nearly the whole of those Indians by the end of June; when, early in July, I was requested by the War Department to charge myself with the duties of superintendent. This I declined, being unwilling to have any thing to do with contracts and accounts.

*Interrogatory 2.* "Are you acquainted with Clements, Bryan, & Co., named in said articles of agreement as contractors?"

*Interrogatory 3.* "Who compose the firm of Clements, Bryan, & Co.?"

*Interrogatory 4.* "Where did they, respectively, reside?"

*Answer.* I know nothing of such firm, nor do I know that I have ever seen in my life the persons of the Clements and Bryan who are named, or that of either of them; and I may add, that I had, until the receipt of the papers before me, no knowledge that any contract had been signed by Captain Page with anybody, of the nature of that contained in the copy which the committee has sent me. June 16, 1838, I returned from that part of the Cherokee country lying in North Carolina, (ninety miles distant,) to the Cherokee agency, near Calhoun, in Tennessee. There I found Captain Page, who had just come up (forty miles) from Ross Landing, also then in the Cherokee country. Learning on that day, or on the 17th or 18th, that the terms of a contract were under consideration, for supplying the Indians on the land route to their new country with subsistence, I made some inquiries into the particulars, both of the superintendent and disbursing agent, (Smith and Page.) Neither of them, I am confident, showed me any contract; and both left me under the impression that nothing had been done in the matter which could bind the United States. It is also true that neither was under any direct obligation of duty to show me any contract which either had signed. I had heard something of the price it was proposed to pay for the Indian rations, (sixteen cents,) and my object was to inquire whether any advertisement had been published inviting competition and proposals. The reply was, that sixteen cents a ration was not an extravagant price, and that the sudden fall of water in the rivers, and the consequent necessity of continuing the emigration by a new or land route, allowed of no time for inviting competition in that sequestered and thinly-peopled region of country. Being already a week or two advanced in the drought, which lasted till October, I was, at the time of those conversations, anxiously deliberating whether I should not assume the authority of stopping the emigration until the return of the cool season. This was the universal wish of the Cherokees themselves; for we all knew that many parts of the land route were extremely sickly in the summer months, including September. Accordingly, on the 18th of June, when the rivers had almost ceased to be navigable, all further emigration was suspended by me, with the approbation of the superintendent, and that (subsequently signified) of the War Department. At the same time, I gave directions to Captain Page to advertise extensively to invite proposals for supplies on the route, preparatory to renewing the emigration in September or October.

It is proper to add, even if I had known of the existence of the contract in question, it would not have changed my decision. This was founded on the imperious dictates of policy, as well as of humanity. If, under the circumstances, we had attempted to force the emigration by land, the Indians would have madly broke, and have compelled us to slaughter very many of them. In the autumn, all went off cheerfully.

After I had suspended the emigration, and given the directions to Captain Page to advertise, &c., a stranger called at my cabin and desired me to step aside with him. When I had left my company, and was in rear of the cabin, the stranger said something to me about a contract for supplying rations to the Indians on the land route—enough to connect his remarks with his negotiations with Captain Page and the superintendent at Ross Landing. Discovering that he wished to persuade me to approve or to allow of a contract, I abruptly, and perhaps indignantly, stopped him by saying, "Sir, if you have any thing to propose of that nature, this is not the place; we will return to the company." We returned, and I added, "Now, sir, what have you to say about a contract?" Probably offended at my manner, the stranger withdrew. One of my staff, who was then with me, thinks that the name of that person was Clements. I never saw him before, and have never seen him since; nor have I ever had any other communication with him.

When I gave specific instructions to Captain Page to advertise, &c., as mentioned above, I am certain that he did not mention that he was already under a contract binding on the United States, for the supplies in question.

Subsequently, (about the 13th of July,) the Cherokee delegation arrived from Washington, and brought me instructions from the War Department to place the emigration of the Cherokees into their own hands, or those of their chiefs, if I found it advisable. This was accordingly done; and the emigration was resumed at the end of the drought, about the beginning of October.

*Interrogatory 5.* "Did they (Clements, Bryan, & Co.) make purchases of cattle, grain, and provisions, with reference to this contract? and what disposition did they make of the said cattle, grain, and provisions, so purchased? Did they realise a profit on such purchase and sale? and, if so, what amount, as near as you can ascertain? or did they sustain a loss, and, if any, to what amount?"

*Answer.* I am as absolutely ignorant of the transactions of the individuals alluded to, as I am of their persons.

The contract before me purports to have been signed June 12th. No place is connected with that date; but Captain Page, with Smith, the superintendent, must have then been at Ross Landing. I have stated above, that I conversed with them about such contract as early as the 17th, if not the 16th, of the same month; at the agency. If I did not then positively forbid (as I think I did) any such contract, on the ground that I should probably suspend the emigration, I certainly on the 18th gave the instructions for advertising, &c., as above. Consequently, Clements, Bryan, & Co. could, at the most, have had only six days if present, or eight if below at Ross Landing, for making purchases, before learning that the emigration had been stopped for months. I also knew, from many sources whilst in that country, that there was a steady but moderate advance on the prices of June, by reason of the drought, on all such supplies as are mentioned in the contract, as well in the Cherokee country, as all along

the route of emigration. It seems to me, therefore, that a profit must have been made on the judicious purchase of all such supplies taken in June, both on account of the drought, and increased consumption caused by the collection and the emigration of the Indians.

*Interrogatory 12.* "Do you know George D. Gorden, of Alexander county, Illinois? Was he one of the company of Clements, Bryan, & Co., and was he interested in said contract to the amount of one quarter?"

*Answer.* I have no knowledge of any such person, and I know nothing whatever of the company mentioned.

*Interrogatory 13.* "Was the said Captain Page also interested in said contract to the amount of one-quarter, and did said firm of Clements, Bryan, & Co. consist of Reuben E. Clements, Needham A. Bryan, John Page, and George D. Gorden?"

*Answer.* I have already said that I know nothing of any of the persons named, with the exception of Captain Page; and I have never known him to do an act of dishonesty or dishonor; and have never had the slightest reason to suspect him capable of such act, or an act of peculation.

I do not here reproduce the remainder of the fourteen interrogatories submitted to me, because they are either already answered, or, by my answers, it will be seen that I could give no further answer.

I have the honor to remain, sir, with high respect, your obedient servant,  
WINFIELD SCOTT.

HON. DAVID RUSSELL,  
*Chairman Committee of Claims, H. R.*

WAR DEPARTMENT,  
*Office Indian Affairs, May 21, 1840.*

SIR: I have the honor to acknowledge yours of the 14th instant, enclosing printed copies of a bill and report from the Senate's Committee of Claims, dated respectively March 17, for the relief of Messrs. Clements, Bryan, & Co., contractors with the agent of this department for subsisting emigrating Cherokee Indians, with the papers accompanying the same.

I enclose a copy of the instructions of this department to Captain John Page, which, though not defining particularly (besides those of disbursing agent) the duties to be performed by him in the Cherokee removal, the committee will perceive associate him with the superintendent in the more responsible duties of his office, without diminishing the authority of the superintendent, to whom is committed the subsistence of the Indians, and, generally, every thing connected with Indian removal. It was under these instructions, and none other from this office, that Captain Page could have entered into the contract with claimants, and may be considered within the spirit of them to have co-operated, in doing so, with the superintendent in his "more arduous and responsible duties," acting at the time under his authority. From an examination, it does not appear that the contract in question was ever transmitted to the department by the agent, and it therefore is unable to say whether the copy enclosed in your letter is a "true copy." I believe it to be an original paper, from the signatures of Captain Page and General Nathaniel Smith, which I have often seen. Nor is this office informed that the contractors gave security for the performance of their contract; which, if not given (and I learn indirectly it was not) "in all cases of the kind," the "regulations con-

cerning the emigration of Indians" require it. If given at all, it is not known when; and of the bond, a copy cannot be furnished to the committee. There is no information in this office as to the precise time the contractors were informed "the emigration would not commence until the 1st of September, 1838;" but Captain Page's letter to them, of date 18th June, (which no doubt is genuine,) will be sufficient proof as to notice immediately after the postponement was determined on. The contract, I should think, was clearly obligatory upon Clements, Bryan, & Co., before security for its execution was given. There is no provision in the contract for security, although the instructions under which Captain Page made it requires that the contractors should give it. On the 18th June, they wrote to Captain Page they were ready to give the required security, and to commence issues of rations. Security was therefore required, and assented to and offered. But, whether or not, Clements, Bryan, & Co. were bound; and the United States, having by their own acts broken the contract, cannot, I think, shelter themselves because of non-compliance with the requirement to give security, which was not inserted in the article, and which was subsequently offered, but, for a reason unknown, not given. From the letter of General Smith to Captain Page, of 11th June, it would seem that it was intended to subsist 6,000 emigrants on the entire route, it being then contemplated to send by land so many; and, for answer to the interrogatory "When and what number emigrated," embracing all removed subsequent to the date of the contract, and extending to the close, I state them, in round numbers, at about 14,000 souls. But, of this number, at least 6,000 were intended to be removed by water; of whom a portion were actually so removed. No Indians were subsisted under the contract, and consequently no payment has been made to the contractors on that account, nor for losses they may have sustained. Captain Page, on the 13th of July, (an extract from his letter in reference to the fact is found with the papers enclosed in your letter,) informed my predecessor that the contractors were pressing him for money on the contract; and, in reply, was instructed as follows: "In relation to the claims of Messrs. Clements & Bryan for damages and losses sustained by them in consequence of the suspension of emigration, I have to say that this office does not authorize you to make any payments on those claims. Any claims on this account will be referred to this office for adjustment." For the use of the committee, and as furnishing; with the views of this office, other information asked for, not embraced in the above answers to the interrogatories, I have the honor to enclose a copy of my report on the subject of this claim for indemnity to the Secretary of War. I have also to apprise the committee of the existence of a second contract with the claimants, dated 27th June, 1838, under which was received from the contractors what beef they had provided under their first contract, and had at the Cherokee agency, (see extract of Captain Page's letter of 13th July to the Commissioner of Indian Affairs, referring to agreement,) at six and a half cents per pound. On this contract the contractors furnished 896,595 pounds, and were paid therefor \$58,278 67, according to the returns on file in the Second Auditor's office. I enclose a copy of the contract. The papers enclosed are herewith returned to the committee.

Very respectfully, your most obedient servant,

T. HARTLEY CRAWFORD.

HON. DAVID RUSSELL,  
*Chairman Committee of Claims, H. R.*

WHITE SULPHUR SPRINGS, *August 18, 1838.*

SIR: I have had the pleasure to receive your letter of the 31st July, and am much gratified to learn that you have made such arrangements with the chiefs and headmen for the emigration of the remaining Cherokees as will prove satisfactory to that people. It is deemed by the department of the last importance that they should be conciliated, and the good feeling and friendship which formerly existed between them and the whites should be restored. It is to be hoped that the judicious measures you have adopted will produce this desirable result. I am pleased to find that you have been enabled, by the peaceable disposition evinced by the Indians, to discharge the militia called out to aid in the execution of the law.

Very, &c.,

J. R. POINSETT.

General WINFIELD SCOTT, *Cherokee Agency.*

WASHINGTON, *January 30, 1841.*

GENTLEMEN: Your note of this date I have received; and to your inquiry whether it was or was not the general belief at the Cherokee agency, in the summer of 1838, that you were the contractors for subsisting the emigrating Cherokees, I will say, that I arrived at the agency a few days after the contract was let by Captain Page, and remained there until the change was made by General Scott, and a new contract was made with Lewis Ross. Up to within a few days of the letting of the second contract, you were considered the contractor, and I was so informed by Captain Page.

Yours, respectfully,

J. L. COLBORN.

Messrs. CLEMENTS, BRYAN, & Co.

WASHINGTON CITY, *January 30, 1841.*

GENTLEMEN: I received your letter inquiring of me what was the public opinion at the agency of the Cherokee nation, as to whether you were or were not considered the contractors after the period of the suspension of the emigration by General Scott. In reply, I have to say that it was the general opinion, (and, I believe, truly,) that you continued the contractors after the period of the suspension.

Not having had any personal acquaintance with either of you until after your contract was made with Captain Page, and after the suspension was made, I had no knowledge, personally, of the facts connected with that contract; except such as were publicly known.

Very respectfully, yours, &c.,

A. ANDERSON.

Messrs. CLEMENTS & BRYAN.

WASHINGTON CITY, *January 30, 1841.*

GENTLEMEN: In yours of this date you inquire whether I "do or do not know, and was or was it not the general belief of all parties in and around the agency, that you were to furnish, under the contract with

Captain Page, the subsistence for the Cherokees, when they should begin their removal, in September; and did not that impression prevail until some time in August, when it was known that John Ross and others were to conduct and provide for their own transportation and subsistence?" In answer to your inquiry I must say, that I do not *know* that you were to furnish, under a contract with Captain Page, the subsistence for the Cherokees, when they should commence their removal; but I was at the agency from the time the commissioners under the late Cherokee treaty commenced the sessions of their board at that place, until their adjournment from there to Athens; I had frequent conversations with the commissioners, General N. Smith, agent and superintendent of Cherokee removals, Dr. Lyde, one of his assistants, and with others, on the subject; and distinctly *understood*, from them, that you had the contract for furnishing the Cherokees subsistence; and understood the contract to so prevail, until I was informed that it was superseded by a contract made by General Scott, with John Ross and others, for subsisting the Cherokees. The precise date at which I was informed of the contract with Ross and others I do not recollect, but think it was some time in the month of August, 1838. I had, however, some short time before, been informed that John Ross was negotiating with General Scott for the contract. Whether or not it was the *general* impression of all parties around the agency, that you were to subsist the Cherokees, as stated in yours of to-day, I am unable to say.

Yours, respectfully,

JOHN F. GILLESPIE.

MESSRS. CLEMENTS & BRYAN.

WAR DEPARTMENT,  
*Office of Indian Affairs, January 16, 1841.*

SIR: I have the honor, as requested by your letter of the 14th instant, to transmit a copy of my report of the 14th July last, to the Secretary of War, in relation to the claim of Messrs. Clements, Bryan, & Co., for damages sustained by the non-compliance, on the part of the United States, with the terms of a contract made with them on the 12th June, 1838, for subsisting Cherokee emigrants. No other facts than those shown by the papers heretofore submitted, in respect to this claim, are known to this office.

Very respectfully, your most obedient servant,

T. HARTLEY CRAWFORD.

Hon. D. RUSSELL,

*Chairman Committee of Claims, House of Representatives.*

HOUSE OF REPRESENTATIVES, *July 12, 1840.*

SIR: The bill for the relief of Messrs. Clements, Bryan, & Co., passed by the Senate, and now pending before the House, provides for the settlement of the claim "on the principles of equity and justice;" and the committee of the Senate, who reported on the bill, set forth "that the parties are entitled to full indemnity:" both of which (the report and bill) are

herewith presented. We entertain the opinion, that, if said bill should pass, the claimants will be clearly entitled to at least the price allowed by the contract, on all the provisions, &c. which they may show they actually purchased at the agency and on the line, in order to be in condition to fulfil their contract. Entertaining this opinion, we respectfully desire your department to make an estimate upon this principle, and furnish us with the amount.

Very respectfully, your obedient servants,

A. V. BROWN,  
H. L. TURNEY.

HON. J. R. POINSETT,  
*Secretary of War.*

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WAR DEPARTMENT, *February 2, 1841.*

SIR: I have the honor to transmit herewith a report of the Commissioner of Indian Affairs, covering copies of the several letters asked for, in your letter of the 29th ultimo, in relation to the claim of Clements, Bryan, & Co.

Very respectfully, your most obedient servant,

J. R. POINSETT.

HON. D. RUSSELL,  
*Chairman Committee of Claims, H. R.*

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WAR DEPARTMENT,  
*Office of Indian Affairs, January 9, 1841.*

SIR: I have had the honor to receive your letter of the 7th instant.

In reply to the inquiry made, I have respectfully to say that, upon an examination carefully made, none of the papers in the case of Messrs. Clements, Bryan, & Co., supposed by you not to have been returned to the Committee of Claims of the House, are to be found in this office. It is confidently believed that, without any exception, the whole of them were returned to your committee, when my report of 14th July last, on the letter of Messrs. A. V. Brown and H. L. Turney of the 12th, was made to the Secretary of War.

Very respectfully, your most obedient servant,

T. HARTLEY CRAWFORD.

HON. D. RUSSELL,  
*Chairman Committee of Claims, H. R.*

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WHITE SULPHUR SPRINGS,  
*August 20, 1838.*

SIR: I have had the honor to receive your letter of the 3d instant, together with copies of the proposals and estimates of John Ross and his associates for emigrating the Cherokees, and your correspondence with them on that subject. The estimate does, indeed, appear to be very extrav-

agent, and more than doubles the amount on which the appropriation of Congress for that object was based. The estimate presented to Congress, which was founded upon past experience, was \$30 for the removal of each Indian; and I should think the operation might be accomplished for that amount. Congress appropriated at first too small an amount, and, at the instance of the department, increased it, so as to embrace the whole number of Cherokees east of the Mississippi at \$30 a head. Whatever sum, over and above this amount, 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 five millions;) and this must be fully explained to the chiefs and headmen, and ought to be understood by the nation. I have not the last act by me, and therefore cannot recapitulate with exactness the sums appropriated; but there is a certain amount destined for the removal of the Indians, (all of which is, of course, applicable to this purpose,) and a certain amount for their maintenance for one year after their arrival at their new homes. Both were considered sufficient for these objects; and if either be exceeded, especially for any extravagance of their own agents, the fund belonging to the nation will be held liable for the excess. Nor could the Executive recommend to Congress to increase the appropriation for either purpose, believing, as it does, the amount already given to be sufficient for the object proposed.

Your desire with respect to Captain Garner has been communicated to the Adjutant General, who has received an order to send all company officers who can be spared from other duties, as well as those on leave of absence, to their companies.

Very, &c.,

J. R. POINSETT.

General WINFIELD SCOTT,  
*Cherokee Agency.*

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CHEROKEE AGENCY EAST, August 18, 1838.

GENTLEMEN: In answer to the proposal contained in your note of this morning, I have to inform you that no arrangement of the kind can be entered into, and that no offer can be made which would induce me to surrender the contract into other hands, but by the direction of the Cherokees themselves. Stronger reasons than those based merely upon the probable profits of the undertaking induced me to take the contract of this branch of business in the emigration, and I could not now abandon it.

Very respectfully, your obedient servant,

LEWIS ROSS.

To Messrs. N. A. BRYAN, R. E. CLEMENTS,  
A. ANDERSON, and PIERCE B. ANDERSON.

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CHEROKEE AGENCY, August 18, 1838.

GENTLEMEN: We propose to give to you \$40,000, in par funds, for the exclusive control and privilege of carrying out the contract which you have made for the supply of the Indians and the subsistence of their

horses and cattle; it being understood that the contract is to be carried out by us in the name of Mr. Lewis Ross; for the proceeds which we can make, after paying you that sum, we would pay you the \$40,000, in par funds, as soon as we should enter into articles, if we agree in the detail. The favor of an answer is requested immediately.

Very respectfully, yours, &c.,

N. A. BRYAN,  
R. E. CLEMENTS,  
A. ANDERSON,  
PIERCE B. ANDERSON.

To Messrs. LEWIS ROSS and  
JOHN MCGHEE.

WASHINGTON CITY, *February 6, 1839.*

SIR: Messrs. J. B. & R. E. Clements, gentlemen of high respectability and character, residing at Fayetteville, Tennessee, inform me that they have a claim upon the Government for indemnity for losses sustained under a contract made by them with the agent of the Government, relating to the emigration of the Cherokees, which contract the Government on its part failed to perform. One of the Messrs. Clements will hand you this, accompanied by the evidences of claim. From what I learn from him, he has suffered great loss. He will be detained on expenses in the city, awaiting your decision; and I have to request, in his behalf, that you will cause an early examination of the claim to be made.

I am, very respectfully, your obedient servant,

JAMES K. POLK.

Hon. J. R. POINSETT,  
*Secretary of War.*

SENATE UNITED STATES, *February 6, 1839.*

SIR: I beg leave to unite with Colonel Polk in the foregoing request. From the information I have received, it is my opinion that the Messrs. Clements have suffered great loss by the non-compliance of the United States with the contract made with them, and that they have a just claim to remuneration. I hope the examination will be made by the proper officer, with as little delay as possible.

I am, sir, very respectfully, your obedient servant,

C. C. CLAY.

Hon. J. R. POINSETT,  
*Secretary of War.*

SENATE CHAMBER, *February 6, 1839.*

SIR: Permit me to unite with Colonel Polk and Governor Clay in the request that the department will give an early consideration to the claim of the Messrs. Clements, in which Mr. Bryan, a citizen of Mississippi, is largely interested. The case seems to be one of peculiar hardship to the applicants, the default being all on the part of the Government, and the

injury very great; and the amount of capital employed so far beyond the ordinary means of individuals, as to make delay equal to a denial of justice.

Very respectfully, yours,

THOS. H. WILLIAMS.

Hon. J. R. POINSETT,

*Secretary of War.*

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*Criticisms on the claim of Clements, Bryan, & Co.*

The petitioners allege that they, immediately after entering into the contract, proceeded to procure and furnish the requisite quantity of provisions and supplies necessary to enable them fully to comply with their engagements. What evidence has been produced before the committee to sustain this allegation? At what places were those supplies deposited, from whom purchased, and what amount of loss was sustained? How many agents were employed, what were their names, and what prices were agreed to be paid for their services? Did said contractors have more than ten thousand dollars employed in said contract; and was not this sum expended for beef, all of which was taken by the United States under the contract dated 27th June, 1838? Did said contractors purchase a large quantity of beef, in addition to the quantity procured to be used in the contract of the 12th June, 1838; and was not the whole of their purchases of beef used under the contract of the 27th June? Did they purchase any other article in consequence of having made said contract of the 12th June; if so, what was it, and where was it delivered on the route?

Inquire of Captain Page why it was he chose to disregard the contract made by him of the 12th June, and afterwards advertise for proposals to make a new contract. Was not the contract of the 12th June considered conditional, to depend entirely on the approval of General Scott?

It appears, from General Scott's letter to General Smith, dated 4th June, (marked No. 2,) that instructions were given in that letter to make "corresponding arrangements for receiving and transporting the emigrants by land and water;" but not until the 11th of the same month did General Smith notify Captain Page of the necessity of making any arrangement for subsistence on the route for 6,000 persons by land, and instruct him, in making contracts by the ration with suitable persons, to require them to give bond and sufficient security for the faithful performance; which was not given. From this letter of instructions to Captain Page, it would appear he was only instructed to make arrangements for subsisting six thousand persons; therefore, the contract with Clements, Bryan, & Co., was only intended for that number. Now, how much loss could they have actually sustained, even had they made all the necessary arrangements on the route? (which, by the by, I do not believe.) Captain Page writes, on the 16th June, to Clements, Bryan, & Co., that he will start two parties, of one thousand each, on the 18th; and requests that they be ready to subsist them agreeably to contract. This is all the notice I find specifying numbers actually required to be subsisted. On the 18th Clements, Bryan, & Co. report themselves ready to commence the issues agreeably to Page's order of the 16th, (meaning to the two thousand,) and to give the necessary security. But none appears to have been given;

and on the same day (18th) Captain Page notifies Clements, Bryan, & Co. of the emigration being suspended until 1st September, but does not intimate that the contract made with them is at an end. On the 22d June General Smith notifies the contractors to be ready to subsist all who may remove by land after the 1st September, agreeably to their contract. On the 13th July Captain Page writes to the Commissioner of Indian Affairs that he had advertised for proposals to subsist the Cherokees on the route west, although the company with whom he had made the contract of 12th June held him responsible. He states he entered into a contract to take what beef they had at 6½ cents, but could do nothing with the arrangements on the road. Now, make a calculation of the quantity of beef for six thousand persons for eighty days, the time necessary to perform the travel west, and you will find it amounts to 480,000 lbs.; and the quantity issued under this contract of 27th June appears to be 896,595 lbs., making 416,595 lbs. more than was necessary for six thousand persons on the whole route. This beef could have been purchased at four cents per pound, which would show a clear profit of \$22,419 87½. It appears from Captain Page's letter that "the contract of the 27th June was made to relieve the contractors of the beef they had on hand under the contract of the 12th, and that a higher price was allowed them in consequence of the disappointment made in this contract."

From the foregoing, it would appear that the profits realized on the beef contract would more than cover any losses sustained on the route, (*if any were sustained,*) and that the United States ought not to make any further allowance, in the absence of proof of actual losses sustained.