

EASTERN BAND OF THE CHEROKEES.

LETTER

FROM

THE ATTORNEY-GENERAL,

TRANSMITTING,

In compliance with the act of July 15, 1870, an estimate of appropriation in relation to the duty of the district attorneys and the Attorney-General of the United States to institute and prosecute suits against the present and former agents of the Eastern Band of the Cherokee Indians.

FEBRUARY 10, 1875.—Referred to the Committee on Indian Affairs.

FEBRUARY 16, 1875.—Ordered to be printed.

DEPARTMENT OF JUSTICE,
Washington, January 25, 1875.

SIR: By the eleventh section of an act of Congress approved July 15, 1870, (Statutes at Large, vol. 16, p. 326,) it is made the duty of the district attorneys and the Attorney-General of the United States to institute and prosecute suits in the name of the Eastern Band of the Cherokee Indians against their present and former agents and their securities, in the courts of the United States.

In pursuance of this authority, in the spring of 1873 suits in law and in equity were instituted, under my instructions, in the courts of the United States for the western district of North Carolina, against the former agents and their securities of the said Indians.

Two of the most important of these suits were recently determined, awarding to the Indians over fifty thousand acres of lands lying in the western part of North Carolina, estimated to be worth \$200,000, and to that extent relieving the United States from liability to the Indians.

The decree of the court awarding to the Indians these lands makes the plaintiffs liable for one-half of the costs, and the act in pursuance of which it became my duty to institute the suits above mentioned does not provide for the payment by the United States of costs. It seems, however, upon a fair construction of the act, that such costs should be paid by the United States, as well as the compensation of counsel specially employed by me to aid the district attorney in the prosecution of these cases, and others still pending, of a like kind in the western district of North Carolina.

I have the honor to transmit herewith an estimate of appropriation required to pay the costs adjudged against the Eastern Band of the Cherokee Indians, in the suits at law and in equity between them and

William H. Thomas and others, lately determined in the circuit court of the United States for the western district of North Carolina, and for other purposes, and respectfully present the subject to Congress for its favorable consideration.

I invite attention to the inclosed copies of letters from the Secretary of the Interior and Commissioner of Indian Affairs, recommending this appropriation.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. JAMES G. BLAINE,
Speaker of the House of Representatives.

Estimate of appropriation required to pay the costs adjudged against the Eastern Band of the Cherokee Indians in the suits at law and in equity between them and William H. Thomas and others, lately determined in the circuit court of the United States for the western district of North Carolina, and for other purposes.

For this amount, or so much thereof as may be necessary, to pay the costs adjudged against the Eastern Band of the Cherokee Indians in the suits at law and in equity between them and William H. Thomas and others, lately determined in the circuit court of the United States for the western district of North Carolina, and including compensation to special counsel, and for other purposes, in pursuance of the act of Congress of July 15, 1870, to be expended under the direction of the Attorney-General..... \$15,000 00

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 23, 1875.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant, inclosing draught of a letter proposed to be sent to Congress, with draught of an appropriation for \$15,000 to cover the costs adjudged against the Eastern Band of Cherokee Indians in the suits between them and William H. Thomas *et al.* in the United States circuit court for the western district of North Carolina, and asking me to make such recommendation as I may deem advisable, &c.

I concur with you in your views as to the propriety of the payment of the costs in question by the United States, and respectfully invite your attention to the inclosed copy of a report, dated the 22d instant, from the Commissioner of Indian Affairs, to whom your letter and inclosure were referred, together with the printed copy of report of the 16th December, 1874, noting the action taken by the Office in relation to the affairs of these Indians.

Your recommendations in the premises are concurred in without qualification.

Very respectfully, your obedient servant,

C. DELANO,
Secretary.

The Hon. the ATTORNEY-GENERAL.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., January 22, 1875.

SIR: I have the honor to acknowledge the receipt, by reference from you, of a communication from the Department of Justice, dated the

20th instant, inclosing copy of a letter addressed to the Speaker of the House of Representatives, and draught of a bill providing for an appropriation of \$15,000, with which to pay costs adjudged against the Eastern Band of the Cherokee Indians in the suits at law and in equity between them and William H. Thomas and others, lately determined in the circuit court of the United States for the western district of North Carolina, including compensation to special counsel, &c.

Relative to this matter you ask for a report from this Office, and, in reply, I have the honor to state that during the administration of William H. Thomas, as the agent of said Indians, beginning in 1836 and continuing for a number of years, he purchased with money belonging to said Indians, received from the United States, large tracts of land for the benefit and use of said Indians.

It appears from correspondence on file in this Office that said Thomas in purchasing lands for said Indians took the title in his own name, that he afterward became bankrupt, and the lands were claimed by William Johnston and others, creditors of Thomas, who purchased at sheriff's sales, with a knowledge of the equities of the Indians.

In pursuance of the eleventh section of an act of Congress, approved July 15, 1870, (U. S. Stat., vol. 16, p. 362,) suits in law and equity were brought in the circuit court of the United States for the western district of North Carolina by the Eastern Band of the Cherokee Indians against said Thomas, Johnston, and others for the purpose of acquiring a title to the lands purchased for said Indians. At the May term, 1874, of said court arbitrators were appointed, with the consent of the interested parties, to pass upon the matters of dispute and controversy, and their award was to be final and a rule of the court. On the 24th day of October last the arbitrators made and filed their award, which was confirmed by the United States circuit court, held at Asheville, by which over fifty thousand acres of land in the western part of North Carolina was awarded to said Indians.

The decree of the court awarding to the Indians said lands makes the plaintiff liable to half the costs, and I concur with the opinion of the honorable Attorney-General that it should be paid by the United States.

For the action heretofore taken by this Office in reference to this matter, I respectfully invite your attention to a report, dated December 16, 1874, printed copy herewith inclosed.

The papers referred to are herewith inclosed.

Very respectfully, your obedient servant,

EDW. P. SMITH,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., December 16, 1874.

SIR: I have the honor to submit herewith the following statement relative to the Eastern Cherokee Indians in North Carolina:

In May, 1873, in pursuance of the 11th section of an act of Congress approved July 15, 1870, (Statutes at Large, vol. 16, p. 362,) a suit in equity was instituted in the circuit court of the United States for the western district of North Carolina, by the Eastern Band of the Cherokee Indians, against William H. Thomas and William Johnston, seeking to subject the said Thomas, as agent and trustee of the plaintiffs, to an account and settlement for large sums of money alleged to have been received by him, for the benefit of the plaintiffs, from the United States from the year 1836 to the year 1861; which moneys, it was alleged, had been, or ought to have been, invested by him, according to

various contracts made by the said Thomas from time to time with said Indians, in certain boundaries of land for the benefit of the plaintiffs as a tribe or community, and in a number of separate tracts of land for individual members of said Eastern Band of the Cherokee Indians. It was further alleged that the legal title to all of said lands was still held by the said Thomas in his own name.

It was alleged against the other defendant, Johnston, that in the year 1869 he had procured a sale of all of said lands to be made by the sheriffs of the several counties in which they are situate, to satisfy judgments which he, Johnston, had theretofore obtained in the courts of North Carolina against the said Thomas; and that Johnston had bought in the lands at said sales, and had taken said sheriffs' titles therefor to himself with a knowledge of the subsisting equities of the Indians. It was further alleged that Johnston, after said sheriffs' sales, in September, 1869, had entered into a contract with certain of the said Eastern Band of the Cherokee Indians to release to them for their tribe all the right which he claimed to have acquired by said sheriffs' sales to said lands, for the sum of thirty thousand dollars, payable within eighteen months from the date of said contract; and that the Indians had paid him at the time said contract was executed the sum of six thousand five hundred dollars.

An action at law was commenced, at the same time as the above-mentioned suit in equity, by the same plaintiffs, against James W. Terrell, their former agent, from 1853 to 1861, and his sureties, the said Thomas and Johnston, to recover a balance of their moneys which he had received for their use from the United States, and which, as it was alleged, he had not properly accounted for.

At the May term, 1874, of the said circuit court of the United States, the parties to the above two causes entered into an agreement, in writing, to submit all matters of dispute and controversy between them to Rufus Barringer, John H. Dillard, and Thomas Ruffin, their award to be final and a rule of court; said submission to have effect from the approval thereof by the Hon. R. P. Dick, judge of said court, the Secretary of the Interior, the Commissioner of Indian Affairs, and the Department of Justice. This agreement was approved by all the said several officers, and the arbitrators undertook the work thereby imposed upon them. On the 24th day of October, 1874, they made and filed their award, which was confirmed at the following November term of the said United States circuit court, held at Asheville.

The award finds: That Thomas was the agent of the plaintiffs from the year 1838, and as such undertook to purchase, and did purchase for them, lands to be paid for with moneys coming to them from the United States; that from time to time, and from various persons, he did purchase lands for them as a tribe and community, and settled them thereon; which purchases make a large tract, situated on Soco Creek and the Oconalufy River and their tributaries, known as the Qualla Boundary, which is described by metes and bounds, and its area estimated by the arbitrators, in a report accompanying their award, at over fifty thousand acres.

That within said Qualla Boundary, Thomas sold and conveyed, by deed, several tracts to individual Indians, (naming them,) and received from them, respectively, the purchase-money; that he also contracted, in writing, to sell several other tracts within said Qualla Boundary to individual Indians, (naming them,) and received from them, in whole or in part, the purchase-money. It is, therefore, awarded "that the general boundary, known as the Qualla Boundary, belongs to and shall be held by the Eastern Band of the Cherokee Indians, living in the State of North Carolina as a tribe or community, and whether living at this time at Qualla or elsewhere in the State; and that the individual Indians above named as holding under Thomas, either by deed or contract, shall hold and possess their several tracts as their separate property, with the quality of being inheritable, but without the power of alienation except from one Indian to another, and then only with the assent of their council."

The award then proceeds to determine the titles of a large number of individual Indians and persons of Indian blood to tracts of land outside of the Qualla Boundary, and decrees that conveyances shall be made to them by Thomas and Johnston upon the terms and according to their right as specified in the award.

The award finds that the plaintiffs owe Thomas a balance toward the purchase-money of the Qualla Boundary of eighteen thousand two hundred and fifty dollars, (\$18,250); that Johnston obtained from certain of the plaintiffs on his contract of September, 1869, the sum of six thousand five hundred dollars, (\$6,500,) which, with interest to the date of the award, amounts to eight thousand four hundred and eighty-six dollars, (\$8,486,) which sum, it is awarded, Johnston shall apply, as a credit on his judgments against Thomas, as money paid by the plaintiffs toward the balance above stated as due from them to Thomas, thus reducing said balance to nine thousand seven hundred and sixty-four dollars, (\$9,764.)

In the action at law the award finds: That Terrell is liable to the plaintiffs for the sum of two thousand six hundred and ninety-seven $\frac{8}{10}$ dollars, and that that sum be deducted from the above balance of \$9,764, thus reducing it to the sum of seven thousand and sixty-six $\frac{1}{10}$ dollars; on the payment of which, with six per cent. interest from the date of the award, to the defendant Johnston, by him to be entered as a

credit on his judgments against Thomas, the plaintiffs shall have a perfect equity to demand and have of Johnston a conveyance of the legal title to all the lands embraced within the Qualla Boundary, to be made to them or some trustee for them.

The Eastern Band of the Cherokee Indians reside in the counties of Jackson, Swain, Macon, Cherokee, and Graham, in the State of North Carolina, and number about two thousand. Fifteen hundred of them are full-blood Indians, and about two-thirds of these are in the counties of Jackson and Swain, and live within the Qualla Boundary. A large proportion of the other full-bloods live in what is known as the Cheoah Boundary, in Graham County. The mixed-blooded, or white Indians, as they are called, number some three hundred, and are settled among the whites in the several counties above named. The whole of these Indians are industrious, sober, obedient to the laws, and have the good-will and esteem of their white neighbors. They have long since adopted the Christian religion, and have several native ministers who preach the gospel according to the faith of the Baptist and Methodist Churches. Nearly all of them read and write the Cherokee language, and a few speak and read and write the English tongue.

The territory recently awarded to them, estimated in value at two hundred thousand dollars, yields abundantly all the cereals, and is unsurpassed in its climate and soil for the production of grapes and fruits and the rearing of live-stock.

These people need money to pay the balance due upon their purchase of the Qualla Boundary, and to discharge what is due by individuals, upon their separate tracts of land; to pay for the making and registration of their tribal and individual title-deeds; to pay the costs and charges incident to their litigation; to purchase a number of tracts of land within their general boundary held by white persons; to pay taxes now due on their lands; and to aid them in educating their children and improving their farms.

They are entitled, as individuals, to a fund set apart, in the Treasury of the United States for their benefit, by the 4th and 5th sections of an act of Congress approved July 29, 1848. (U. S. Statutes, vol. 9, pp. 264, 265.)

The money which they used to purchase the general boundary lately awarded to them was much of it the interest on the above-named fund, which has, from time to time, been disbursed to them since the passage of the act of 1848. They wish now, according to a resolution of their general council, to have the use of the whole of said fund, principal and interest, for the purposes indicated in the foregoing part of this paper. By a judicious use thereof, having now a clear legal right to their homes and possessions, in the language of the arbitrators, they will "go to work with renewed hope and quickened energy in cultivating and improving the large and valuable domain of over 50,000 acres, henceforth undoubtedly theirs, not to include numerous individual titles also adjudged them."

In order to enable the action herein designated, I submit herewith, with the recommendation that the same be laid before Congress for the action of that body, a draught of a bill providing that the fund set apart in the Treasury of the United States by virtue of the 4th and 5th sections of an act of Congress, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes for the year ending June thirtieth, eighteen hundred and forty-nine, and for other purposes," approved July 29, 1848, shall be applied, under the direction of the Secretary of the Interior, for the use and benefit of the Eastern Band of the Cherokee Indians, to perfect the titles to their lands, &c. I also submit a copy of the award of the arbitrators referred to.

Very respectfully, your obedient servant,

EDW. P. SMITH,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fund set apart in the Treasury of the United States by virtue of the 4th and 5th sections of an act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes for the year ending June thirtieth, eighteen hundred and forty-nine, and for other purposes," approved July twenty-nine, eighteen hundred and forty-eight, shall be applied, under the direction of the Secretary of the Interior, for the use and benefit of the Eastern Band of the Cherokee Indians, to perfect the titles to their lands recently awarded to them by a decree of the circuit court of the United States for the western district of North Carolina; to the payment of such costs, charges, expenses, and liabilities attending their recent litigations in the said court as the Secretary of the Interior may determine to be properly chargeable to them; to purchase and extinguish the titles of any white person or persons within the general boundaries allotted to them by the said decree of said court, and for the education, improvement, and civilization of the said Indians,

STATESVILLE, October 24, 1874.

SIR: In submitting the accompanying award in the cause of the Eastern Band of Cherokee Indians against Thomas and others, and Terrell and others, the arbitrators deem it proper to state briefly to your honor the labors and difficulties involved in the investigation. This will enable your honor, and the parties interested, the better to appreciate the results we have reached, both with a view to the compensation to be allowed to those conducting and making the investigation and the indulgence with which the award will be received and accepted.

The commission began its duties on the 7th of August last. Our first sitting was at Asheville, and lasted one week. To accommodate parties and witnesses, and to see for ourselves the condition of affairs among those people, we adjourned on the 15th of August to the Indian settlement at Qualla, sixty-five miles west of Asheville. There we found serious obstacles to a fair and speedy investigation of the peculiar matters referred to us, and we accordingly returned, after a few days, to Waynesville, an intermediate point. At this place we sat some three weeks, working often night and day. We then returned to Asheville, and finally to Greensborough and Statesville. At this last place we concluded our work on the 23d of October, instant.

In the course of our investigations we have sworn and examined nearly one hundred and fifty witnesses, most of them Indians, speaking only Cherokee. We have taken, read, examined, and considered many hundreds of pages of oral, written, and record testimony. The amounts involved embraced hundreds of thousands of dollars received, disbursed, and invested; the accounts and transactions extending through a period of nearly forty years, and often including the minutest details of innumerable small debts with 1,500 Indians through all that time. We were also required to assort, scrutinize, and decide upon the title-papers to a large number of individual land-claims, and fix the location, settlement, and boundary of two immense bodies of disputed claims, each numbering thousands of acres. All this had to be done in the midst of that confusion and chaos necessarily caused by the peculiar condition and doubtful legal status of these people through near a century of mixed tribal and civilized life. To increase our difficulties and responsibilities, the facts on which we had to decide could only be reached through witnesses of partisan bias, often extremely ignorant, and speaking only through an interpreter.

Under such circumstances as these it could hardly be expected that the rights and interests of the parties involved could be very readily or satisfactorily ascertained or settled; yet we trust and believe we have done substantial justice, and at the same time so marked, defined, and secured the rights of the several parties litigant, as to bring repose and confidence to all concerned, and greatly quicken individual energy and enterprise among both whites and Indians.

We feel sure that for the first time in their history these Cherokees will stand in clear legal right as to their homes and possessions, and that they will now go to work with renewed hope and quickened energy in cultivating and improving the large and valuable claim of over 50,000 acres henceforth undoubtedly theirs, not to include numerous individual titles also adjudged them.

So, too, the Government will, for the future, find it a comparatively easy task and grateful duty to superintend this interesting people and protect them in their new condition, and more readily indicate and carry out such policy as it may regard necessary and proper to their progress in the arts of civilized life.

In conclusion, we gladly recommend that proper allowances be made to Deputy Marshal Davis, and his bailiffs, Erwin and Smith, for their services in attending the commission, and in executing process; also to E. R. Hampton, a former referee in the equity suit, for numerous depositions taken by him and used by us.

Respectfully submitted.

RUFUS BARRINGER,
Chairman.

To Hon. R. P. DICK,
Judge of United States District Court, Asheville, N. C.

I, E. R. Hampton, clerk of the United States district and circuit courts for the western district of North Carolina, hereby certify that the foregoing is a true copy of letter from Hon. Rufus Barringer to Hon. Robert P. Dick, judge of the United States district and circuit courts for the western district of North Carolina, and now on file in my office.

As witness my hand and the seal of said circuit court this 23d day of November, A. D. 1874, and in the 99th year of American independence.

[SEAL.]

E. R. HAMPTON, Clerk,
By R. H. GRESHAM, Deputy Clerk.

In the circuit court of the United States, fourth circuit, and the western district of North Carolina. November term, A. D. 1874, at Asheville.

BETWEEN THE EASTERN BAND OF THE CHEROKEE INDIANS }
and } In equity.
 WM. H. THOMAS, WM. JOHNSTON, and JAS. W. TERRELL. }

BETWEEN THE UNITED STATES AND THE EASTERN BAND OF }
 the Cherokee Indians }
and } Action at law upon J. W.
 JAS. W. TERRELL, WM. H. THOMAS, WM. JOHNSTON, J. B. } Terrell's bond as disburs-
 Allison, and A. J. Murray. } ing agent of the United
 States.

Upon motion this day made unto this court by Marcus Irwin, esq., of counsel for the plaintiffs, it was prayed that the writing of award, bearing date the 23d day of October A. D. 1874, under the respective hands and seals of Rufus Barringer, John H. Dillard, and T. Ruffin, esquires, and by them filed with the clerk of this court, may be made an order of this court; whereupon, and upon hearing, N. W. Woodfin, esq., of counsel for the defendants, who consented thereto: This court doth order that the said award be made an order of this court, and that the same be observed and performed by all parties thereto according to the tenor and true meaning thereof; and it is further ordered that said award, with this decree, be enrolled upon the records of this court.

It is further ordered that E. R. Hampton, clerk of this court, be allowed three hundred dollars and his expenses for taking depositions in the equity cause between the plaintiffs and defendants, and that Hamilton Erwin be allowed thirty dollars and his expenses—thirty dollars—total, sixty dollars, for his services as bailiff in attending upon the court of arbitration, serving processes, and for other duties performed by him during the session of said court at Waynesville.

(Signed)

ROBERT P. DICK, *Judge.*

Rec'd sixty dollars of Ro. M. Douglas, in full of my allowance on within order and decree, Nov. 16, 1874.

(Signed)

HAMILTON ERWIN.

I, E. R. Hampton, clerk of the U. S. district and circuit courts for the western district of North Carolina, hereby certify that the foregoing is a true copy of the final award of circuit court at Asheville, in the Nov. term, 1874, signed by Hon. Robert P. Dick, United States district and circuit judge, as now on file in this office.

As witness my hand and the seal of said circuit court this 23d day of November, A. D. 1874, and in the 99th year of American independence.

[SEAL.]

E. R. HAMPTON, *Clerk,*
 By R. H. GRESHAM, *Dep. Clerk.*

In the circuit court of the United States, western district of North Carolina. In Asheville.

THE EASTERN BAND OF THE CHEROKEE INDIANS }
against } In equity.
 WILLIAM H. THOMAS, WILLIAM JOHNSTON, AND JAMES W. }
 Terrell. }

THE EASTERN BAND OF THE CHEROKEE INDIANS }
against } Suit at law on the bond
 JAMES W. TERRELL, WILLIAM H. THOMAS, WILLIAM JOHN- } of J. W. Terrell as the
 ston, A. J. Murray, and J. B. Allison. } disbursing agent of
 plaintiffs.

Whereas at the May term, 1874, of said circuit court of the United States held at Asheville, before his honor R. P. Dick, judge, the parties to the above two causes entered into an agreement, in writing, to submit all matters of dispute and controversy between them, as specified and set forth in their said written agreement, to Rufus Barringer, John H. Dillard, and Thomas Ruffin, their award to be final and a rule of court, and said submission to go into effect upon the approval thereof by the said Hon. R. P. Dick, judge of said court, the Secretary of the Interior, the Commissioner of Indian Affairs, and the Department of Justice at Washington City; and whereas their said submission was approved by the said judge of the court and the said several officers at Washington City, as appears from their several indorsements on the said written sub-

mission, a copy of which is hereto attached, and to be referred to as a part of this award; and whereas, by virtue of said submission, the reference to the said arbitrators was to be deemed operative and fully authorized as soon as approved as aforesaid:

Now, therefore, we, the undersigned, Rufus Barringer, John H. Dillard, and Thomas Ruffin, having taken upon ourselves the burden of the reference aforesaid, and having heard and duly considered and weighed the several allegations of the said parties, the pleadings in the said two suits, and all the proofs, vouchers, and documents which have been given in evidence before us, and having heard the arguments and suggestions of counsel, do hereby make and publish this our award, in writing, of and concerning all and every the several matters as above referred to us, in the manner following; that is to say:

1. That William H. Thomas became and was the agent of the Eastern Band of the Cherokee Indians living in North Carolina, who are the plaintiffs in the above two causes, after the removal of their brethren west in the year 1838, and as such undertook to purchase, and did purchase, for them land, the amount, location, and boundary whereof will hereinafter be fully described, to be paid for with money or moneys coming to them from the United States under treaties with and the laws of the said United States.

2. That the said William H. Thomas, in pursuance of his said agency and trust reposed in him, did from time to time, and from various persons, purchase lands for the plaintiffs as a tribe and community, and settlement thereon, and carved up the same into towns, which said purchases are included in and make a large tract, situated on Soco Creek and Ocona Lufta River and their tributaries, known as the Qualla Boundary, and bounded as follows, to wit: Beginning at a stump near the spring on Jackson County line at the head of Jonathan's Creek, where the Soco road crosses the mountain; thence in a northerly direction with the said county-line to the ridge which divides the waters of the Ravin's Fork from Bradley or west fork of Ocona Lufta River; thence with the water-shed of that ridge to the line of Widow Hugh's; thence eastwardly with her line, crossing Ravin's Fork; thence down, and with her lines and the lines of Wesley M. Enloe, to the Ocona Lufta River; thence down with the meanders of said river to the southern boundary of Samuel Monteith; thence across said river and with said Monteith's line to his southwest corner; thence with the lines of an entry made by W. H. Thomas and other lines of said Thomas, keeping on his outside lines to the dividing-ridge between the waters of Adam's Creek and Newton's Mill Creek, so running said line as to include all the Indians living on the headwaters of said Adam's Creek; thence in a southerly direction, keeping on the water-shed of said ridge to the line of Sim Sherrell; thence with his line to Ocona Lufta River, the last two lines being run so as to include all the Indian settlements on the east side of Newton's Mill Creek; thence with and across the said Ocona Lufta River to the upper boundary of J. M. Bird; thence with his line to the corner of the first tract of what is known as the State surveys above the said Bird; thence up said river with the lines of said State surveys so as to include one tier of old surveyed tracts bordering on said river, and striking said river below Ute Sherrell's, excluding the tract now occupied by J. A. Gibbs, and also some entries known as Thomas's entries; thence up and with the meanders of said river to a tract of land occupied by an Indian named Ah-ma chma; thence with the line of that tract, and including the same, to the old line of Scoop Enloe, or near it, but so as to exclude the tract now occupied by Mason Reckley; thence with the line of the tract so occupied by Reckley, crossing the Soco Creek below his house, to the old line of said Scoop Enloe; thence with Enloe's line to the line of Thomas's mill-tract; thence with the line of said mill-tract and with the line of an entry known as Thomas's five-hundred-acre entry, and leaving the same outside, to the line of J. B. Sherrell; thence with his line to the line of a tract conveyed to Flying Squirrel by J. W. King; thence with the line of that tract, and so run as to include it, to the line of the Thompson Carter tract; thence with that tract, and so run as to include it, to the top of the ridge which makes the water-shed between Soco Creek and Shoal Creek; thence with the said water-shed to the south corner of the Cathcart survey; thence with the line of that survey to the beginning, at the head of Jonathan's Creek.

3. That within the said Qualla Boundary so as aforesaid purchased for the tribe as a community, the said Thomas, at divers times, sold and conveyed by deed several tracts of land to the following individual Indians, to wit: To Enola, (or Black Fox,) 40 acres; to One-tab, 33 acres; to Standing Wolf and children, 256 acres; to Catalska, three tracts, making together 110 acres; to Charlie Hornbuckle's heirs, 100 acres; to Sa-lo-lu-netah, (or Young Squirrel,) 53 acres; to Nellie Johnson, 200 acres; and to Jinney Reed, 200 acres, and received from them, respectively, the purchase-money; the locations and boundaries of which said tracts fully appear from the accompanying deeds to the said parties from said Thomas; and also that the said Thomas, at divers times, contracted in writing to sell several other tracts within said Qualla Boundary to the following individual Indians, to wit: To Chu-lo-gu-lah, (or Cloud,) 50 acres; Wilson Oocummah, two tracts, one of 20 acres and the other known as the Cayuatago tract; to the heirs of

Jeff. Hornbuckle, 200 acres; to Sawnooka, the lands surveyed by Dills, being a part of the Holland's old field; to Ben. Quain, 50 acres, where he lives; to the heirs of Long Blanket, the place where they live; to the heirs of Little Witch, the place where they live; to Wilson Wolf, the mill-tract purchased of Abraham Mingus; to Ta-a-kah, the tract known as the Thompson place; to Wilson Reed, 125 acres, surveyed to him by Terrell; to Standing Water, the place where he now lives; to Ta-ya-hah, a part of the Holland's old field; to Tah-gul-se-nah, the place now occupied by him; and received from them, respectively, in whole or in part, the purchase-money, the location of which said tracts, so contracted to be sold, will appear by the several accompanying titles, bonds, and other memoranda from said Thomas to said Indians. We do, therefore, award that the general boundary, known as the Qualla Boundary, and above described, belongs to, and shall be held by, the Eastern Band of Cherokee Indians, living in the State of North Carolina, as a tribe or community, and whether living at this time at Qualla or elsewhere in the State; and that the individual Indians above named as holding under said Thomas, either by deed or contract, shall hold and possess their several tracts as their separate property, with the quality of being inheritable, but without the power of alienation except from one Indian to another, and then only with the assent of their council. All the above, however, to be subject to the payment of a sum of money to William Johnston, as hereinafter provided.

4. We find that the wife and children of an Indian named Little John have a deed to a tract of land situated on the south side of Tuckaseegee River, and outside of said Qualla Boundary, for 173 acres, on which they now live, and we award that the same is a good title as against all parties and privies to these suits. We further find that the said wife and children of the said Little John have a title-bond from said Wm. H. Thomas for 100 acres of land, to be curved off from a tract of land adjoining the lands last spoken of, so as to embrace 100 acres of land on both sides of the Skeekee's Branch, and that they have paid for the same in full. Also, that the heirs of Will-gees-ka have a title-bond from Wm. H. Thomas for the tract of land on which they live, adjoining the above lands of the Little John's, and on the south side of said Tuckaseegee River, for which they have paid in full. We do, therefore, award that the said defendants, Thomas and Johnson, do lay off and convey to the said wife and children of the said Little John the said 100 acres to embrace both sides of said Skeekee's Branch; and also that they convey unto the said heirs of Will-gees-ka the land on which they live.

5. We find that at one time it was contemplated between said Thomas and the Indians residing in the region described in the pleadings as Cheoih, to make a similar purchase of a general boundary of land in that section of the State, and that there was a written agreement to that effect between them; but afterward the Indians declined to furnish, and did not furnish, the funds necessary to make such purchase; and we therefore award that the said agreement between them and Thomas to make such purchase was abandoned; and that in lieu thereof the following individual Indians made separate purchases from Thomas and others, and have deeds or other sufficient title therefor, to wit:

Sakah, 100 acres in district No. 9, section 589.

Corn-silk, 100 acres in district No. 9, section 347.

Corn-silk, 100 acres in district No. 10, section 374.

Chick-a-lilla, 100 acres in district No. 9, section 363.

Chick-a-lilla, 48 acres in district No. 9, adjoining section 363.

Walla-na-kah, 100 acres in district No. 10, section 552.

Ches-que-ne-tah, (or Young Bird,) son of Ty-al-ta, 100 acres in district No. 9, section 364.

Tom Big-meat, 100 acres in district No. 9, section 359.

Tom Big-meat, 90½ acres in district No. 9, section 360.

Con-na-see-nah, 100 acres in district No. 10, section 386.

And these having all paid the purchase-money in full, we do award that they hold and have title in fee as against said Thomas and Johnson, and all other parties and privies to these suits.

We find further that the following Indians and persons of Indian blood have written contracts for title to lands in Cheoih from Wm. H. Thomas, and are entitled to specific execution thereof, they having paid the purchase-money in full therefor, to wit:

Ka-yu-kah, (or Ground Squirrel,) for 288 acres in district No. 10, section 23, Cherokee County.

James Taylor, district No. 7, in Cherokee County, Nos. 19, 21, and 27.

That the following have contracts in writing for the purchase of lands, and are entitled to specific performance thereof whenever they shall make full payments of the purchase-money, to wit:

Dick-a-gees-ku's heirs, for 100 acres in district No. 9, section 367.

Oo-tal-ka-nah, 100 acres in district No. 9, section 373.

Chin-a-que, (or John Owl,) the land whereon he lived in 1855, in Cherokee County, excepting all mineral interests.

Too-way-al-lah, part of No. 12, district No. 10.

Corn-silk, 100 acres in district No. 9, section 588.

Tracking Wolf, district No. 9, section 404.

Richard Henson and others, and their heirs, 210 acres in district No. 5, section 11.

Richard Henson, 157 acres in district No. 5, section 14, with a bounty-claim of 2,700 acres.

Sal-ka-nah and others, 80 acres in district No. 6.

Tes-a-tees-kah, 100 acres in district No. 9.

George Oo-yah-ste-ah, district No. 9, section 365.

Cah-nah-a-to-go and others, district No. 9, section 405.

Cohe-lokshah, 120 acres in district No. 9, section 93.

Too-nah-lu-yah, Chees-que-ne-tah, Te-tal-ka-nah, no districts or section given.

We do, therefore, award that Ka-yu-kah (or Ground Squirrel) and James Taylor have a perfect equitable title in fee to their said sections of land, and that W. H. Thomas and William Johnston do execute deeds to them severally therefor; and as to all the others above mentioned, we award that they have respectively an equity to have title, and that the same be made to them by the said Thomas and Johnston upon the payment of the purchase-money still due from them; and the said Thomas, or Johnston, as the case may be, shall have a right, in default of such payment of the purchase-money, to enforce the same by sale of their lands, respectively, according to law.

6. We find that in the course of the agency and trusteeship of the defendant Thomas for the plaintiffs he received, in the way of payments by the Government, contributions from individual Indians, and from sales of lands, within the said common boundary at Qualla, to individual Indians, large sums of money; that, on the other hand, by reason of the purchase for them of their lands, by his services rendered them in securing their claims, and by his furnishing them, through a long series of years, with clothing, food, farming-tools, and other necessary supplies, they became largely indebted to him; that after adjusting all claims of every kind and description between them, except as hereinafter mentioned, we find that the said Indians owe the said Thomas a balance toward the purchase-money of the said Qualla Boundary of \$18,250; that after the purchase of the said lands by the defendant Johnston, under his executions against the defendant Thomas, the plaintiffs, in pursuance of a contract made with the said Johnston, for the redemption of said lands, on the 29th day of September, 1869, paid to him, the said Johnston, the sum of \$6,500, which said payment we award that the said Johnston shall apply as a credit on his said judgments against Thomas as money paid by the plaintiffs toward the balance above stated as due from them to Thomas; that the said sum of \$6,500, with interest to this day, amounts to the sum of \$8,486, thus reducing said balance due Thomas to the sum of \$9,764.

7. We find, in the suit at law on the bond of Terrell and his sureties, that the said defendant Terrell paid over to the said defendant Thomas, his bondsman, the sum of \$2,478, which is sought to be recovered in said suit on his bond, relying on him to pay it out to those entitled; and we further find that though such payment to Thomas was not in strict compliance with the conditions of his bond, yet this same being paid to Thomas, to whom the plaintiffs were owing a balance of purchase-money for their lands, and who then had a power of attorney from the plaintiffs authorizing him to receive the same and apply it toward the payment of said purchase-money for their lands, we do therefore award that the said sum, with its interest, this day making \$2,697.89, be deducted from the above balance of \$9,764, thus reducing it to the sum of \$7,066.11; and upon the payment of this last-mentioned sum, to wit, the sum of \$7,066.11, with its interest from this date at the rate of six per cent. per annum, to the said defendant Johnston, and by him to be entered as a credit on his said judgments against Thomas, we do further award that the said plaintiffs shall have a perfect equity to demand and have of him, the said Johnston, a conveyance of the legal title to all the lands embraced within their said Qualla Boundary, the same to be made to them, or to some trustee for them; and until such conveyance be made, the said Johnston, so soon as said balance is paid him, shall, himself, stand seized as a naked trustee of said lands to the use of said plaintiffs; and the said sum of \$2,697.89, so sued for as aforesaid in the action at law, being applied as above set forth on the said balance due for the purchase-money, we do therefore further award that the plaintiffs do recover in the said suit at law the penalty of said Terrell's bond, to be discharged on the payment of a penny and the costs of that action, to be taxed by the clerk.

8. Wishing to secure repose of title to the parties and to end litigation between them, we have taken into consideration all accounts, claims, and demands between the said plaintiffs as a tribe, and each and every member of the tribe, wherever residing in the State of North Carolina, and W. H. Thomas and William Johnston, and either of them, and we do hereby award that all such accounts, claims, and demands are to be treated as concluded and adjusted between them, and in no way collectible and enforceable, save and except as is hereinbefore provided in relation to contracts for

sales of land, and save and except the matters of controversy between the members of the Raper family in regard to their reservation-money. This latter being already the subject of litigation in our State courts, we have not considered, but leave the same to be settled in said State courts.

9. We find that William H. Thomas purchased the Cathcart survey of 33,000 acres, and other adjoining tracts and entries, out of part of which the said Qualla boundary is composed, and that he extinguished the titles of all whites inside of said boundary, with the single exception of that one of Ute Sherrell, and that but few of his title-papers have been registered, and but few of his deeds to, and his written contracts of sale with, said Indians, whether at Qualla or elsewhere, have been registered. We do therefore award that all of said deeds to Thomas, under which the said Indians claim, and all his deeds and written contracts of sale to them or any of them, shall be registered in the proper offices of the State; and to the end that this may be properly attended to by some competent person, we do award that all such deeds and contracts be delivered to W. W. Rollins, one of plaintiff's agents, for registration.

10. In considering the compensation due to the defendant Thomas, as agent of the plaintiffs, we have estimated his fees and commissions only on the moneys heretofore actually paid to the Indians. On these amounts we award that said Thomas shall claim no further compensation, either directly from the Indians or indirectly through the Government. But we further find that by a special contract of November 25, 1860, the said Thomas is entitled to compensation of ten per cent. on all moneys said Indians may receive from lands sold for their benefit west of the Mississippi, mainly secured through his efforts, and which contract it is not intended to impair. We therefore award that the said Thomas be allowed said rate of ten per cent. on all moneys said Indians may hereafter receive from said western land-fund, to be paid when the same is actually realized by the said Indians, and not otherwise.

11. The costs of the suit at law having been hereinbefore disposed of, we award that all the other costs be taxed in the equity case, and be paid one-half by the plaintiffs and the other half by the defendants, W. H. Thomas and William Johnston. We leave the allowance to the arbitrators, and the manner of its payment, to be fixed and provided for by the judge.

All of which is respectfully submitted, under our hands and seals, this 23d day of October, 1874.

(Signed)

RUFUS BARRINGER. [SEAL]
JOHN H. DILLARD. [SEAL]
T. RUFFIN. [SEAL]

In the circuit court of the United States, western district of North Carolina.—May term, 1874.

THE EASTERN BAND OF THE CHEROKEE INDIANS

vs.

W. H. THOMAS, WILLIAM JOHNSTON, AND J. W. TERRILL.

} In equity.

THE EASTERN BAND OF THE CHEROKEE INDIANS

vs.

JAMES W. TERRELL, W. H. THOMAS, WILLIAM JOHNSTON,
A. J. MURRAY, and J. B. ALLISON.

} Suit at law on bond.

The above causes, together with all unsettled matters connected therewith in law and equity between said parties or any of them, as well as any and all unsettled matters between any of said parties and any of the Cherokee Indians residing in North Carolina, growing out of any of the dealings between said Indians, or any of them, and William H. Thomas, acting as their agent or otherwise, especially in relation to their alleged indebtedness to him for services, supplies, &c., and his alleged indebtedness to them on account of the management, disposal, or investment of their funds in his hands as agent or otherwise; and touching all contracts in relation to lands, and for services rendered, or otherwise, for or with them, or otherwise; also all unsettled matters growing out of the agency of James W. Terrell as a disbursing-agent of the Government, as well as all matters of controversy between the said Indians, or any of them, and William Johnston, defendant, touching the right to land purchased by him at execution-sale as the property of William H. Thomas, as well as the contracts of sale of 1869 between him and the said Indians, are referred to the arbitrament and award of John Dillard, esq., of Greensborough, Thomas Ruffin, of Hillsborough, and General Rufus Barringer, of Charlotte, and their award, or that of a majority of them, shall be a rule of court in all matters involved in said suits, and shall be final and forever obligatory between the parties as to all matters herein referred. If either of said arbiters shall not, for any cause, serve, then the other two are authorized to proceed to act, or to select a third person to act with them, and in that case the award of a majority of them shall be conclusive.

EASTERN BAND OF THE CHEROKEES.

This reference is to go into effect when approved by his honor R. P. Dick, judge of this court, the Secretary of the Interior, the Commissioner of Indian Affairs, and the Department of Justice at Washington City.

WM. H. THOMAS,
By JAS. W. TERRELL, *Agent*.
JAS. W. TERRELL.

WM. JOHNSTON.
THE EASTERN BAND OF CHEROKEE INDIANS,
By W. W. ROLLINS, *Agent and Attorney*.

Approved :

N. W. WOODFIN, *Attorney for Wm. H. Thomas*.

Approved :

MARCUS ERWIN, *Asst. U. S. Dist. Attorney*.

Approved :

ROBT. P. DICK, *U. S. District Judge*.

OFFICE OF INDIAN AFFAIRS, June 17, 1874.

Approved :

EDW. P. SMITH, *Commissioner*.

DEPARTMENT OF THE INTERIOR, June 17, 1874.

Approved :

C. DELANO, *Secretary*.

Approved June 17, 1874.

GEO. H. WILLIAMS, *Attorney-General*.

I, E. R. Hampton, clerk of the circuit court for the western district of North Carolina, hereby certify that the foregoing is a true copy of the original paper on file in my office, as witness my hand and the seal of said court this 30th day of June, A. D. 1874.

E. R. HAMPTON,
Clerk,
By R. H. GRESHAM,
Deputy Clerk.

I, E. R. Hampton, clerk of the United States district and circuit courts for the western district of North Carolina, hereby certify that the foregoing is a true copy of the award by the arbitrators, Rufus Barringer, John H. Dillard, and Thomas Ruffin, and accompanying papers, as on file in my office.

As witness my hand and the seal of said circuit court this 23d day of November, A. D. 1874, and in the ninety-ninth year of American Independence.

| SEAL. |

E. R. HAMPTON,
Clerk,
Per R. H. GRESHAM,
Deputy Clerk.