

PETITION
OF
THE DELEGATES OF THE CREEK NATION,

WITH REFERENCE TO

The awards made to those Creeks who enlisted in the Federal Army, loyal refugees and freedmen, asking early action of Congress upon that subject.

[To accompany bill H. R. 3513.]

MARCH 4, 1878.—Referred to the Committee on Indian Affairs.

MARCH 16, 1878.—Recommitted to the Committee on Indian Affairs and ordered to be printed.

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

The undersigned delegates of the Creek Nation are charged by those Creeks who enlisted in the Federal Army, loyal refugees and freedmen, with the duty of presenting and urging upon the attention of Congress the claim of those individuals against the United States, by virtue of an award made to them by a commission composed of the agent of the Creeks and the superintendent of Indian affairs for the Southern superintendency, which award was duly approved by the Commissioner of Indian Affairs and the Secretary of the Interior. To accomplish that object, House bill No. 3513 was introduced in the House of Representatives at our request, and is now before the Committee on Indian Affairs.

A short history of the Creek Nation becomes necessary to show the reasons for their views, to explain their conduct and to show the security they felt in the treaty of 1856, that the legality of the claim shall be beyond controversy, and its equity be startlingly apparent.

While the Creek Nation was in Alabama it was divided into two bands and known as the Upper and Lower Creeks, but better known among the nation as the McIntosh and Ho-po-thle-ya-ho-la bands. In the war of 1814 the McIntosh band joined the forces of the United States, and fought and conquered the Ho-po-thle-ya-ho-la band. At that time our nation was comparatively uncivilized, with no property save ponies and huts. Yet at the conclusion of that war the Congress of the United States paid the individuals of the McIntosh band \$195,000 for the loss of property, which they sustained by reason of their joining the forces of the United States and making war upon the Ho-po-thle-ya-ho-la band; this, too, without any treaty stipulations requiring it. Our nation subsequently removed to their present locality. In the traditionary history of all their councils it is clearly shown that the subject which engaged their attention most was how to obtain guarantees from the United States for protection against domestic violence and aggressions from

other Indians or white men, and to secure indemnity for losses sustained, if any should occur. Their hopes were consummated in the treaty of 1856, by the insertion of article 18 of said treaty, as follows, to wit:

The United States shall protect the Creeks and Seminoles from domestic strife, from hostile invasion, and from aggression from other Indians and white persons not subject to their jurisdiction and laws; and for all injuries resulting from such invasion or aggression, full indemnity is hereby guaranteed to the party or parties injured out of the Treasury of the United States, upon the same principles and according to the same rules which white persons are entitled to indemnity for injuries or aggressions upon them, committed by Indians.

The last clause of this article brings the Indians within the jurisdiction of the act of June 30, 1834, known as the intercourse law. That law provides in substance that where a white person shall have his property stolen or destroyed by an Indian, such white person shall receive full pay therefor out of the annuities of the nation of Indians to which the Indian or Indians belong who stole or destroyed the property; but if they have no annuity, then out of the Treasury of the United States.

If, then, upon this principle and this rule the United States agrees to pay this indemnity to the Creeks and Seminoles, it must be paid out of the Treasury of the United States. Or, if our people are to come under sections 2154 and 2155 of the Revised Statutes (compiled section of act of 1834), still it must be paid out of the Treasury of the United States. For those sections provide in substance, that where a white person shall be convicted of the commission of any offense against an Indian, he shall be sentenced to pay double the value of any property stolen or destroyed; and if the person cannot be convicted the individual Indian whose property has been stolen or destroyed shall receive pay therefor out of the Treasury of the United States. But such individual Indian shall not receive pay for such losses if he or any member of the tribe to which he belongs has committed any act of revenge of which his misfortune was the result. Those Creeks who enlisted in the Federal Army, loyal refugees and freedmen, are clearly entitled to indemnity within the provisions of these sections, for they lost their property mostly by those white persons whose cause they have espoused, as will more clearly appear hereafter, none of the nation having committed any act of hostility against the whites for revenge.

In 1861, contrary to the treaty stipulations, the United States withdrew all protection from the Creeks, and to obtain that protection which the United States had guaranteed, a part of the Creek Nation treated with the so-called Southern Confederacy; and this, too, was the McIntosh band, which in the war of 1814 joined their fortunes with the United States against the Ho-po-thle-ya-ho-la band, while the Ho-po-thle-ya-ho-la band, relying in good faith upon the guarantees of their treaty with the United States, separated from their brothers, leaving homes, property, and country, sought the lines of the Federal Army for that protection which they had failed to receive at home. All the able-bodied men of those who went North joined the Federal Army, leaving the old men, women, and children to be cared for by the agents of the United States.

During the entire war none of the annuities were paid for any purpose designated by treaty, but all their annuities, with those of other Indian nations, were gathered into one vast sum and used for the purpose of feeding and clothing refugees from the Indian country. The Indians were poorly clothed and poorly fed, but contractors and officers fattened upon their distresses. All that was done with reference to the diversion of annuities from 1861 to 1866, inclusive, was done without authority of law or treaty, and had to be remedied by treaty, which was made in 1866. The Creeks had been in their country for a long time,

and in lieu of being uncivilized they were comparatively civilized. They had good houses, large farms inclosed with good fences; they had immense herds of cattle and horses and all the comforts and many of the luxuries of civilized life. They could have gone with the McIntosh band and saved all their property; but they chose obedience to their treaty obligations and loyalty to that government which had guaranteed protection to them and indemnity for all losses of property which they might sustain by so doing. Remembering that the individuals of the McIntosh band were indemnified for their losses when they joined the United States against the Ho-po-thle-ya-ho-la band, when no law or treaty required it, they felt doubly secure when a positive treaty obligated the United States to do for the Ho-po-thle-ya-ho-la band that which they voluntarily did in 1814 for the McIntosh band.

Our houses were burned, our fences destroyed, and our fields laid waste by those who were hostile to us for going North, and our vast herds of cattle and horses were stolen and taken to Kansas and sold to feed the Army of the United States, and to cattle-brokers to speculate upon our misfortunes. So extensive did this matter become that to read the report of Superintendent Sells, made to the Commissioner of Indian Affairs in 1865, you must conclude that in order to be respectable in Kansas in those days men had to steal some Indian cattle. In that report he estimates the value of cattle stolen out of the Indian country and taken to Kansas to be \$4,500,000. With this amount of property stolen (although we know he did not approximate to the value of the property which was taken North), and with the vast sum of annuities which were diverted during the six years, it became necessary that some settlement should be made to prevent this subject being fully investigated. The expedient of a treaty was resorted to, and in 1866 our nation was requested to meet a commission of the United States for the purpose of making a new treaty. Those who had been South had returned; they were the most learned and sagacious in all such matters; they were suspicious of wrong-doing and sensitive for the welfare of the whole nation, but their counsels and protests were unheeded by the commissioners of the United States, while those who had been loyal to their treaty stipulations and had been in the Army of the United States, confiding implicitly in the good faith of the United States, selected three delegates to represent them in the council to make a new treaty—three men, neither of whom could speak one word of English, and for an interpreter a freedman who could neither read nor write. Under these circumstances and with these delegates the treaty of 1866 was made and explained and signed. They forced us to sell nearly one-half of our national domain for less than half per acre than was paid the Cherokees and Osages for land not half as good. When it was discovered a wrong had been committed against the Osages, the whole power of the government was brought into requisition to do them full justice; but not so with the loyal Creek Indians. The \$100,000 to be paid to those who enlisted in the Federal Army, loyal refugees and freedmen, "proportionate to their losses," was explained to them to mean that it was only a payment in part; and the fourth article was explained to them to mean a manner by which their losses could be ascertained, and that they should be paid in full; that the eleventh article provided only a settlement of any controversy which might arise with reference to the annuities which had been diverted, or any kindred national claim; and that section 14 confirmed all their rights under article 18 of the treaty of 1856; under these circumstances they signed that treaty of 1866. Under article 4 of the treaty

of 1866, the United States agent of the nation and the superintendent of Indian affairs for the Southern superintendency made the investigation of the losses of the loyal Creek Indians. Those who had lost filed a statement of the precise property lost and its value, under oath, with these two officers. The amount of claims thus filed amounted to over \$5,000,000, the agent and superintendent acting as a commission on the part of the United States.

After a careful scrutiny of each claim an award was made of the amount due each individual, the aggregate of which was \$1,900,000; these awards were approved by the Commissioner of Indian Affairs and Secretary of the Interior, and are now on file in the Department of the Interior. About 5 per cent. of this amount has been paid, but out of funds belonging to the Creek Nation, instead of out of the Treasury of the United States, as the treaty of 1856 and the law of 30th June, 1834, require.

That the Ho-po-thle-ya-ho la band of the Creek Nation were loyal to the United States is not denied; that they lost \$1,900,000 is the verdict of a commission composed of United States officers, and that verdict is approved by the Commissioner of Indian Affairs and the Secretary of the Interior. The United States owe these individuals that sum of money, or the treaty of 1866 was made to protect the respectable thieves (as Superintendent Sells calls them in his report of 1865), and to leave these Indians in poverty and distress because they were Indians. The young men of the Ho-po-thle-ya-ho-la band joined the Federal Army, not as scouts or Indians, but as soldiers, and did valiant service, many of them giving their lives to the cause. They were swindled out of most of their bounty and first payment of their pension by an agent of the United States, but no reparation is made to the soldier, or widow, or orphan.

This award is in no sense a national claim, but an individual claim of the "party or parties" referred to in article 18 of the treaty of 1856, and there is nothing in the treaty of 1866 with which it conflicts. That their claim is legal there can be no question; that all the equity is with them is beyond the shadow of a doubt. Their poverty in consequence of their losses is more than oppressive; civilization has been retarded for years, and they almost look upon their present condition as a penalty for their loyalty. We represent them without counsel, for they are too poor to employ counsel, and we ask in their behalf your early and favorable action upon the subject. If the sum awarded is too large, give them such a sum as in your judgment is right, and make a final settlement of the whole matter. We beg at your hands action upon this matter now, that the suffering of those who have lost may be relieved, and that the claim may not lie dormant for years until the real sufferers are dead, and the claim will fall into the hands of attorneys, and be largely absorbed by them.

Finally, at the close of the late war and before the treaty of 1866 was made, the United States was obligated by treaty to pay to the "party or parties" whatever they had lost by the "aggression of other Indians and white persons." By the "aggressions of other Indians and white persons" the Ho-po-thle-ya-ho-la band of the Creek Nation lost their houses, their fences, and their farming-implements; by the aggression of white men from Kansas they lost their vast herds of cattle and horses; and the United States had agreed to pay them by article 18 of the treaty of 1856, and in which these Indians felt perfect security. Those individuals of the Ho-po-thle-ya-ho-la band of Indians had a vested right in that contract, which could not have been treated away without their consent or the full payment. The treaty of 1866 does not interfere

with those vested rights, but confirms them. Article 4 of the treaty of 1866 provides a means by which the exact amount each individual had lost could be ascertained and guarantees payment therefor. Article 14 of said treaty confirms the existence of article 18 of the treaty of 1856. Under article 4 of the treaty of 1866, a commission was created to examine the claims and make an award. They did so after a most critical examination, and made an award to each individual, the aggregate of which was \$1,900,000. One hundred thousand dollars has been paid them out of the funds belonging to the nation; there is still due them \$1,800,000, out of the Treasury of the United States.

The United States paid the McIntosh band \$195,000 out of the Treasury for property lost, because of their loyalty in 1814. They had but little property to lose, and the United States were not required by law or treaty to pay them. The United States have paid the Ho-po-thle-yah-la band only \$100,000, and this out of the fund belonging to the Creek Nation, for their loyalty, notwithstanding the fact of a treaty in which it is stipulated that all such loss should be paid out of the Treasury of the United States; the United States have acknowledged that at the lowest possible estimate their losses were \$1,900,000. Is the comparison a fair or just one? We in their behalf ask that it be paid and paid to the individuals who lost, or their legal representatives, a list of whose names is on file in the Department of the Interior, together with the amounts awarded.

That there may be early and favorable action is the prayer of your petitioners.

DAVID M. HODGE,
YAR TEH KA HARJO,
Creek Delegates.