

## OLD SETTLER OR WESTERN CHEROKEE INDIANS.

FEBRUARY 7, 1888.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. COBB, from the Committee on Indian Affairs, submitted the following

### REPORT:

[To accompany bill H. R. 1407.]

*The Committee on Indian Affairs, to whom was referred the bill (H. R. 1407) to authorize the Court of Claims to hear and determine and render final judgment upon the claim of the Old Settler or Western Cherokee Indians, report as follows:*

This claim is of long standing. In 1883 Mr. C. C. Clements, as special agent, appointed by authority of Congress, to investigate the claims made by the Cherokee Indians against the United States, reported to the Department of the Interior that there were due to the Western Cherokees \$421,653.68, exclusive of interest, and this report was indorsed as correct by the Secretary of the Interior.

In 1881 Mr. Logan, from the Senate Committee on Indian Affairs, made an elaborate report on the claim of the Western Cherokees, stating as the result of the investigation of said committee, that a large sum was due them. These reports are contained in Senate Ex. Doc. No. 14 of the first session of the Forty-eighth Congress.

In the second session of the Forty-eighth Congress, the matter of this claim was before the Committee on Indian Affairs of the House of Representatives, and was closely investigated by the present chairman of said committee. In his report Mr. Peel reviews the reports to which reference has been made, and concludes that such claim is not well founded.

When the present bill was referred to this committee, at the present Congress, the opinion of the Commissioner of Indian Affairs was asked. That opinion was transmitted to the committee through the Secretary of the Interior, who says:

The Department concurs in the views of the Commissioner as above set forth.

The following is the letter of the Commissioner:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
Washington, January 23, 1888.

SIR: I am in receipt of a letter from Hon. J. E. Cobb, chairman of a subcommittee of the House Committee on Indian Affairs, dated January 17, 1888, inclosing a copy of a bill (H. R. 1407, Fiftieth Congress, first session) "to authorize Court of Claims to hear, determine, and render final judgment upon the claim of the Old Settler or Western Cherokee Indians," and requesting the opinion of this office on the merits of the same and the propriety of permitting a final judgment, as provided therein.

The purpose of the bill is to refer the claim of said Old Settler or Western Cherokee Indians against the United States for money alleged to be due them under treaty

stipulations to the Court of Claims for adjudication, conferring jurisdiction on said court to try and determine the cause, and to try and determine all questions that may arise therein, on behalf of either party thereto, and render final judgment thereon, with right of appeal by either party to the Supreme Court of the United States.

A history of said claim and the views of this Department thereon will be found in Senate Ex. Doc. No. 60 of the second session of the Forty-seventh Congress.

The case was referred to the Court of Claims by the Senate Committee on Indian Affairs, under the act of Congress approved March 3, 1883 (22 Stats., 485), and the court rendered an alternative opinion and finding of facts therein. (See Congressional Case No. 14, United States Court of Claims.)

Senate bill 428, first session of the Fiftieth Congress, for the same purpose and in all respects similar to House bill, was on January 19, 1888, reported by the Senate Committee on Indian Affairs, with amendments. (See Congressional Record, No. 24, page 592.)

The interests of the Indians as well as those of the Government demand that a final adjudication should be had of this claim, which has been pending so long, and in my opinion jurisdiction should be conferred upon some judicial tribunal to finally and forever settle the matter. I can see no reason why the present bill should not become a law.

Mr. Cobb's letter, with its inclosure, is herewith transmitted.

Very respectfully, your obedient servant,

J. D. C. ATKINS,  
Commissioner.

The SECRETARY OF THE INTERIOR.

It thus appears that there are grave differences of opinion in regard to the merits of the claim between those who have given close study to it, and that it is a matter requiring for its proper solution patience and critical investigation. This investigation requires the construction of the several treaty stipulations made by the United States with these Indians, as well as the scrutinizing and proper adjustment of the accounts between the Government and the Indians, it being urged that errors were heretofore committed by the accounting officers of the Government.

In view of these facts the committee recommend that the bill pass with the following amendment, to be inserted after the word "property" and before the words "and to try," in line 18:

And after deducting all offsets, counter-claims, and deductions of any and every kind and character which should be allowed to the United States under any valid provision or provisions in said treaties and laws contained, or to which the United States may be otherwise entitled, and after fully considering and determining whether or not the said Indians have heretofore adjusted and settled their said claim with the United States, it being the intention of this act to allow the said Court of Claims unrestricted latitude in adjusting and determining the said claim, so that the rights, legal and equitable, both of the United States and of said Indians may be fully considered and determined.

Without intending to express opinion as to the correctness or incorrectness of the said report of Mr. Peel, but that the same may be preserved in connection with said Senate Ex. Doc., the committee ask that the same be printed as exhibit to this report.

[House Report No. 2651, Forty-eighth Congress, second session.]

*The Committee on Indian Affairs, to whom was referred Executive Document No. 14, on the subject of the claim of the "Old Settlers," or Western Cherokees, against the United States, have had the same under consideration, and, after a very careful and thorough investigation of the whole subject, beg leave to submit the following report:*

This claim is founded upon certain alleged errors committed by the accounting officers of the Government in stating the accounts between them and the United States under the treaty of 1835-'36 and 1846, and the different acts of Congress relating thereto, by charging them with the items of removal and subsistence of 18,026 In-

dians, at \$53.33 $\frac{1}{3}$  per head, as stipulated in the fourth article of the treaty of 1846, and in the fifteenth article of the treaty of 1835.

Inasmuch as this claim has been prosecuted against the Government for more than thirty years by claimants, their agents and attorneys, with much zeal and apparent earnestness, and being now quite large, amounting as it does to over \$1,120,000, and having received the approval of several honorable committees of the Senate, and by the special report of the Hon. C. C. Clements, special agent of the United States appointed by the honorable Secretary of the Interior for that purpose, and the separate report of the honorable Commissioner of Indian Affairs himself, which reports are indorsed and approved by the honorable Secretary of the Interior, all of which will more fully appear by reference to Senate Executive Document No. 14, to the first session Forty-eighth Congress, hereinafter set out, it is thought best to give a short history of claimants and their various transactions with the Government, out of which this claim springs. Prior to the treaty of 1817 between themselves and the United States these claimants and the balance of the tribe of Cherokee Indians resided on lands east of the Mississippi River, and were one people. But by the treaty of 1817 claimants sold their interest in said lands to the United States for lands situate between the White and Arkansas Rivers, in the then Territory of Arkansas, and from that time up to the treaty of 1846 were treated with as a separate band of Indians. The Government turned over to them their part of the whole Cherokee annuity, reckoning them as one-third of the whole tribe, and removed them to their new homes in Arkansas (see Revision Indian Treaties, page 45); the balance of the tribe remained east of the river. Claimants remained on their new homes in Arkansas until 1828, when by treaty of that date they sold the same to the United States for \$50,000 and various articles of personal property and a joint interest or interest in common with the balance of their tribe who were still east of the Mississippi to the country west, where they now reside. (See Revision Indian Treaties, page 56.) The Eastern Cherokees that remained east of the river finally became desirous of selling to the United States their interest in their lands and possessions occupied by them east, and for the purpose of the purchase the Senate of the United States appropriated \$5,000,000 as the maximum to be paid them for the same, which led to the treaty of 29th December, 1835, between them and the United States, in which treaty the United States agreed to pay them the five millions appropriated by the Senate for their interest in the lands east of the river, less certain items of expenditures, charges, and investments enumerated in the fifteenth article of said treaty, and by the same treaty sold and conveyed to them an undivided or joint interest with claimants in the same lands described in the treaty of 1828 between claimants and the United States, and agreed to remove them to their new homes west, and subsist them for one year after their arrival there. (See Revision Indian Treaties, pages 65 to 77, inclusive.) But whether the expense of removal and the one year's subsistence of the Eastern Cherokees were to be borne by them or the United States, became a question of dispute, and as that fact is a material one in determining the correctness of this claim, your committee here gives the language of the different articles of the treaty of 1835 touching that matter. The eighth article of that treaty reads as follows:

"ARTICLE 8. The United States also agree and stipulate to remove the Cherokees to their new homes and subsist them one year after their arrival there, and that a sufficient number of steam-boats and baggage-wagons shall be furnished to remove them comfortably, and so as not to endanger their health, and that a physician, well supplied with medicines, shall accompany each detachment of emigrants removed by the Government. Such persons and families, as in the opinion of the emigrating agent, are capable of subsisting and removing themselves, shall be permitted to do so, and they shall be allowed in full of all claims for the same \$20 for each member of their family, and in lieu of their one year's rations they shall be paid the sum of \$33.33, if they prefer it."

This article taken alone would import pecuniary responsibility on the part of the Government, but the fifteenth article of the same treaty reads as follows:

"ARTICLE 15. 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 spoliation, removal, subsistence, 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 fund 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, according to the census just completed, and such Cherokees as have removed West since June, 1833, who are entitled, by the terms of their enrollment and removal, to all the benefits resulting from the final treaty between the United States and the Cherokees East. They shall also be paid for their improvements according to their approved value before their removal, where fraud has not already been shown in their valuation."

The twelfth and thirteenth articles of the treaty of 1835 allowed all individual heads of families who were averse to removing West to remain, and to whom was given a pre-emption right of 160 acres and certain other reservations. The President being opposed to this, and the Cherokees claiming that the expense of their removal West ought not to be deducted from their treaty fund of \$5,000,000, to adjust these differences a supplemental treaty was held, articles 1, 2, and 3 of which are as follows:

"ARTICLE 1. It is therefore agreed that all the pre-emption rights and reservations provided for in articles 12 and 13 shall be and are hereby relinquished and declared void.

"ARTICLE 2. Whereas the Cherokees have supposed that the sum of \$5,000,000, fixed by the Senate in their resolution of \_\_\_\_\_ day of March, 1835, as the value of the Cherokee lands and possessions east of the Mississippi River, was not intended to include the amount which may be required to remove them, nor the value of certain claims which many of their people had against citizens of the United States, which suggestion has been confirmed by the opinion expressed to the War Department and by some of the Senators who voted upon the question; and whereas the President is willing that this subject should be referred to the Senate for their consideration, and if it was not intended by the Senate that the above-mentioned sum of \$5,000,000 should include the objects herein specified, that in that case such further provisions should be made therefor as might appear to the Senate to be just.

"ARTICLE 3. It is therefore agreed that the sum of \$600,000 shall be, and the same is hereby, allowed to the Cherokee people, to include the expense of their removal, and all claims of every nature and description against the Government of the United States not herein otherwise expressly provided for, and to be in lieu of the said reservations and pre-emption, and of the sum of \$300,000 for spoiliations described in the 1st article of the above-mentioned treaty. This sum of \$600,000 shall be applied and distributed agreeably to the provisions of the said treaty, and any surplus which remains after removal and payment of the claims so ascertained shall be turned over and belong to the educational fund."

These articles were ratified by the Senate and thereby became a part of the treaty of 1835, and in all future transactions the sum appropriated was added to the \$5,000,000, and the two sums, aggregating \$5,600,000, treated as the treaty fund under the treaty of 1835 and the supplement of 1836. It will be noted that, of the \$600,000 allowed in the supplemental treaty of 1836, \$300,000 was set apart for spoiliations allowed in the first article of the treaty of 1835, which would leave \$300,000 for claims of individual Indians against citizens of the United States and for removal of the Eastern Cherokees to their new homes in the West. Under this arrangement, as will hereafter appear, some 2,495 only removed; the remainder, under the leadership of John Ross, refused to go, ignored the treaty, and declared it a fraud on their nation, and contended that in addition to the entire treaty fund of \$5,600,000, the Government ought to remove them and subsist them for one year after their arrival to their new homes. The only pretext for this strange conclusion is found in a talk made to them by President Jackson before the treaty of 1835, the effect of which was that the Government proposed to remove them to their new homes West, and subsist them for one year after their arrival there. Your committee find, from the history of this long and complicated transaction, that in order to induce the remainder of these Indians to comply with the terms of the treaty of 1835 and remove as agreed, and in order that the Government might keep her counter obligations with Georgia and other States who were interested in their speedy removal, and to avoid the necessity of enforcing the terms of the treaty at the point of the bayonet, the Secretary of War agreed with said Indians that the Government would remove them and subsist them for the one year at the expense of the United States, and for that purpose recommended to Congress that the sum of \$1,047,067 be appropriated for that purpose, which was done on the 12th of June, 1838, with a condition that the recipients were to complete their removal within two years from that date, with a further condition that no part of it was to be deducted from the treaty fund of \$5,600,000. This last allowance was not by treaty. No new treaty was held for that purpose—none proposed; but this was a new independent contract and a new consideration paid by the United States to induce the Eastern Cherokees to remove West, as agreed in the treaty of 1835. Under this new contract the Eastern Cherokees removed to their homes set apart for them in the said treaty of 1835, and reserved for them in the treaty of 1828 with claimants, and upon settlement it was found that the entire expense of removal and the one year's subsistence exceeded the appropriation of \$1,047,067, made by Congress in 1838 for that purpose, in the sum of \$189,422.76, and there being no appropriation for it, or, in other words, the appropriation being exhausted, this amount or excess of \$189,422.76 was deducted by the accounting officers of the Government from their treaty fund of \$5,600,000, and against that the Indians protested.

After the removal of the Eastern Cherokees west, the "Old Settlers, or Western Cherokees," the claimants herein, became very much dissatisfied at finding their tribal government entirely supplanted by their more numerous allies of the East, and seri-

ous trouble grew up between these two factions, the "Old Settlers, or Western Cherokees," contending that if they were compelled, under the treaties, to surrender to their brethren a common and joint interest with themselves to all the country west, that in turn they should share equally with them in the proceeds of the lands east. And inasmuch as the Eastern faction still claimed from the Government the \$159,422.76, the amount deducted from their treaty fund, it being the difference between the appropriation of \$1,047,067 for removal and subsistence and the actual expense for the same, and in order to settle all these conflicting interests between the United States and these Indians and between the Indians themselves, the treaty of 1846 was held, in which all parties were represented by their respective delegates. And by that treaty, in order to satisfy the "Old Settlers, or Western Cherokees," the claimants, as your committee believe, the United States agreed to allow them an amount equal to one-third of the treaty fund stipulated in the treaty of 1835 and the third article of the supplement of 1836 with the Eastern Cherokees, being \$5,600,000. After certain expenditures, charges, and investments should be deducted, which expenditures, charges, and investments were particularly enumerated in the fifteenth article of the said treaty of 1835, this rule of settlement with claimants is laid down in the fourth article of the said treaty of 1846, while the rule or basis of settlement of the claim of the Eastern Cherokees in regard to subsistence and removal is contained in the ninth article of that treaty, which is as follows:

"ARTICLE 9. The United States agree to make a fair and just settlement of all moneys due the Cherokees and subject to the per capita division under the treaty of 29th December, 1835, which said settlement shall exhibit all moneys properly expended under said treaty, and shall embrace all sums paid for improvements, ferries, spoliation, removal, and subsistence, and commutation therefor—debts and claims upon the Cherokee Nation of Indians, for the additional quantity of land ceded to said nation—and the several sums provided in the several articles of the treaty, to be invested in the general funds of the nation, and also all sums which may be hereafter properly allowed and paid under the provisions of the treaty of 1835. The aggregate of which said several sums shall be deducted from the sum of \$6,647,067, and the balance thus found to be due shall be paid over per capita, in equal amounts, to all of those individuals, heads of families, or their legal representatives, entitled to receive the same under the treaty of 1835 and the supplement of 1836, being all those Cherokees residing east at the date of said treaty and the supplement thereto."

And the rule or basis of settlement of the claim of that part of the Cherokees denominated "Old Settlers, or Western Cherokees," is contained, as heretofore shown, in the fourth article of the treaty of 1846, which is as follows:

"ARTICLE 4. And whereas it has been decided by the board of commissioners recently appointed by the President of the United States to examine and adjust the claims and difficulties existing against and between the Cherokee people and the United States, as well as between the Cherokees themselves, that under the provisions of the treaty of 1828, as well as in conformity with the general policy of the United States in relation to the Indian tribes, and the Cherokee Nation in particular, that that portion of the Cherokee people known as the 'Old Settlers, or Western Cherokees,' had no exclusive title to the territory ceded in that treaty, but that the same was intended for the use of, and to be the home for, the whole nation, including as well that portion then east as that portion then west of the Mississippi; and whereas the said board of commissioners further decided that, inasmuch as the territory before mentioned became the common property of the whole Cherokee Nation by operation of the treaty of 1828, the Cherokees then west of the Mississippi, by the equitable operation of the same treaty, acquired a common interest in the lands occupied by the Cherokees east of the Mississippi as well as in those occupied by themselves west of that river, which interest should have been provided for in the treaty of 1835, but which was not, except in so far as they, as a constituent portion of the nation, retained in proportion to their numbers a common interest in the country west of the Mississippi and in the general funds of the nation; and therefore they have an equitable claim upon the United States for the value of that interest, whatever it may be. Now, in order to ascertain the value of that interest, it is agreed that the following principle shall be adopted, to wit: All the investments and expenditures which are properly chargeable upon the sums granted in the treaty of 1835, amounting in the whole to \$5,600,000 (which investments and expenditures are particularly enumerated in the fifteenth article of the treaty of 1835), to be first deducted from said aggregate sum, thus ascertaining the residuum or amount which would, under such marshaling of accounts, be left for per capita distribution among the Cherokees emigrating under the treaty of 1835, excluding all extravagant and improper expenditures, and then allow to the 'Old Settlers' or 'Western Cherokees' a sum equal to one-third part of said residuum, to be distributed per capita to each individual party of 'Old Settlers' or 'Western Cherokees.'

"It is further agreed that, so far as the Western Cherokees are concerned, in estimating the expense of removal and subsistence of an Eastern Cherokee, to be charged

to the aggregate fund of \$5,600,000 above mentioned, the sums for removal and subsistence stipulated in the eighth article of the treaty of 1835, as commutation money in those cases in which the parties entitled to it removed themselves shall be adopted. And as it affects the settlement with the Western Cherokees, there shall be no deduction from the fund before mentioned in consideration of any payments which hereafter may be made out of said fund; and it is hereby further understood and agreed that the principle above defined shall embrace all those Cherokees west of the Mississippi who emigrated prior to the treaty of 1835."

From the treaty of 1846 your committee find that the question in dispute between the Eastern faction of Cherokees and the United States was the balance of the expense of removal and subsistence, being the \$189,422.76 that was deducted from their treaty fund, and the question of interest, which was by the eleventh article of that treaty referred to the Senate of the United States as umpire, which article of said treaty is as follows:

"ARTICLE 11. Whereas the Cherokee delegations contend that the amount expended for the one year's subsistence after their arrival in the West of the Eastern Cherokees is not properly chargeable to the treaty fund, it is hereby agreed that that question shall be submitted to the Senate of the United States for its decision, which shall decide whether the subsistence shall be borne by the United States or the Cherokee funds; and if by the Cherokees, then to say whether the subsistence shall be charged at a greater rate than \$33.33 per head. And also the question whether the Cherokee Nation shall be allowed interest on whatever sum may be found to be due the nation and from what date and at what rate per annum."

For fear of being misled at the language of the eleventh article, at the commencement, which is as follows: "Whereas the Cherokee delegations contend that the amount expended for the one year's subsistence after their arrival in the West of the Eastern Cherokees is not properly chargeable to the treaty fund," etc., as "delegations" is in the plural, thereby designating more than one delegation, it might be supposed that both claimants and the delegates of the Eastern Cherokees were thereby necessarily included; but upon examination of the caption and preamble of the treaty of 1846 it will be seen that the Cherokees had three separate delegations in that treaty. One set of delegates represented the party denominated the Cherokee Nation party, one the Treaty party, and the other the "Old Settlers" or "Western Cherokees." (See Revision Indian Treaties, page 79.)

Those questions were by the Senate submitted to the Second Auditor of the Treasury and the Second Comptroller of the Treasury, not only because they were the proper accounting officers of the Government, but because one of them was a delegate on the part of the United States that concluded the treaty of 1846, and was supposed to be familiar with its provisions and the intention of the contracting parties; and upon their report to the first session of the Thirty-first Congress, in 1850, only four years after the treaty of 1846, the Committee on Indian Affairs, by the Hon. William K. Sebastian, of Arkansas, reported the following resolutions, to wit:

"Resolved by the Senate of the United States, That the Cherokee Nation of Indians are entitled to the sum of \$189,422.76 for subsistence, being the difference between the amount allowed by the act of June 12, 1838, and the amount actually paid and expended by the United States, and which excess was improperly charged to the treaty fund in the report of the accounting officers of the Treasury.

"Resolved, That it is the sense of the Senate that interest at the rate of 5 per cent. per annum be allowed upon the sums found due the Eastern and Western Cherokees, respectively, from the 12th day of June, 1838, until paid."

Which resolutions were by the Senate adopted. And upon the adoption of the above resolutions said committee stated the account of the Eastern Cherokees as provided and defined in the ninth article of the treaty of 1846, by deducting all the charges and expenditures enumerated in fifteenth article of the treaty of 1835, except the item of removal and subsistence from the maximum, to wit, \$6,647,067, from which it will be seen that the above sum was relieved from the charge of \$189,422.76, it being the excess or the difference between the appropriation of \$1,047,067, made June 12, 1838, for removal and subsistence of the Eastern Cherokees, and the amount actually expended by the United States for that purpose; in short, by the contract of the Secretary of War with John Ross, the leader of the Eastern Cherokees, or Treaty party, and the appropriation made by Congress June 12, 1838, pursuant to said contract, and the resolution adopted by the Senate during first session Thirty-first Congress, heretofore cited, the treaty fund was relieved of the entire charge and expense of removal and the one year's subsistence, at least so far as the Eastern Cherokees were concerned.

Now, the question is, was the treaty fund (the \$5,600,000) as to claimants (the "Old Settlers or Western Cherokees") also relieved of that charge, or was the items of removal and subsistence still a proper charge against their fund, as stipulated in the fourth article of the treaty of 1846. This is the real issue and the question to determine. In their protest, hereinafter set out, they admit that was it not for the con-

tract made by the Secretary of War with John Ross and others, leaders of the Eastern part of the Cherokees that refused under their leadership to remove under the treaty of 1835, and the supplement of 1836, to remove and subsist them for one year at the expense of the Government, and the act of Congress of June 12, 1838, pursuant to said contract, appropriating \$1,047,067 for that purpose, and the action of the Senate, as umpire under the eleventh article of the treaty of 1846, to same effect, that it would have been a proper charge against their fund, but claim that the relief given the Eastern Cherokees by those acts inured to them as well, and thereby their treaty fund was relieved of that charge also, and that the accounting officers of the Government committed an error against them by charging them with it according to the rule laid down in the fourth article of the treaty of 1846. Your committee, however, after a very careful and thorough examination of this whole subject, involving, as it does, the construction of the treaties of 1817, 1828, and 1833 with claimants, and the treaties of 1835 and 1836 with the Eastern Cherokees, the contract of the Secretary of War with them, the various acts of Congress relating thereto, the treaty of 1846 with claimants and the Eastern Cherokees, and the resolution of the Senate at the first session of the Thirty-first Congress as umpire, and the report of Senate Committee on Indian Affairs made thereon, are decidedly of the opinion that the relief given by the contract of Secretary of War and the acts of Congress in regard to the charge and expense of removal and one year's subsistence only applied to the Eastern Cherokees, and did not inure to the benefit of claimants, as by them alleged. And that expense was properly charged up against claimants by the accounting officers of the Government, as appears on the face of the account stated between them and the United States, which account was made up by the accounting officers of the Government and ratified by the Senate of the United States at the first session of the Thirty-first Congress (see Appendix to Congressional Globe, first session Thirty-first Congress, page 1335), while sitting as umpire under the eleventh article of the treaty of 1846, which account is as follows:

Treaty fund, \$5,600,000; from which are to be deducted, under the treaty of 1846 (fourth article), the sums enumerated under the fifteenth article of the treaty of 1835, which will, according to the accounting officers, stand thus:

For improvements, \$1,540,572.27; for ferries, \$159,572.12; for spoiliations, \$264,894.09; for removal and subsistence of 18,026 Indians, at \$53.33½ per head, \$961,386.66.

For debts and claims upon the Cherokee Nation, to wit:

National debt (tenth article), \$18,062.06; claims, United States citizens (tenth article), \$61,073.39; Cherokee committee (twelfth article), \$22,212.76; amount allowed United States for additional land ceded by the United States, \$500,000; amount invested in general fund of the Nation, \$500,830.10; making in the aggregate the sum of \$4,028,653.45, which, being deducted from the treaty fund of \$5,600,000, leaves the residue as contemplated in the fourth article of the treaty of 1846, \$1,571,346.55, of which amount one-third part is to be allowed the Old Settlers Cherokees for their interest in the Cherokee country east, being the sum of \$532,896.90, with interest at 5 per cent. per annum from June 12, 1838, \$354,583.25, aggregating to amount due Old Settlers, \$887,480.15, which amount was appropriated by Congress by act approved September 30, 1850, and was paid over to John Drennen, as superintendent of Indian affairs, to be distributed to the "Old Settlers," or "Western Cherokees," per capita. The act also provided that said amount was to be paid to them, upon condition each Indian for himself executed a receipt acknowledging that the amount received was in full of all demands under the fourth article of the treaty of 1846 against the United States; and under this act, on the 22d September, 1851, said Cherokees received per capita the amount of said appropriation, and executed, respectively, receipts according to the terms of said act, but at same time executed and filed their written protest with the said Drennen, as superintendent of Indian affairs, as aforesaid, which protest is now on file with the Secretary of the Interior, a copy of which is here inserted as a part of this report:

PROTEST AND APPEAL OF THE OLD SETTLERS, OR WESTERN CHEROKEES, TO THE GOVERNMENT OF THE UNITED STATES UPON THE OCCASION OF THEIR RECEIVING THE PER CAPITA MONEY ACCRUING UNDER THE TREATY OF AUGUST, 1846.

FORT GIBSON, CHEROKEE NATION, *September 22, 1851.*

The undersigned, being that portion of the Cherokee Nation heretofore designated Old Settlers, or Western Cherokees, and registered as such by the committee appointed for the purpose of taking the census, under the provisions of the fifth article of the treaty of August 6, 1846 (concluded between the United States and the Cherokees), having been publicly notified to assemble on this 22d day of September, 1851, by Col. John Drennen, superintendent of Indian affairs, for the purpose of receiving their per capita or head-right money accruing under the stipulations of said treaty, respectfully submit the following:

The Old Settler recipients thus assembled are required, before receiving their per capita money, to execute a receipt, acknowledging the sum paid to them now by the

superintendent "to be in full discharge of all claims they have against the United States." The superintendent is required to demand this receipt, by his instructions from the Department of Indian Affairs at Washington City, dated October 16, 1850, which are based upon the act of Congress making the appropriation to carry into effect the treaty of August 6, 1846, and which contains the following proviso, viz:

"Provided, also, That the Indians who shall receive the said money shall first respectively sign a receipt or release, acknowledging the same to be in full of all demands, under the fourth article of said treaty."

It is a fact universally admitted by those acquainted with the affairs of the Old Settler Cherokees that their condition has been a deplorable one. They were much impoverished by the circumstances connected with the loss of their country and their government, under the operation of the treaty of 1835, forced upon the Eastern Cherokees by the strong arm of the Government of the United States; and at the period they commenced the prosecution of their claims for the value of the country of which they were thus dispossessed they were entirely destitute of means. This truth is made manifest by the proceedings of the first convention, held in the forks of the Verdigris, on the 16th day of April, 1842, and it is well known that they have not since that time obtained any pecuniary aid from the Government of the United States to relieve them from their embarrassments. Although by the treaty of August 6, 1846, they were declared by the commissioners on behalf of the United States to have been the one-third owners of the country ceded to the United States by the New Echota treaty of December, 1835, and entitled to all the personal benefits accruing under that treaty, yet the money they are now about to receive is the first that has been paid to them on any account whatever, under its provisions. They were debarred from all participation in the benefits it conferred by the fifteenth article, which excludes all those Cherokees who had removed west anterior to the month of June, 1833. Thus after a lapse of nearly eleven years (passing between the date of the treaty of 1835 and the treaty of 1846), when nearly \$6,600,000 appropriated to carry that treaty into effect, had been expended, they are told for the first time that a portion of that money belonged to them, and that an error was committed in not embracing them within the provisions of the treaty.

Under these circumstances, urged by stern necessity which presses heavily upon them, they have mutually agreed to receive the amount appropriated for their benefit by the act of Congress approved September 30, 1850, and execute the receipt or release required by the proviso contained in said act. In doing so, however, they unite in most solemnly protesting against being thus arbitrarily and summarily deprived of the right to present a claim for a larger amount than has been awarded to them under the provisions of the treaty of August, 1846. They, therefore, enter this protest and appeal to the justice of the United States Government, through the superintendent of Indian affairs charged with the payment of their per capita money, for the reasons already assigned taken in connection with the following:

1. By the report of the Committee on Indian Affairs of the Senate of the United States, made by the Hon. William K. Sebastian, on the 8th day of August, 1850, and afterwards (within a short period of the close of the session) adopted by that honorable body, it will be seen that in making up the account of the Old Settler Cherokees, these people are charged for the removal and subsistence of 18,026 Indians, at \$53.33½ per head, \$961,386.66.

2. In the settlement made with the Eastern Cherokees, being those who emigrated under the provisions of the treaty of 1835, the same report puts down the whole amount expended on their account for subsistence alone at \$972,844.78, which included \$172,316.47 expended for the support of destitute Indians, under an order of General Arbuckle. Deduct this last amount from the sum total, and it leaves the net sum of \$800,528.31 paid for subsistence, and charged to aggregate fund. Of this sum (the committee go on to say) the United States provided by the act of June 12, 1838, for \$611,105.55. This, it will be perceived, leaves \$189,422.76, which was charged to the appropriation of \$5,600,000 provided by the treaty of 1835-'36. The committee then recommended that the treaty fund shall be relieved of this charge as being an improper one, in which recommendation the Senate concurred by the adoption of the following resolutions:

*Resolved by the Senate of the United States, as umpire under the treaty of 1846, That under the circumstances the Cherokee Nation are entitled to the sum of \$189,422.76 for subsistence, being the difference between the amount allowed by the act of June 12, 1838, and the amount actually paid and expended by the United States, and which excess was improperly charged to the treaty fund in the report of the accounting officers of the Treasury. Thus it will be seen that the treaty fund, which means the five millions given to the Cherokees as the value of their lands by the treaty of December, 1835, and the \$600,000 allowed for removal and other expenses by the third supplementary article, concluded 1st March, 1836, has been relieved of the whole amount expended on account of subsistence, it being an improper charge.*



3. Now turn to the treaty of 1846, and it will be seen that, by the principle therein adopted, the Old Settlers or Western Cherokees have been relieved from the whole charge made against their funds on account of subsistence by this decision of the Senate. The fourth article of that treaty establishes the rule or principle under which settlement is to be made with the Old Settler Cherokees. The commissioners on behalf of the United States, in that article, declare: "That in order to ascertain the value of their interest, the following principle shall be adopted, viz: all the investments and expenditures which are properly chargeable upon the sums granted by the treaty of 1835, amounting in the whole to \$5,600,000, shall be first deducted from said aggregate sum, thus ascertaining the residue or amount which would, under such marshaling of accounts, be left for per capita distribution among the Cherokees emigrating under the treaty of 1835, excluding all extravagant and improper expenditures, and then allow the Old Settlers, or Western Cherokees, a sum equal to one-third part of said residuum." Here we have the fourth article of the treaty and the resolution of the Senate placed side by side. The first establishes a principle which required it to be ascertained what expenditures made on account of the treaty of 1835 were properly chargeable upon the fund created by that treaty, amounting in the aggregate to \$5,600,000, in a settlement to be made with the Cherokees emigrating under the treaty of 1835. And upon the decision made in conformity with this principle, the claim of the "Old Settlers" must be settled. That decision has been made by the Senate, as shown by the report and resolution cited above, which declares "that no part of the expenditure made on account of the subsistence of the Cherokees," after their removal west under the treaty of 1835, should be charged to the treaty fund of \$5,600,000, but must be paid out of the appropriation of \$1,047,060 by the act of June 12, 1838, and when that appropriation was exhausted, the balance required for the purpose of subsistence must be charged upon the United States.

It must be recollected (and it is a singular feature in the treaty of 1846) that in the settlement to be made with the Western Cherokees, by the fourth article of the treaty, they do not obtain credit for the large appropriation made by the act of June 12, 1838, which, if it had been properly applied, would have relieved the five million fund of all charges which could be properly made against it; yet they are charged with the very expenditures which were paid in full out of that appropriation, in direct violation, too, of the law making it, which provides as follows: "That no part of the said sum of money shall be deducted from the five million of dollars stipulated to be paid to the said tribe of Indians by said treaty."

4. It has thus been conclusively shown that after the statement was made, under the report of the accounting officers of December 3, 1849, and the Old Settlers were charged with the removal and subsistence of 18,026 Indians, the Senate of the United States decided that the subsistence was improperly charged, and in a subsequent appropriation for the Eastern Cherokees, or emigrant party, it has been refunded, and the sum of \$189,422.76, which had been charged to the treaty fund, has been declared to be an "improper" charge, and payment thereof is assumed by the United States. The "Old Settlers," or Western Cherokees are, therefore, entitled to one-third part of the money improperly charged for the subsistence of 18,026 Indians, at \$33.33 $\frac{1}{3}$  per head, which has been deducted from the amount due them in the act of appropriation made for their benefit September 30, 1850. There were some slight alterations made in the statement of accounts after the report of the committee was submitted, but they change the amount very little, and are not worth noting.

5. The amount then due the Old Settlers or Western Cherokees, in accordance with the decision of the Senate, is the one-third part of the charge made against them for the subsistence, one year after removal, of 18,026 Indians, which, at \$33.33 $\frac{1}{3}$  per head, amounts to the sum of \$600,856.66, the one-third part of which is \$200,285.33. This sum, with interest from June 12, 1838, is now due to the Old Settler Cherokees (in addition to the amount appropriated by the act of September 30, 1850) in accordance with the principle established by the Senate of the United States, in the resolution adopted by that honorable body. Here, in one item alone, the Old Settler Cherokees are declared by an act of the United States Government to be entitled in addition to the amount they are now receiving to upwards of \$330,000. It is known to the "Old Settlers" that many honorable members of Congress were aware that this item could have been added to the appropriation of September 30, 1850, and that a favorable report thereon would have been made from the office of Indian Affairs; but that those who represented the Old Settlers with other friends deemed it advisable not to make the effort then to change the statement already made—it being at the close of the session when the least delay or interference might have defeated the appropriation, even under the first statement. The undersigned will close this protest and appeal by a brief reference to the statement exhibited in the report of the Committee of Indian Affairs of the Senate, in the settlement made with the Old Settlers, to show that improper charges besides ("subsistence") were made against them. The statement upon which the Senate based this settlement was made by the accounting officers of

the Treasury. It was embraced in the report of these officers, communicating to the Senate a settlement with the Cherokee Nation, under the ninth article of the treaty of 1846. It made no reference to the fourth article of that treaty, and no settlement has yet been made under the separate construction of the provisions of that article, by any tribunal of the United States Government.

Look, for instance, at the charge made for removal in the settlement made with the Old Settlers. They are charged with the removal of 18,026 Indians under the treaty of 1835. Now, by reference to the census roll taken in the Cherokee Nation in December, 1835, it will be seen that the whole number of Cherokees, including about 400 residing in the State of North Carolina, was 16,743 souls. Here, then, we find that the Old Settlers are actually charged with the removal of 1,283 more persons than lived in the Cherokee Nation, or claimed to belong to it, at the date of the treaty of 1835; and it is well known that between fifteen hundred and two thousand did not emigrate, and now reside in North Carolina and other States. There could not, therefore, have been more than 15,000 souls altogether who ever emigrated or will remove under the treaty of 1835. The number charged for by Mr. Ross, for the emigration under his contract of 1838, on behalf of the nation, is 13,149. Look, then, at the estimate made by the Secretary of War in his letter to Congress dated May 25, 1838. He there estimates for the removal of 15,840 souls, and asks for this purpose, and for subsistence and other objects, an appropriation of upwards of a million of dollars, which was appropriated by the act of June 12, 1838, already quoted. The expense of removal of all the Cherokees was expressly embraced in that estimate and appropriation, and the proviso to the law, which has also been quoted, as expressly declares "that no part of the said sum of money shall be deducted from the \$5,000,000 stipulated to be paid to said tribe of Indians by said treaty." It is strongly impressed upon the minds of the "Old Settlers," therefore, that the deduction made from the amount due them out of the \$5,000,000 appropriated under the treaty of 1835, on account of removal, was improperly made; and that, upon mature consideration, it will be restored by the United States.

The amount which is considered yet due, then, on account of removal, stands thus: For removing 18,026, at \$20 per head, \$360,520; the one-third part of which amount, with interest since June 12, 1838, will be added to the subsistence money, making in the aggregate nearly half a million of dollars yet due to the Old Settler Cherokees on these two items alone. There are numerous other charges made against the Old Settler fund which they deem to be "improper." They are charged with the value of improvements and ferries, paid for, to the Eastern Cherokees, amounting to \$1,700,144.39. For depredations committed upon the property of Eastern Cherokees, the sum of \$266,894.09, and for debts and claims upon the Cherokee Nation East and other expenditures of similar character, the sum of \$101,348.31. All these charges the Old Settlers believe are improperly made against the fund belonging to them. And they entertain the solemn conviction that any impartial tribunal selected and organized by the President and Senate of the United States, who will investigate all the complicated questions arising out of the various treaties with the Cherokees, will so construe the treaty of 1846, taken in its connection with the treaty of 1835-'36, as to relieve the "Old Settlers" from every one of the onerous and improper charges above referred to. The undersigned, therefore, composing the whole population known as "Old Settlers" or "Western Cherokees," citizens of the Cherokee Nation, now submit this protest and humble appeal to you, as superintendent of Indian affairs, to be communicated to the Commissioner of Indian Affairs at Washington for submission to the President of the United States, by the honorable the Secretary of the Interior and to the Senate and House of Representatives. In the plain and homely statements and commentaries submitted by this paper the "Old Settlers" (who have always been the steadfast friends of the United States, giving less trouble to the Government than any tribe of Indians living) beg leave, in conclusion, respectfully to say to the authorities of that Government, which assumes toward them the double character of guardian and trustee, that they appeal not to their pity, to their sympathies, to their magnanimity (although they may be deserving of all these), but they boldly and confidently appeal to the high sense of justice entertained by the representatives of the greatest nation on earth; and they feel confident that they will not appeal in vain.

In presenting this paper, the undersigned make known that the counsel of the "Old Settlers," Samuel C. Stambough, is hereby continued as such, and authorized to appear on their behalf before any tribunal of the United States Government.

With respect and regard, your friends,

[Signatures omitted.]

Col. JOHN DRENNEN,  
*Superintendent Indian Affairs.*

From which it will be seen that they urge that the accounting officers of the United States committed errors against them by improperly charging them with the removal

and subsistence of the 18,026 Eastern Indians, at \$53.33 $\frac{1}{2}$  per head, amounting to \$961,386.66, for the same reasons aforesaid. And from that time up to the present claimants have been prosecuting this claim against the Government upon these alleged errors. And after obtaining several favorable reports from Senate committees for the amount claimed the Senate during the last Congress referred the whole matter to the honorable Secretary of the Interior, with instruction to have the matter fully investigated, the accounts restated, and report the result thereof back to Congress. And for the purpose of making said investigation the honorable Secretary employed Mr. C. C. Clements, who made an exhaustive report, and finds the Government indebted to claimants in the sum of one million one hundred and twenty odd thousand dollars. The honorable Commissioner of Indian Affairs made his separate report to the same effect, both of which were approved by the honorable Secretary himself. All of which appear in said Executive Document No. 14, which is as follows:

[Senate Ex. Doc. No. 14, Forty-eighth Congress, first session.]

*Message from the President of the United States transmitting a communication of the 12th instant from the Secretary of the Interior, submitting report of Commissioner of Indian Affairs of December 8, 1883, on the subject of the "Old Settler" or "Western Cherokees."*

*To the Senate and House of Representatives:*

I transmit herewith a communication of the 12th instant from the Secretary of the Interior, submitting a report of the Commissioner of Indian Affairs of December 8, 1883, and accompanying papers, on the subject of the "Old Settler" or "Western Cherokees."

CHESTER A. ARTHUR.

EXECUTIVE MANSION,  
December 17, 1883.

DEPARTMENT OF THE INTERIOR,  
Washington, December 12, 1883.

SIR: I have the honor to submit herewith a copy of report from the Commissioner of Indian Affairs of the 8th instant, with its inclosures, on the subject of the claim of the "Old Settler" or "Western Cherokees."

By a provision in the sundry civil appropriation act, approved August 7, 1882, the Secretary of the Interior was required to investigate this and other matters relating to the several bands of Cherokee Indians, and report to Congress thereon.

The report (extract herewith) submitting the result of the investigation made upon this subject was submitted to the President by me on the 3d of February, 1883, and by him laid before the Senate. (See S. Ex. Doc. No. 60, Forty-seventh Congress, second session.)

Congress took no definite action on the subject, owing, it is presumed, to the press of other business and the short time remaining before the final adjournment.

I have seen no reason to change the views expressed by me in my former report on the case; and, concurring in those of the Commissioner of Indian Affairs in his report of the 8th instant, above referred to, favoring an early adjustment of the matter, I respectfully recommend that the papers may be presented to the Congress.

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

H. M. TELLER,  
Secretary.

The PRESIDENT.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, December 8, 1883.

SIR: My report of January 31, 1883, and the report of Special Agent Clements, of January 24, 1883, upon the claim of the "Old Settlers" or "Western Cherokees," made in accordance with the act of August 7, 1882 (22 Stat., 328), were submitted by you to the President under date of February 3, 1883, and on the 7th of February the papers were transmitted by the President to Congress, but that body took no definite action looking to the adjustment of the claim, owing, no doubt, to the press of work and the want of time on account of the near approach of the end of the session.

I now have the honor to transmit herewith, in duplicate, the papers above referred to, with the request that the matter be again laid before Congress, with a recommendation for early and favorable action.

This is a matter that has been pending for nearly half a century, and justice to the Indians and good faith on the part of the Government equally demand that it should be finally disposed of one way or the other.

If the claim is a just one, of which I have not the slightest doubt, it should be settled and paid at once; and if it is not, it is equally as important that it should be settled, for then its status will be fixed and the Indians will not be put to the large annual expense of a commissioner, holding councils, etc., to keep it alive.

I trust that Congress will give the claim early consideration.

Very respectfully, your obedient servant,

H. PRICE,  
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,  
Washington, February 3, 1883.

SIR: The Secretary of the Interior is required by an item (copy inclosed) in the sundry civil bill, approved August 7, 1882, to investigate and report to Congress on certain matters relating to the Cherokee Indians.

Mr. C. C. Clements was appointed special agent by this Department to make the investigation required. He has made several reports on the subject, two of which I have the honor to submit herewith, viz:

REPORT No. 3.—This report relates to the claims of the "Old Settler" or "Western Cherokee" Indians against the United States, based upon alleged errors committed by the officers of the Government having charge of and stating the accounts between the "Old Settlers" and the United States in relation to their interest in the proceeds of the sale of the Cherokee lands east of the Mississippi River under the treaty of 1835.

Mr. Clements reports that there is a balance due from the United States to the Old Settler Cherokees amounting to \$421,653.68, together with interest at 5 per centum per annum from September 22, 1851.

This report, No. 3, is intended to take the place of a report on the same subject by Mr. Clements, dated December 12, 1882, which was transmitted by me to the President of the Senate *pro tem.*, December 16, 1882, in compliance with a Senate resolution calling therefor (printed in Ex. Doc. 17, Forty-seventh Congress, second session).

These reports, Nos. 2 and 3, have been carefully examined by the Commissioner of Indian Affairs, who reaches the same conclusions as does Mr. Clements, as shown by the closing statements of his report thereon, dated January 31, 1883, as follows:

"It must be understood that all the figures used in this report are as of the date of the several settlements and for the purpose *only* of determining what amount is due each class of claimants; and after making all deductions for payments properly chargeable to the several funds, and allowing proper credits, it appears that there is due (not including interest) as follows: Cherokees, exclusive of 'Old Settlers,' the sum of \$334,297.75; 'Old Settlers,' \$421,653.68."

I have given these reports such careful examination and consideration as time and opportunity would permit, and am of opinion that they represent fair and just bases of settlement of the claims. The parties interested appear satisfied with the results reported.

I respectfully recommend that the accompanying papers be represented for the consideration of the Congress.

Very respectfully, your obedient servant,

H. M. TELLER, Secretary.

To the PRESIDENT.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, January 31, 1883.

SIR: \* \* \*

REPORT No. 3.—This report is supplemental to, or rather intended to take the place of, Mr. Clements's report of December 12, 1882, upon the claim of the "Old Settlers," or Western Cherokees, against the United States, which claim is based upon alleged errors committed by the officers of the Government having charge of and stating the account between the "Old Settlers" and the United States in relation to

their interest in the proceeds of the sale of the Cherokee lands east of the Mississippi River under the treaty of 1835.

The facts and figures are given in full by Mr. Clements in his report on this subject and his report No. 2, and it is not deemed necessary to restate them here. It is sufficient to say that—

1st. They received credit under the settlement made under the treaty of 1846 for one-third of the fund, and were chargeable with one-third of the items properly chargeable thereto.

2d. Independent of article 4 of the treaty of 1846, the "Old Settlers" were not chargeable with removal out of the \$5,000,000 fund.

3d. Independent of that article, they should not be charged out of the \$5,000,000 with the removal of the Eastern Cherokees for three reasons: (1) the "Old Settlers" removed themselves at their own expense; the Eastern Cherokees were not required to reimburse the "Old Settlers" under the treaty of 1835; and (3) the Government was required to remove the Eastern Cherokees.

4th. They were not properly chargeable with the removal of the Ross party of 13,148, because (1) the United States were to remove them; (2) an appropriation of \$1,047,067 was made for that purpose, and for which the "Old Settlers" received no credit in the settlement under the treaty of 1846.

5th. They, having received credit for their proportion of the \$600,000, under article 3 of the treaty of 1836, were chargeable with their proportion of that fund used for removal, &c., *i. e.* 2,495 Indians, at \$53.33 per head, amounting to \$133,058.35.

6th. The Eastern Cherokees were properly chargeable with the removal of the Ross party, and therefore they received credit for the \$1,047,067 appropriated by the act of June 12, 1838.

7th. In the settlement the \$5,600,000 fund was charged with the removal and subsistence of 18,026 Indians, at \$53.33 $\frac{1}{2}$  per head, amounting to \$961,386.66. The account would therefore stand thus:

ACCOUNT WITH THE WHOLE CHEROKEE PEOPLE.

	Dr.	Cr.
By amount appropriated by act of July 2, 1836, for lands under first article, treaty of 1835 .....		\$5,000,000.00
By amount appropriated under third article treaty 1836, by act of July 2, 1836 .....		600,000.00
By amount erroneously charged for removal of 2,495 [should be 18,026] Indians, at \$53.33 $\frac{1}{2}$ per head .....		961,386.66
To amount paid for improvements .....	\$1,540,572.27	
To amount paid for ferries .....	159,572.12	
To amount paid for spoliations .....	264,894.09	
To removal and subsistence of 18,026 Indians, at \$53.33 $\frac{1}{2}$ per head .....	961,386.66	
To debts, &c .....	101,348.31	
To additional land purchased .....	500,000.00	
To amount invested as a permanent fund .....	500,880.00	
	4,028,653.45	6,561,386.66
Deduct .....		4,028,653.45
Balance due as of date June 12, 1838 .....		2,532,733.21
Of which amount the "Old Settlers" are entitled to one-third .....		844,244.40
"Old Settlers" account .....		844,244.40
To one-third of unexpended balance of \$600,000 appropriated under article 3, treaty 1836, viz, \$39,300 .....	13,100.00	
To one-third of the cost of removing 2,495 Indians, at \$53.33 per head, \$133,058.35 .....	44,352.78	
	57,452.78	844,244.40
Deduct .....		57,452.78
Balance due .....		786,791.62
By interest on balance (\$786,791.62), at 5 per cent., from June 12, 1838, to September 22, 1851 .....		522,342.21
To appropriation by act of September 22, 1851 .....	532,896.90	
To interest allowed under same act .....	354,583.25	
	887,480.15	1,309,133.83
Deduct .....		887,480.15
Balance due "Old Settlers" .....		421,653.68

I may add that in the former report on this subject the investigation was confined to alleged errors committed by the accounting officers of the Government in the matter of calculation.

It seems, however, that in the examination of the claim of the Eastern Cherokees against the United States Mr. Clements concluded that it was not intended by the eighth article of the treaty of 1835 and the supplementary articles thereto, or subsequent Congressional legislation, that the \$5,000,000 fund should be used to defray any expenses for removal and subsistence where made under the supervision and control of the United States, or for any reasonable expenses incurred by the Cherokees in removing themselves. These conclusions necessarily affected his former report, and changed the balance found due the "Old Settlers" under the settlement provided by the fourth article of the treaty of 1846.

It must be understood that all the figures used in this report are as of the date of the several settlements, and for the purpose only of determining what amount is due each class of claimants; and after making all deductions for payments properly chargeable to the several funds, and allowing proper credits, it appears that there is due (not including interest) as follows: Cherokees, exclusive of "Old Settlers," the sum of \$334,297.75; "Old Settlers," \$421,653.68.

Very respectfully, your obedient servant,

H. PRICE,  
*Commissioner.*

HON. SECRETARY OF THE INTERIOR.

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REPORT No. 3.

DEPARTMENT OF THE INTERIOR,  
*Washington, D. C., January 24, 1883.*

SIR: Referring to my report of December 12, 1882, to your Department, upon the claim of the "Old Settler" or Western Cherokee Indians against the United States, the Commissioner of Indian Affairs, in his letter of transmittal of the 14th ultimo, stated, "The subject-matter treated of in this report and the amount found due may be very materially affected and changed when the other three questions connected with this one are examined. Mr. Clements, who makes this report, agrees with me in this. In view of these facts, I think it would be much safer for the Government and more equitable to all parties concerned to delay all Congressional action until all of the questions involved in which the Cherokee people are parties, either as between themselves or the Government, can be examined and reported upon. I therefore recommend that no Congressional action be had until the report is made an entirety upon the question specified in the act of Congress authorizing their settlement, believing that to be the only safe course for the Government to pursue."

Subsequent investigations of other matters of dispute mentioned in his communication proved the wisdom of the Commissioner's recommendation. As stated in my former report, this claim is based upon alleged errors committed by the officers of the Government having charge of and stating the account between the "Old Settlers" and the United States in relation to their interests in the proceeds of the sale of the Cherokee lands east of the Mississippi River, as provided in the treaty of 1835 between the United States and the Cherokee Indians.

By the terms of the fourth article of the treaty of 1846, concluded between the United States and the Cherokee Indians, a basis of settlement of this claim was agreed upon as follows: "All the investments and expenditures which are properly chargeable upon the sums granted in the treaty of 1835, amounting in the whole to \$5,600,000 (which investments and expenditures are particularly enumerated in the fifteenth article of the treaty of 1835), to be first deducted from said aggregate sum, thus ascertaining the residuum or amount which would, under such marshaling of accounts, be left for per capita distribution among the Cherokees emigrating under the treaty of 1835, excluding all extravagant and improper expenditures, and then allow to the 'Old Settlers,' or Western Cherokees, a sum equal to one-third part of said residuum to be distributed per capita to each individual of said party of 'Old Settlers,' or Western Cherokees. It is further agreed that, so far as the Western Cherokees are concerned, in estimating the expense of removal and subsistence of an Eastern Cherokee, to be charged to the aggregate fund of \$5,600,000 above mentioned, the sums for removal and subsistence stipulated in the eighth article of the treaty of 1835, as commutation money in those cases in which the parties entitled to it removed themselves, shall be adopted. And as it affects the settlement with the Western Cherokees, there shall be no deduction from the fund above mentioned in consideration of any payments which may hereafter be made out of said fund; and it is hereby further understood and agreed that the principle above defined shall embrace all those Cherokees west

of the Mississippi who emigrated prior to the treaty of 1835." (Rev. Ind. Treaties, pp. 81-82.)

The investments and expenditures to be deducted from the \$5,600,000 fund, as enumerated in article fifteen of the treaty of 1835, are for improvements, ferries, claims for spoiliations, removal, subsistence, debts, and claims upon the Cherokee Nation, additional quantity of land, goods for the poorer class of Cherokees, and the several sums for the national fund. (*Ib.*, p. 75.)

By the fourth article of the supplementary articles to the treaty of 1835 the \$100,000 appropriated in that treaty for the poorer classes of Cherokees was added to the permanent national fund, thereby increasing it to \$500,000. (*Ib.*, p. 78.)

In the settlement with the "Old Settlers" or Western Cherokees, under the treaty of 1846, the eighth article of the treaty of 1835, to which reference is therein made, fixed the amount for removal and subsistence to be charged to the aggregate fund at \$54.33 per capita. (*Ib.*, p. 70.)

The joint resolution of August 7, 1848, required the accounting officers of the Treasury to make to Congress a just and fair statement of the claims of the Cherokee Nation of Indians according to the principles established by the treaty of August, 1846, between the United States and those Indians. This statement was submitted December 3, 1849 (Senate Ex. Doc. 176, Thirty-first Congress, first session), and was recognized and adopted by Congress in making a final settlement with said nation under the act of February 27, 1851 (9 Stat., p. 572-3), which appropriated the sum of \$724,603.37, with interest, for that purpose. The same statement was also adopted by Congress so far as applicable under the provisions of the fourth article of the treaty of 1846 in effecting a final settlement with the "Old Settlers" under the act of September 30, 1850 (9 Stat., p. 536), appropriating the sum of \$532,896.90, with interest, in payment of their account against the United States. (Rep. 176, Senate Com., Thirty-first Congress, first session.)

In adopting the above statement made by the accounting officers of the Treasury, the "Old Settlers" are charged by the Senate committee "for removal and subsistence of 18,026 Indians, at \$53.33 $\frac{1}{2}$  per head, \$961,386.66." I am satisfied that this is an over-charge. The eighth article of the treaty of 1835 provides that "the United States also agree and stipulate to remove the Cherokees to their new homes and to subsist them one year after their arrival there." (Rev. Ind. Treaties, p. 70.) This language imports pecuniary responsibility on the part of the Government, and, in the talk which was sent by President Jackson to the Cherokees to explain the advantage of that treaty, he mentions that the stipulations offered "provide for the removal, at the expense of the United States, of your whole people, and for their subsistence a year after arrival in their new country." It would seem that the Indians so understood this matter, and that the Senate recognized the fact that all expenses incurred by them, for and on account of removal and subsistence, should be borne by the United States. In support of this proposition, articles 2 and 3 of the supplementary articles to the treaty of 1835 provide that, "Whereas the Cherokee people have supposed that the sum of \$5,000,000, fixed by the Senate in their resolution of — day of March, 1835, as the value of Cherokee lands and possession east of the Mississippi River, was not intended to include the amount which may be required to remove them, nor the value of certain claims which many of their people had against citizens of the United States, which suggestion has been confirmed by the opinion expressed to the War Department by some of the Senators who voted upon the question; and whereas the President is willing that this subject should be referred to the Senate for their consideration, and if it was not intended by the Senate that the above-mentioned sum of \$5,000,000 should include the objects herein specified, that in that case such further provision should be made therefor as might appear to the Senate to be just. It is therefore agreed that the sum of \$600,000 shall be, and the same is hereby, allowed to the Cherokee people to include the expense of their removal and all claims of every nature and description against the Government of the United States not herein otherwise expressly provided for, and to be in lieu of the said reservations and pre-emptions (provided for in articles 12 and 13 of the treaty), and of the sum of \$300,000 for spoiliations described in the first article of the above-mentioned treaty. This sum of \$600,000 shall be applied and distributed agreeably to the provisions of the said treaty, and any surplus which may remain after removal and payment of the claims so ascertained shall be turned over and belong to the education fund." (*Ib.*, p. 78.)

Hon. Casey A. Harris, Commissioner of Indian Affairs, in his letter of July 25, 1836, to the board of commissioners authorized by the seventh article of the treaty to examine and adjudicate Cherokee claims, refers to the above supplementary article as follows: "The sum of \$300,000 is appropriated to pay claims for spoiliations; if they should fall short of this sum, the balance will be applicable to the expenses of removing the Cherokees."

Again, in his letter of January 25, 1838, to Lieutenant Van Horn, disbursing agent for the removal and subsistence of those Indians, the Commissioner says: "The claims for which requisitions have been made by the commissioners amount to \$210,000, and

the remittances which have been made for your use are \$305,000. There will then be a balance of \$90,000, applicable to other objects than the payment for abandoned improvements, &c., and which you will apply to the satisfaction of claims for commutation of subsistence and others of a similar character." (See records Indian Office.)

There is further evidence in support of the proposition that the treaty of 1835-'36 contemplated that the expense of removal and subsistence should be paid by the United States, and that the "Old Settlers" or Western Cherokees, were properly chargeable only with the number actually removed and subsisted out of the \$600,000 allowed by the third supplementary article to the treaty of 1835 for that and other purposes, and to this evidence I will now call your attention.

The treaty of 1835-'36 was finally ratified on the 23d of May, 1836, and by its provisions the Cherokees were required to remove within two years. (Rev. Ind. Treaties, pp. 75, 79.) The time elapsed May 23, 1838. It had been concluded, in defiance of the protest of a large majority, with a small minority of the nation, who saw no other escape from threatened ruin. Within that period those who had favored the treaty had mostly emigrated to the West under its provisions. The large majority of the nation, adopting the counsels of John Ross—a man represented as of unlimited influence among them—had obstinately withstood all the efforts of the Government to induce them to adopt the treaty and emigrate under its provisions. Ross and his party had constantly repudiated its obligations and denounced it as a fraud upon their nation. In the mean time the United States had appointed its agents under the treaty, and collected a large military force to enforce the execution of the treaty. The State of Georgia had adopted a system of hostile legislation, intended to drive them from the country. She had surveyed the country and disposed of the homes of the Cherokees by lottery, dispossessed them of their lands, subjected them to her laws, while she disqualified them to hold any political or civil rights. In this posture of affairs the Cherokees, who had never abandoned the vain hope of remaining in the country, or obtaining better terms from the United States, through John Ross and others, made new proposals to the United States for the sale of their country and emigration to the West. Still pursuing the idea that they were aliens to the treaty of 1835, and unfettered by its provisions, they proposed to release all claim to their country and emigrate for a named sum of money, in connection with other conditions, among which was the stipulation that they should be allowed to take charge of their own emigration, and that the United States should pay the expense of their removal. To avoid the necessity of enforcing the treaty at the point of the bayonet, and to relieve itself of its counter obligations to Georgia by the compact of 1802, and to the Cherokees by the treaties of 1817 and 1819, the proposal was readily acceded to. On the 18th of May, 1838, Mr. Poinsett, then Secretary of War, addressed a reply to the proposals of the Cherokee delegation, in which he says: "If it be desired by the Cherokee Nation that their own agents should have the charge of their emigration, their wishes will be complied with, and instructions be given to the commanding general in the Cherokee country to enter into arrangements with them to that effect. With regard to the expense of this operation, which you ask may be defrayed by the United States, in the opinion of the undersigned the request ought to be granted, and an application for such further sum as may be required for this purpose shall be made to Congress." The application was made, and a resolution of the House of Representatives adopted, inquiring how much would be required for that purpose. The Secretary of War replied to this resolution on the 25th of May, 1838, from which the following is an extract:

"The payment of the expenses of removing the remaining Cherokees, estimated at \$15,840, at 30 a head.....	\$475, 200
"Amount applicable to that purpose.....	39, 300
"Balance to be provided for.....	335, 900

"If it should be deemed proper to make any further provision for the payment of the subsistence of the emigrants for one year after their arrival in the West, it requires, estimating the whole number at 18,332, thereby including those who have already emigrated, and allowing the amount stipulated to be paid by treaty, viz, \$33.33 a head, \$611,105.55."

These estimates, with a message containing the provisional arrangement with John Ross, were communicated to Congress and received its sanction by the act of June 12, 1838, in the following language:

"That the sum of \$1,047,067 be appropriated, out of any money in the Treasury not otherwise appropriated, in full for all objects specified in the third article of the treaty of 1835, between the United States and the Cherokees, and for the further object of aiding in the subsistence of the Indians for one year after their removal West: *Provided*, That no part of the said sum of money shall be deducted from the \$5,000,000 stipulated to be paid to said tribe of Indians by said treaty: *And provided further*, That the said Indians shall receive no benefits from said appropriation unless they shall complete their emigration within such time as the President shall deem reasonable, and without coercion on the part of the Government."



Here was a clear legislative affirmation of the terms offered by the Indians and acceded to by the Secretary of War. It was agreed by the Secretary of War to consider the expenses of removal and subsistence, as intended by the treaty of 1835, to be borne by the United States, and Congress affirmed his act by providing that no part of the \$1,047,067 should be taken from the treaty fund. It was made auxiliary to the \$600,000 provided for in the third supplemental article, a fund for removal and other expenditures independent of the treaty fund and in full of these objects.

It will be observed that the act of June 12, 1838, provides that a part of the sum appropriated was for the "object of aiding in the subsistence of the Indians for one year after their removal West. The actual expense of subsistence was found to be \$800,528.31, being in excess of the estimate on which the appropriation was based of \$189,422.76, and this excess was provided for by the act of September 30, 1850. (9th Stat., p. 556, and Rep. 176, Senate Com., Thirty-first Congress, first session.)

Here, then, was a total allowance and appropriation of \$1,836,489.76, mainly to pay the expenses incurred by the removal and subsistence of the Cherokees.

Notwithstanding the circumstances which surrounded these last appropriations, it is not, perhaps, fair to assume nor reasonable to suppose that in their action Congress was influenced solely by considerations of public policy. It would seem, rather, that they recognized the fact that the Cherokees had some grounds at least for the interpretation of the treaty of 1835, making it obligatory upon the United States to emigrate them to their new homes and subsist them for one year after their removal.

Now, if the Government was bound by the terms of that treaty to remove and subsist these Indians at the expense of the United States, no part of the \$5,000,000 fund was properly chargeable with those expenditures; but the \$600,000 allowed by the third supplementary article to that treaty, appropriated July 2, 1836, the appropriation of \$1,047,067 on July 12, 1838, and the appropriation of \$189,422.76 on September 30, 1850, were alone available for these purposes.

I assume that the "Old Settlers" were properly chargeable with all expenses incurred for removal and subsistence which were paid out of the \$600,000 fund, and for these expenses alone; otherwise they would have been entitled to credit for the subsequent appropriations made to meet those expenditures. The appropriation of \$1,047,067 in June 1838, was for a specific purpose. It was in full for the removal and to aid in the subsistence of the Cherokees then east of the Mississippi. The Cherokees then east were properly chargeable with those expenses, at least to the extent of that appropriation, and therefore in the settlement with them, under the ninth article of the treaty of 1846, they were entitled to credit for that amount. If the "Old Settlers" were to be charged with the removal and subsistence of the Cherokees who emigrated after June 12, 1838, I am unable to understand why they were not also entitled to a credit for the appropriation made for their emigration and subsistence.

To determine, then, the number of Cherokees removed prior to June 12, 1838, under the provisions of the treaty of 1835, is deemed important in arriving at a fair and equitable settlement of the claim of the Western Cherokees, and this has been found exceedingly difficult. According to the estimates made by the Secretary of War in his letter of May 25, 1838, to Congress, the number was about 2,495. On the other hand, the Cherokee census of 1835 shows that the whole number of Indians then east of the Mississippi was about 16,743 (Senate Doc. 120, p. 535, Twenty-fifth Congress, second session). Of this number John Ross removed about 13,149 after June 12, 1838 (Ex. Doc. 65, p. 17, H. R., Thirtieth Congress, first session), and the number then remaining, as shown by the Mullan roll, in the Indian Office, was 1,517. This would make about 2,077 removed prior to the emigration under Ross.

For the purposes of this settlement, I have adopted the estimates of the Secretary of War. The appropriation of June 12, 1838, was based upon these estimates in so far as they related to the number of Indians then to be removed, and it would seem that the conditions were then more favorable for ascertaining the actual population of the nation than when the census was taken.

I am therefore inclined to the opinion that a fair and equitable statement of the "Old Settlers," or Western Cherokee Indians, against the United States would be as follows:

Cr.

By the fund provided by the treaty of 1835-36 .....	\$5,600,000.00
From which are to be deducted, under the fourth article of the treaty of 1846, the sums "properly chargeable" under the fifteenth article of the treaty of 1835, which, according to the report of the accounting officers (except for removal and subsistence), will stand thus:	
For improvements .....	\$1,540,572.27
For ferries .....	159,572.12
For spoliations .....	264,894.09
For removal and subsistence of 2,495 Indians, at \$53.33 a head .....	133,058.35

Debts and claims upon the Cherokee Nation, viz:	
National debts (tenth article) .....	\$13,062.06
Claims of United States citizens (tenth article) .....	61,073.49
Cherokee committee (twelfth article) .....	22,212.76
	\$101,348.31
Amount allowed United States for additional quantity of land ceded .....	500,000.00
Amount invested as general fund of the nation .....	500,880.00
Unexpended balance of the \$600,000 appropriation .....	39,300.00
	\$3,239,625.14
Which, being deducted from the treaty fund of \$5,600,000, leaves the residuum, contemplated by the fourth article of the treaty of 1846, of. 2,360,374.86	
Of which amount one-third is to be allowed to the "Old Settlers," being. 786,791.62	
Together with interest thereon at 5 per cent. per annum from June 12, 1838, to September 22, 1851, when a payment of \$532,896.90, with interest, was made (Cong. Globe, p. 1760, Thirty-first Congress, thirty-first session, and act of September 30, 1850, 9th Stat., p. 556) .....	522,342.21
Deduct above payment, with interest, as credited .....	897,480.15
Balance due the "Old Settlers" .....	451,653.68

Together with interest thereon at 5 per cent. per annum from September 22, 1851, as provided by Senate resolution of September 5, 1850. (Cong. Globe, vol. 21, part 2, p. 1760, 1849-'50.)

Respecting the collection and distribution of the moneys due these Indians, it appears that, acting under the authority of that clause of the second article of the treaty of 1846 which provides that "all party distinctions shall cease, except so far as they may be necessary to carry out this convention or treaty," the "Old Settlers" held a convention or council November 22, 1875, at Tablequah, the capital of the Cherokee Nation, for the consideration and determination of the best course to pursue and means to be adopted by them to secure a fair and just settlement with the United States of all matters under or growing out of said treaties. That convention resolved to prosecute their claim to a speedy, just, and final settlement and payment of what should upon such a settlement be found due from the United States, and to that end appointed three of their own people as commissioners, with full power and authority to represent them in the prosecution of their claim. These commissioners were also authorized to employ such legal assistance as they might deem necessary to a successful prosecution of the claim, and for the purpose of defraying all the expenses of said prosecution the convention or council set apart and appropriated 35 per cent. of whatever sum might thus be recovered or secured to said Indians, "or so much thereof as might be necessary" for that purpose. A duly attested copy of the proceedings of that convention is now on file in this Department.

A similar council of these Indians was held at the same place on April 28, 1877, when J. M. Bryan, esq., one of their commissioners, was appointed their treasurer, and authorized to receive from and receipt to the proper officer or officers of the Government for the 35 per cent. thus set apart for the purposes above stated. This authority, conferred upon Mr. Bryan as their commissioner and treasurer, was reaffirmed and continued by similar councils held at the same place November 20, 1880, November 17, 1881, and October 13, 1882. By the resolutions of their council of November 17, 1881, the objects for which the sum of 35 per cent. was set apart and appropriated by the council of 1875 are specifically enumerated as follows, namely:

"To pay the expenses of the several councils held by their people for the purpose of considering and directing the collection of their claim from 1875 until the same should be collected and final payment and full settlement made with their treasurer; to repay moneys borrowed by the 'Old Settlers' for the purpose of prosecuting their claim; to pay their commissioners for their services and expenses; to pay their treasurer for his services; and to pay attorneys employed by their commissioner and treasurer, according to contracts with them for services actually rendered in the prosecution of their claim."

At the last council held by the Indians, on October 13, 1882, the following resolutions were unanimously adopted, viz:

"Whereas we, the 'Old Settler' or Western Cherokee Indians, have ever since about the year 1851 been appealing either to the Department of the Interior of the United States or Congress, praying for the settlement and payment of our claims arising against the General Government, growing out of the treaties between our people and the United States, and the several acts of Congress in relation thereto: Therefore,

"1st. Be it resolved by the 'Old Settler' or Western Cherokee Indians in general council assembled, That we fully and highly appreciate the action of Congress in inserting a

provision in the bill making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1883, and for other purposes, authorizing and directing the honorable Secretary of the Interior to investigate and report to Congress what, in his opinion, would be an equitable settlement of all matters of dispute between any bands or parts of the Cherokee Indians and the United States arising from or growing out of treaty stipulations or the laws of Congress relating thereto; and that, though our claims have been long deferred, we hereby express our thanks to Congress for thus providing for a just and equitable settlement with us.

"2d. *Be it resolved*, That we respectfully but earnestly request that Congress, in making necessary appropriations to pay whatever amount may be found to be due us as such 'Old Settler' or Western Cherokee Indians upon such investigation and report by the honorable Secretary of the Interior, shall direct the payment of the same to be made in accordance with the resolution for that purpose adopted by the general council of the 'Old Settler' or Western Cherokee Indians on the 22d of November, 1875, and which has been reaffirmed by said Indians by like general councils, held respectively in 1876, 1877, 1879, 1880, 1881, and which we do hereby again reaffirm, and ask that the per cent. therein named be paid to Col. J. M. Bryan, our special commissioner to prosecute our said claims, and our treasurer, to be applied by him as stipulated and provided in said resolution of November 22, 1875, and that the said J. M. Bryan be, and he is hereby, authorized and fully empowered to receive from the proper disbursing officer or officers of the United States the amount of said per cent. upon whatever sum may be allowed said Indians and appropriated by Congress as aforesaid, and to execute a receipt in full therefor to the United States for, and on behalf of, all of said 'Old Settler' or Western Cherokee Indians, and that the balance of such amount so found due, and to be distributed per capita to each and every 'Old Settler' or Western Cherokee Indian, according to the fourth article of the treaty of 1846: *Provided*, That before the said J. M. Bryan, treasurer and commissioner of the 'Old Settler' Cherokees, draws the amount of (35 per cent.) 35 per cent., as above provided, he shall be required to file a bond to the satisfaction of the Secretary of the Interior, conditioned upon disbursing the said money according to the authority granted him by the 'Old Settlers' conventions of 1875 to 1882, inclusive."

Duly certified copies of the proceedings of the several councils, as above mentioned, are now on file in the Interior Department.

Therefore, in view of all the facts stated in this report, I recommend that an appropriation be made to pay the said sum of \$421,653.68, with interest, so found due the "Old Settler" or Western Cherokee Indians, and that the same be paid in accordance with their request, as expressed by them in their several resolutions above mentioned and the fourth article of the treaty of 1846.

Very respectfully,

C. C. CLEMENTS,  
*Special Agent.*

The Hon. SECRETARY OF THE INTERIOR.

From which it will be seen that Mr. Clements gives claimants credit for full amount of treaty fund, \$5,600,000, and only charges them with the removal and subsistence of 2,495 Eastern Cherokees, at \$53.33 $\frac{1}{4}$  per head, amounting to \$133,058.35, being the number of Cherokees emigrating under the treaty of 1835 and the supplement of 1836, and prior to the act of Congress of June 12, 1838, appropriating, pursuant to the contract of the Secretary of War with John Ross, \$1,047,067, for the purpose of removal and subsistence of the remainder of said Indians, assuming that under the eighth article of the treaty of 1835, the Government was bound to remove and subsist all the Eastern Cherokees for one year, and entirely ignores the fifteenth article of said treaty, which expressly says that that expense shall be borne by them. But as the theory urged in the protest for this claim and the theory adopted by Mr. Clements and the honorable Commissioner of Indian Affairs entirely differ, your committee will review them separately; first, the one urged in the protest, and, second, the one adopted by Mr. Clements and the honorable Commissioner.

In answer to the claim under the protest, your committee might urge payment as a bar to a further recovery, because the act of Congress of September 30, 1850, making the appropriation of the amount then found due claimants by the accounting officers of the Government, coupled a condition or proviso to it, as follows:

"Provided, also, that the Indians who shall receive the said money shall first respectively sign a receipt or release, acknowledging the same to be in full of all demands under the fourth article of said treaty [meaning the treaty of 1846]."

This condition or proviso being a part of the act when claimants accepted the money under it, they accepted the conditions also; and as Col. John Dunnen was but a special agent of the Government to make the per capita distribution, upon the conditions or proviso created in the act, he had no other power, and could not bind the Government to further liability by allowing recipients to file protest on receiving their pro rata share of said appropriation. But a generous Government, dealing

with her wards in the double capacity of guardian and trustee, perhaps should waive such legal advantage, provided there was otherwise merit in the claim.

Again, claimants contend that the eleventh article of the treaty of 1846, referring the items of removal and subsistence, the question in dispute between the Eastern Cherokees and the United States, to the Senate as *umpire*, applied to them as well. If so, they are concluded by its decision, because that decision, when made and ratified, became part of the treaty and binding on the contracting parties, and as the Senate, after adopting the resolutions heretofore referred to, proceeded to settle with the two factions of the Cherokees, in which they deduct the items in dispute (removal and subsistence) from the treaty fund of the Eastern Cherokees as heretofore stated, and refused to deduct same items from the treaty fund when settling with claimants, but charged them with it according to the terms of the fourth article of the treaty of 1846. So, if the items of dispute referred to the Senate applied to claimants, their action thereon became a part of the treaty referring it and binding on the contracting parties, and especially so after claimants accepted the proceeds of their finding.

As a third and last reason why this claim ought not to be paid, your committee say that they fail to find in the history of this entire transaction how or where claimants acquired any interest in the lands east of the river ceded to the United States by the Eastern Cherokees in the treaty of 1835, except the interest admitted by the Government in the treaty of 1846. It nowhere appears that at the time the treaty of 1835 was concluded that the "Old Settlers" or "Western Cherokees" (claimants) had any legal or equitable interest in the lands ceded in that treaty. They had by treaty approved December 26, 1817, sold and conveyed all their interest in their lands and improvements east of the Mississippi River to the United States for land west of the river, located between the White and Arkansas Rivers, in the then Territory of Arkansas, and for some other articles of personal property. Under said treaty the United States moved them to their new homes in the West; and in that treaty, both factions participating, the Cherokee annuity was divided between those that remained east and those that removed west, reckoning those going west at one-third of the whole from that time up to the treaty of 1846. These two factions were treated with and regarded as separate bands, wholly distinct from each other. Then, in 1828, claimants sold their Arkansas possessions to the United States for their *proportionate* share as compared with the whole tribe, both east and west, according to numbers, in the lands now occupied by them, and \$50,000 in money and various other articles of personal property, which treaty was concluded between the United States and claimants on the 6th day of May, 1828. (See Revision Indian Treaties, page 56.) Now, if claimants had no interest in the lands and possessions east of the river at the time they were sold to the United States by the Eastern Cherokees under the treaty of 1835, and by the treaty of 1828 only acquired an undivided interest or interest in common with their brethren then east in the lands now occupied by them under that treaty, then they lost nothing by the sale of the lands east, nor by surrendering possession in common to that part of their tribe, emigrating from east to west under the treaty of 1835, to the country west, then occupied exclusively by themselves. Yet the Government, from some reason, admitted, in the fourth article of the treaty of 1846, that by the equitable operation of the treaty of 1828 they acquired a common interest in the lands east, which interest ought to have been provided for in the treaty of 1835, but which was not, and then go on and lay down by the fourth article of that treaty (1846) a rule by which that interest is to be ascertained from these facts, and others gathered from the whole history of this case; it is plainly to be seen that the Government recognized this interest of claimants more from a spirit of generosity, and to appease and quiet them with their eastern allies, than from a sense of legal liability; the primary object of the Government from first to last seemed to be to permanently settle this entire band both east and west in their new Western home, which had been set apart for them in the treaty of 1828, in a peaceable, quiet, and satisfactory manner, and to do that recognized this interest.

And it is furthermore plainly to be seen from the treaty of 1835-'36 and 1846 that the intention of the Government was to place claimants on equal footing with the Eastern Cherokees as to the net proceeds of the sale of the lands east, as stipulated in the treaty of 1835 and the supplement thereto of 1836, treating all subsequent contracts with the Eastern Cherokees in regard to removal and subsistence as independent matter and as a new consideration to induce the Eastern Cherokees to comply with the terms of the treaty of 1835. This could not be otherwise from the fact that when claimants accepted their per capita share of the proceeds of the sale of the lands east they thereby ratified the sale, and in ratifying the sale they necessarily ratified the terms and condition of the sale, and to share equally with their brothers east in the net proceeds of the sale of the lands east is all they could ask, in fact was all they did ask, in the treaty of 1846; and in the fourth article of that treaty they agreed to accept one-third of the proceeds of the sale of said lands after all expenditures, charges, and investments were deducted, which expenditures,

charges, and investments were particularly enumerated in the fifteenth article of the treaty of 1835, which treaty fixed the terms of the sale of the lands by the Eastern Cherokees to the United States.

And by this rule of settlement the Government, as heretofore shown, settled with claimants, and paid them the sum of \$837,480.15, which they received under protest, and for cause of protest claim that in making this settlement the accounting officers committed an error by charging them with the items of removal and the one year's subsistence of the Eastern Cherokees, as heretofore stated; they do not deny but what, under the terms of the treaty of 1835, it would have been a proper charge, but really admit it by insisting that the said treaty fund had been relieved of that charge by virtue of the contract of the Secretary of War with the Eastern Cherokees after the treaty of 1835 was concluded.

And as a further evidence that the new contracts made with the Eastern Cherokees, after the conclusion of the treaty of 1835 and the supplement of 1836, to remove and subsist them for one year at the expense of the Government, does not apply to claimants and inure to their benefit, we have only to look at the terms of the treaty of 1846, keeping in view the antecedent facts. These new contracts that relieved the treaty fund of the item of removal and subsistence as to the Eastern Cherokees were made more than ten years prior to the treaty of 1846, and were well known to the various contracting parties, and if they had intended to give claimants the benefit of those new contracts with the Eastern Cherokees the treaty of 1846, fixing the different rules of settlement with each faction, would have so stated. And your committee respectfully submit, why lay down separate rules of settlement with these two factions in that treaty if the same debits and credits were to be computed with both? And as conclusive proof that claimants were not to be relieved of that item, and that the respective parties to the treaty of 1846 well knew the effect of the new contracts with the Eastern faction and did not intend for it to apply to claimants, they expressly state in the fourth article of the treaty of 1846 that in estimating the expense of removal and subsistence of an Eastern Cherokee, to be charged to the aggregate fund of \$5,600,000 above mentioned, the sum for removal and subsistence stipulated in the eighth article of the treaty of 1835 as commutation money in those cases in which the parties entitled to it removed themselves, shall be adopted, which we find by reference to the said eighth article to be \$53.33½ per head, thereby limiting that item of expense as to claimants to a fixed sum, and was not left open and referred to the Senate as umpire by the eleventh article of that treaty, as claimed by claimants. The said eleventh article on its face shows that this item as to claimants was not referred to the Senate, but that the reference alluded to in said article related solely to the Eastern faction of Cherokees. The following words of said article 11 proves this, to wit:

"Which shall decide whether the subsistence shall be borne by the United States or the Cherokee funds; and if by the Cherokees, then to say whether the subsistence shall be charged at a greater rate than \$33.33 per head."

The above language clearly shows that claimants are not included in the eleventh article. This article, as will be noticed, only referred the item of subsistence to the Senate, it being the only one in dispute between the Government and the Eastern branch of the Cherokees, while the fourth article of same treaty, as heretofore shown, fixes the charge of removal and subsistence as against claimants at \$53.33½ per head. The item of removal was not in dispute between the United States and the Eastern Cherokees. But if there remained the slightest doubt as to the item of removal and subsistence, as specified in the fourth article of the treaty of 1846, being a proper charge as against claimants, the twelfth article of said treaty would place it beyond all question, which article is as follows:

"ARTICLE 12 a. The Western Cherokees, called 'Old Settlers,' in assenting to the general provisions of this treaty in behalf of their people, have expressed their fixed opinion that in making a settlement with them upon the basis herein established the expenses incurred for the removal and subsistence of Cherokees after the 23d day of May, 1838, should not be charged upon the five millions of dollars allowed to the Cherokees for their lands under the treaty of 1835, or on the fund provided for by the third article of the supplement thereto, and that no part of the spoliations, subsistence, or removal, provided for by the several articles of said treaty and the supplement thereto, should be charged against them in their settlement for their interest in the Cherokee country east and west of the Mississippi River. And the delegation of "Old settlers" or Western Cherokees propose that the question shall be submitted, with this treaty, to the decision of the Senate of the United States of what portion, if any, of the expenditure made for removal, subsistence, and spoliations, under the treaty of 1835, is properly and legally chargeable to the five million fund, and they will abide by the decision of the Senate."

Claimants, by agents and attorneys, Messrs. Wilshire and Hurd, claim that this section was not ratified, but was stricken out by the Senate. If so, that only proves the stronger that the charge therein proposed to be submitted was to remain a legal

and proper charge against the treaty fund, as far as claimants were concerned. For the purpose, however, of reaching the interest of the contracting parties it is perfectly immaterial whether it was stricken out by the Senate or not. It shows conclusively and positively that claimants understood and well knew that the items of removal and subsistence of an Eastern Cherokee, at the rate of \$53.33 $\frac{1}{3}$  per head, was to be charged to the treaty fund of \$5,600,000 in making settlement with them for their alleged interest in the proceeds of the lands east of the river ceded to the United States by the Eastern Cherokees, under the treaty of 1835, as enumerated in the fifteenth article of that treaty, and reaffirmed in the fourth article of the treaty of 1846.

The twelfth section proves most conclusively that the question as to the proper or improper charge of the item of removal and subsistence, as to the claimants, was not referred to the Senate, as umpire, by the eleventh article of the treaty of 1846, as claimed by them, and that the eleventh article only referred to the question as the charge of those items to the Senate, as umpire, as between the United States and the Eastern Cherokees, and that the finding of the Senate, as such umpire, in favor of the Eastern Cherokees on those items only effected the settlement with the Eastern Cherokees, and did not inure to claimants, as by them alleged.

Your committee, in answer to the theory adopted by Mr. Clements and the honorable Commissioner of Indian Affairs, beg leave to say, that it will be observed that Mr. Clements and the honorable Commissioner assume and take the high ground that under the treaty of 1835 the expense of removal and subsistence of the Eastern Cherokees were to be borne by the United States, and not to be deducted from the treaty fund of \$5,600,000. This, they say, is so independent of the after contracts and appropriations by Congress, and that inasmuch as claimants were to be paid one-third of the net proceeds of the sale of the lands East, that under the fourth article of the treaty of 1846 the item of removal and subsistence therein mentioned was an improper charge against the treaty fund of \$5,600,000, under the treaty of 1835-'36 and 1846, except as to the 2,495 Indians at \$53.33 $\frac{1}{3}$  per head that emigrated under the treaty of 1835, and prior to the additional appropriation made July 12, 1838; and to sustain this theory they recite and rely solely upon the eighth article of the said treaty of 1835, and ignore the fifteenth article of said treaty. It will be observed from the report of Mr. Clements that in restating the accounts of claimants he gives them credit for the full amount of the \$5,600,000, the treaty fund, and only charges them for the removal and subsistence of the said 2,495 Indians, at \$53.33 $\frac{1}{3}$  per head, amounting to \$133,058.35, instead of the entire Eastern band, amounting to 18,026, at that rate aggregating \$961,386.09.

The honorable Commissioner of Indian Affairs proceeds with his separate report based upon the same theory, the only difference being in the mode or manner of stating the accounts. He first ascertains what amount is due claimants under the rule laid down in the fourth article of the treaty of 1846, omitting any charge for removal and subsistence, and from the amount thus found he deducts one-third of the \$133,058.35 for the removal and subsistence of the 2,495 Indians, at \$53.33 $\frac{1}{3}$  per head, while Mr. Clements deducts the whole amount of \$133,058.35, with all the other charges, from the treaty fund of \$5,600,000, and then takes one-third of the remainder for the amount due claimants. Thereby they both reach the same result, but by different methods of calculation. Now the question is, under the treaty of 1835-'36, was the removal and subsistence of the entire eastern part of the Cherokees to be borne by the United States or by the treaty fund of \$5,600,000. If by the Government, then Mr. Clements and the honorable Commissioner of Indian Affairs are correct, and the United States is indebted to claimants in the amount herein claimed, but if by the treaty fund, the Government does not owe them a cent. As heretofore stated, Mr. Clements and the honorable Commissioner of Indian Affairs rely solely upon the eighth article of the treaty of 1835, which says:

"The United States also agree and stipulate to remove the Cherokees to their new homes, and to subsist them for one year after their arrival there, etc."

As to what party shall bear the expense the eighth article is entirely silent. But the fifteenth article of the same treaty, the one seemingly overlooked by Mr. Clements and the honorable Commissioner, uses this language:

"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, &c."

This article is clear and definite, and not necessarily in conflict with the eighth article of said treaty above cited. They should be construed together, and given such construction as will permit them to both stand. Then it will be seen that under the eighth article of said treaty the Government bound herself to remove and subsist the Cherokees to their new home; that is, furnish the transportation and means of re-

moval, and superintend the same, and after their arrival West to furnish rations for the one year's subsistence. And the fifteenth article expressly says the expense of both shall be borne by the treaty fund and deducted from it, &c.; to maintain this construction your committee call attention to the preamble of the supplement of 1836, which says:

"Whereas the Cherokee people have supposed that the sum of \$5,000,000, fixed by the Senate in their resolution of — day of March, 1835, as the value of the Cherokee lands and possessions east of the Mississippi River, was not intended to include the amount which may be required to remove them, &c."

This shows that the Government understood differently. As further proof that the expense of removal and subsistence was to be borne by the Indians, we find in a letter of the Secretary of War addressed to John Ross and other leading Cherokees of the Eastern band, dated —, 1836, which was after the treaty of 1835 was concluded, the following words:

"The United States having allowed the full consideration for their country nothing further would be allowed for removal and subsistence."

We also find in the report of the Hon. William K. Sebastian, of Arkansas, chairman of the Senate Committee on Indian Affairs, made at the time this question was settled by the Senate as umpire, the following words:

"We have no doubt by a strict construction of the treaty of 1835 the removal and one year's subsistence was a proper charge against the treaty fund."

From these and all the circumstances connected with the history of this long and complicated transaction, your committee are clearly of the opinion that under the treaty of 1835, that the entire expense of removal and subsistence was to be borne by the treaty fund and not by the United States, as assumed by Mr. Clements and the honorable Commissioner of Indian Affairs.

The subsequent contract made with them by the Secretary of War to remove them and subsist them at the expense of the United States, and the appropriation made by Congress June 12, 1838, of \$1,047,067 for that purpose, proves most conclusively that under the treaty of 1835 and 1836 that expense was to be borne by the Indians and deducted from their treaty fund; for, if not so, why make new contracts and appropriations for that purpose? If, as contended by Mr. Clements, that under the treaty of 1835 and 1836 the expense of removal and subsistence of the Eastern Cherokees were to be borne by the Government and not to be deducted from the original treaty fund of \$5,600,000, why the use of making a subsequent new contract for the Government to bear that expense and appropriate the money to carry out the new bargain?

Your committee find that the Hon. John A. Logan, during the last session of the Forty-sixth Congress, from the Senate Committee on Indian Affairs, submitted a very elaborate report upon this claim, in which he assumes that under the treaty of 1828 between claimants and the United States, that claimants acquired an exclusive interest in the territory west, where they now reside, and to sustain this assumption refers to the second article of the said treaty of 1828. In this theory your committee can not agree. For the very preamble of that treaty, as heretofore shown, says to the contrary, in these words:

"Whereas it being the anxious desire of the Government of the United States to secure to the Cherokee Nation of Indians, as well those now living within the limits of the Territory of Arkansas as those of their friends and brothers who reside in States east of the Mississippi, and who may wish to join their brothers of the West, a permanent home, and which shall, under the most solemn guarantee of the United States be theirs forever, &c."

Again, the eighth article of the same treaty says:

"ARTICLE 8. The Cherokee Nation, west of the Mississippi, by this agreement freed themselves from the harassing and ruinous effects consequent upon a location amidst a white population, and secured to themselves and their posterity, under the solemn sanction of the Government of the United States, as contained in this agreement, a large extent of unembarrassed country, and that their brothers yet remaining in the States may be induced to join them and enjoy the repose and blessings of such a state in the future, it is further agreed, upon the part of the United States, to each head of a Cherokee family now residing within the chartered limits of Georgia or of either of the States east of the Mississippi, who may desire to remove west, shall be given on enrolling himself for emigration a good rifle, a blanket, a kettle, &c."

And, again, these claimants, in the fourth article of the treaty of 1846, admit that they did not acquire an exclusive title to the western country in the treaty of 1828, but that said territory was intended in that treaty to be the home of both factions of the Cherokee tribe, both east and west.

The language of that fourth article is as follows:

"That under the provisions of the treaty of 1828, as well as in conformity of the general policy of the United States in relation to the Indian tribes, and the Cherokee Nation in particular, that that portion of the Cherokee people known as the "Old Settlers" or Western Cherokees had no exclusive title to the territory ceded in that

treaty, but the same was intended for the use of, and to be the homes for, the whole nation, including as well that portion then east as that portion then west of the Mississippi, &c."

And your committee find that the Hon. Mr. Cameron, from Wisconsin, at the first session of the Forty-seventh Congress, in making the report of the honorable Senate Committee on Indian Affairs, falls into the same error. Again, your committee find in the two Senate reports above alluded to they place the theory of settlement with claimants under the treaty of 1846 upon the third and fourth articles of that treaty when, in fact, the third article of that treaty has no reference whatever to claimants, but refers to the settlement with the Eastern Cherokees solely, and by confounding the rules of settlement with these separate factions they commit the great error against the Government. The rule of settlement under the treaty of 1846 with the Eastern Cherokees are embraced in the third and ninth articles of that treaty, and with claimants in the fourth and fifth articles of said treaty. (See Revision Indian treaties, page 79.)

Your committee are constrained to say that claimants adopted one theory in their protest to sustain their claim, the two several honorable Senate Committees on Indian Affairs another, while Mr. Clements and the honorable Commissioner of Indian Affairs still another, no two of which are alike; and your committee, with due deference and respect, beg leave to disagree with all, and insist that the construction of the various treaties and acts of Congress relating thereto, adopted by the accounting officers of the Government touching this claim in 1849, and ratified by the Senate in 1850, is the true and correct one. As heretofore shown, this settlement was made when all the various transactions relating thereto were fresh in the minds of those making it, and for that reason entitled to great credit. We believe that the amount of \$887,480.15 then appropriated, and afterwards paid, was all that was due claimants under the said treaties.

Therefore your committee, after a very careful, thorough, and diligent investigation of this long and complicated transaction in all its phases and bearings, with the full appreciation of the long and continuous prosecution of this claim, and the very flattering prospects of success, made so by the numerous indorsements by the highest authorities of this Government in such matters, and with due deference to their opinion, we beg leave to report adverse, and recommend that said claim be rejected.