

IN SENATE OF THE UNITED STATES.

FEBRUARY 19, 1847.

Submitted, and ordered to be printed.

Mr. JARNAGIN made the following

REPORT :

The Committee on Indian Affairs, to whom was referred the memorial of David Vann and William P. Ross, delegates from the Cherokee nation, respectfully report the following facts, which will enable the Senate to decide the various questions upon which the Cherokee delegation and the commissioners appointed to treat with them in July last could not agree, and which, by the terms of the treaty of the 6th of August, 1846, were to be submitted to the arbitrament of the Senate, whose award was to constitute a part of that treaty. The peace and happiness of the Cherokee nation so imperiously demanded the immediate adoption of that treaty, that the Cherokee delegation could not refuse their assent to it—leaving certain questions to the arbitrament of the Senate. Peace and quiet have been restored in the Cherokee country, and it now only remains for the Senate to decide the questions which have been submitted to it, that the account may be finally made up and closed.

The first of these questions is, whether, by the treaty of 29th December, 1835, it was the understanding of the parties that the various sums since charged to the five million fund given by that treaty have been properly so charged. On the 28th February, 1835, a delegation from the Cherokee nation proposed to submit the terms of a treaty to the arbitrament of the Senate of the United States. In considering the subject, the Senate only looked to the value of the lands, and have so said in language the most explicit. The preamble to that treaty recites the submission which had been made to the Senate, and then adds: "and whereas, on such submission, the Senate advised that a sum not exceeding five millions of dollars be paid to the Cherokee Indians for their *lands and possessions east of the Mississippi river.*" The sole consideration for the five millions was "their lands and possessions east of the Mississippi river." If any thing else had been intended to be included, such as claims for spoliations, subsistence, removal, &c., why was it not so stated in the treaty? It is enough to show that it is not so stated; but it is manifest that such was not the intention of the parties; for the amount of these spoliations, the expense of removal, &c., were not then known, and could not have been ascertained; and besides, there were subsisting claims upon the government of the United States, which they were bound by treaty to have paid. Not to pay them, or to pay them out of the funds of the Cherokees which had been fixed by the Senate as the value of their lands, was precisely the same thing.

The United States were bound by the treaty of 1828 to pay the expense of the removal of all the Cherokees. This obligation was not released by the purchase of their lands at their appraised value. Would such a thing be pretended in a similar transaction between individuals? If all the Cherokees had removed before they ceded their lands, the United States were bound to pay the cost of removal. If the United States afterward bought the lands of the Cherokees, they were bound to pay the price at which they were appraised. The first article of the treaty recites that "the Cherokee nation hereby cede to the United States their lands east of the Mississippi river, and hereby release their claims for spoliations of every kind, for and in consideration of \$5,000,000; but as a question has arisen between the commissioners and the Cherokee people whether the Senate, when they advised that a sum not exceeding \$5,000,000 be paid the Cherokee Indians for their lands and possessions east of the Mississippi river, had included or made any allowance for claims for spoliations, it is therefore agreed on the part of the United States that this question shall be submitted to the Senate for their consideration and decision; and if no allowance was made for spoliations, that then an additional sum of \$300,000 be allowed for the same." It will be seen by the above that subsistence and removal were not included in the above article, nor was any question as to either of those items then even thought of. But the only thing pretended to be charged upon this fund was *spoliations*. The Senate decided that the sum of \$5,000,000 was given for the lands alone, and a supplemental article giving \$600,000 was added to pay for spoliations and removal, but still not including subsistence. That sum it was then thought would be sufficient to cover these charges; but it was found that it was not; and the United States, feeling that they were bound to pay these charges, again, in 1838, appropriated \$1,047,000 for these objects. The Cherokee nation does not contend that the treaty fund shall be relieved from the charge for spoliations, but only from the cost of one year's subsistence and removal to the west. Both of these sums, which were added by Congress, were found inadequate to pay these various charges, and the fund of five millions has been used for that purpose and others, to its entire exhaustion, or nearly so. They ask to be relieved from the charges for removal and subsistence. It is very clear that not until after the exhaustion of the \$600,000 and the \$1,047,000 did the officers of the government of the United States ever once think that the \$5,000,000 was liable for these charges. Not one dollar of that fund was ever so used until then. The following communication from the then Secretary of War shows that his understanding was, that this fund was not liable for these charges, or else he would not have made the requisition for the sum of \$1,080,000; that is to say, \$1,047,000 for these purposes, and \$33,000 for annuities. Congress made the appropriation at once, which shows that the opinion of that body was the same. If the five million fund was liable for these charges, how could the Secretary have said that there were no funds to meet them, when there was the five million fund? Why did Congress make this additional appropriation? The only answer which can be given is, that it was considered just under the treaty, as the Senate had said, when the subject was a second time referred to that body for its decision on this specific question, that the treaty fund of five millions was not liable to be charged with these expenses.

[Doc. No. 401, 2d session 25th Congress.]

DEPARTMENT OF WAR, *May 25, 1838.*

SIR: In compliance with the resolution of the House of Representatives of the 23d instant, requiring a statement of the amount that will be required for the additional allowance proposed to be made to the Cherokees, I have the honor to present the following estimate:

The payment of the expenses of removing the remaining Cherokees, estimated at 15,840, at \$30 per head	-	\$475,200 00
Amount applicable to that purpose	- - -	39,300 00
		<hr/>
Balance to be provided for	- - -	435,900 00
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 west, it will require, estimating the whole number at 18,335, there- by including those who have already emigrated, and allowing the amount stipulated, viz: \$33 33 a head	-	611,105 55
Add for contingencies, under estimates both of number to be removed and of expenses to be incurred	- - -	100,000 00
The amount of annuities, payment of which is asked for by the deputation, will be	- - -	33,330 00
		<hr/>
		<u>1,180,335 55</u>

Very respectfully, your most obedient servant,

J. R. POINSETT.

Hon. J. K. POLK,
Speaker House of Representatives.

But this is not all. The question was submitted to the Secretary of War for his decision on this specific point, and he decided that these charges of subsistence and removal were not chargeable to the treaty fund, but to the government of the United States, under the treaty of 1828.

Shortly after the ratification of the treaty of 1835, a question arose as to the allowance of claims for commutation of the year's subsistence, which was referred for decision to the War Department; and the decision was communicated by the Hon. C. A. Harris, Commissioner of Indian Affairs, to B. F. Curry, superintendent of Cherokee removals, in his letter under date of November 18th, 1836, in which he says: "I acknowledge the receipt of your letter of the 26th of October last, and in reply have to observe, that I have taken the decision of the Secretary of War *ad interim* upon the claim of the Cherokees for subsistence at \$33 33 each. The Secretary decides that the commutation may be paid at the rate above stated; but at the same time declares that the allowance is made under the treaty of 1828, and not in pursuance of any stipulations of the final treaty of 1835." (See Senate Doc. No. 120, page 200, 2d session 28th Congress.)

The treaty fund was never touched, nor was it ever pretended that it was liable for these charges, until after the appropriations made for these specific objects had been exhausted. Now it seems very clear that if the government of the United States was liable for these charges when the

additional sum of \$600,000 was given, and then again when the further sum of \$1,047,000 was given, it is equally liable now for whatever may remain of these charges, after both of these sums have been exhausted. The magnitude of the obligation cannot be held to release the party from its fulfilment.

The thirteenth article of the treaty which stipulates, on the part of the United States, to pay for reservations of which the Indians had been deprived, closes with the following words: "It is expressly understood that the amount to be allowed for reservations under this article shall not be deducted out of the consideration money allowed the Cherokees *for their claims for spoliations, and the cession of their lands*; but the same is to be paid for independently by the United States, as it is only a just fulfilment of former treaty stipulations." Here, again, the consideration given is stated. And what is that consideration? Why, *claims for spoliations and the cession of their lands*—not a word said about any thing else; and this because "it is only a just fulfilment of former treaty stipulations." Does not this apply equally to the payment for removal and subsistence? The government was bound to do this by the treaty of 1828, and again by the 8th article of the treaty of 1835:

"ART. 8. The United States *also* agree and stipulate to remove the Cherokees to their new homes in the west, and to subsist them one year after their arrival there, &c., &c. Such persons and families as, in the opinion of the emigrating agent, are capable of removing and subsisting themselves, shall be permitted to do so, and shall be allowed, in full for 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."

What does the word *also* in the above article mean, unless it be that this removal and subsistence shall also be paid in addition to the price given for their lands? Is there any other imaginable meaning that can be given to it? the more clearly so, as the United States were bound by the subsisting and unabrogated treaty of 1828 to pay these charges. But if neither the cost of removal nor subsistence is to be paid by the United States, it is too clear to admit of contradiction that there is neither justice nor right in charging the treaty fund with more than \$33 33 for subsistence, nor more than \$20 for removal. That was the sum which the United States was willing to allow; the sum which was fixed on as fair and proper. If the United States made it cost more, there is no justice in charging the excess to the treaty fund; but all such excess should be borne by the United States. So of the removal. The Indians were detained more than a month after they were assembled and ready to remove. This expense should also be borne by the United States, and all losses sustained on the resale of provisions which were not needed nor consumed.

As to the justice of interest, the committee have no doubt. If the treaty fund had not been charged improperly, as it is now acknowledged, the money would have been paid twelve years ago. This was in nowise the fault of the Cherokees, but of the officers of the government of the United States. The Cherokees have for all this time been deprived of the use of money justly due them, and the United States have had the use of it for their own benefit. They have been paying interest on money borrowed all this time, and would have had to pay that interest on a larger sum if

they had paid the Cherokees what was justly due them. It is not the case of a claim of an individual, but of a people treated with as a nation; and not to have paid it was a violation of a treaty, and must be repaid now. For the claims of American citizens on Mexico and other governments, interest has been claimed by our government and allowed.

By the treaty of 1805 three valuable tracts of land in Tennessee were reserved to the Cherokee nation, and guarantied by the United States. These lands were taken and held under North Carolina or Tennessee grants, and the Cherokee nation deprived of them. They ought to be paid for, and your committee recommend that the sum of \$10,000 be paid on that account to the treasurer of the Cherokee nation. So, by the treaty of 1819, twelve miles square were reserved in Alabama for an education fund, amounting in all to 93,558 acres. Of these lands 53,436 acres remain unsold. Your committee recommend that the United States take these lands at 62½ cents per acre, which is the price for which the United States sold lands of less value in the west to the Cherokees. All connexion of that people with the country east of the Mississippi is now dissolved, and, considering the loss which they have suffered, your committee think the request a reasonable one, and one by which the United States cannot lose any thing.

Your committee see no just ground for paying for the public buildings, turnpike roads, &c., in the Cherokee country east of the Mississippi river. The committee therefore report, and recommend the adoption of the following resolutions:

Whereas, by the treaty of the 6th of August, 1846, between the United States and the Cherokee Indians, certain questions were agreed to be submitted to the decision of the Senate:

1. *Resolved*, That, in the opinion of the Senate, whatever balance of the fund of \$5,000,000 stipulated to be paid to the Cherokee nation by the treaty of the 29th December, 1835, and the subsequent additions thereto, may now be ascertained to be due to the said Cherokee nation, shall bear an interest at the rate of five per cent. per annum from the time found due until the same be paid by the United States.

2. *Resolved*, That the charge for one year's subsistence of the Cherokees, after their arrival in the west, is not a proper charge upon the fund of \$5,000,000 aforesaid, but should have been paid independently of that fund, by the United States.

3. *Resolved*, That the expense of removing the Cherokees to the west should, in like manner, have been borne by the United States, and not charged to the fund of \$5,000,000 aforesaid.

4. *Resolved*, That the United States will pay to the Cherokee nation the sum of \$10,000 for lands guarantied to the Cherokee nation by the treaty of Tellico, signed 25th October, 1805, and of which the said Cherokee nation was deprived by the authority of the State of Tennessee, and the further sum of \$35,568 for the balance remaining unsold, by the United States, of a reservation of twelve miles square in Alabama, secured to the Cherokee nation by the treaty of 27th February, 1819, being at the rate of 62½ cents per acre.