32d Congress, 1st Session. [SENATE.] Rep. Co No. 78.

IN THE SENATE OF THE UNITED STATES.

February 18, 1852.
Ordered to be printed.

Mr. Atchison made the following

REPORT:

[To accompany joint resolution S. No. 19.]

The Committee on Indian Affairs, to whom was referred the memorial of Johnson K. Rogers, legal representative of the widow and heirs of David Corderoy, deceased, report:

That, by the treaty of 1817, David Corderoy, as the head of an Indian family, was entitled to a "life estate" in a reservation of 640 acres, with reversion to his widow and children. That treaty ceded to the United States a portion of the country of the Cherokees east of the Mississippi, for a like quantity, "acre for acre," west of that river, in the then Territory of Arkansas. It allowed such reservation to each head of an Indian family, who resided upon territory then or thereafter to be ceded to the United States, who might wish to become a citizen of the United States, and provided that the register of the names of such reservees should be filed in the office of the Cherokee agent. By the treaty of 1819, a further tract of country was ceded, and the same provision as to reservations extended to those heads of families who resided *within the ceded territory*, those enrolled for emigration to Arkansas excepted. David Corderoy registered his name with the agent for a reservation under the treaty of 1817, but was not embraced within the territory ceded in 1819. By the 13th article of the treaty of 1835, which finally ceded the remaining territory of the Cherokees, reservations were to be allowed to all such heads of families as were entitled under the treaty of 1817, and who had complied with the stipulations of said treaty, notwithstanding such reservations were not included within the lands ceded by the treaty of 1819. The right of Corderoy under the treaty of 1817, destroyed by that of 1819, was thus revived and provided for by the final treaty of 1835. A supplemental article of the last named treaty, adopted in 1836, extinguished all reservations, and substituted a compensation in lieu of them. The proof is clear that Corderoy was a Cherokee, with a white woman as his wife; that he resided upon his reservation until forcibly dispossessed by the State of Georgia, in 1833 or 1834, and, soon after the treaty, died, leaving a widow and children. A commission was authorized by the treaty to adjudicate all claims under the treaty, and their decision was to be final. Several commissions sat, in the investigation of these and other claims. They successively rejected the claim of Corderoy; and to obtain relief from their decisions, his memorial is presented.

The sole ground upon which his claim was rejected was that stated by the first board—that the register conclusively showed that he was not the "head of an Indian family," within the meaning of the treaty. The "register" kept by the agent, under the provisions of the treaty of 1817, was before the commissioners. In form, it was a registration of the names of reservees, with a column opposite, in which the number in family was indicated in figures. The figure "1" stood opposite the name of Corderoy, and the commissioners held that "one" could not constitute a family. In this conclusion, upon these premises, the committee do not concur. How little the *register* was considered conclusive is shown by the fact that opposite many of the names was a blank, yet the claims were allowed upon parol proof of the number of the family. The legal effect of a registration under this treaty has become a subject of judicial decision and received a consideration wholly different from that accorded by the boards of commissioners. In Jones, lessee, *vs.* Evans *et al.*, 5th Yerg. 326, the supreme court of Tennessee say, "that the fact that a party's name was registered with the Cherokee agent for a reservation within the time prescribed by law in the treaties is *conclusive evidence* that such party was the 'head of an Indian family,' and resided within the ceded territory." This decision was mentioned with approbation by the Supreme Court of the United States, 2d How., 591. In Blair and Johnson *vs.* Pathkiller's lessee, 5th Yerg., 331, a *registration* is deemed an expression of a desire to become a citizen of the United States, and entitles the party to a reservation. The ground of these decisions is, that the registration is the act, not of the Indian, but of an accredited public officer, the agent of the United States, and charged with the duty, which the law presumes he discharges correctly. His duties were judicial, and involved the ascertainment of facts, and the making of a written memorial of them. His registry was conclusive, because the highest official evidence. Nor was there, under the treaty of 1817, a necessity for guarding against frauds: the quantity of such lands was reserved from the amount ceded west of the Mississippi, and that was sufficient protection.

The committee, therefore, are of opinion that David Corderoy was entitled to a reservation under the treaties of 1817 and 1835, and as he was dispossessed by Georgia, is entitled, under the 13th article of the treaty, to compensation for such reservation, as "unimproved land;" but, inasmuch as the proof of value which has been furnished the committee is based upon the present improved value thereof, the committee report the accompanying resolution, directing the proper officers of the treasury to ascertain and pay the value of said reservation at the date of the treaty, as unimproved land.