

IN THE SENATE OF THE UNITED STATES.

APRIL 30, 1886.—Ordered to be printed.

Mr. JONES, of Arkansas, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill S. 2292.]

The Committee on Indian Affairs, to whom was referred the bill (S. 1601) to provide for the settlement of certain Cherokee claims, have had the same under consideration, and report as follows:

About the year 1817 a part of the Cherokee Nation moved west of the Mississippi River and settled in what is now the western part of Arkansas. These people have been since known as the "Old Settlers," or Western Cherokees.

In 1828 a treaty was made with them by which they agreed to remove to the country they now occupy, and in said treaty the following provision is found:

It is further agreed that the property and improvements connected with the agency shall be sold under the direction of the agent, and the proceeds of the same applied to aid in the erection, in the country to which the Cherokees are going, of a grist and saw mill for their use.

In the subsequent treaty of February 14, 1833, the following language is found:

And said United States will cause to be erected on said lands, for the benefit of said Cherokees, eight patent railway corn-mills, to be erected according to the stipulations of the fourth article of said treaty of sixth of May, one thousand eight hundred and twenty-eight, from the avails of the old agency.

On June 23, 1834, Congress made an appropriation of \$1,600 for the purchase of the corn-mills for the Cherokees, and in 1844 eight patent railway corn-mills were purchased by the Indian agent and paid for by the United States, costing \$200 each.

It seems that one of these mills was erected and the other seven were not. This bill is intended to compensate the Cherokees for the failure of the Government to erect these mills.

Hon. H. L. Muldrow, Acting Secretary, under date of April 22, 1886, writes as follows:

DEPARTMENT OF THE INTERIOR,
Washington April 22, 1886.

SIR: I have the honor to acknowledge the receipt of your letter of 1st instant, enclosing for examination and report S. No. 1601, entitled "A bill to provide for the settlement of certain Cherokee claims."

The subject having been referred to the Commissioner of Indian Affairs, I transmit herewith, for the information of the committee, a copy of his reply of 20th instant.

The Commissioner recites the provision of the eleventh article of the Cherokee treaty of 1846, noted in the bill, and the resolution of the Senate referred to, and states that he is unable to see what "relation the sum of \$16,000 proposed by the bill to be appropriated and paid to the 'Old Settler' or Western Cherokee Indians, bears either to the

Senate award of the 5th of September, 1850, or to the eleventh article of the treaty of 1846. * * * If, however, the intention of the bill be to pay these Indians the sum of \$16,000 with interest thereon, as a money compensation for the eight patent railway corn-mills named in the bill," which were to be furnished under the provisions of the treaty of 1834 in lieu of the grist and saw mill stipulated in the treaty of 1828, "no objection can be made to the purpose of the bill, as the Government is manifestly under an obligation to erect the said patent railway corn-mills or pay the money compensation therefor."

The Commissioner expresses the view that the amount named in the bill is excessive, and that whatever amount is appropriated in settlement of the claims should be paid to the Cherokee Nation; and he has caused a bill to be drafted, a copy of which is herewith inclosed, intended to meet the views in the case as expressed by him, which provides for the payment of the sum of \$2,800 with interest thereon, from June 28, 1834, at the rate of 5 per cent. per annum until paid; to be in full of all claims, &c., which he suggests may be adopted as a substitute for S. No. 1601.

The report of the Commissioner has the concurrence of this Department.

Very respectfully,

H. L. MULDROW,
Acting Secretary.

The CHAIRMAN *Committee on Indian Affairs, United States Senate.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 20, 1886.

SIR: I have the honor to acknowledge the receipt, by your reference for report, of a communication dated the 1st instant, from Hon. H. L. Dawes, chairman of the Senate Committee on Indian Affairs, referring for examination and early report a bill (S. 1601) entitled "A bill to provide for the settlement of certain Cherokee claims."

This bill authorizes and requires the Secretary of the Treasury to pay, out of the Treasury of the United States, to the "Old Settler" or Western Cherokee Indians the sum of \$16,000 with interest thereon, as provided by Senate resolution of September 5, 1850, based upon the eleventh article of the Cherokee treaty of 1846: *Provided*, That the same shall be taken and accepted as a full and final discharge of all claims against the United States arising from or growing out of all treaties made with the "Old Settler" or Western Cherokee Indians for or on account of the value of the Old Cherokee Agency, in the State of Arkansas, as well as for the value of a certain grist and saw mill provided for in the Cherokee treaty of 1828, and eight railway corn-mills provided for in the treaty of 1834.

In reply, I have the honor to report that the eleventh article of the Cherokee treaty of 1846, 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, 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." (9 Stats., p. 875.)

The resolution of the Senate approved September 5, 1850, based upon said eleventh article of the treaty of 1846, is, in words, as follows:

"IN THE SENATE OF THE UNITED STATES,
September 5, 1850.

"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.

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

In accordance with this award, Congress, in the Indian appropriation act, approved September 30, 1850, appropriated conditionally the aforesaid sum of \$189,422.76, and the further sum of \$532,896.90, to the "Old Settler" or "Western Cherokees" in full of all demands under the fourth article of the treaty of 1846 (9 Stats., p. 556), which sums have been fully disbursed and paid over, under protest on the part of the Old Settlers, to the respective parties in interest.

From the extended debate which arose in the Senate on the 5th of September, 1850, on the resolutions aforesaid, it was clearly brought out that only two questions were submitted for the decree of the Senate, viz, subsistence and interest (see p. 1334-1340 Appendix Congressional Globe, Thirty-first Congress, first session).

I cannot, therefore, see what relation the sum of \$16,000 proposed by the bill to be appropriated and paid to the "Old Settler" or Western Cherokee Indians bears either to the Senate award of the 5th of September, 1850, or to the eleventh article of the treaty of 1846 (see House Report 2651, Forty-eighth Congress, second session).

If, however, the intention of the bill be to pay these Indians "the sum of \$16,000 with interest thereon" as a money compensation for the eight patent railway corn-mills named in the bill and provided for in the Cherokee treaty of 1838, which was proclaimed April 12, 1834 (7 Stats., p. 416), which were to be erected in lieu of the grist and saw mill according to the stipulation of the fourth article of the treaty of 1828 (7 Stats., p. 312), then no objection should be made to the purpose of the bill, as the Government is manifestly under an obligation to erect the said patent railway corn-mills or pay a money compensation therefor.

Congress, by the act of June 28, 1834 (4 Stat., p. 705), made an appropriation for the purchase of these corn-mills, and the Second Auditor of the Treasury, in a communication to this office, dated November 14, 1877, transmitted a copy of a voucher filed with the account rendered by P. M. Butler, Cherokee agent and special disbursing officer of the appropriation in question, which is as follows:

The United States to James Bonbright Dr., 1844.

For eight patent railway corn-mills, as per fourth article treaty of 1833, at \$200 each \$1,600

Received, Fort Gibson, November 30, 1844, of Pierce M. Butler, Cherokee agent, \$1,600, in full of the above account.

JAMES BONBRIGHT.

I certify on honor that the above account is correct and just, and that I have actually, this 13th day of November, 1844, paid the amount thereof.

P. M. BUTLER,
Cherokee Agent.

Showing that the eight mills were duly purchased; but from subsequent investigation made by this office, through Indian Agent John O. Tufts, it appears that evidence of the erection of only one of these mills could be obtained, and nothing is known of what became of the other seven.

The cost of the eight railway corn-mills, with the expense of their erection, should form a basis for an estimate of the amount the Government would have expended had the stipulations of the treaty in that respect been fully executed at the time, as was contemplated, by the appropriation made June 28, 1834. To this amount should be added the interest thereon, not from the 12th of June, 1833, as designated in the Senate resolutions, but from a period not later than the proclamation of the treaty, April 12, 1834, or the date of the appropriation June 28, 1834, until paid. Had the cost of transportation and other expenses incident to their erection been equal to the cost of the mills, the account would stand thus:

Cost of seven mills, \$200	\$1,400
Cost of erection	1,400
Interest on \$2,800 for fifty-two years, at 5 per cent	7,280
	10,080

I, therefore, think the sum of "\$16,000, with interest," an excessive amount to pay for said corn-mills, which is the only claim the Cherokees could have on the Government in consideration of the cession of the Old Cherokee Agency in the State of Arkansas.

There is a question as to whether the "Old Settler" or Western Cherokees are entitled to whatever may be due in respect of the corn-mills in question, to the exclusion of other portions of the Cherokee people, or as to whether the whole Cherokee Nation is not entitled to whatever may be found due in that respect.

It would appear by reference to the treaty of 1817 (7 Stats., 156) that the land in Arkansas was granted to that part of the Cherokee Nation then residing on the Arkansas River, now known as the "Old Settler" or Western Cherokees.

The land in Arkansas was ceded to the United States by the treaty of 1828 (*Id.* 311), by the fourth article of which the Government agreed to erect a grist and saw mill for the Cherokees in their new home (Indian Territory), and in lieu of which the patent railway corn-mills were to be erected as stipulated in the fourth article of the treaty of 1833 (*Id.* 416).

It is presumed that the "Old Settler or Western" Cherokees base their claim upon the fact that the lands in Arkansas appear, by the treaty of 1817, to have been given them exclusively, and the further fact that the mills were to be erected upon lands in the Indian Territory, for an interest in which they had surrendered their lands in Arkansas. But by reference to the preamble to the treaty of 1828 it will be seen that the purpose of the Government in ceding the lands described in the second article, viz, the lands in Indian Territory, was to secure a permanent home to the whole Cherokee Nation, as well those in Arkansas as those residing east of the Mississippi who might wish to join them in the West, and by reference to the fourth article of the treaty of 1846 (9 Stat., 872) it will be observed that it was therein determined that the "Old Settler or Western" Cherokees had no exclusive title to the land ceded to the Indians by the treaty of 1828, but that the same was intended for the whole Cherokee Nation.

If, then, the land given to the Cherokees by the treaty of 1828 was for the benefit of the whole Cherokee Nation, all benefits accruing under that treaty, unless expressly reserved, belong to the Cherokee Nation, and therefore the Old Settlers or Western Cherokees have no exclusive right to anything that may be due in respect of the aforesaid corn-mills. It is evident that if the mills had been erected in the Indian Territory, as the Government agreed to do, they would have been for the use of the whole nation.

If it be the purpose of the present bill to pay the value of the corn-mills not erected, and cost of transportation and other expenses which would have been incident to their erection, with interest, then, in my opinion, said bill should be so amended as to make the payment to the Cherokee Nation.

I have caused to be drafted a bill intended to meet this view of the case, and, with your concurrence, have the honor to recommend that the same be forwarded with the suggestion that it be adopted as a substitute for Senate bill No. 1601.

For a history of the status of the land known as "the Old Cherokee Agency" I would respectfully refer you to the following public documents (copies of which I am unable to submit), viz: House Report No. 1146, Forty-seventh Congress, first session; House Report No. 2021, Forty-eighth Congress, first session; Senate Report No. 908, Forty-seventh Congress, second session; Senate Report No. 287, Forty-eighth Congress, first session.

I return herewith the communication of Senator Dawes with the bill, and submit herewith a copy of this report and draft of proposed substitute.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

This committee regard the estimate of General Atkins as reasonable and adopt the same, but do not agree to the payment of interest thereon.

Whether this money should be paid to the "Old Settlers" or Western Cherokees or to the Cherokee Nation, is a question not free from difficulty. The honorable Commissioner of Indian Affairs concludes that it should go to the nation, but from this opinion this committee are forced to dissent.

The land which was conveyed to the Government as the price of the erection of these mills was the property of the "Old Settler" Cherokees. That part of the tribe residing east of the Mississippi were not parties to the treaty, and while the stipulation to erect a mill provided that it should be placed in the country now occupied by the Cherokee Nation, there is no evidence of any intention to so place the mill for the benefit of the Eastern Cherokees, but it was to be erected in the country to which the Western Cherokees were themselves ready to move.

A circumstance to be considered in this connection is that at that time there was no agreement, even with the Eastern Cherokees for their removal, and they did not remove until 1835 to 1837. Under these circumstances it seems that no intention on the part of the Western Cherokees to make the Eastern Cherokees equal beneficiaries in this matter with themselves could be inferred.

Your committee therefore report the accompanying bill as a substitute for bill S. 1601, and recommend that it pass.