

L E T T E R

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

A communication from the Secretary of the Interior submitting an estimate of appropriation to re-imburse the Chickasaw Nation.

JUNE 23, 1890.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT, June 21, 1890.

SIR: I have the honor to transmit herewith, for the consideration of Congress, a communication from the Secretary of the Interior, of the 20th instant, submitting an estimate for an appropriation of \$56,021.49 to re-imburse the general fund of the Chickasaw Nation as required by article 4 of the treaty with the Chickasaws, dated June 22, 1852.

Respectfully, yours,

W. WINDOM,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
Washington, June 20, 1890.

SIR: On January 5, 1888, your predecessor, Secretary Fairchild, transmitted to the Speaker of the House of Representatives a copy of a communication from the Secretary of the Interior submitting an estimate for an appropriation of \$240,164.58 to fulfill treaty stipulations with the Chickasaw Nation of Indians, under the fourth article of the treaty of 1852 (10 Stat., 974), being the amount found by the Court of Claims to be erroneously charged against the Chickasaw general fund and the Chickasaw incompetent fund by the United States.

Among the items so erroneously charged was the following:

Payment to assignees of William M. Gwin (charged prior to December 21, 1844), \$56,021.49.

The act approved March 2, 1889, making appropriation for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes, for the year ending June 30, 1890, contained the following (25 Stat., 983):

For re-imbursement of the general fund of the Chickasaw Nation for moneys improperly disbursed from said fund, as ascertained by the Secretary of the Interior as required by article 4 of the treaty with the Chickasaws, dated June 22, 1852 (less payment of \$56,021.49 to assignee of W. M. Gwin), \$84,862.68.

For re-imbursement of the Chickasaw incompetent fund for moneys improperly disbursed from said fund, as ascertained by the Secretary of the Interior as required by article 4 of the treaty with the Chickasaws, dated June 22, 1852, \$99,240.41.

The appropriation hereby made shall be a permanent and continuing appropriation, not subject to lapse or to be covered into the Treasury; and said sums shall be paid from time to time under requisitions signed by the Chickasaw governor, national secretary, national treasurer, and auditor of public accounts: *Provided*, That the question of the obligation of the Government, on account of the payment to the assignee of W. M. Gwin, be referred to the Secretary of the Interior for reconsideration.

The question referred for the reconsideration of the Secretary of the Interior under the above proviso is as to the obligation of the Government to account to the Chickasaws for the amount of \$56,021.49 paid to the assignee of William M. Gwin, and which is part of the aggregate amount found by the Court of Claims to have been improperly charged against the trust fund of the Chickasaws.

The alleged claim of the Chickasaw Nation to this amount grows out of the obligation of the Government under the treaty of October 20, 1832, between the Chickasaw Nation and the United States (7 Stat., 381), by which the United States agree to sell the ceded lands of the Chickasaw Nation, and, after deducting from the proceeds of the sale certain charges and expenses therein provided for, the residue was to constitute a trust fund of the Chickasaw Nation, to remain subject to the control of the United States for a period of fifty years from the date of the treaty.

In 1834 another treaty was entered into, by which the proceeds of the sale of the lands of the Chickasaw orphans and incompetents were to be added to the trust fund. By said treaty it was also stipulated (7 Stat., 450)—

And that they may be advised of these matters it is stipulated that the Government of the United States, within six months after any public sale takes place, shall advise them of the receipts and expenditures and of balances in their favor; and also, at regular intervals of six months after the first report is made, will afford them information of the proceeds of all entries and sales.

The net proceeds arising from the sale of these lands were deposited in the United States Treasury, upon which interest, at the rate of 5 per cent. per annum, was paid by the Government, as stipulated by the treaties aforesaid, and it was subject to certain charges for specific expenses authorized thereby.

The Chickasaws complained from time to time that their account was not properly exhibited on the books of the Treasury, and that in the management and disbursement of their funds they had been subjected to losses and expenses that should have been properly borne by the Government.

In 1852 a new treaty was entered into between the Chickasaws and the United States, in which it was agreed that—

* * * There shall be, at as early a day as practicable, an account stated, under the direction of the Secretary of the Interior, exhibiting in detail all the moneys which, from time to time, have been placed in the Treasury to the credit of the Chickasaw Nation, resulting from the treaties of 1832 and 1834, and all the disbursements made therefrom. And said account, as stated, shall be submitted to the Chickasaws, who shall have the privilege, within a reasonable time, of filing exceptions thereto; and any exceptions so filed shall be referred to the Secretary of the Interior, who shall adjudicate the same according to the principles of law and equity, and his decision shall be final and conclusive on all concerned. (10 Stat., 974).

Notwithstanding the stipulation aforesaid, the Government failed to perform the duties imposed by said treaty stipulation, until 1868 when an account was stated, under the direction of the Secretary of the Interior, and submitted to said nation. The Chickasaws being dissatisfied with

said account, as stated, filed exceptions thereto with the Secretary of the Interior, but no action was taken thereon until 1883, when the Secretary of the Interior submitted said matter to the Court of Claims for a finding of facts and conclusions of law thereon, under the provisions of the act of Congress of March 3, 1883 (22 Stat., 485), entitled, "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government."

On May 23, 1887, the finding of facts and conclusions of law by the Court of Claims were filed in the Department, showing that the Chickasaw Indians had been subjected to erroneous charges on the books of the Treasury, as follows:

Chickasaw general fund:

Payments for transportation and demurrage to S. Buckner (charged against the trust fund prior to December 31, 1840).....	\$58,299.00
Payments to conductors of emigration (charged prior to December 31, 1840).....	26,563.68
Payment to assignees of William M. Gwinn (charged prior to December 21, 1844).....	56,021.49
	140,884.17

Chickasaw incompetent fund:

Payments from incompetent fund (charged prior to December 31, 1840).....	99,280.41
	240,164.58

Thereupon the Secretary of the Interior on December 20, 1887, transmitted to the Secretary of the Treasury a communication from the Commissioner of Indian Affairs, with an estimate for an appropriation—\$240,164.58—required to fulfill treaty stipulations with the Chickasaw Indians, under the fourth article of the treaty with said Indians of June 22, 1852, as shown by a certified copy of the finding and opinion of the United States Court of Claims, which were inclosed therewith, and Secretary Lamar stated in said letter of transmittal:

The findings of fact and the opinion of the Court of Claims in the case have been adopted as the decision of the Department in the matter. (Ex. Doc. No. 42, H. R., Fiftieth Congress, first session, page 2.)

Said communication and estimate were thereupon submitted to Congress for its consideration by the Secretary of the Treasury, resulting in the action by Congress March 2, 1889, as hereinbefore mentioned.

Said item of \$56,021.49 was paid to Messrs. Corcoran and Riggs, as assignee to William H. Gwinn, and represents a fee claimed by Gwinn for services rendered in having restored to the trust fund of the Chickasaws on the books of the Treasury the sum of \$112,042.99, alleged by the Chickasaws to have been improperly charged against said trust fund. This sum was charged on the books of the Treasury in 1837 for pork and flour purchased at Cincinnati for use of the Chickasaws while emigrating from the State of Mississippi to the Indian Territory. Upon the arrival of the pork and flour at Fort Coffee the pork was found to be putrid and the flour moldy, and, being unfit for use, were not accepted, but were without delay returned to New Orleans into the possession of the United States.

On March 11, 1850, the Chickasaw trust fund was credited with the sum of \$58,124.14, but on the day following said account was charged with the sum of \$56,021.49, for payment to the assignee of William M. Gwin, as a fee for securing the restoration of the sum of \$112,042.99 to the trust fund of the Chickasaws upon the books of the Treasury, and

on March 28, 1851, said account was credited with the sum of \$53,918.85, being the balance of said sum of \$112,142.99, with which the Chickasaws were entitled to be credited on account of the return of the flour and pork.

So it appears the Government, recognizing that said sum of \$112,142.99 was improperly charged against the trust fund of the Chickasaws, restored it by the two credits of March 11, 1850, and March 28, 1851, aforesaid, and then charged said fund with the sum of \$56,021.49 as a fee paid to the assignee of Gwin for securing the restoration of said sum to the trust fund.

It was claimed by Gwin that he had a contract signed by certain persons, who styled themselves commissioners for the Chickasaws, authorizing him to secure a credit on the books of the Treasury to the trust fund of the Chickasaws, the same alleged to have been improperly charged against said sum for the flour and pork purchased for them, and securing to him 50 per cent. of the claim recovered.

Without going into the question of the existence of said contract, or of the authority and power of the so-styled commissioners to make a valid contract binding upon the Chickasaws, or whether the Government had not allowed Gwin a greater compensation than the real value of his services upon a *quantum meruit*, it is sufficient to say that upon an investigation of this question by Congress a committee of the House of Representatives, to whom this question was referred, on September 4, 1850, presented a report thereto. in which, speaking of the payment of said sum, it was said :

It was so paid, against the earnest protest and remonstrance of the Indians, under a copy of a power of attorney without date, and which had been executed under circumstances which cast great doubt upon its validity, a power of attorney which had been rejected by the Indians as spurious, and the original of which had been lost. Your committee feel called upon to note the fact that, although there were subscribing witnesses to this power of attorney, their testimony seems not to have been taken as to the correctness of the copy on which the money was paid. The copy sworn to and prosecuted by the party in interest appears to have been the only evidence required by the Secretary of the Interior to justify the payment to Corcoran and Riggs.

Said report was also accompanied by the following resolution :

Resolved, That the sum of \$56,021.49, paid to Messrs. Corcoran and Riggs, as assignees of William M. Gwin, was justly due to the Chickasaw Indians, and was improperly paid to Corcoran and Riggs.

When this question came before the House the resolution was amended by striking out all after the word "resolved," and inserting—

That, inasmuch as the resolutions proposed by the committee, raised on motion of Mr. Richardson, of Illinois, do not charge the Secretary of the Interior with any crime or misdemeanor, and do not propose any change of existing law, but, in effect, call upon the House to revise and reverse the decision of the proper officers of the Government, upon a legal question affecting private rights, the same be not concurred in.

While it is true that the House agreed to the amendment, it does not question the truth of the resolution that the said sum was improperly paid to the assignee of Gwin, but merely dismissed the question, upon the ground that the Secretary of the Interior was not charged with any crime or misdemeanor, and that the House was not called upon to revise and reverse the decision of the proper officer of the Government.

On January 3, 1849, Attorney-General Johnson, without assigning any reason therefor, submitted to the Secretary of the Interior the following opinion (5 Op., 226) :

First, I am of the opinion that the account of the nation is to be considered now as having been properly opened and restated, and that the balance found due by the accounting officers of \$112,842 is properly chargeable to the appropriation for the subsistence and removal of Indians.

Second. That the last contract of the Chickasaws with William M. Gwynn, assigned to Corcoran & Riggs, is valid, and that out of the fund payable to the Chickasaws under the first head whatever balance is due, under that contract should be paid to Corcoran & Riggs.

In accordance with this opinion the Secretary of the Interior, on January 4, 1850, directed, "the account will be stated and the payment made in accordance with the Attorney-General's opinion within."

While it is true that the Attorney-General rendered an opinion, January 3, 1849, to the effect that the contract of the Chickasaws with Gwynn was valid, and that the amount due thereunder was properly payable out of the fund due to the Chickasaws, and the House of Representatives in 1850 refused to re-open the question, yet the United States afterward, on repeated complaints of the Chickasaws, by the treaty of 1852 solemnly declared that the accounts between the Government and Chickasaws should be stated by the Secretary of the Interior and submitted to the Chickasaws, who might file exceptions thereto, and that the Secretary *should adjudicate the same according to the principles of law and equity, whose decision thereon should be final on all concerned.* Acting under the authority given by this treaty, the Secretary of the Interior submitted said matters to the Court of Claims for consideration under the act of March 3, 1883.

The Court of Claims, after an investigation of the whole subject, held that the trust fund of the Chickasaws was improperly charged with this amount, for the reason that the Government, the trustee of these Indians, was negligent, and no excuse was shown for the bad quality of the food furnished, and that, not having voluntarily repaired the fault, it should be held to account for the damage suffered by its innocent *cestui que trust.*

Upon this point the court said:

We eliminate from the controversy questions as to the validity, between the Indians and Gwin, of the power of attorney, and as to the right of Gwin to assign any emolument coming to him under it, for Gwin did perform service; the result desired was attained; his assignees were in fact paid; and the Chickasaws' fund is diminished by the amount so paid.

The question presented, then, is that of a trustee bound to feed his *cestui que trust* out of the trust fund, who furnishes the latter spoiled food and thus forces the *cestui* to pay a large sum of money to obtain from the trustee the return of funds thus improvidently disbursed. Such a charge, it seems to us, should in all equity and justice be borne by the trustee. That the fee was too large, under the circumstances set forth in the findings of fact, if that be true, is not a defense, for the trustee paid it with open eye and full knowledge of the circumstances. The matter was fully discussed, and in two opinions did the Attorney-General approve the disbursement. If fair in amount as against the injured Chickasaws it was fair in amount as against the United States, through whose fault, error, or laches the injury occurred which caused the agent's employment and his compensation. The provisions furnished were damaged; the Chickasaws were charged with the cost; the United States did not voluntarily make good the loss; and the Indians were put to expense in enforcing their claim to re-imbusement. On the record as it stands, the trustee seems to have been negligent, for nothing is shown to excuse the bad quality of the food furnished, and being so negligent, and not having voluntarily repaired the fault, he should be held to account for the damage suffered by his innocent *cestui que trust.* We think courts of chancery in a controversy between individuals would reach a similar determination; but whether that be so or not, we, in the advisory capacity in which we act in this case, a case between a strong nation and a weak tribe, its wards, are of opinion that equity and justice require the United States to credit the Indians with this disbursement to Gwin of \$56,021.49.

When this finding and opinion was certified to the Secretary of the Interior, the conclusions of said court were subsequently adopted by Secretary Lamar, in the following language:

The findings of fact and the opinion of the Court of Claims in the case have been adopted as the decision of the Department in the matter. (Ind. Div. Rec., vol. 53, p. 251.)

Upon a full consideration of this question, I conclude that the finding and opinion of the Court of Claims, having been adopted by the Secretary of the Interior as the decision of the Department, was an adjudication of the same by him "according to the principles of law and equity," and that by the terms of the fourth article of the treaty of 1852 his decision was "final and conclusive on all concerned," and that the sum omitted from the appropriation act of March 2, 1889, should be appropriated for the re-imbusement of the general fund of the Chickasaw Nation for moneys improperly disbursed from said fund, as ascertained by the Secretary of the Interior, etc.

I have the honor, therefore, to forward the matter to you that it may again be presented to Congress, under the provisions of section two of the act of July 7, 1884 (23 Stats., 254), together with an estimate for the appropriation of the amount herein named (\$56,021.49) to fulfill treaty stipulations with the Chickasaw Nation of Indians, under the fourth article of the treaty of June 22, 1852.

Very respectfully,

JOHN W. NOBLE,
Secretary.

The SECRETARY OF THE TREASURY.

CHICKASAW NATION.

For re-imbusement of the general fund of the Chickasaw Nation for moneys improperly disbursed from said fund, as ascertained by the Secretary of the Interior, as required by article 4 of the treaty with the Chickasaws, dated June 22, 1852, \$56,021.49, being amount paid to assignee of W. M. Gwin, and omitted from the appropriation act of March 2, 1889, for re-consideration by the Secretary of the Interior: *Provided*, That this shall be a permanent and continuous appropriation, not subject to lapse or to be covered into the Treasury; and said sum shall be paid from time to time, under requisition signed by the Chickasaw governor, national secretary, national treasury, and auditor of public accounts.