

IN SENATE OF THE UNITED STATES.

MARCH 2, 1846.

Submitted, and ordered to be printed.

Mr. JARNAGIN made the following

REPORT :

The Committee on Indian Affairs, to whom was referred the memorial of William H. Thomas, praying payment for supplies furnished certain Cherokee Indians during the year 1836, have had the same under consideration, and make the following report :

The memorial is dated the 18th of December, 1844, and states that the memorialist, shortly after the date of the Cherokee treaty of December, 1835, was requested by the Rev. John F. Schermerhorn, the commissioner on the part of the United States who concluded the treaty, to furnish the Cherokee Indians, whose crops had been destroyed by the early frost, and gave an assurance of payment. In compliance with this request the memorialist furnished supplies to the value of \$750. His claim was presented to the Cherokee commissioners, acting under the provisions of the seventeenth article of the treaty, and was by them duly certified and approved, and was subsequently presented to the Commissioner of Indian Affairs for payment. He was informed his claim could not be paid, because the account was informal. A second application was made, a similar answer given, and an appeal was taken to the Secretary of War. He referred the claim to the Second Auditor of the Treasury, who gave an opinion in favor of payment, and sent the case back to the Secretary of War. He refused payment because the fund appropriated under the eighteenth article of said treaty had been disposed of. So, the memorialist says he has been compelled to apply to Congress for the payment of his claim.

The account presented to this committee is headed "Provisions and clothing furnished the poor class of Cherokees between the 1st of February and 1st of August, 1836." The supplies seem to have been furnished to families; the number in each family is given, and three dollars charged for each member, but neither the kind nor amount of articles furnished is given. The bill thus made amounts to seven hundred and fifty dollars, upon which are charged three hundred and sixty five dollars and twenty-five cents more, for interest; making the amount now claimed eleven hundred and fifteen dollars and twenty-five cents. Upon this claim the Commissioner of Indian Affairs, on the 8th of July, 1839, made the following decision :

WAR DEPARTMENT,
Office Indian Affairs, July 8, 1839.

The claim of Mr. William H. Thomas is presented for "provisions and clothing furnished the poor class of Cherokees between the 1st February and 1st August, 1836."

It appears that the Rev. John F. Schermerhorn, (see his letter of 4th July, 1836, to the Commissioner of Indian Affairs,) after the treaty of December, 1835, was concluded, and before he left the Cherokee country, requested the claimant, among others, "to supply the poor and destitute with provisions, to keep them from starvation," and "assured them they would be paid by the government a fair price for the same, out of the money provided for this purpose by the eighteenth article of the treaty." That article does provide for the "poorer class of the nation" an advance of the two years' annuities that would accrue before the removal of the Cherokees, to be expended in provisions and clothing. The treaty was ratified on the 23d May, 1836, and Congress, on the 2d July, 1836, appropriated, under said article, \$75,000. A number of affidavits are filed that Mr. Thomas did supply the poor Cherokees with provisions and clothing in the summer of 1836; the account is not specific, but gives only the name of the Indian and the amount; but three justices of the peace of Haywood county, North Carolina, certify that the several Cherokees charged in the account appeared before them "and acknowledged the receipt of the amount (of William H. Thomas) in money, corn, and clothing, as therein stated, 4th February, 1837;" and Messrs. Wilson, Lumpkin, and John Kennedy, commissioners, certified that they had "examined the within accounts, and the evidence to support them, and approve of their payment." These two certificates and the account itself are certified by the clerk of the court of Haywood county to be correct copies of the originals in Mr. Thomas's possession, which he states were stolen from him. And the clerk certifies that the three persons acting as justices, in giving the above-named certificate, were such.

It appears to have been settled by the opinion of the War Department, as early as 19th July, 1836, "that the Cherokees of North Carolina have an interest proportionate to their numbers in all the stipulations of that treaty." The only two questions that it is necessary to answer are these: Do the documents show that the articles were delivered? If they were, was there any authority for so doing, or other previous step which will entitle Mr. Thomas to look to the fund for the "poorer class of the nation?" The affidavits prove that the claimant, in the spring and summer of 1836, did furnish provisions and clothing for the destitute Cherokees. The account, as presented, claims for each individual three dollars, its aggregate being seven hundred and fifty dollars for two hundred and fifty Indians. J. W. King and J. Keener, clerks in Mr. Thomas's store, prove that three dollars' worth of provisions and clothing was allotted to each individual, and Mr. Thomas, in the probate of the account, states that he furnished "money, provisions, and clothing," &c. This discrepancy of statement was, I have no doubt, accidental, and it is only mentioned to show the uncertainty which attends the presentation of the claim. Mr. Thomas is correct, and there is an omission in the testimony of the clerks, it is fair to presume; but the treaty authorizes no payment in *money* to the "poorer" Cherokees by the United States, and they can allow none. If

they could, how much was paid in money nowhere appears. The account against each family is thus stated, taking the first :

	No. of family.	\$	cts.
" Yonn-a-guska,	9	27	00."

This, it appears to me, cannot be admitted. The claim should set forth each article, and the quantity of it, delivered ; and it should be so established. Three justices of the peace state that the Cherokees acknowledged the receipt of the money, corn, and clothing. It will, I think, be unsafe to pass a claim on such an admission ; the precedent would be used in other cases which might not be so fair as this one appears to be.

The authority of Mr. Schermerhorn to order the expenditure of money under one of the provisions of a treaty, for no better reason than that he had been a commissioner to negotiate it, cannot be recognised. The sum to be disbursed was large.

The claim of Mr. Thomas seems to rest on strong equitable grounds, but, in my judgment, cannot be allowed by this office.

T. HARTLEY CRAWFORD.

This would seem to be conclusive against the claim of the memorialist. The committee do not see, with the Commissioner of Indian Affairs, (if he means as against the United States,) the strong equitable grounds upon which this claim is founded, whatever it may be against the Cherokee nation, or certain individuals of that nation. It is not seen that it is founded upon any treaty stipulation, or on any legal or moral obligation under which the government of the United States has been placed. It may be insisted that it is founded upon the provisions of the eighteenth article of the before named treaty ; but this assumption cannot be sustained, because the United States have discharged the obligation created thereby, having made the appropriation and advanced the money provided for in that article, which was simply an advance of a portion of the Cherokee annuities, and did not bind the United States to see to the judicious application of the sum advanced. The committee are disposed to give to the memorialist due credit for his charities and sympathy, shown in the timely aid given to certain poor and distressed Cherokees, but do not think they are authorized or required to make him a pecuniary reward, and thereby deprive him of the greatest merit his acts can claim. If he, influenced by the benevolent suggestions and promptings of the Rev. Mr. Schermerhorn, thought proper to open a sort of poorhouse for the relief of the poor and indigent of the Cherokee nation of Indians, he surely cannot thereby make good a claim for money against the United States before the government shall undertake to provide for the paupers of the several States. This has not been, nor is it supposed ever will be done, and therefore the claim of the memorialist cannot be recognised as valid, Indians having no higher claims than citizens of the United States.

The committee will not argue upon or spend time in reciting the many consequences which would result from the precedent that would be furnished by allowing this claim ; and being satisfied it is not founded upon, or sustained by, any treaty stipulations, they recommend the adoption of the following resolution :

Resolved, That the memorialist is not entitled to any compensation from the United States for supplies furnished by him to the Cherokee Indians in the year 1836.