

CHEROKEE COUNCIL TO COL. H. MONTGOMERY.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING A COPY OF THE

Letter from the Cherokee Council to Col. Hugh Montgomery, &c.

DECEMBER 8, 1828.—Read, and laid upon the table.

WASHINGTON, December 8, 1828.

To the House of Representatives of the United States:

In compliance with a resolution of the House of Representatives, of the second of April last, I transmit the copy of the letter from the Cherokee Council to Colonel Hugh Montgomery, the Agent, requested by the resolution, with a report from the Secretary of War.

JOHN QUINCY ADAMS.

DEPARTMENT OF WAR,

December 5th, 1828.

SIR: In complying with the resolution of the House of Representatives of the 2d April, 1828, requesting "the President to communicate to this House, if it will not, in his opinion, be injurious to the public service, a copy of the letter from the Cherokee Council to Col. Hugh Montgomery, the Agent, which is referred to in the extract of a letter from Col. McKenny to the Secretary at War, dated 20th January, 1827, communicated to this House the 22d ultimo," I would respectfully beg leave to refer the President to a communication from this Department, of the 4th April, 1828, and have the honor of transmitting herewith a copy of the letter called for in the resolution above mentioned.

I have the honor to be

Your obedient servant,

P. B. PORTER.

To the PRESIDENT of the United States.

DEPARTMENT OF WAR,

April 4th, 1828.

SIR: I have the honor to state that the letter from the Cherokee Council to Col. Hugh Montgomery, the Agent, which is referred to in the ex-

tract of a letter from Col. McKenney to me, dated the 20th February, 1827, and which is called for by a resolution of the honorable the House of Representatives, of the 2d inst., has been mislaid. After diligent, but fruitless search, some days ago, I directed a letter to be addressed to Col. Montgomery, requesting copies of the original papers, and which was accordingly done. As soon as these are received, I will communicate them to you.

I have the honor to be

Your most obedient servant,

JAMES BARBOUR.

To the PRESIDENT of the United States.

FORTVILLE, CHEROKEE NATION,

December 11th, 1826.

To Col. HUGH MONTGOMERY, U. S. Agent:

SIR: In pursuance of a resolution of the late General Council, we have the honor to communicate to you a reply, in behalf of the nation, to your communications of the 5th and 26th September and 23d October last, embracing the following subjects:

1st. You say that you are directed by the President of the United States "to endeavor, by reasoning with the chiefs of the Cherokee nation, to reconcile them to a survey for the purpose of ascertaining the practicability of a canal through their country;" and, by way of illustration, you have presented various views of the subject, to show the utility and incalculable advantages which would be derived by the Cherokees from such a work. The General Council, after maturely deliberating on the subject, and with a full sense of the great importance of internal improvement, have decided that no individual State shall be permitted to make internal improvements, within the sovereign limits of the Cherokee nation; and, as the application is supposed to be made in behalf of a State, and that no State would undertake to cut a canal through the nation without first securing the right of soil and jurisdiction over the ground where the canal would pass, and which right the Cherokee nation can never surrender, it is deemed inexpedient to grant a privilege to make a survey for the object of ascertaining the practicability of such a work; therefore, the General Council have refused to grant the application.

2d. The account of James and Samuel Reid, for twenty barrels flour, eighteen barrels whiskey, and two barrels brandy, confiscated from them by "John Walker, Jr. and John Sheppard, civil officers, for a breach of the laws of the Cherokee nation: you say that you are directed by the Secretary of War to lay this account before us for payment, and to report to him our reasons for not paying it, if we refused to do so." From the evidence produced by Mr. Walker in his own justification, which you have taken, it is evident that the Reids did sell whiskey in the Cherokee nation; but you observe, "whether in violation of the United States' inter-course law or not, it is deemed now to be too late to investigate; and that you are prevented from doing so by the operation of our laws and the act of our officers;" and "what our laws on the subject are, you know not, nor is it material, in the present case, that you should." To these remarks, we would observe, that, if it is now too late for you to investigate the illegality of the Reids conduct, in violation of the United States' inter-

course law, in consequence of the operation of our law, and if it is also unimportant that you should inform yourself of our law on this subject, the case, of course, ought to go to rest, or otherwise how can you act upon it correctly and justly towards both parties? But, by way of a defence, in support of this claim, you have thought proper to introduce, for our consideration, a number of questions, touching the right of passing laws affecting trade and intercourse between the citizens of the United States and the Cherokee nation, by referring to certain sections of the Constitution of the United States, and certain articles of our treaties with the United States. Your argument and conclusion on those points, so far as this case is involved, cannot, in our opinion, be maintained. The 8th section of the 1st article of the Constitution of the United States, which you have referred to, is in these words: "Congress shall have power to regulate commerce with *foreign nations*, and among the *several States*, and with the *Indian tribes*." By this section, we are placed precisely on the same footing with *foreign nations and the several States*; and, by this power, can Congress prevent Great Britain, France, and the several States from adopting municipal regulations, affecting trade within their own sovereign limits? and have not the several States ever exercised the right of taxing merchants, pedlars, &c., without molestation, within their respective limits, for the purpose of creating a revenue? and, in the name of common sense and equal justice, why is this right of the Cherokee nation, in this respect, disputed? For an answer, you will, perhaps, point to the 9th article of Hopewell, and the 6th article of Holston treaties.

As to the treaty of Hopewell, it is deemed not to be in force, and that it is abrogated by the war which followed it; and as to the Holston treaty, the words contained in the 6th article are these: "It is agreed, on the part of the Cherokees, that the United States shall have the *sole and exclusive* right to regulate *their trade*." By the words *sole and exclusive*, we exclude all other sovereigns from acting upon the subject. Regulating "*their trade*;" these words fix the subject to be regulated; that is, *their trade*—the trade of the Cherokee nation, as a nation—not the trade between A and B within the nation. In other words, Congress alone is to have the power of regulating the trade of the Indian with all other sovereigns. Each State was once sovereign: each had the power to regulate *its* commerce with other sovereigns. By the Constitution of the United States, Congress is vested with the power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes. What power has the States lost? The power to regulate commerce with foreign nations, and among each other; but neither has lost the power to regulate transactions between A and B within its own limits.

The Cherokee nation, like that of other nations, requires money to support its Government: there is no stipulation in any treaty that Congress shall defray this expense out of the common fund. Is Congress, by the treaties, to impose a tax upon the Cherokees? The American Government, we believe, never has advocated the doctrine, that taxes can be imposed by a body, where the People taxed are unrepresented. The Constitution of the United States *prohibits* an enumeration of the Indians for the purposes of representation; they are, therefore, unrepresented in Congress. If we suppose the treaty of '85 in force, and add the words "regulate their trade, and *all their affairs*," it will not aid the other side of the question: immediately it will be asked, with whom? we answer,

with foreign nations. As a nation, the Cherokees once had much to transact with other nations, which did not relate to the regulation of trade: the affairs then which they had to transact with other Powers, the United States were empowered to manage for them; but not to manage affairs which relate to the relative duties of individual Indians to each other, within their own territory; nor to the duties which individuals of the Indian community owe to the Cherokee nation: and, if the Congress of the United States alone possess the sole right to pass all laws affecting the internal, as well as the external trade of the Cherokees, why did they appropriate the *exclusive privilege* granted by the Cherokee nation to the Unicoi Turnpike Company, to carry on trade on their road, over other licensed traders? And it is well known that Congress has never passed any law by which such licensed traders could collect their debts in the Cherokee nation: the only laws resorted to by them have ever been those passed by the Cherokee nation. The Cherokee nation possess the same right of making municipal regulations for their internal Government, for the purposes of creating a revenue, as any other nation: therefore, our opinion in regard to our right of taxing licensed traders, cannot be changed, until the Congress or Supreme Court of the United States shall have made a final decision on this question, and denying to us this right: but the case of James and Samuel Reid, which is now the subject of consideration, is entirely of a different character: by the evidence produced, it appears that they have violated the laws of the United States, as well as the laws of the Cherokee nation, by selling spirituous liquor in the nation; and, by entering the nation without a passport or a license to trade, they placed themselves completely under the control of the laws of the Cherokee nation. In support of this fact, we refer you to the 8th and 9th articles of the Treaty of Holston, '91, which are in these words, "If any citizen of the United States, or other person, not being an Indian, shall settle on any of the Cherokee lands, such person shall forfeit the protection of the United States, and the Cherokees may punish him or not, as they please." And again: "No citizen or inhabitant of the United States, shall attempt to hunt or destroy the game on the lands of the Cherokees; nor shall any citizen or inhabitant go into the Cherokee country, without a passport first obtained from the Governor of some one of the United States, or territorial districts, or such other person as the President of the United States may, from time to time, authorize to grant the same." These are treaty stipulations; and it is as much the right of the Cherokee nation to enforce its laws within its jurisdiction, against those who may violate these articles, and commit a breach upon its laws, as it is for the United States to prescribe a mode for their punishment by their laws.

3d. You have thought proper again to introduce the case of Hiram Buckley, which, you say, assimilates itself very much to that of the Messrs. Reids: you will recollect that a fine was collected off him for carrying a trade without a license from the United States' agent, and in violation of our laws; and that you drew up a memorial in his behalf, before the General Council, in 1825, as the only resort, and the Council did not deem it expedient to remit the fine imposed on him.

4th. The claim of John McGown, for negroes, cattle, and cash, said to be detained from him by Rich. Fields, at the instance of Eliz. Pack, on a plea of debt, you say is also of the same nature of the others, excepting that the property was detained without a sale. We are informed that the ac-

count of property detained, as stated, is not correct; but it appears to be true that Mr. McGown was indebted to Mrs. Pack for several hundred dollars, and for which Mrs. Pack held his note; and that the officer probably did collect some property from Mr. McGown, on account of that debt; and, agreeably to the law then existing, valued the property, and surrendered it to Mrs. Pack; but for further evidence in regard to this business, Mrs. Pack has been notified to produce before you her evidence in the case, to rebut Mr. McGown's statements.

5th. The claim of Elliot Murdock, of fifteen dollars, for a cow said to be stolen by certain Cherokees. We are informed that the two Indians found a dead cow in the Tennessee river, near to Mr. John Brown's; and the cow having the mark and brand used by said Brown, they supposed it to have been the property of Brown, and they skinned it, and placed the hide in Brown's cornfield, where it might be discovered. And soon after, Murdock saw the Indians, and he arrested them under a charge of killing his cow: one of the Indians was committed to the jail of Hamilton county for trial, and the other was acquitted. It appears that some white man broke open the jail, and let the other Indian escape. It is further said, that the cow had once been the property of Brown, but he had disposed of her to Murdock. The facts in this case can be procured in Hamilton county, and if you will authorize some person in the neighborhood of the Lookout Mountain to obtain the evidence, it could be done at any time.

We will now proceed to notice certain subjects, which were submitted by the Cherokee nation, through you, for the consideration and decision of the General Government, and which you have now returned, with the remarks of the Secretary of War. On the subject of the boundary line run by Wilson Lumpkin, the Secretary of War, you say, remarks "that the late Secretary of War having refused to take any further steps in regard to it, his decision will not be revised." We will observe that the treaty which established this boundary is the supreme law of the land; and if the line run out is contrary to its stipulation, it is void. And the Cherokee nation contend that the line, as run out, is contrary to the treaty stipulation; therefore, requested that a re-examination of the survey of that boundary should be made; and if it should be found upon an examination to be correct, that the nation would be satisfied; or otherwise, if wrong, to correct it. Therefore, we cannot but view the application of the nation, in this respect, as a fair and equitable one, and of course must feel the severity of the Secretary of War's decision with sensibility. We can therefore but say to the Secretary of War's reply, that, if he will not revise the decision, the Cherokee nation will never abandon its claims on that subject. And on the subject of our right to tax licensed traders and pedlars, his reply is the same which was made to the Cherokee delegation before, by his predecessor, and from whose opinion the delegation had appealed to Congress for a decision; and Congress not acting upon the memorial of the delegation at that session, another memorial was submitted through you to the last session of Congress; and to which, it appears, the War Department has replied; and whether the memorial was laid before Congress, or not, we are not informed; but nothing in relation to it appeared in the proceedings of Congress, which were published in the newspapers. This is a subject of great importance to the Cherokee nation; and the question involved we would be gratified to have settled by the Congress or Supreme Court of the United States: these we

are led to believe are the highest tribunals in the Government of the United States.

On the subject of the Unicoi Turnpike Company refusing to pay their contract with the nation, you inform us that you are directed to institute a suit against them in behalf of the Cherokee nation; and that you had applied to the Company for *their reasons* for withholding the sum stipulated in the compact, and that they have given them at large, and which will be necessary for us to rebut, before a recovery can be had; which papers, you observe, will be submitted for our inspection; and that you also have enclosed a copy of Mr. Henley's letter, as their justification for withholding the \$160 per annum, rent. These papers have not as yet appeared before our view; and it is possible, that, in folding up your letter, the copy of Mr. Henley's letter was omitted to be enclosed. We must therefore request the favor of you to submit a copy of all the documents in their defence, so that we should have an opportunity to rebut them. On the subject of Chatahoochie Ferry, it appears you are also instructed to institute a suit against Winn: the opinion of Judge Clayton on the subject, which you have thought proper to submit to us, we are, as well as yourself, by no means satisfied with it. We view it to be a very partial one; and how could it be otherwise, when it is said that Winn is his client? If the suit cannot be brought in any other court than the State Court, we presume that an appeal can be taken to the Federal Court, and from thence to the Supreme Court of the United States. And the nation cannot rest satisfied to lose the suit, and stop short of having the question settled by the highest tribunal. This question is of considerable magnitude, and involves a right which would affect the whole Cherokee nation. We must therefore hope that you will prosecute the suit with all possible legality, and without unnecessary delay; and without referring to us the mere opinions of lawyers, who may perhaps be influenced either by selfish or political interest in giving them.

On the subject of the annuity arising from the treaty of 1804, you inform us that you learn from letters received from the Secretary of War, that the decision of the late Secretary of War on the subject will be adhered to; that is, "two-thirds of that annuity will be paid to us, and one-third to the Arkansas Cherokees." The distinct understanding between the delegation and the late Secretary of War, there were no definitive decision made by him on the subject; but he remarked to the delegation, that any arrangement which might be made between the Cherokee nation and the Arkansas Cherokees, that the Government would be satisfied with it. Accordingly, an arrangement did take place between the delegations of both parties, and a written agreement was submitted before Col. McKenney, of the War Department, by which \$7,000 of that money was left in the hands of the Government for an adjustment between themselves; but soon after, as we are informed, the money was paid over by the present Secretary of War to the United States' agent on Arkansas, for the Cherokees there, without consulting either party; consequently, the Cherokees of Arkansas did not consider it necessary for them to attend to the agreement made by their delegation with the delegation of this nation. We cannot but believe that the United States' Government is justly accountable to the Cherokee nation for that money. We consider this nation to be exclusively entitled to the whole annuity arising out of that treaty, not only because the Cherokees of Arkansas had volun-

tarily withdrawn themselves from the protection of this nation, and established an independent community in a distant country to themselves, but also because the treaty stipulation *secures it to the Cherokee nation*; and that the Cherokees of Arkansas have no right to any part of it, from any known article of treaty, or by any principle sanctioned by the law of nations. We would now beg leave again to bring before the Government the subject of the school reservations; and hope that an arrangement will be made as soon as practicable to bring those lands into market, so that the youths of this nation may enjoy the privilege and benefit of education from the funds which will arise therefrom. This subject has been so repeatedly brought before the Government by the nation, and as often promised to meet attention, that we should have felt it as a matter of delicacy to introduce it again, had we not been urged from the great necessity for a general education among the youths of this nation. We would also bring before your view the subject of horses, stolen from the Cherokees by citizens of the United States. It appears, from the late instructions given you by the War Department, that the same course must be pursued as is required by the intercourse law for other stolen property; and that, in every case, the transgressor must be pursued and brought to trial, before a recovery can be had, and the Indian remunerated: this has never been the course heretofore, neither can we believe that it was contemplated by the treaty that it should be so, because the concluding part of the 9th article of Tellico treaty, 1798, is very explicit, which is in these words: "It is mutually agreed between the parties, that horses, stolen, and not returned within ninety days, shall be paid for at the rate of sixty dollars each, if stolen by a white man, citizen of the United States, the Indian proprietor shall be paid in cash; and if stolen by an Indian from a citizen, to be deducted as expressed in the 4th article of the treaty of Philadelphia." All that was ever required of an Indian in this case for upwards of twenty years, was, to prove that his horse is actually stolen by a citizen of the United States; and such evidence being established to the satisfaction of the Board of Adjudication, the Indian has generally been paid by the Government for his horse; but the late regulation which is adopted by the War Department, if we understand it correctly, puts it out of the power of the Indian to recover pay for his horse once out of at least one hundred cases, and contrary to the special stipulation of treaty in his favor. We hope this error will be corrected, and that the same rule prescribed by the treaty will be resumed.

We return you the thanks of the General Council for your vigilance and tedious duties performed on the frontier settlements, in endeavoring to suppress intrusions on the Cherokee lands, as well as your exertion to bring to justice those depredators who have committed injury on the property of the Cherokees living on the frontier. In behalf of the Cherokee nation, we salute you; and may health and happiness attend you is the sincere prayer of your friends and obedient servants.

CHARLES R. HICKS,
JOHN ROSS.

P. S. Agreeably to your request, the claims submitted by you are all herewith returned.

NEWTOWN, 26th Sept. 1826.

FRIENDS AND BROTHERS: Enclosed I send you the accounts of James and Samuel Reid, for twenty barrels of flour, and eighteen barrels of whiskey, and seventy-three gallons of brandy, taken from them by John Walker and John Shepherd, officers of the Cherokee nation, for an alleged breach of your laws; which accounts I am directed by the Secretary of War to present to you for payment, and report to him your reasons for not paying it, if you do refuse to do so. It has been presented to Mr. Hicks, but no direct answer received.

I have taken the evidence offered by Mr. Walker for his own justification; and, from the evidence produced, it seems that the Mr. Reids did sell some whiskey on the Conesauga river, and within the limits of the Cherokee country, but whether in violation of the United States intercourse laws and the existing treaties, is a question which it is deemed now too late to investigate. We are prevented from doing so by the execution of your laws or the acts of your officers. How far those officers are justified by your laws is a question for you, not for me, to determine. What your laws are on the subject I know not, nor is it material in the present case that I should. In the consideration which I have given this case, several important questions have presented themselves to my mind, a few of which I will take the liberty of proposing to you for your consideration, while reflecting on this claim, and all other claims of the same nature.

The first is, who has the power to pass laws regulating trade and intercourse between the citizens of the United States and the Cherokee Indians? This is an important question in the present case, and on its solution rests the validity or invalidity of all your laws on the subject. For an answer to it, I might refer you to the 8th and 17th sections of the 1st article of the Federal Constitution, but it is not deemed necessary to go further than the treaty of Hopewell, in 1785, article the 9th, and the treaty on Holston, in 1791, article the 6th. These are your own acts, and they are the supreme laws of the land, and they are your constitution; all your laws must be bottomed on them, and accord with them, or they are void.

Those treaties seem to give to the Congress the sole and exclusive right to pass laws on the subject. This leads to a second question: If Congress have the sole and exclusive right to pass laws on the subject, have they not (as a matter of course) the right to execute those laws, and prescribe the manner and means how and by whom they shall be executed? Here, it seems to me that your own good sense will tell you they have. Again: If Congress have the right to pass those laws, and to execute them, can the Cherokees legally deprive her officers from executing them, and thereby deprive the United States from receiving that revenue which she might receive from fines and forfeitures incurred under the penalties of those laws? This is precisely in point, and, like the answer to the last, would seem to follow of course. They cannot.

One more question. Can the Cherokees, by their laws, add to the laws of the United States, and, on her citizens, additional fines and forfeitures? My own opinion is they cannot. The construction forbids it; the treaties which I have quoted forbids it; the words *sole and exclusive* put that question to rest. If, then, the construction be a correct one, that Congress alone have the right to pass laws regulating trade and intercourse between her citizens and yours, and the *sole* right to execute those laws, and if you

have legally no right to prevent her officers from doing so, and her citizens cannot be twice punished for the same offence, the inference is a natural one, that all the laws which you have passed on the subject are void; that they only lead your citizens into errors, and will eventually operate as drains on your treasury, and ought to be repealed; and that the only course left for you to pursue is, when any of the citizens of the United States infract her laws, report them to the Agent, whose duty is prescribed by law.

I would again call your attention to the claim of Hiram Buckley, which was presented to the last Council, but no answer received. This claim assimilates itself very much to that of the Reids, with only this exception, viz: that no charge has been alleged against him for selling spirituous liquors, or any other unfair trade, that I have heard of.

I have also enclosed you the claim of John M'Gown, for negroes, cattle, and cash, taken from him and detained by Richard Fields, as Deputy Marshal, at the instance of Betsy Pack. This is of the same description of the others, with the exception, as I understand, that it was taken under pretence of private debt, but without any trial.

I have also enclosed you the account of Elliot Murdock, for fifteen dollars, for a cow, killed by two Indians, Jere. Cornflower and Callaway. This account is supported by his own and the depositions of William M'Gill and William Coleman, with all the forms required.

Your final determination on all those accounts is expected, with as little delay as will suit your convenience.

Respectfully, your friend and brother.

H. MONTGOMERY.

Mr. CHARLES HICKS, and the Com. and Council of the Cherokee nation.

A list of property taken by John Walker and John Shepherd, officers of the Cherokee nation, from James and Samuel M. Reid, on the Conesauga river, in the Cherokee nation.

Eighteen barrels whiskey ; in all, six hundred fifty three gallons,	- - - - -	653 gallons.
Two barrels peach-brandy ; in all, seventy-three gallons,	- - - - -	73 do
Twenty barrels superfine flour, containing one hundred and ninety-six pounds each.		

STATE OF TENNESSEE,

McMinn County.

¶ This day, personally appeared James Reid and Samuel M. Reid, before me, Samuel McConnell, one of the acting Justices of the Peace, in and for said county, and, after being duly sworn, deposeth and saith, that, on the 21st day of December last, John Walker, Jun. came to our boat, on the Conesauga river, with several men in company, and demanded all of our spirits, stating that he was bound to take the same, as an officer of the Cherokee nation, and then violently took six hundred and fifty-three gallons of whiskey, and seventy-three gallons of peach brandy; and, on

the 23d of the same month. John Shepherd came to our boat, and stated that we must pay him one hundred dollars as a fine, for the same offence that they had taken the whiskey for : the breach they alleged against us, was that of selling whiskey on the Conisanga river. We refused to pay said fine ; and the said John Shepherd, with others, violently took from us, out of our boat, twenty barrels of flour. They took our loading, without adducing any proof that we even had sold whiskey on said river, or giving us any trial whatever. We then proceeded to go on to Alabama, with the balance of our loading, and sold the same. We believe we could have received for the whiskey, in Alabama, from seventy-five cents to one dollar per gallon ; the brandy would have demanded at least one dollar per gallon : the flour was selling, at Cahawba, at twelve dollars per barrel.

JAS. REID,
SAMUEL M. REID.

Sworn to and subscribed before me, this 25th day of February, 1826.

S. McCONNELL,
J. P. for said county.

STATE OF TENNESSEE,
McMinn County.

Personally appeared Alfred Denton, before me, Samuel McConnell, one of the acting Justices of the Peace in and for said county, and, after being duly sworn, deposeth and saith : That he, the deponent, was present, and saw John Walker and John Shepherd violently take out of the boat, in the Conesauga river, belonging to James Reid and Samuel M. Reid, eighteen barrels of whiskey, and two barrels of brandy, and twenty barrels of flour. The above acts were done in the limits of the Cherokee nation, and in the last of December last past.

ALFRED DENTON.

Sworn to and subscribed before me, this 25th day of February, 1826.

S. McCONNELL,
Justice of the Peace.

Endorsed.—"Presented to Mr. Wm. Hicks and John Ross, on the 16th April, 1828. Mr. Ross replied, that he had no other reasons for not paying it than what were assigned by him and Chas. R. Hicks, in their letter of the 14th Dec. 1826, to me. I will only add, that the taking is proved by Denton, acknowledged by Mr. Walker, and justified by the Chiefs, on the grounds that they had a right to do so : for my opinion, see my letter of the 18th Dec. 1826."

H. MONTGOMERY.

CHEROKEE AGENCY, 18th December, 1826.

SIR : On the 5th September, ult. I received your letter of the 19th August. I immediately wrote to Mr. Hicks, on the subject of the line between Georgia and Alabama ; and on the 26th, I wrote him and the National

Council on the subject of a survey, for the purpose of ascertaining the practicability of a canal or railway through their country, offering such reasons as in my opinion ought to have reconciled them to the measure.

And on the 23d October, I presented the claim of James and Samuel Reid, Hiram Buckley, and others. Their answer to both these letters is just received, together with their speculations on several other matters which had been the subject of previous correspondence between them and the Government and its agents: the original of which, as it is too voluminous for me to copy, is enclosed, together with the copy of my letter to them on the subject of those claims, and evidence taken for and against the claimants, by which you will see that they and me are at issue on one very important point, viz: whether the Congress of the United States, or the Cherokees, have the right to pass laws, regulating trade and intercourse between the citizens of the United States and the Cherokee Indians.

In the two first cases, of the Reids and Buckley, the fact of taking the goods is not denied, but the right to do so is claimed under the Cherokee law. My opinion is, that the Cherokees had no right to pass such a law; and having assumed a power not given them by the constitution and existing treaties, they ought to pay for the property.

In the case of Elliot Murdock, the claim is supported by two witnesses; and as no evidence is offered to discredit them, I am bound to believe them, until the contrary appears, and that Murdock ought to be paid for his cow.

The claim of John McGown, for property taken from him by Richard Fields, deputy marshal, is reduced down by the evidence offered by Mrs. Pack, to one negro woman and child, proved by the oath of Obadiah Benge, to be worth at that time \$450, and six or eight head of cattle, worth, I suppose, about \$100. If McGown was indebted to Mrs. Pack, she must have trusted him under the impression that he would pay her without law, or that she could enforce the payment by the laws of Tennessee, where he then and yet resides; she ought, therefore, to have applied to those laws for a recovery, and the nation ought to compel her to return the property or pay for it.

I have the honor to be

Your obedient servant,

H. MONTGOMERY.

Hon. JAMES BARBOUR,
Secretary of War.

CHEROKEE AGENCY, May 6, 1828.

SIR: On the 25th April I had the honor to receive your letter of the 3d of that month. I immediately sent one of the interpreters to Newtown for the paper called for, with directions, if he did not succeed there, to proceed to Mr. John Ross'. He was directed, if possible, to return in time for me to have sent the papers by the last Friday's mail; but as he did not succeed in getting it at Newtown, but had to go to Mr. Ross', he did not get back until to-day; and now, as the mail does not return to Calhoun until next Friday night, I fear the papers will not arrive in time

to meet the call which is made for them; but be assured, Sir, that we have used all the expedition in our power.

The copy of a letter from Messrs. Hicks and Ross to me, and copies of two letters from me to the Council, to which that was a reply, and a copy of my letter to you of the 18th December, 1826, which accompanied them, are enclosed. I have also enclosed the copy of the Reids' account, having, on the 16th April last, presented it to Messrs. Ross and Hicks, and having been referred to the objections contained in their letter of the 11th December, 1826; and I thought it had better accompany the papers, to which it, in a great measure, gave rise.

Respectfully, your obedient servant,

H. MONTGOMERY.

Honorable JAMES BARBOUR,
Secretary of War.

CHEROKEE AGENCY, September 26, 1828.

FRIENDS AND BROTHERS: I am directed, by your great father the President of the United States, to endeavor, by reasoning with the chiefs of the Cherokee nation, to reconcile them to a survey, for the purpose of ascertaining the practicability of a canal through their country.

I wrote to Mr. Hicks, a few days since, a hasty line on the subject, which he will, no doubt, lay before you. But the hurry of the bearer was such, that I had not time even to read what I did write; and what was written, was without a moment's reflection.

I have since reflected more seriously on the subject, and am only the more confirmed in the correctness of both the positions which I then took: 1st, that the examination, and, if practicable, the effectuation of a canal, connecting the waters of the Tennessee with the Chattahoochie, through the Cherokee country, would be of incalculable advantage to the nation, and could not, in any event, affect your title to the lands; and that every source of wealth opened in the country, and every dollar's worth of improvement made on the soil, adds to the permanency of your residence on it. By way of illustrating this idea, I will suppose a case. Suppose A has a tract of land, say 100 acres, which is worth two dollars per acre in the woods, and for which he could sell it; but suppose he puts \$ 1,000 worth of buildings on it, may he not be thereby deprived of selling, even if he was willing, the price being too much enhanced for the buyer? Or I will put a case more familiar to you. Suppose every man in the nation had buildings and improvements equal to Joseph Vann, would not the value of the country be so much enhanced, and the difficulty and expense of purchase by the United States, as to prevent a sale, even if you were willing, and of course fix you down more firmly on the soil. Then it cannot operate against the permanence of your residence.

As to the other position which I took, viz., that a successful experiment of the kind would be an advantage to the nation, I will premise what I have to say on that subject by observing that I fear it is not practicable, at least in the neighborhood where the experiment was making, not because of the unevenness of the ground, but for want of lasting springs, or small water-courses, to feed a canal. There, you know, small water-

courses are scarce; and what are, generally dry up in the Summer or dry seasons.

I will now correct a mistake which I inadvertently went into in writing that hasty line to Mr. Hicks. I think I mentioned that such a work, if ever begun, would be the work of an age. I understand the New York Canal, 350 miles long, and over much worse ground, was completed in about three years. But suppose this took five, or even ten years, and the expense two million of dollars, and this is believed to be a moderate estimate, would not the circulation of that sum of money in the Cherokee nation be an advantage to every person in it, by affording a ready market for every pound of beef, pork, butter, and cheese, all the melons, pumpkins, corn, fodder, garden vegetables, chickens, eggs, horses, cattle of every kind, &c., and a ready employ and good wages for those who wished to work, and, besides, a stimulant to industry. Those who raised one dollar of surplus produce the first year would raise two the second, and so on, in progression; and those who now raise nothing for market would be stimulated to it by the readiness of the market; and a competition would be excited, and habits of industry commenced and confirmed, that would not wear out during life. But this is not all. The canal, if completed, would afford a ready, safe, and convenient road to market. It is the opinion of practical men, that are acquainted with canalling, that they cut off at least half the distance to market; this they prove by the facility with which the trip is performed. But the advantage is not entirely in carrying your surplus produce to market, but in receiving all your supplies, say salt, sugar, and coffee, in return, at reduced prices. These are a few, out of many advantages which your people would receive from such a work, if completed. I need not say to you, for you know it, that the hunter's life has passed away, and that the herdsman's is fast following in the wake. But this I will say, that, if we wish to see those people comfortable and happy, we must, after cultivating their minds, and impressing them with a sense of virtue and religion, encourage them to, and stimulate them on in, the cultivation of their lands; and, in my opinion, this work would be one of the best stimulants within our reach, and that we ought to embrace it.

My anxiety on this subject is not a little increased by the strong desire I have, that peace, friendship, and good will should exist, to their mutual advantage, between the Cherokees and all their neighbors. Be so good as to weigh this subject seriously, and let me have the pleasure of hearing the result of your deliberations.

I am, gentlemen, with high respect,
Your friend and brother.

H. MONTGOMERY.

MR. CHARLES HICKS, and the National Committee and Council of the Cherokee nation,





