30th Congress, 1st Session. [SENATE.] Miscellaneous. No. 147.

MEMORIAL

OF

B. MARSHALL, TUCKAHATCHEE MICO, G. W. STEDHAM, AND GEO. SCOTT,

DELEGATES OF THE CREEK NATION,

Praying Congress to pass an act for the adjustment of their unsettled business.

June 19, 1848.

Referred to the Committee on Indian Affairs, and ordered to be printed.

To the Senate and House of Representatives of the United States in Congress assembled:

The memorial of the undersigned, duly accredited delegates from the Creek nation of Indians, most respectfully represents, that they were duly appointed by their nation, in General Council assembled, to visit the city of Washington, to lay their claims before the President of the United States, and Congress if it should be deemed necessary, in order that the same might be fairly and finally settled. The Commissioner of Indian Affairs, to whom the undersigned made a statement of the claims which they were charged by their people to bring to the notice of the government, having informed them that they could only get relief by an appeal to your honorable bodies, this memorial is presented, in which will be found a brief statement of what the Creek nation believe is justly due to them from the United States.

1. By the treaty made and concluded at the Indian Springs in 1821, the Creek nation ceded to the United States a large tract of country lying within the chartered limits of Georgia. One consideration for this cession was, that the United States agreed to pay to the State of Georgia whatever balance might be found due by the Creek nation to the citizens of that State, whenever the same should be ascertained in conformity with the reference made by the commissioners and the chiefs, headmen, and warriors of the Creek nation, provided the same shall not exceed the sum of two hundred and fifty thousand dollars. It is to this sum of two hundred and fifty thousand dollars that the undersigned desire to call your attention. It has always been the opinion of the Creek nation, that they conveyed the land embraced in the treaty of 1821 to the United States for the sum or consideration of $450,000. And although they agreed that the United States might retain the sum of $250,000 for the purpose of paying the claims of the citizens of Georgia, if they could establish just claims against them, in the mode pointed out in the treaty,

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still they have always contended, and now contend, that the exact sum of $250,000 was a part of the consideration agreed to be paid for the land conveyed, and that the Creek nation are entitled to the balance which was left in the treasury after the debts due to the Georgians, and which were legally established by them, were paid. That this was the understanding of all parties at the time the treaty was made, the undersigned consider manifest, from the fact that, simultaneous with the execution of the treaty, articles of agreement were entered into between the principal chiefs who signed the treaty, and the commissioners appointed by the State of Georgia, for and on behalf of the citizens of said State, in which it was mutually determined between them how and in what manner these claims should be set up and established. Now, had it been the understanding that the Creek nation was not to be entitled to any balance which might remain after the claims of the citizens of Georgia were paid, where was the necessity for them to enter into the agreement referred to? What other possible interest could it have had in the matter? If the United States were not bound to pay the whole sum of $250,000, but only such sum as the citizens of Georgia might establish to be justly due, it would have been for them, and not for the Creek nation, to have made themselves parties to this agreement with the commissioners of the State of Georgia. If the views here taken of the matter be incorrect, then it was an act of superlative folly on the part of the commissioners of Georgia to enter into the agreement with the Indian parties to the treaty, for, according to any other construction, as soon as the treaty was signed, the amount of claims and manner of their establishment and allowance were questions solely between the United States and the State of Georgia, representing her citizens, and in which the Creek nation had not the slightest interest. The Creek nation, by signing the treaty, were absolved from all liability. If the sum of $250,000 should prove insufficient to pay the claims of the citizens of Georgia against them, it was no further concern of theirs; the treaty exonerated them from all claims of this character. Again, if the Creek nation had no interest in this sum of $250,000, the undersigned memorialists again ask, what possible interest the Creek nation could have had in stipulating "a speedy and final settlement?" The United States had agreed to pay the claimants, and the agents of the claimants had accepted them as paymasters; yet this agreement was made, as it expressly states, "to adjust and bring to a speedy and final settlement" the claims to a large amount held by the citizens of Georgia against the Creek nation of Indians. From the whole tenor of the treaty, and the agreements accompanying it, it is apparent, as your memorialists conceive, that the United States but acted as trustee in regard to this sum of two hundred and fifty thousand dollars, and in accepting the trust they became bound to pay over to the citizens of Georgia the amount which should be found due to them, in the mode agreed upon by the parties, and to pay over any balance remaining in their hands after these payments were made to the authorities of the Creek nation. Your memorialists will not at this late day, though they well might, object to the amounts paid to the Georgia claimants on awards made under the instructions of President Monroe. They might point to the treaty, which shows that the reference to the commissioner was to have been of the claims on both sides, while his instructions were, to settle the amount of claims of the citizens of Georgia on the Creek nation—not those also of the Creek na-

tion on the State of Georgia. The place of settlement, too, was in the interior of Georgia, remote from the Indian settlements ; and whilst care is taken that the Georgia claimants shall have full notice, it does not appear that there was any notice given to the Creek nation, so as either to enable them to bring forward their own claims, or to oppose, if they thought proper, those of the citizens of Georgia. The subject submitted was the claims on both sides, so as to lead to the ascertainment of the balance, if any, which might be due to the citizens of Georgia. On such a reference of accounts between individuals, it would be error for the arbitrators to proceed without notice to both parties ; and such an award would be set aside on the prayer of the injured party who had not notice. [See opinion of Attorney General Wirt, page 619, "Opinions of Attorneys General."] Again, your memorialists might object to the act of President Monroe, in enlarging the instructions given to the commissioner so as to embrace all claims arising under the treaties of Augusta, Galphinton, and Shoulderbone; when an examination of those treaties will show that the claims arising under them were settled by them. But they will not do this. All they ask is, that the balance may be paid over to them. They conceive it to be their right to ask it, and such was the opinion of Attorney General Wirt, who said : "To me it is manifest that it (the sum of $250,000) is part of the estimated price of the lands sold by the Creek nation to the United States for their assumption of the debts of that nation to the people of Georgia.

"It is true that there is no stipulation for the payment over of the surplus to the Creeks. This may have proceeded either from the cause that has already been suggested—the despair of this people, under the circumstances of the case, that any surplus would remain—or from their expectation that the natural justice of the case would prompt the payment of the surplus to them if any should remain. Be this as it may, does it comport with the dignity and magnanimity of the United States, does it consist with their enlightened justice, to retain any portion of this fund after it shall have answered the only purpose for which it was left in their hands—that is, to indemnify them against the responsibility for the Creeks, which they had assumed to the State of Georgia? On the contrary, after it shall have completely fulfilled this purpose, by the payment of all the fair claims of Georgia, and thus exonerated the United States from all further responsibility, ought not the surplus to go to those to whom it would have gone at once, but for this temporary impediment? My opinion is, that it ought; and that if it were possible to constitute a disinterested equitable tribunal, with power to try and decide this question, the decree would infallibly be in favor of the Creeks."

2. During the war generally known as the Red Stick war, a large number of the Creeks took part with the United States, and from that cause suffered great loss of property. After the war was over, an act of Congress was passed, which was approved on the 3d March, 1817, by which an appropriation was made to pay for the losses thus incurred by certain Creek Indians. After the passage of the act, commissioners were appointed by the President of the United States to examine into these claims, and to distribute to the claimants the amount thus appropriated, being the sum of $85,000. In pursuance of the notice given by the commissioners, claims for losses were presented and allowed for a sum far exceeding the amount of the appropriation, so that the claimants got but a little more,

if any, than a moiety of the amount due them for the losses which they had sustained. Your memorialists pray that this matter be inquired into, and if the facts be as they have understood and stated them to be, that you will grant them relief.

3. Your memorialists would further call your attention to the claims of some thirteen hundred of their people, belonging to what was known as the McIntosh party, and who were emigrated under the direction of Col. Crowell. This party, after being ready to remove, were, against their protestations, kept in camp near the agency for a period of more than eight months before they were emigrated. They were a portion of the three thousand friends and followers of Gen. McIntosh who were entitled to *per capita* distribution of the one hundred thousand dollars secured to be paid to the followers of Gen. McIntosh, by the 9th article of the treaty of 1826. This party, though clearly entitled, both by treaty stipulations and by the pledges of government officers, to some $30 each on their arrival in the west, have never been paid a cent. If the whole fund has been distributed, as is claimed to have been by the Commissioner of Indian Affairs, a large portion of it must have been paid to persons not entitled to share in the distribution; and the United States having paid it to improper persons, are, as your memorialists conceive, clearly bound to make it good to those to whom it rightfully belonged. Mr. Crawford admits in a letter to Major Armstrong, dated July 29, 1845, that there was in the treasury the sum of $11,160, which was applicable to the payment of those claims in part. The reason given by Mr. Crawford, in the letter referred to, why this amount has not heretofore been paid over, has never been satisfactory to the people interested therein, and your memorialists ask for such action as may be necessary to afford relief to these claimants.

4. In all the various treaties between the United States and the Creek nation of Indians which contemplated the removal of the whole or any portion of the creek tribe to the west of the Mississippi river, the United States undertook and agreed to pay the expenses of all who thus removed. A number of their people have at different times removed at their own expense. Your memorialists pray that your will make an appropriation to reimburse those who are in this situation.

5. The Creeks have large claims for spoliations committed upon their property by the Osage Indians. Mr. Crawford, in his letter to Captain Armstrong above referred to, admits that the sum of $30,000 was provided by the treaty of the 1st of January, 1839, with the Great and Little Osages, to pay for depredations committed by them against other Indians or citizens of the United States, but charges the Creeks with not presenting their claims in a proper manner or at the proper time. Your memorialists ask that their claims may be investigated, and if found just, that they be paid out of the balance remaining of said fund.

6. Your memorialists would further beg leave to call the attention of your honorable bodies to the claims of their chief, Gen. Roley McIntosh, and his followers, against the United States. Your memorialists admit that a treaty was made in 1838, and a portion of these claims provided for and paid. But they assert that a large portion of the claims had been sent to the War Department at Washington, and were not returned to the commissioners; or if so returned, that the Indians had no notice thereof, and that they were not taken into the estimate when the amount to be awarded

them was fixed. Your memorialists ask that this be inquired into, and if the claims be just, that provision be made for their payment.

7. Your memorialists would further state, that in consideration of the cession of all their country east of the Mississippi river to the United States, by a clause in the 11th article of the treaty of 1832, a part of the consideration to be paid by the United States, to wit: the sum of $8,570, was set apart to pay certain judgments against the chiefs. These debts were paid, but a small balance was left in the treasury, which your memorialists believe rightfully belongs to the Creek nation, and they ask that it be paid.

8. Your memorialists would respectfully represent that during the war in Florida, application was made to the chiefs, headmen, and warriors of the Creek nation to furnish a regiment of Indians to march against the Seminoles. Gen. Jesup, by whom the proposition was made, agreed to have them mustered into the service of the United States, to receive the pay of soldiers, and promised that if any of their warriors were killed or died in the service, their families should receive pensions, and that pensions should be given to such as were wounded. Relying on these promises, many of their people enrolled themselves and marched to Florida, and rendered good service to the United States against the Seminoles. Some of their people were killed, some died, and some were wounded; but as yet they have received no pensions, as was promised to them by Gen. Jesup. In this their people have been disappointed, and your memorialists pray that an act may be passed for their relief.

Your memorialists have now presented their claims before you, and they ask your favorable action upon them, as it will satisfy all outstanding and unsettled claims which they have against the United States. Respectfully submitted.

B. MARSHALL.
TUCKAHATCHEE MICO, his ⋊ mark.
G. W. STEDHAM.
GEORGE SCOTT.