CHEROKEE TREATY OF 1846.

LETTERS

FROM THE

SECRETARY OF WAR, SECOND COMPTROLLER, AND COMMISSIONER OF INDIAN AFFAIRS,

UPON

The subject of the Cherokee Treaty of August, 1846.

FEBRUARY 13, 1849.

Ordered to be printed.

WAR DEPARTMENT, *February* 9, 1849.

SIR: I have the honor to transmit herewith a report of the Commissioner of Indian Affairs in reply to your letter of the 3d instant, asking that information and estimates be furnished to the committee "of the amount proper to be appropriated, if any, to carry into effect the treaty of August 6, 1846, between the United States and the Cherokee nation."

Very respectfully, your obedient servant,

W. L. MARCY,
Secretary of War.

Hon. D. M. BARRINGER,
Chairman Com. Indian Affairs,
House of Representatives.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
February 9, 1849.

SIR: I have the honor to acknowledge the receipt of the letter of the chairman of the Committee on Indian Affairs of the 3d, referred by you to this office on the 6th instant, on the subject of the increase in the amount to carry into effect the treaty of 1846 with the Cherokees, inserted in the Indian appropriation bill by the Senate, over and above the sum stated to be necessary for that purpose in my report of May 10, 1848, according to the principles explained in that report, and submitted for the examination and revision of Congress.

In view of this increase in amount the honorable chairman of the committee remarks, in reference to the settlement with the Cherokees required to be made by the treaty of 1846, that the "subject is one of very great importance; and he requests, in behalf of the committee, "that information and estimates may be furnished from your department of the amount proper to be appropriated, if any, to carry into effect" that treaty.

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In obedience to your order I have the honor to state, in reply, that the amount required for that object depends upon the construction to be given to the ninth in connexion with the third article of the treaty, and the correctness of what are assumed as facts in the latter. My report of May 10, 1848, contained a full exposition of the principles of settlement therein adopted, and of the reasons for the construction given to the above articles upon which those principles were based; that construction being, to a certain extent, in conformity with the action of Congress, both before and after the treaty of 1846, in cases arising under the treaty of 1835–'6, and which having, as I judged, a material bearing upon the construction to be given to the treaty of 1846, I felt bound to respect. I may also add, that so far at least as one class of reservations is concerned, viz: those which by the thirteenth article of the treaty of 1835–'6 were to have been granted and confirmed to the reservees, but which grant was annulled by the first supplemental article of that treaty, and money in lieu thereof specifically allowed by the third supplemental article, *to be paid by the United States*, the construction adopted in my report was in conformity with a decision, or decisions, of the Second Comptroller, who was one of the commissioners that negotiated the treaty of 1846, and who, subsequent to that treaty, and upon argument and full consideration, as I was informed, directed the payment of some $8,960 allowed by the late board of Cherokee commissioners for reservations of that class, out of the appropriations made to carry into effect the treaty of 1835–'6, a part of which was the $600,000 stipulated in the 3d article of the supplement to that treaty to be part in lieu of reservations of that kind. The whole amount allowed and paid for such reservations is $130,962 50, and if this sum is now embraced in the amount yet to be appropriated and paid to the Cherokees, the result will be that the United States will actually have provided for one class of the reservations twice over. With reference to the other classes of reservations Congress, by distinct and special legislation, both before and since the treaty of 1846, fully recognized, as I supposed, a similar construction, while it also appears that cases of spoliations of the class denominated "rents," or "dispossessions," have likewise been paid for out of the appropriations mentioned, since the treaty of 1846, through the offices of the Second Comptroller and Second Auditor of the Treasury.

In preparing my report, the amounts expended and paid were classified and arranged separately, under each separate and distinct class or head of expenditure; so that if Congress should not be disposed to concur in the construction and principles of settlement acted on in that report, that body might be in possession of the materials for arriving at whatever amount it would be necessary to appropriate, according to any different construction it might think proper to adopt.

It will readily be seen that any estimate different from that contained in my report, must be according to some construction and principles different from those set forth therein, and as I am not apprised of any adopted by Congress to serve as the basis of a different estimate, I do not see how I can better comply with the request contained in the letter of the honorable chairman of the Committee of Indian Affairs, than to respectfully refer him to the report and estimates already submitted.

Very respectfully, your obedient servant.

W. MEDILL.

Hon. W. L. MARCY,
Secretary of War.

TREASURY DEPARTMENT,
SECOND COMPTROLLER'S OFFICE,
February 6, 1849.

SIR: I have to acknowledge the receipt of your note of yesterday, requesting me to furnish you with a brief statement of the reasons for the constructions placed upon the Cherokee treaty of 1846, in the report of the Second Comptroller and Second Auditor to the Senate of the United States of the 15th ultimo.

By the resolution of the Senate of the 10th ultimo, the Comptroller and Auditor were required to report "what amount is due to the Cherokee nation of Indians, according to the principles established by the treaty of 1846, taking as a basis for their calculation the statement of amounts made by the Commissioner of Indian Affairs in his report of May 10, 1848."

On referring to the treaty it was found that the United States had agreed to reimburse to the Cherokee fund sundry sums which, although not justly chargeable upon it, had been improperly paid out of that fund. The ninth article of the treaty points out the principles upon which the settlement is to be made. It particularly enumerates the objects of expenditure to which the Cherokee fund was applicable, to wit: "improvements, ferries, spoliations, removal and subsistence, and commutation therefor, debts and claims upon the nation, the amount paid for the additional quantity of land ceded to the nation, and the several sums invested as general funds of the nation under the treaty of 1835. This enumeration excludes the improper payments above referred to, and is so clear and explicit that it would seem there could not be a doubt as to its meaning. The Comptroller and Auditor therefore proceeded to ascertain what sums had been paid for the objects enumerated above, and found the aggregate amount to be five millions nine hundred and sixty three thousand ninety-two dollars and twenty-one cents.

The ninth article of the treaty of 1846, requires that this aggregate shall be deducted from the sum of six millions six hundred and forty-seven thousand and sixty-seven dollars, and the balance thus found to be due is to be paid over to the Cherokee nation. This balance the Comptroller and Auditor, in compliance with the resolution of the Senate, reported as "due to said nation according to the principles established by the treaty of 1846." The reasons for their action are to be found in the positive direction of the 9th article of said treaty, which seemed to them to be too clear to admit of a doubt.

In addition to this, they had recourse to the report of the commissioners who negotiated the treaty of 1846, "and whose report and conclusions, in a great measure, formed the basis of that treaty." The commissioners say, "by the first article of the treaty of 1835, the Cherokee nation ceded to the United States all the lands owned, claimed, or possessed by them east of the Mississippi river, in consideration of the sum of five millions of dollars, to be paid and invested in conformity with the subsequent stipulations of the treaty." "In the third supplemental article to the same treaty, the United States agreed to pay the additional sum of six hundred thousand dollars for the objects therein mentioned. By the act of June 12, 1838, Congress appropriated the further sum of one million forty-seven thousand and sixty-seven dollars to defray the expenses of removal, which was a volunary grant to the Cherokee people," &c.

The commissioners add, "as all these sums were for the objects expressed in the treaty, the undersigned regard them as one aggregate sum given by the United States for the lands of the Cherokees, subject to the charges, expenditures, and investments, provided for in the treaty. They amount in the aggregate to six millions six hundred and forty seven thousand and sixty seven dollars." This sum (the commissioners say) was appropriated and placed in the treasury of the United States, to be disposed of according to the stipulations of the treaty. The United States thereby became the trustee of this fund for the benefit of the Cherokee people, and were bound to manage it in accordance with the well known principles of law and equity which regulate the relation of trustee and *cestui que trust*.

The commissioners then proceed to state what expenditures and investments were properly chargeable upon that fund, and enumerate those particularly set forth in the ninth article of the treaty of 1846.

From this explanation you will see how the Comptroller and Auditor ascertained what amount is due the Cherokee nation, as stated in their report of the 15th ultimo, made in compliance with the resolution of the Senate.

They took the treaty for their guide, finding its directions to be explicit and free from ambiguity; and they found, also, that their interpretation of the treaty was fully confirmed by the report of the commissioners who negotiated it.

With entire respect, I am, &c.,

ALBION K. PARRIS, *Comptroller.*

Hon. JAMES MCDOWELL,
Member of the Com. of Ways and Means, House of Reps.

WAR DEPARTMENT, *February* 12, 1849.

SIR: In compliance with the request in your letter of the 10th instant, I have the honor to transmit herewith a report from the Commissioner of Indian Affairs, showing the amount that will be required to carry out the treaty of August, 1846, with the Cherokees, if the construction and principles of settlement laid down in the report of the Second Comptroller and Second Auditor of the treasury, made to the Senate on the 15th ultimo, be adopted.

Very respectfully, your obedient servant,

W. L. MARCY,
Secretary of War.

Hon. D. M. BARRINGER,
Chairman Committee Indian Affairs, House of Reps.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
February 12, 1849.

SIR: In compliance with your directions I have the honor to make the following report upon the letter of the chairman of the Committee on Indian Affairs of the House of Representatives of the 10 instant, referred by you to this office.

In my report of May 10, 1848, it is stated that, according to the construction and principles therein fully set forth and explained, there would be due under the treaty of August, 1846, with the Cherokees—

To the "government party" - - - -	$184,071 28
And to the "Old Settlers," or "Western Cherokees" -	419,763 96
	603,835 24
Deduct estimated balance on hand applicable thereto, of appropriations on account of treaty of 1835–'6, viz: -	38,948 50
Leaving to be appropriated, according to my report, to carry into effect the treaty of 1846, the sum of - -	564,886 74

In arriving at that result, the amounts for certain objects of expenditure under the treaty of 1835–'6, and the supplement thereto were, for reasons given in the report, deducted not from the "five million fund," but from the additional $600,000 stipulated in the third article of the supplement, and the $1,047,067 appropriated June 12, 1838, in full for the objects provided for in that article, and for others.

Among the objects and amounts so deducted were the following, viz:

Amount allowed for reservations of all classes by the commissioners under 17th article treaty of 1835–'6 -	$256,440 01
Amount allowed for "spoliations" of all kinds - -	439,095 35
Amount allowed for "pre-emptions" - - -	15,589 00
	711,124 36
By the report of the Second Comptroller and Second Auditor of the Treasury to the Senate of the 15th ultimo, I understand them to differ from that of this office, as to the propriety of these deductions, and that they allow the above sums as legitimate and proper charges against the United States, except so much of the amount for spoliations as was for spoliations proper, as contra distinguished from those for "rents" or "dispossessions," viz: - - - - - -	226,950 23
Amount allowed by Comptroller and Auditor on account of the above objects - - - - -	484,174 13
In addition to which they also allow, as a charge against the United States, the amount paid to agents for valuing improvements, ferries, &c., owned by the Cherokees, which in the report from this office, was considered a legitimate charge upon the "five million fund" as a part of the cost of those objects, which were payable out of that fund, viz: - - - -	15,729 38
Total allowed by Comptroller and Auditor to the "Cherokee nation" - - - - - - -	499,903 51
In addition to the amount allowed in the report from this office, viz: - - - - - - -	184,071 28
Which two sums make the amount reported by those officers as found due to the "Cherokee nation" under the treaty of 1846, viz: - - - - -	683,974 79

In what manner the Senate arrived at the amount ($1,231,424 75) which I understand from the letter of the chairman of the Committee on Indian Affairs, that body inserted in the Indian appropriation bill, I am not apprised; but should the construction and principles of settlement adopted by the Second Comptroller and Second Auditor, as I understand them prevail, the amount required to carry out the treaty with the Cherokees of August 1846, in addition to the estimated balance on hand of former appropriations, will be $1,184,392 08, as may be seen from the following statement in detail:

1st. With reference to the "Cherokee nation," or "government party:"

CR.		
By consideration stipulated for the lands east of the Mississippi, ceded by the treaty of 1835–'36 - - -	$5,000,000 00	
By additional amount stipulated in third article of supplement thereto - -	600,000 00	
By further amount allowed and appropriated by act of June 12, 1838 -	1,047,067 00	
		$6,647,067 00
DR.		
To amount for additional quantity of lands assigned Cherokees west -	500,000 00	
To amount invested for general national funds - - - - -	500,000 00	
To amount paid for improvements and ferries - - - - -	1,721,837 85	
To amount paid for removal and subsistence, and commutation therefor, including necessary incidental expenses of enrolling agents, conductors, commissaries, interpreters, &c. - -	2,915,141 58	
To amount paid citizens of the United States for claims against the Cherokee nation - - - - -	59,574 25	
To amount paid Cherokees for similar claims - - - - -	17,561 41	
To amount paid Cherokee committee for their services - - - -	22,026 89	
To amount allowed for spoliations, except for "rents" and "dispossession of property and improvements" - -	226,950 23	
		5,963,092 21
		683,974 79
Deduct estimated balance on hand of appropriations under treaty of 1835–'36, viz: - - - -		38,948 50
Balance required under this head of account - -		645,026 29

2d. With reference to "Old Settlers," or "Western Cherokees:"

CR.

By consideration stipulated for the lands east of the Mississippi, ceded by treaty of 1835–'36 - - - -	$5,000,000 00	
By additional amount stipulated in third article of supplement thereto -	600,000 00	
		$5,600,000 00

DR.

To amount for additional quantity of lands assigned Cherokees west -	500,000 00	
To amount invested for general national funds - - - - -	500,000 00	
To amount allowed for improvements and ferries, prior to date of treaty of 1846 - - - - -	1,716,502 85	
To amount for removal and subsistence at $53 $\frac{33}{100}$ per head - - -	941,979 99	
To amount paid citizens of the United, States for claims against the Cherokee nation - - - -	59,574 25	
To amount paid Cherokees for similar claims - - - -	17,561 41	
To amount paid Cherokee committee for their services - - - -	22,026 89	
To amount allowed prior to date of treaty of 1846, for spoliations, except for "rents" and "dispossession of property and improvements" - -	224,257 23	
		3,981,902 62
"Residuum" - - - - -		1,618,097 38
Of which the "Old Settlers," or "Western Cherokees," are entitled to one-third, which is the amount that will be required under this head, viz: - - -		539,365 79

Recapitulation.

Amount under head of account with "Cherokee nation," or "government party" - - - -	645,026 29
Amount under head of account with "Old Settlers," or "Western Cherokees" - - - -	539,365 79
Total - - - - -	1,184,392 08

Very respectfully, your obedient servant,

W. MEDILL.

Hon. WM. L. MARCY,
Secretary of War.

2d. With reference to "Old Settlers," or "Western Cherokees."

Cr.

By consideration stipulated for the lands east of the Mississippi, ceded by treaty of 1835-'36	$5,000,000 00	
By additional amount stipulated in third article of supplement thereto	600,000 00	
		$5,600,000 00

Dr.

To amount for additional quantity of lands assigned Cherokees west	500,000 00	
To amount invested for general national funds	500,000 00	
To amount allowed for improvements and ferries, prior to date of treaty of 1846	1,716,502 85	
To amount for removal and subsistence at $53 $\frac{3}{10}$ per head	941,979 99	
To amount paid citizens of the United States for claims against the Cherokee nation	59,574 25	
To amount paid Cherokees for similar claims	17,561 41	
To amount paid Cherokee committee for their services	22,025 89	
To amount allowed prior to date of treaty of 1846, for spoliations, except for "rents" and "dispossession of property and improvements"	224,257 23	
		3,981,902 62
"Residuum"		1,618,097 38
Of which the "Old Settlers," or "Western Cherokees," are entitled to one third, which is the amount that will be required under this head, viz.		539,365 79

Recapitulation.

Amount under head of account with "Cherokee nation," or "government party"	645,026 29
Amount under head of account with "Old Settlers," or "Western Cherokees"	539,365 79
Total	1,184,392 08

Very respectfully, your obedient servant,

W. MEDILL.

Hon. Wm. L. Marcy,
Secretary of War.