A

LETTER

TO THE

COMMISSIONER OF INDIAN AFFAIRS,

UPON THE

CLAIMS OF THE INDIANS

REMAINING

IN THE STATES EAST.

BY WM. H. THOMAS.

WASHINGTON, D. C.:
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TO THE

COMMISSIONER OF INDIAN AFFAIRS.

WASHINGTON CITY, *May* 5, 1853.

SIR: Whereas the Cherokees residing west of the Mississippi river have sent on a Delegation to this place, for the purpose of concluding a treaty to recede to the United States 800,000 acres of land acquired by the Eastern Cherokees, under the treaty of 1835; and whereas said Delegation have, for some time past, been endeavoring to conclude a treaty upon terms which, if complied with, will exclude from its benefits the portion of the tribe remaining in the States east, who have an equal interest with the portion of the tribe west, in the lands proposed to be ceded. In explanation of their rights, I beg leave to file this additional exposition, not only of their rights to the lands west, but also of their claims to be provided for, if the treaty be concluded.

At the time the treaty of 1835 was concluded, the lands ceded under the first article were owned by the eastern portion of the tribe, as designated by a census taken immediately preceding the date of the treaty, now on file in your office, which is referred to in the fifteenth article. They held their lands as a family, not as a civilized nation; hence the necessity of a census, to know with whom to treat and to whom to make payment.

A comparison of the census taken of the North Carolina Cherokees, under the act of July 29, 1848, with the census taken of the tribe in 1835, will prove that those included in the latter were embraced in the former census.

It is not necessary, in this explanation, to inquire into the competency of the individual Cherokees of Georgia to make the treaty, without the knowledge or consent of the portion of the tribe residing in North Carolina. Its provis-

ions must now be taken as we find them, as furnishing an explanation of their rights.

Article 1st provides as follows:

"The Cherokee nation hereby cede, relinquish, and convey to the Uni-
'ted States all the lands owned, claimed, or possessed by them east of the
'Mississippi river," &c., "for and in consideration of the sum of five
'millions of dollars, to be expended, paid, and invested in the manner stip-
'ulated and agreed upon in the following articles."

The 2d article provides, that the United States, under former treaties and under the present, as a fulfilment of subsisting stipulations, shall convey to the Cherokee Indians, within a described boundary west of the Mississippi, seven millions of acres of land, with a perpetual outlet west.

In the last clause of that article it is provided, that the United States, in consideration of five hundred thousand dollars to be deducted from the sum of five millions, stipulated to be paid by the United States for the cession of the land east of the Mississippi, in the first article, do convey to the Cherokees the lands which it is now proposed to cede to the United States.

"And whereas it is apprehended by the Cherokees that in the above
'cession there is not contained a sufficient quantity of land for the accom-
'modation of the whole nation, on their removal west of the Mississippi,
'the United States, in consideration of the sum of five hundred thousand
'dollars therefor, hereby covenant and agree to convey to the said Indians
'and their descendants, by patent, in fee simple, the following additional
'tract of land, situated between the west line of the State of Missouri and
'the Osage reservation, beginning at the southeast corner of the same,
'and runs north along the east line of the Osage lands fifty miles, to the
'northeast corner thereof, and thence east to the west line of the State of
'Missouri; thence with said line south fifty miles; thence west to the
'place of beginning—estimated to contain eight hundred thousand acres
'of land."

The 15th article of the treaty provides for deducting the $500,000, given for the aforementioned tract of land, from the price of the lands ceded to the United States, under the 1st article.

"It is expressly understood and agreed between the parties to this
'treaty, that after deducting the amount which shall be actually expended
'for the payment of improvements," &c., "and the additional quantity of
'lands," &c., "the balance, whatever the same may be, shall be equally
'divided between all the people belonging to the Cherokee nation east,
'according to the census just completed."

The report of the Commissioner who negotiated the treaty of 1835, at New Echota, Georgia, proves that the North

Carolina Cherokees were neither present nor represented at the negotiation. In his letter addressed to the Secretary of War, which bears date the next day after the treaty was concluded, 30th December, 1835, after informing the Secretary that the treaty had been made, he proceeds to inform him "*that the chiefs of the North Carolina Cherokees* ' *did not attend*" at the place where the treaty was concluded. Notwithstanding the North Carolina Cherokees were neither present nor represented at the negotiation, the treaty, as some of its provisions show, was intended to be made acceptable to them, in order to procure their acquiescence and surrender of the country they occupied, which they held under a grant from the State, bearing date in 1783.

It was known that the North Carolina Cherokees always had been opposed to removal west; hence the 12th article provided that they could have the right to remain in the State, and, with the money which would be due from the United States, under the treaty, purchase lands for themselves to reside on while they chose to remain east. That article also provided that they should have pre-emption rights to purchase the lands, including their improvements. In order to ascertain the nature of the provisions of the treaty, and secure amendments thereto, if deemed necessary, at the request of the North Carolina Cherokees I came on to Washington in 1836. The object of the visit is explained in a letter of the Hon. James Graham, under date of April 4, 1836, now on file in your office. He was at that time the Representative in Congress of the district in which the North Carolina Cherokees reside. In the letter referred to, he says :

"My friend, Wm. H. Thomas, is now in this city, from North Carolina, ' where he resides. He has stopped here for a short time, to ascertain what ' is doing, or to be done, with regard to the Indian treaty. Mr. Thomas is ' the agent, I believe, legally and fairly constituted, for a part of the Chero- ' kee tribe of Indians. I am informed by gentlemen of high respectability, ' that Mr. Thomas has, for some years past, acted as agent of a part of the ' Cherokees, and has been very serviceable to them." * * *

"I called, in company with Mr. Thomas, this day to see you in the War ' Office, but regret to learn you were absent from indisposition. I have ' known Mr. Thomas eight or ten years, and have entire confidence in his ' honest and upright character."

The Hon. Bedford Brown, at that time in the Senate from North Carolina, also addressed a similar letter to the

Secretary of War, under date of April 6, 1836, in which he says :

" Mr. Thomas, of North Carolina, who will hand you this, is, as he in-
' forms me, acting as agent for a part of the Cherokee Indians, and visits
' this city on business connected with their affairs. I have advised Mr.
' Thomas to place before you certain papers and information which he in-
' forms me he has in his possession," &c.

" I have not heretofore had the pleasure of an acquaintance with Mr.
' Thomas, but, from the representation of others in whom I have entire
' confidence, he is a gentleman of fair and respectable standing." (The original letters are on file in your office.)

After several unsuccessful efforts to see the Secretary of War, finding that it would not be in my power to obtain supplemental articles in favor of the North Carolina Cherokees, upon advisement with the Senators from North Carolina, an explanatory agreement was entered into with the chiefs who negotiated the treaty, which included some of the chiefs of the Western Cherokees, which is now on file in your office, and it bears date May 26th, 1836. The preamble to the agreement, and some of the articles therein contained, prove that the North Carolina Cherokees were admitted to possess an interest in all the common property of the tribe, consisting of lands and annuities, including the very land which it is now proposed to cede to the United States, by the Delegation in attendance for that purpose.

The preamble to the agreement explains the position and intention of the parties thereto :

" The Delegation whose names are hereunto subscribed for the *Cherokees*
' *who have emigrated and are expected to emigrate* to their new homes west
' of the Mississippi, and William H. Thomas for the Cherokees belonging
' to the following towns and settlements—Qual-la, Alarka, Aquone, Ste-
' koih, and Cheoih, with their respective settlements, *expected to remain*
' *east*, of the second part.

" ARTICLE 1. It is admitted that the *Cherokees above mentioned are enti-*
' *tled to an equal share, proportioned to their numbers, in all the lands belong-*
' *ing to the Cherokee nation of Indians*; and, notwithstanding they have
' been deprived of their share of the annuities since the year 1820, are
' nevertheless entitled to all sums in the possession of the President of
' the United States, for the use of and due from the United States to the
' Cherokee nation of Indians.

ART. 2 provides : " That the number belonging to said towns and set-
' tlements be accurately ascertained by two acting Justices of the Peace
' in and for the counties in which they reside ; shall annually take their
' census, make out and certify a list showing the number in each town,
' which list shall be certified by the clerk and chairman of the county

'court. Agreeably thereto, the President of the United States is request-
'ed to pay them their proportionate share of all sums arising from the
'sale or transfer of the common property, mentioned in the first article of
'this agreement.

"ART. 3. It is further agreed to, that if any construction be given to
'any of the articles of the New Echota treaty, whereby the Cherokees
'belonging to said towns and settlements shall be deprived of an equal
'share, proportioned to their numbers, in all the sums arising from a sale or
'transfer of the common property mentioned in the first article of this
'agreement, payable to the Cherokee nation of Indians or people, we will
'request the President and Senate of the United States, and they are here-
'by requested, to allow them such supplemental articles thereto, as shall
'remove such improper construction, and enable them to receive their
'equal proportioned share, as above mentioned.

"ART. 4. It is further agreed, that one claim to which said Cherokees
'desiring to remain are entitled, by the 12th article of the New Echota
'treaty, amounting to $53.33 each, intended to place them on terms of
'equality with those that chose to emigrate in two years from the ratifica-
'tion of the above-named treaty, who are allowed that sum for removal
'and subsistence, out of the money arising from the sale of the common
'property, shall be placed by them on interest in the State Bank of North
'Carolina, or some other safe institution, to furnish those desiring to emi-
'grate to their new homes in the west, with removal and subsistence."

"ART. 5. Provided, that those remaining east should have the use of
'the hunting ground reserved under the Cherokee treaty of 1791.

"ART. 6. Should a division of the lands west of the Mississippi, belong-
'ing to the Cherokee nation as a common property, take place, the above-
'mentioned Cherokees shall be entitled to have their share laid off for
'them.

"Witness our hands and seals:

'WM. ROGERS,
'ELIAS BOUDINOTT,
'JOHNSON K. ROGERS, (who now resides in this city.)
'GEORGE WELCH,
'JOHN SMITH, (Arkansas chief.)
'JOHN GUNTER,
'MAJOR RIDGE,
'STANWATIE.
WM. H. THOMAS, (for the North Carolina Cherokees.)
JAMES FOSTER,
LONG SHELL TURTLE,
JOHN FIELDS,
JAMES FIELDS,
JAMES STARR,
ANDREW ROSS, (Brother to John Ross.)

"Attest: JOSEPH A. FOREMAN."

The foregoing agreement, and the power of attorney from the North Carolina Cherokees, under which I acted, with the letters of the Hon. James Graham and Hon. Bedford Brown, were, upon the suggestion of the Commissioner of Indian Affairs, submitted to him, to be laid before the Secretary of War, for the purpose of obtaining his decision on the rights of the North Carolina Cherokees under the treaty of 1835, of which the Commissioner of Indian Affairs was to inform me after my return home, which caused the following letter to be written:

"WAR DEPARTMENT, OFFICE OF INDIAN AFFAIRS, *July* 19, 1836.

"SIR: Your communication of the 4th instant has been laid before the 'Secretary of War, with the accompanying documents, relating to the 'interest of the Cherokees residing in the State of North Carolina in the 'treaty of December 29th, 1835.

"I am instructed to inform you, that it is the opinion of the Department that the Cherokees in North Carolina have an interest, proportion-'ate to their numbers, in all the stipulations of that treaty.

"C. A. HARRIS, *Commissioner.*

"WM. H. THOMAS, Esq.,

"*Scott's Creek P. O., Haywood Co., N. C.*"

This decision amounts to an approval of the explanatory agreement with the chiefs, on which it was based. And it is the more to be relied on, because it was made while General Jackson was President, and the Hon. Lewis Cass, Secretary of War, under whose instructions the treaty was made, remained in office. One of the stipulations of the treaty, referred to in the decision, was *their share of the lands west of the Mississippi river*, which, in accordance with the agreement submitted to him, "was to be laid off for them."

The Secretary of War did not base his decision upon a supposition that the Cherokees in North Carolina would remove west with the tribe, because the agreement itself, on which the decision was made, informed him that they designed remaining in their native country, and only remove west, as they might subsequently desire to go, of their own accord.

The expense of their removal, and of their subsistence one year after their arrival west, and having their share of the land laid off for them, would, it was supposed, encourage a reunion of the tribe; and it is much to be regretted that so little has transpired in the nation west, since the emigration in 1838, to encourage those of the tribe remaining in the States east to unite with their brethren west. The anarchy which for the most part of the time has reigned over that country—the war of extermination that has been waged between different portions and individuals of the tribe, covering the land with innocent blood—have driven hundreds of the tribe into the surrounding States, to obtain protection for themselves and families, and many of them are now in exile—the tendency of which was to prevent the Cherokees, remaining

in the States east enjoying peace and quietness, from joining their brethren west. But certainly, as the United States were bound "to protect the Cherokees against domestic violence," and failed to do it, which is the prime cause of many of the tribe now being out of the nation, they ought not to fail to protect their interest in any treaty which may be made. The necessity of such protection, on the part of the Government of the United States, is clearly established by past experience, as the records of your office fully demonstrate.

The State of North Carolina, instead of requiring the removal of the portion of the tribe within her limits, acquiesced in their remaining; and at the session of her Legislature in 1836–'37 passed an act for their protection, which prescribed the mode of concluding legal contracts, and recognised their right to be represented by attorneys.

The act provides:

"That all contracts, of every nature and description, made after the 'eighteenth of May, one thousand eight hundred and thirty-eight, with any 'Cherokee Indian, or any person of Cherokee Indian blood within the 'second degree, for an amount equal to ten dollars or more, shall be null 'and void, unless some memorandum thereof be made in writing, and 'signed by such Indian, or person of Indian blood, or by some other per-'son by him authorized, in the presence of two creditable witnesses, who 'shall also subscribe the same."

Notwithstanding, under the 12th article of the treaty and the decision of the Secretary of War, the North Carolina Cherokees had the right to remain east, it was required that they should purchase land to reside on, as the possession of the lands ceded under the treaty had to be given or purchased of the State. It became necessary, therefore, that lands should be purchased in advance of receiving the money due under the treaty. The Indians had neither the capacity, means, nor credit, to make the purchase, and to supply such articles as might be necessary in forming a new settlement.

Having, by misfortunes incident to the death of a father and poverty of a mother, been placed when a boy of only thirteen years of age in a store on the frontier line, which was engaged in the sale of goods and the manufacture of ginseng for the Chinese market, received in exchange for goods of the Indians, where I acquired a knowlege of their

language, manners, and customs. And in order to afford protection to me as an orphan boy, the chief of the North Carolina Cherokees, as I afterwards ascertained, adopted me as one of the clan to which he belonged—agreeably to an ancient custom of the tribe—which, though done without my knowledge or consent, in all probability saved my life. This relation the old chief and his people contiuued to respect, which enabled me to exercise an influence in after years favorable to the introduction of temperance regulations, the translation of the Scriptures, and other measures of reform. It is to this position occupied by me to which the Hon. James Graham makes reference in his letter to the Secretary of War. Owing to this relation, I had been selected to visit Washington to represent the North Carolina Cherokees, and to conclude the agreement which has been referred to. And now it was owing to the same confidence, that I was required by the Indians to aid them in making a purchase of lands and such articles as might be necessary in forming a new settlement.

Having obtained the decision of the Secretary of War, that these Indians were entitled to all the stipulations of the treaty without removal, the twelfth article of the treaty having provided that the portion of the money to which the Cherokees that remained east were entitled should be paid "as soon as an appropriation was made for the treaty," which appropriation had already been made; and the ninth article of the treaty having provided that the just debts of those Indians should be paid "by the United States, out of the money due them;" and a law having been passed by the State of North Carolina, regulating the manner in which contracts should be made with these Indians, and recognising their right to transact their business by means of powers of attorney—upon the Indians executing to me powers of attorney, authorizing me, in the precise manner prescribed by the law in making contracts with the Indians, to prosecute their claims against the United States, and to receive and receipt for the moneys due, I undertook the purchase of the lands, and supplying the articles required by the Indians.

The country selected for their residence was at the base of the great Iron or Smokey Mountain, and where they would have an uninterrupted outlet to the hunting ground

reserved for the use of the Cherokees, until settled by the whites, under the treaties of 1791 and 1798, which embraces a large extent of uninhabited country in North Carolina and Tennessee, including the great Iron or Smokey Mountain, and many other mountains which will not probably be settled by the whites in the next half century, which has not been relinquished by any subsequent treaties. By the agreement which I made in favor of the North Carolina Cherokees, which has been referred to, they were to have the use of that hunting ground, which privilege they have continued to enjoy up to the present time, which was one cause of the country adjacent thereto being selected for their residence.

In pursuance of the contract made with the Indians of North Carolina, I purchased about 40,000 acres of land, on the waters of the Oconalupta river, well adapted to the condition of the Indians, for agricultural and grazing purposes. I also supplied those Indians, as they settled on the lands, with provisions, clothing, farming and mechanics' tools, and many of them with work-oxen and other cattle ; also with hogs and sheep, and some with horses, to enable them to subsist by agriculture. I also supplied the females with cards, wheels, and looms, to enable them to manufacture their own clothing ; that laid the foundation of the subsequent improvements which those Indians have made.

At the time those supplies were furnished to the Indians, I had been for a considerable length of time carrying on a lucrative mercantile business, not only in the white settlement adjoining to the Indian settlements, but also at Fort Delany and Fort Butler in North Carolina, and at Fort Cass in Tennessee, at which posts I had supplied the United States troops with large quantities of provisions, clothing, &c., by which the means were accumulated to enable me to make the large purchases for the Indians.

In incurring these large responsibilities for the Indians, to enable me to comply with the contract which I had made with them, I considered that I was conferring a great benefit on them, without subjecting myself or others, of whom the purchases were made, to unreasonable delays in making payments—not doubting but that the Government would pay the money due to the Indians, to enable me to meet the liabilities incurred. I had the strongest rea-

sons for confiding in the Government. In all the contracts I had made for furnishing the army with provisions, &c., I had found no difficulty in obtaining payment of the Government officers. Knowing that the Government was largely indebted to the Indians, that they had surrendered the lands for which the money was to be paid ; that Congress had made the appropriation to pay them ; and that I was authorized to receive it by powers of attorney, coupled with an assignment of interest declared irrevocable, made in strict conformity with the laws of the State, which recognised their right to make the contract and to transact their business by means of powers of attorney—at that date, Congress had not assumed the power of impairing the obligation of contracts made between individuals under the laws of a sovereign State. Both the Executive and Supreme Court had decided that powers of attorney, coupled with an interest, could not be revoked by the principal ; and that the Government was bound to protect the interest of the citizens in whose favor the assignment was made—I could have no grounds for supposing that the time would arrive when both Congress and the Executive would sanction laws impairing the obligation of contracts made under the laws of a State, in derogation of her rights, and in total disregard of the interest of her citizens, for whose protection and interest the General Government had been created. But the experience of prosecuting the claims of the North Carolina Cherokees from 1835 to 1853, a period of upwards of seventeen years, and a large portion of that time spent in Washington, as the records of your office prove, which was the result of necessity, not choice, has convinced me that new powers are assumed by the Federal Government, which, if not intended, have the effect to impair the obligation of contracts subsisting under the laws of the States, between individuals, in derogation of the rights of the former, and frequently to the destruction of the interest of the latter.

To prove this, it is only necessary to advert to the execution of the Cherokee treaty of 1835.

The 17th article of that treaty authorized the President to appoint a Board of Commissioners to adjudicate the claims of individual Cherokees against the United States, whose decision, by the terms of the treaty, was declared to

be "*final, and, on their certificate of the amount due the several claimants, they should be paid by the United States.*"

The time of the first Board of Commissioners was principally spent in examining and adjudicating the claims of the emigrating Cherokees, preparatory to their departure for the West. This accounts for the large portion of the claims of the North Carolina Cherokees for pre-emption rights and reservations, which were presented to the second, that were not presented to the first Board for adjudication. To enable the North Carolina Cherokees to have their claims prepared for adjudication, the second Board of Commissioners, consisting of Gen. John H. Eaton and Edward B. Hubley, were sent to Cherokee county, North Carolina, to enable them, by being in the country where the claims originated, to obtain reliable evidence.

I prepared the principal part of the claims of the North Carolina Cherokees, and the testimony in support of them, as the records of the Commissioners prove.

A small number of the claims for pre-emption and reservation rights, provided for under the 12th, 13th, and supplemental articles of the treaty, were examined, allowed, and valued by agents appointed for that purpose, while the Commissioners remained at Murphey, in 1843. A considerable number of the claims for pre-emptions were for the portion of the tribe occupying the lands I had purchased; and I availed myself of the earliest opportunity to inform my creditors that the allowance had been made, and that the money, I presumed, would be paid in a short time. This statement was made in good faith, and I believed it at the time to be correct; but subsequent events proved that in that opinion I was also deceived.

The Board of Commissioners having, in the decision which they had made, adopted rules which would govern in their adjudication, returned to Washington to write up decrees.

Shortly after their arrival, it was discovered that the Secretary of War entertained the opinion that he, and not the Commissioners, had the right to determine their jurisdiction. This probably was the result of an opinion entertained that the Commissioners in the decisions had been a little more favorable to the Indians, in the allowance of their claims, than had been contemplated. Without giving

the Board time to write out their decisions, after the labor of examining the claims had been performed, for this or some other cause, they received a notice from the Secretary of War, that "their services were no longer required, and 'their compensation would cease." This prevented the payment of the claims that had been valued, and they remain unpaid yet, and which in the aggregate amount to $31,260.00.

After great delay, another Board of Commissioners were appointed, who received the appointment with a perfect knowledge of the fate of their predecessors, and that a similar fate would befal them if they offended in like manner. They soon discovered that their predecessors had committed, in their opinion, an error, in allowing the claims of the Indians for pre-emption rights—in deciding in favor of the Indians against the United States, when they should have decided in favor of the United States against the Indians. To this mode of deciding, of course, the United States interposed no objections, notwithstanding the decision clearly showed that the rejection was based upon a total misapprehension of the treaty and an out-door influence. The Commissioners assume three important grounds for reversing the decisions of their predecessors:

1. That the Indians claiming compensation had not, under the pre-emption privilege, taken out grants for the land.

2. The number was too large, and it was supposed would get larger.

3. And a man who had been on the Cherokee committee had informed them that they were right in rejecting them.

This position is a clear proof that the Commisioners did not understand the grounds upon which their predecessors allowed the claims; hence, they decide that the Indian was not entitled to compensation, because he did not get the land, when, if he had received the land, he would have obtained all that the twefth article of the treaty contemplated, and consequently would not have sustained loss to be compensated for. It was for the loss of that right, and consequently of the privilege of securing the land, that, under the supplemental articles of the treaty, the United States agreed to compensate the Indians, to be in lieu of the right. I give their own reasoning upon the two last objections.

The Commissioners, in their decision, say:

"The late Board of Commissioners (our immediate predecessors) did 'recognise this class of claims as coming under provisions of the treaty and 'third supplemental article thereto, and made favorable awards in a few 'cases. Encouraged by the precedent thus established, we find entered 'on our dockets between two and three hundred pre-emption claims; and 'no doubt many others are in reserve, awaiting our decision." * * *

"But it is believed that both the Indian Committee and the United States 'Commissioners fully understood that pre-emption rights were abrogated by 'the treaty, &c. That such were the views entertained by the Indian Com-'mittee is not a matter of conjecture, for we assume the fact upon the evi-'dence of one who was secretary to, and subsequently a member of, that 'Committee."

Who was this "secretary and member of the Cherokee 'Committee?" The records themselves show that it was a Mr. J. K. Rogers, now residing in this city, who at that time represented a few families of Cherokees in Georgia, that had no pre-emption rights, and whose *per capita* would be increased, if the money given in lieu of pre-emption rights were, by the rejection of the individual claims, added to the fund designed for distribution. I presume it was not for this portion of his services that he subsequently claimed fees of the North Carolina Cherokees, unless he supposed it to be the intention of the Government to reward those who aided in the defeating of their claims, to the exclusion of those who had advocated their payment. This decision of the Commissioners, obtained as has been stated, produced decisions of the same board, under the same treaty, for and against the claims, and part of them allowed, but not paid, and they remain in that condition yet, which, if a treaty be concluded with the tribe, should be provided for.

Having shown what was the final result of two Boards of Commissioners upon the claims of the North Carolina Cherokees, it may be necessary to advert to the *per capita* fund, which, under the twelfth article of the treaty, was to have been paid to the Cherokees that remained east, "as soon as an appropriation was made for the treaty," which appropriation was made in July, 1836.

The eighth article of the treaty limited the amount to be paid to Cherokees, for commutation of removal and subsistence allowance, to $53.33.

Under this provision of the treaty, a considerable number of Cherokees removed and subsisted themselves; but John Ross and other chiefs held the Cherokees back, by

promising to have the treaty set aside until they effected a contract on much more favorable terms. Instead of twenty dollars per head for removal, they made a contract with General Scott, by which the chiefs were to receive sixty-five dollars per head, which was only forty-five dollars per head more than was paid to other Indians for removing themselves. Under this contract, about twelve thousand of the Cherokees were removed west, which, if properly managed, must have yielded to John Ross and other chiefs at least a profit of three hundred thousand dollars.

But those chiefs did not stop here. By reason of purchasing and using ox teams, which, instead of mule and horse teams, as had been estimated for in the contract at seven dollars per day, were purchased for less than one-half of the estimated hire of teams; consequently, with the ox teams, instead of horse and mule teams, it required, instead of eighty, upwards of one hundred days to reach the Cherokee country west.

For this additional time a new account was prepared by John Ross and his associate chiefs, concerned with him in the contract for the removal of the Cherokees, and to which other items were added, which deserve notice, amounting in the aggregate to $581,346.88.

After forty-five dollars per head had been paid to the Cherokee chiefs more than had been paid to individual Cherokees who had removed themselves, to be asking an additional allowance seemed unreasonable. I deemed it proper to investigate the claims of which this large sum was composed. I ascertained that the account for subsisting the Indians represented that upwards of four hundred Indians, who died on the way, had received rations as well as the living. Another item in the account was for the hire of upwards of six hundred teams, returning from Arkansas, when they never did return. The accounts, being scrutinized by the Commissioner of Indian Affairs, were rejected by him. An appeal was then taken by Mr. Clark, who was the attorney of the chiefs, to the Secretary of War, who confirmed the rejection by the Commissioner. From his decision an appeal was taken to President Van Buren, who also confirmed the rejection of the claims as fraudulent.

Here I supposed that a final decision had been made against these fraudulent claims, and returned home. But

the Cherokee chiefs went west, and procured a decision of the Cherokee Council, requesting the payment of those claims. In 1840, Mr. Van Buren's Administration ceased, and a Whig Administration commenced. Through the influence of Mr. Clark, the attorney of the Cherokee chiefs, those claims were again taken up, the decisions of the previous Administrations reversed, and the money paid out of the *per capita* fund. In addition to this, one hundred and seventy-two thousand three hundred and sixteen dollars and fourteen cents were furnished to the Western Cherokees, to be charged to their proportion of the *per capita*, and which was to have been deducted out of their portion of the fund, on final settlement, making in the aggregate $753,663.02. This sum was not deducted, as it should have been, on final settlement, nor was any compensation or equivalent paid or secured to the Eastern Cherokees for their distributive share. Therefore, under the 12th and 15th articles of the treaty of 1835, the United States, including interest, justly owe to the Cherokees remaining in the States east, one hundred dollars each, which it becomes the duty of the Government, as trustee of the fund, to have provided for in any treaty which may be concluded.

After being satisfied that the *per capita* fund was becoming exhausted by improper charges, and that the remainder of the fund, if distributed, would not exceed ten dollars for each individual, instead of one hundred and fifty, as had been promised by the President when the treaty was made ; and after, in vain, by long and protracted appeals from the Commissioner of Indian Affairs to the Secretary of War, and from him to the President of the United States, to disburse the funds as contemplated by the treaty, without success, extending through a period of eight years, shortly after Mr. Polk came into office, in 1844, I brought the question before him, to correct the errors of the past disbursements of the fund. He sent me back to the Indian Office for relief, where I had been eight years before.

After an appeal from the Commissioner of Indian Affairs to the Secretary of War—the present Secretary of State—he, upon being informed that I had been, during the two past Administrations, trying to get a decision by the President, referred the questions to him for decision. On the 11th of June, 1845, he referred them to the Attorney General of the United States.

On the 19th day of September, 1845, the Attorney General gave his opinion thereon, as follows :

" On the 11th of June last, you did me the honor to refer to me a report ' of the Commissioner of Indian Affairs of the 19th of May, and a reply ' thereto of Wm. H. Thomas, on behalf of Cherokee Indians, on which ' you desired my opinion in writing. In a memorandum among the papers ' transmitted, there are four questions propounded :

" 1st. Are the Cherokees remaining in the States of North Carolina and ' Tennessee entitled, under the 8th and 12th articles of the Cherokee ' treaty of December, 1835, to $53.33 for their claims for removal and sub- ' sistence allowance, which has been paid to the Cherokees in Georgia?

" 2d. In the event that the Attorney General should be of opinion that ' the Cherokees in North Carolina and Tennessee are not entitled to com- ' pensation for their claims, &c., whether the grant made by the State of ' North Carolina to the Cherokee Indians, in the year 1783, vested the fee ' simple title in the Indians while they continued to reside thereon; and ' whether, under the provisions of the grant, the fee simple title has not ' vested exclusively in the Cherokee Indians within its limits?

" 3d. Whether the treaty of 1835, made with the Cherokee Indians of ' Georgia, does or does not legally convey to the United States the lands ' granted to the North Carolina Indians, by the act of 1783? Whether ' the power of the Cherokees, as a nation, had or had not ceased to exist ' at the time the treaty of December, 1835, was concluded, in consequence ' of the tribe having passed under the dominion of the States?

" 4th. Whether the relinquishment of interest in the lands, which the ' treaty of 1835 purports to convey, is or is not confined to those Chero- ' kees who have and do receive their due portion of the consideration ' money; and whether the title of those who received no part of the com- ' pensation has passed to the United States?

" The first of these involves an inquiry whether, under the treaty of New ' Echota, those Cherokees who remained in the States of Tennessee and ' North Carolina are entitled, under the 8th and 12th articles of the treaty, ' to $53.33 for removal and subsistence allowance.

" This inquiry is embarrassed by the fact that those allowances have been ' made to Cherokees who have remained in Georgia, by decisions at the ' War Department, and by the fact of payment being made to others of ' the tribe who did not emigrate. By the joint resolution of Congress, ' approved June 15, 1844, the interpretation under which the Georgia ' Indians were paid appears to have been acted on by the War Depart- ' ment but for a short time, &c.

" In the papers accompanying your communication are several state- ' ments furnished by the Commissioner who negotiated the treaty on the ' part of the United States, and by respectable persons who were privy to ' the negotiation, tending to show that the Indians were assured that those ' who did migrate should have the benefit of this pecuniary allowance.

" In its construction, it is said that the language used in treaties with ' Indians should never be construed to their prejudice." * * * "How ' the words of the treaty were understood by this unlettered people, rather ' than their actual meaning, should form the rule of construction.

" According to well-established rules of law, I am of opinion that this ' evidence is inadmissible to establish a construction of the treaty incon- ' sistent with its provisions. *Whatever may be done by Congress to fulfill ' expectations thus created,* I am clearly of opinion that the Executive can- ' not execute the treaty on any such construction.

"The other three questions may be solved into three inquiries: whether 'the lands in North Carolina belonged to the North Carolina Indians residing upon them. These lands have been sold by the State of North Carolina, and are, I presume, in the possession of the purchasers. As the 'Executive of the United States would have no power to divest those in 'possession, and the question is one for the Judiciary, I have deemed it 'unnecessary to embrace my views upon it in this communication. Nor 'have I deemed it proper to express my opinion on the hard measure 'which seems to have been dealt out to the North Carolina Indians, whose 'lands have been sold, while they have received no corresponding benefit. 'I have examined the question as one of legal construction only, and have 'no doubt of the correctness of my conclusion in that respect.

"JOHN Y. MASON."

This opinion, on the 2d of October, 1845, was approved by the President of the United States, who made the following endorsement thereon: "I concur in opinion with the Attorney General."

The following conclusions are deducible from the foregoing opinion of the Attorney General and President of the United States:

1. That hard measures had been dealt out to the North Carolina Indians, whose land had been sold, for which they had received no corresponding benefit.

2. That if the decision had been made upon the question submitted, as respected the title of the United States to their land, under the treaty of 1835, it would have been that it was defective. For if it had not been believed that the decision, if made, would be as stated, the reason for declining to give it did not exist.

In the mean time, the Legislature of North Carolina, upon my representation of the great injustice being done to the North Carolina Cherokees and the unreasonable delays in the settlement of their claims, passed the following resolutions in their favor:

RESOLUTIONS RELATING TO THE CHEROKEE INDIANS.

"*Resolved*, That our Senators and Representatives in the Congress of 'the United States are hereby requested to use their influence in favor of 'obtaining a speedy settlement of the just claims of the Cherokee Indians 'residing in this State," &c.

"*Resolved, further*, That his Excellency the Governor be requested to 'send a copy of the foregoing resolution to our Senators and Representa-'tives in Congress.

"Read three times in the General Assembly, and ratified 9th January, '1845.

"EDWARD STANLY, *Speaker of the House of Commons.*
"BURGESS S. GATHER, *Speaker of the Senate.*"

After the decision of the Attorney General, and the

passage of the resolution in favor of the North Carolina Cherokees, in March, 1846, I prepared a new argument in favor of their claims, which was submitted to the Commissioner of Indian Affairs, accompanied with a map of the lands granted to the Cherokees by the State of North Carolina in the year 1783, for his report thereon. On the thirty-first day of March, 1846, he made a report, in which, after referring to the arguments of counsel for the western portion of the tribe, he says: "There has 'also been submitted to this office a paper prepared by 'Wm. H. Thomas, as agent of the Cherokee Indians yet 'remaining in North Carolina," &c. He enumerates what was claimed for them in my argument:

"1. Their portion of the lands west to be set apart for them.

"2. That their claims for pre-emption rights, reservations, spoliations 'committed on their property in 1838, improvements under the treaties of '1817 and 1819, and for removal and subsistence to the amountof $53.33 'each, be allowed to them.

"3. That a fair and full proportion of the *per capita* allowance, under 'the treaty of 1835, be given to them; and

"4. That it shall be left to their own choice when they shall remove 'west, removal not forming a condition of the payment of their claims."

In his report thereon, he says:

"By the supplemental article of that instrument, all claims to pre-emption rights and reservations were relinquished by the Indians, and for the 'latter a moneyed compensation was substituted. So far, therefore, as the 'North Carolina Cherokees were entitled to reservations, and have not been 'compensated therefor, they are entitled to be paid their value as unimproved lands. They are also entitled to compensation for spoliations upon 'their property, and for improvements possessed by them, so far as they 'have not been paid; and they also possess the right, with those who 'have removed, to share in the money to be distributed *per capita*."

This report of the Hon. Wm. Medill, on the 11th of April, 1846, was approved by the Hon. William L. Marcy, Secretary of War, and by him, with the accompanying arguments of counsel of the Indians, was laid before the President of the United States, by him transmitted to Congress, and will be found in the printed documents of that session.

This investigation of the Executive branch of the Govment, and by Congress, led to the appointment of a Board of Commissioners to examine the claims of the different portions of the tribe, for the purpose of concluding a treaty, providing for replacing the funds which had been misapplied under the treaty of 1835, and of curing some other defects in that treaty, shown to exist by the opinion of the Attorney General.

At first, the Commissioners informed me that they did not consider that their instructions embraced the Cherokees east. Upon receiving this information, I made application to the Hon. James Graham, then a member in Congress from the district in which the North Carolina Cherokees resided; and he addressed a letter to the President of the United States, requesting "that the claims of the 'North Carolina portion of the tribe might also be acted 'on by the Commissioners." The President directed this to be done. This led to a letter being addressed to me by the Board of Commissioners, authorizing me to appear before them as the attorney of the North Carolina Cherokees, to advocate their claims. On appearing before the Board, I found that the counsel for the Western Cherokees, General Waddy Thompson, was insisting that the Cherokees remaining in the States east had, by remaining, forfeited their rights; and that it was the duty of the Board to exclude them from the benefits of the treaty about to be concluded. In this he was sustained by the Cherokees he represented, and by J. K. Rogers. The former went for excluding all the Cherokees east, while the latter only went for excluding the Cherokees of Qualla Town. I presume it was hardly for this service that he afterwards claimed fees of the North Carolina Cherokees. I replied to his arguments, and furnished each of the Commissioners with a printed copy of the reply. By them it was finally decided that the Eastern Cherokees had, by remaining, forfeited none of their rights; but that the adjournment of Congress was so near at hand, (and it being desirable to have the treaty acted on by the Senate,) that they would not have time to examine the individual claims of the North Carolina Cherokees, which have been enumerated in the report of the Commissioner of Indian Affairs; and if another treaty be concluded with the tribe, justice requires that a provision should be inserted to cover them.

While the treaty of 1846 did not, for want of time to examine their claims, provide for all of them, it however established their rights to remain while they chose to do so in the States east, and at any time they desired to remove to the lands occupied by the tribe west of the Mississippi. fully recognising their rights to the lands west, in common with the balance of the Cherokee people.

The 1st article of that treaty provides—

"That the lands now occupied by the Cherokee nation *shall be secured* ' *to the whole Cherokee people, for their common use and benefit*, and a patent ' shall be issued for the same, including the eight hundred thousand acres ' purchased, together with the outlet west, promised by the United States ' in conformity with the provisions relating thereto, contained in the third ' article of the treaty of 1835, and in the third section of the act of Con- ' gress approved May 28, 1830, which authorized the President of the ' United States, in making exchange of land with the Indian tribes, to ' *assure the tribe or nation with which the exchange is made, that the United* ' *States will ever secure and guaranty to them and their successors the coun-* ' *try so exchanged with them.*"

The 4th article of the treaty provides that all portions of the Cherokee people, Eastern as well as Western Cherokees, shall have the same interest in the lands west, and that they shall not be regarded as the exclusive property of any portion of the tribe.

"And whereas it has been decided by the Board of Commissioners ' recently appointed by the President of the United States to examine and ' adjust the claims and difficulties existing against and between the Cher- ' okee people and the United States, as well as between the Cherokees ' themselves, that under the provisions of the treaty of 1828, as well as in ' conformity with the general policy of the United States in relation to the ' Indian tribes, and the Cherokee nation in particular, that that portion of ' the Cherokee people known as the ' Old Settlers,' or Western Cherokees, ' had no exclusive title to the territory ceded in that treaty, but that the ' same was intended for the use of, and to be the home for, the whole ' Cherokee nation. By the operation of the treaty of 1828, the Cherokees ' then west of the Mississippi, by the equitable operation of the same treaty, ' acquired a common interest in the lands occupied by the Cherokees east ' of the Mississippi river, as well as in those occupied by themselves west ' of that river, which interest should have been provided for in the treaty ' of 1835."

This article then provides that the United States shall compensate the Cherokees residing west at the time the treaty of 1835 was concluded for their interest in the land east ceded under that treaty, which is followed by the following stipulation:

"In consideration of the foregoing on the part of the United States, the ' Western Cherokees, or Old Settlers, hereby release and quit claim to the ' United States all right, title, interest, or claim, they may have to a com- ' mon property in the Cherokee lands east of the Mississippi river, and to ' the exclusive ownership of the lands ceded to them by the treaty of 1833, ' west of the Mississippi, including the outlet west, consenting and agree- ' ing that the said land, together with the eight hundred thousand acres ' ceded to the Cherokees by the treaty of 1835, *shall be and remain* the ' common property of the whole Cherokee people, themselves included."

The 9th article provides "that the United States should ' make a fair settlement of all moneys due to the Cherokees, ' and subject to *per capita* division," and the balance thus

found to be due shall be paid over *per capita* in equal amounts to all those individuals, heads of families, or their legal representatives, entitled to receive the same under the treaty of 1835 and the supplement of 1836, being all those Cherokees residing east at the date of said treaty.

The 10th article provides:

"It is expressly agreed that nothing in the foregoing treaty shall be so 'construed as in any manner to take away or abridge any rights which the 'Cherokees remaining in the States east of the Mississippi river had or 'may have under the treaty of 1835 and the supplement thereto."

This provision of the treaty recognises the right of the Cherokees remaining in the States east to continue in those States while they choose to do so, but at the same time revives and perpetuates to them and their descendants, as a part of the "Cherokee people," their interest in the lands and annuities west, with the right to settle the lands at any subsequent period.

This article was of much importance to the Cherokees east, but I was anxious to obtain another provision, which I regarded as equally important, viz: that, in making the settlement and distributing the funds, the sums paid the Western Cherokees should be charged to them, and paid out of their portion of the money, which would give to the Eastern Cherokees their share of the school fund.

The Board separated without inserting the article I desired. I, however, afterwards procured the assent of Messrs. Burke and Parris to the provisions desired, but I was unable to get the Board together. After the treaty was sent to the Senate, I was still anxious to obtain an amendment; and after the Senate had laid the treaty on the table, and when Mr. Ross and his counsel, General Thompson, supposed that the treaty would be rejected, the latter proposed for the Ross Delegation to assent to the amendment which I had suggested. After it was signed by General Thompson for the Ross Delegation, it was sent in by the messenger to Judge Mangum, then in the Senate in secret session, for the purpose of having it inserted as an amendment to the treaty, but which he failed to accomplish when the treaty was ratified.

By reference to the papers filed in your office by the Board of Commissioners who negotiated the treaty of 1846, which consisted of Edmund Burke, Albion K. Parris, and William Armstrong, Esquires, you will find the argu-

ments prepared by me in favor of the Eastern Cherokees, which are particularly referred to as proof of what has been said in reference to the negotiation.

The Commissioners received their appointment from the President to investigate the claims of the Cherokees on the 8th of July, 1846; on the 9th, I was informed by them that, under their instructions, they considered that their duties were restricted to the Western Cherokees. On the 10th, I made application to the Hon. James Graham, and obtained a letter to the President, recommending that the Commissioners be authorized to include the claims of the North Carolina Cherokees. I delivered the letter to the President on the same day, and he made the following endorsement thereon:

"Let the interest of the Eastern Cherokees be referred to the Commis-
' sioners recently appointed. J. K. POLK."

This letter was then delivered to the Commissioner of Indian Affairs, and on the 13th, with the claims of the Eastern Cherokees, was transmitted to the Commissioners.

After the Commissioners had received the claims of the North Carolina Cherokees and instructions of the President, they addressed a letter to me, as their records show, notifying me that they now had jurisdiction of the claims of the Eastern Cherokees, and I could appear before them to represent their interest as their agent or attorney.

On the 17th, I submitted to the Commissioners an additional explanation of the claims of the Eastern Cherokees.

August 3d, I filed another argument in favor of the North Carolina Cherokees and others east, on which the Commissioners made the following endorsement:

"Paper submitted by Wm. H. Thomas, Esq., representing the Cherokee
' Indians residing in North Carolina. Received and filed August 5, 1846."

All the letters referred to are on file in your office. The report which accompanied the treaty was prepared by the Chairman of the Board of Commissioners, Mr. Burke, who was then Commissioner of Patents; and after the Board separated, he prepared it at his office. From a letter of his, which is also on file, addressed to the other two Commissioners, then engaged in framing the articles of the treaty, it appears that the argument of the counsel for the Western Cherokees in favor of excluding the portion of the tribe remaining in the States east from the entire benefits of the treaty, and my argument in their favor, were referred to

him for his examination and decision. A quotation from this letter will explain what is here stated:

"PATENT OFFICE, *August* 4, 1846.

"Let the treaty be so shaped as not to cut out the Cherokees yet remaining east from any rights they may have under the treaty. My impression is, that they are entitled to *per capita*."

General Armstrong died shortly after the treaty was concluded; I have therefore only been able to obtain the statements of the other two Commissioners, Messrs. Burke and Parris. The former resides in Newport, New Hampshire, and the latter is mayor of the city of Portland, in the State of Maine. Their letters are in reply to letters which I had written to them, for statements of their recollection of the negotiation of the treaty, supposing, as they were the Commissioners who negotiated it, that they ought to know who represented the Eastern Cherokees, and whether any services were performed in their behalf.

I have already furnished the evidence which the papers returned to your office with the treaty contain; I will now furnish you with the letters of the Commissioners themselves upon the same subject. On the 2d of last April, I addressed a letter to the honorable Edmund Burke, former Commissioner, and received the following reply:

"NEWPORT, N. H., *April* 18, 1853.

"DEAR SIR: Your letter of the 2d of April has been received. In reply I have to say, I remember very well that you applied to the Board of Commissioners, to know if they were authorized to take into consideration the rights and claims of the Cherokees residing east of the Mississippi, and that we decided that we were not. Afterwards, I know that we were authorized by the President, in a written communication of some form, to pass also on the claims of the Eastern Cherokees. I know that you procured this extension of our authority from the President; and I am also confident that we decided to do no act to the prejudice of the rights of the Eastern Cherokees in the treaty which we negotiated. My impression is, that we had not time to investigate fully their claims. Congress was about to adjourn, and we were pressed for time to conclude the treaty. In order to do it, we had to work at night; and the clause to which you refer in the treaty (tenth article) was undoubtedly inserted to preserve the rights of the Eastern Cherokees. I know further that you were the person who represented the North Carolina Cherokees before the Board, and that you advocated their interests ably, faithfully, and zealously.

"I remember many of the circumstances attending the making of the treaty very distinctly. I was Chairman of the Board, and had all the labor to perform, so far as the investigation of documnets and drawing of the report was concerned. I was at the time out of health, and the labor came hard on me. The report is in my handwriting, and when found, will be found to contain some pretty severe strictures upon John Ross.

"EDMUND BURKE

"WM. H. THOMAS, Esq., *Washington, D. C.*"

The letter of Judge Parris was addressed to me from Portland, in the State of Maine. His statements of my services are precisely the same as those of Mr. Burke, except that he adds that he has no recollection of "any other per-' son having represented the Eastern Cherokees during the ' negotiation." Both of the original letters of the Commissioners, in their own well-known handwriting, are in my possession for your examination, at any time you may desire to see them.

I have obtained these letters, and make reference to papers in your office, filed by the Commissioners, for the purpose of showing the services performed by me, and that at that time no other person attempted to defend the rights or claims of the Cherokees remaining in the States east.

It is within the recollection of the Hon. Thomas L. Clingman, Hon. William S. Ashe, and the Hon. Willie P. Mangum, that, after the treaty was made, in the acts which were subsequently passed by Congress to carry out the objects contemplated, and as the records of Congress prove, I continued to guard the interest of the Eastern Cherokees.

A long time had elapsed since the lands, implements, and so forth, had been purchased for the Indians by me, during which period I had not been able to collect sufficient money, due to them from the Government, to pay the interest upon the debts, much less the principal. And after the awards made by the Board of Commissioners in favor of those Indians (on which the creditors had been informed payment would certainly be made) had been suspended, and payment refused, all hopes of ever being able to obtain their dues were destroyed. While I was closely confined before the Board of Commissioners, engaged in negotiating the Cherokee treaty, exerting myself to prevent advantages being taken by the counsel for the Western Cherokees, I was compelled to submit to the sacrifice of a large quantity of valuable lands and the sale of eight likely negroes, to meet the liabilities created, as I supposed, on the faith of the Government. The conditions of my creditors and myself were very different. They had a remedy which they could resort to, when they chose to coerce payments; I had none; I was compelled to wait until the Government, of its own accord, made payment; not being suable, I had no remedy against it by coercion. As to using all the means in my power to obtain payment, the

probability is, that, in the history of the Government, and as the records in the public offices prove, no individual of the same ability ever furnished stronger evidence of at least long-continued perseverance, and that with whatever ability I was capable of. But, after having to sacrifice my private property to meet the liabilities and to defray the expenses incident to the prosecution of claims, which required a long series of years in the city of Washington, there was nothing to be gained by abandoning the claims and quietly submitting to the losses sustained. As the last resort, in 1848 I made application to Congress, to at least set apart for the North Carolina Cherokees the sum of $53.33 each, which, under the treaty, and agreement with the chiefs, was to have been done twelve years previous. This resulted in the passage of the act of July 29, 1848, which provides—

"That the Secretary of War cause to be ascertained the number and ' names of such individuals and families, including each member of every ' family, of the Cherokee nation of Indians that remained in the State of ' North Carolina at the time of the ratification of the treaty of New Echota, ' May 23, 1836, and who have not removed west of the Mississippi, or re- ' ceived the commutation for removal and subsistence, and report the same ' to the Secretary of the Treasury; whereupon the Secretary of the Treas- ' ury shall set apart, out of any moneys in the Treasury not otherwise ap- ' propriated, a sum equal to fifty-three dollars and thirty-three cents, for ' each individual ascertained as aforesaid; and that he cause to be paid to ' every such individual, or his or her legal representative, interest at the ' rate of six per cent. per annum on such *per capita*, from the said twenty- ' third day of May, eighteen hundred and thirty-six, to the time of the ' passage of this act, and continue annually thereafter said payment of ' interest at the rate aforesaid.

"Sec. 5. *Be it further enacted*, That whenever hereafter any individual ' or individuals of said Cherokee Indians shall desire to remove and join the ' tribe west of the Mississippi, then the Secretary of War shall be authorized ' to withdraw from the funds set apart as aforesaid the sum of fifty-three ' dollars and thirty-three cents, and the interest due and unpaid thereon, ' and apply the same, or such part thereof, to the removal and subsistence ' of such individual or individuals, and pay the remainder, if any, or the ' whole, if the said Indians, or any of them, shall prefer to remove them- ' selves, to such individuals or heads of families, upon their removal west ' of the Mississippi."

In addition to my *own* services in the prosecution of the claims provided for in that act, as I was compelled to return home after the conclusion of the treaty of 1846, I was induced to employ General Duff Green and his son, Benjamin E. Green, to attend to the prosecution of these claims in my absence. The interest which has accrued under the act for the last two years remains unpaid; and

arrangements should be made to have the act complied with, by the appointment of a local agent or otherwise. Already five of the Indians have come for their interest, and in addition to the loss of time in travelling twelve hundred miles, by the time they received their small sums of interest, the amount received lacked upwards of one hundred dollars of paying their board at Maher's Western Hotel, for which they had to give their note, to be presented to next Congress for payment. These are some of the fruits of the wise policy adopted by Congress for the benefit of the Indians.

This act, like the 4th article of the agreement referred to, provided for the removal of the North Carolina Cherokees to the Cherokee country west, at any subsequent period they may desire to remove. But, while they have the right at any time to remove west, they also have a right to remain in North Carolina ; while it is their pleasure to do so, they have as perfect a right to choose to remain east as to go west, it being entirely optional with themselves.

But this law clearly proves that Congress considered the North Carolina Cherokees, under the treaties of 1835 and 1846, had the same right to the lands owned by the "Cherokee people" west of the Mississippi river, as the portion of the tribe now residing in that country. This law has set apart in the Treasury $53.33 for each Indian, on which interest at the rate of six per cent. is to be paid to him or his legal representative while he remains in the State ; and at any period that any of these Indians or their descendants desire to remove west, this principal is to be withdrawn, to be used in removing them west, and subsisting them one year after their arrival at the lands which have been assigned by the Government, for a home for the whole Cherokee people. And it certainly was not contemplated by Congress, that a part of the Cherokee people west should, without the consent of those east, exercise the power of appropriating this common property to their exclusive use, to the exclusion of the Eastern Cherokees, by which the former might deprive the latter of any home to remove to, and thus disappoint the benevolent intention of Congress in providing the means to remove them west. And the whole policy of the present chiefs of the Cherokees west proves that they consider the smaller the

number of the tribe the better share, and that they are willing to exclude the whole Cherokee people, except themselves, from participating in the advantages of the common property of the tribe.

Hence, in any treaty which may be concluded for the cession of the lands west, owned by the "Cherokee people," it will be necessary for the Government of the United States to guard the interest of the portion of the tribe remaining in the States east, not only in the land, but also in the permanent funds of the nation, which land may be described as follows: Lands received of the United States west of the Mississippi river in exchange for lands owned by the tribe in the States east, under the treaties of 1828, 1833, and 1835, and the act of Congress of May 28, 1830, and for which a patent was issued to the Cherokee people by the United States on the 1st of January, 1839, containing 14,374,135; the title of which land is guarantied, under the act referred to in the patent, to the Indians and "their descendants, with whom the exchange was made."

As has been shown, by the first article of the treaty of 1835, and explanatory agreement made with the chiefs, as well as by the subsequent treaty of 1846, and act of Congress of July 29, 1848, the Cherokees remaining east formed a part of the "Cherokee people" with whom the "exchange was made," and to whom the United States guarantied the lands, as provided by the act of 1830. This land is therefore owned by the Cherokee family, or "Cherokee people," which, agreeably to the last census, taken in 1851, numbers, west of the Mississippi, 17,267; in the States east of the Mississippi river, 2,133; in all, 19,400, besides a small number embraced in the agent's report, not included in the census of those east—which gives a little upwards of 740 acres to each Indian.

In addition to the lands received in exchange for their lands east, the Cherokee people have the following funds, invested by the United States for their benefit, which formed a part of the consideration for the lands ceded to the United States under the treaty of 1835, as shown by the 15th article of that treaty:

A national fund of - - - - - - - - - -	$404,000
For the purposes of education - - - - -	300,000
Orphans' fund - - - - - - - - - - -	50,000
	$754,000

which, at six per cent. interest, gives an annual income of $45,240. And notwithstanding this large income, which is enjoyed exclusively by the portion of the tribe west, they seem to think it necessary to cede away a part of the land owned by the whole Cherokee people, in part to discharge the debts of the Government, which, at most, ought not to exceed the expenses of a county organization in one of the States.

But if it be deemed advisable to circumscribe the boundary of the nation to smaller limits, the Cherokees east are not disposed to interpose objections, provided their proportion of the proceeds of the sale of the common property be added to the fund set apart under the act of July 29, 1848, and the interest to be paid and the principal applied in the same manner as the fund set apart under that act. But if this is not done, they claim the right to protest against the conclusion and ratification of the treaty; and if ratified without an amendment in their favor, they will consider that the United States justly owe them a sum equal to their just proportion of the common property which may be conveyed or transferred without their consent.

They consider that their right thereto rests on strong equitable grounds:

1. They contributed their proportion of $500,000 paid to the United States for the lands proposed to be ceded.

2. The policy of the United States, as shown by the acts of 1830 and 1848, was to unite the tribe. To guard and protect the rights of those remaining in the States east will favor that object.

3. To permit one portion of the tribe to appropriate the common property of all to their exclusive benefit, will have the effect to cause a dominant party, which has already obtained its power by a sacrifice of the best men in the nation, to continue measures to reduce the number, and prevent a union of the tribe, with a view of appropriating the whole property of the Cherokee people to their own benefit.

As a further proof that a sordid and selfish purpose exists, which requires watching and guarding by the United States, I have to refer you to some further efforts which have been made to practice impositions on the Cherokees remaining in the States east.

In the conclusion of the treaty of 1846, as has been

shown, and is proved by the papers on file in your office, those same chiefs employed able counsel to exclude the portion of the tribe remaining in the States east from its benefits; and thus, by robbing them of their portion of the funds, increase their own *per capita*. And after the treaty was concluded, which guarantied to those remaining in the States their share of the money to be distributed *per capita*, and when Congress was called on for an appropriation of money to make payment, these same patriotic chiefs employed counsel, and endeavored, by every means in their power, to get the act of Congress so worded as to enable them to exclude the eastern portion of the tribe from the benefits which the treaty contemplated; and it was with the utmost difficulty that it was prevented. The bill which resulted in the passage of the act of 30th of September, 1850, was at first so worded as to give to those chiefs what they so much desired—the control and distribution of the funds ; but failing to accomplish that object by means of counsel, aided by some members of Congress, who were very probably in some instances influenced by other motives besides those of performing their duties to their constituents, they next sought to accomplish the same object by causing the Executive to place a false construction on the law.

The Commissioner of Indian Affairs, your immediate predecessor, was furnished with arguments by those chiefs and their counsel to prove that, because the law provided for the payment of the money to the "Cherokee nation," therefore it meant to those chiefs who claimed to be the constituted authorities of the nation. And as to the portion of the tribe remaining in the States east, it was contended by those patriotic chiefs and their counsel that they had forfeited their rights by remaining, and were therefore entitled to nothing.

As absurd as these arguments would seem to be, and notwithstanding all that could be said and done in opposition to the adoption of such a construction of the law, the influences brought to bear were sufficient to lead to the questions involved being referred to the Attorney General of the United States, for his decision. The fact of submitting the questions proves that doubts were entertained as to the duty of the Executive in the execution of the law.

After the questions were referred to the Attorney Gen-

eral for his opinion, I applied at that office for information respecting the questions propounded, and was shown the letter of the Commissioner of Indian Affairs, which was accompanied with an able argument of the counsel of the chiefs, General Waddy Thompson, intended to influence the construction of the law; which has been stated. As an argument had been transmitted in favor of the chiefs receiving the whole appropriation, and to the exclusion of the individuals of the tribe, and particularly of those remaining in the States east, I was permitted to prepare an argument in their favor, which I submitted, after having it printed, on the 22d of March, 1851.

After replying to the sophistry of the argument of the counsel of the Western chiefs, I closed with a reference to both portions of the tribe, that contains some historical facts, which, as you are probably unacquainted with them, have been quoted for your information.

In speaking of the condition of the North Carolina Cherokees, and the country occupied by them, it is stated—

"That country is endeared to those Indians by the graves and sacred relics of their ancestors; the bones of their children, sisters, brothers, 'fathers, and mothers, lie there; they say, 'We cannot leave them; let us 'alone in the land of our fathers. Why ask us to remove west? We once 'owned all the land that could be seen from the tops of our highest moun-'tains; will you not permit us to enjoy in peace the small quantity we 'have purchased?' They ask, 'Where are our brothers, who were forced 'from the mountains of North Carolina? Two-thirds have been buried on 'the road to Arkansas, and in that sickly country. Where are the Ridges 'and Boudinots, who were promised the protection of the United States? 'Have they not been massacred? Their blood cries from the ground. 'Where are their midnight assassins? Have they not been pardoned by 'the Cherokee Government, without trial, contrary to both law and trea-'ties? Will you then ask us to remove, and join a Government too weak 'and too unjust to protect us, and leave a State where our lives, liberties, 'and property, are secured?—where our rights to remain are guarantied by 'solemn treaties?'"

Fortunately for these Indians, the Attorney General and an elderly clerk in his office were not to be influenced by those sordid chiefs, as his opinion, here quoted, proves:

"Office of the Attorney General, *April* 16, 1851.

"The questions stated by the Commissioner of Indian Affairs, and by 'you referred to me for my opinion and advice, have received due consid-'eration; my answers are the following: * * * * * 'Upon 'Who are the nation within the meaning of the act; and may pay-'ment be made to the authorities of the nation as its representative; if not, 'who are entitled to the money; how shall they be paid?'

"The two appropriations of $189,442.76 and of $724,603.37, (making the aggregate of $914,046.13,) relate to the same class of Indians, and

'therefore the questions upon these two appropriations are answered together.

"The payment must be made to the individuals of the Cherokee nation 'per capita, not to the authorities of the nation.

"If the payment be made to all the individuals of the nation *per capita*, 'the faith of the treaties will be preserved, the purview of the statute as 'well as the proviso will be obeyed; for payment *per capita*, to every individual composing the nation, will be payment to the nation.

"Ordinarily, a debt due to a nation, by treaty, ought to be paid to the 'constituted authorities of the nation; but, where the treaty and the law 'appropriating the money both direct the payment to all the individuals of 'the nation *per capita*, the treaty and the statute must prevail.

"According to the true intent and meaning of these treaties of 1836, 'and treaty of 1846, taken together as one whole, and comparing their 'several parts, thereby to find the sense of the contracting parties, as directed by the established rules for construing treaties and all other instruments, I am of opinion that all the Cherokees who, at the date of the 'treaty of December, 1835, were residing within the limits of Georgia, 'North Carolina, Tennessee, and Alabama, or east of the Mississippi, and 'also those Cherokees who, at the date of the treaty of 6th August, 1846, 'were residing east of the Mississippi river, were entitled by the fifteenth 'article of the treaty of 1835 to participate in the distribution of the balance of the purchase money provided for in that article.

"The treaty of 1846 does not expressly, or by implication, abrogate any 'of the interests of the Cherokees in the distribution *per capita* provided 'for in articles twelve and fifteen of the treaty of 1835. The treaty of 1846 'intends to provide for the satisfaction of those claims, not to forfeit, repeal, or annul any of them.

"Under these provisions, my opinion is that the distribution is to be 'made *per capita*, and equally among all the individuals residing east, and 'also all those residing west, other than the 'Old Settlers' found to be in 'existence at the time of the distribution; each being considered as entitled in his own right, and not by representation of another who is dead, 'and the payment of these distribution shares should be made to the individuals entitled; if of competent age, the shares of children to be paid to 'the heads of families to which they belong, whether those heads of families be males or females, father or mother, or persons standing in '*loco* '*parentis*.'

"In this mode I believe the intentions of all parties will be substantially 'carried into effect, and the just purposes of the Government of the United 'States fulfilled.

"To attempt to apply to these Indians any nice doctrines of distribution, 'as ordered by this or that of the several States of our Union, of vested 'rights, and right vested in each individual Indian at the date of one or 'other of these treaties, and thence to be traced and claimed *per sterpes* 'through a line of regular descent, inheritance, or representation of persons 'born in lawful wedlock,' are ideas inapplicable to the known condition of an Indian tribe. The attempt to act upon them in this instance 'would lead to endless difficulty, delay, and confusion, and would moreover violate the substantial purposes and the intentions of the treaties and 'the laws.

"Question fourth: 'If any of the Cherokees who have never removed 'west of the Mississippi river are entitled, may they be required to emigrate, 'as a condition precedent to their being paid?' Answer: The treaty of

' 1835, article twelve, conceded the rights of individuals and families of ' Cherokees, who were averse to the removal to the Cherokee country west ' of the Mississippi, to remain east, and to receive their due portions of ' the money to be distributed *per capita*. The treaty of 1846, article ten, ' recognised these claims of the Cherokees, then, at the date of the treaty, ' residing east of the Mississippi river. On this subject I have hereinbe- ' fore expressed my views. To require these Indians, so residing east of ' the river Mississippi at the date of the treaty of August, 1846, to remove ' to the Cherokee country west, as a condition precedent to their being ' paid their dividend *per capita* of the balance of the purchase money for ' the lands east of the Mississippi river, ceded by their nation to the United ' States, would be without any authority of law, and a breach of the faith ' of the treaties of 1835 and 1846, as I think and firmly believe.

" Very respectfully, yours, &c., J. J. CRITTENDEN.

" Hon. H. H. Stuart, *Secretary of the Interior*."

But this question, raised at the Indian Office and decided by the Attorney General, was followed by another, emanating from the same source, a little more remarkable. The counsel for the Western Cherokees, having failed to get the act of Congress, and afterwards a construction placed on it by the Attorney General, to accomplish the same object—viz: the exclusion of the Cherokees remaining east—claimed that fees should be paid him out of the portion of the money due to the Eastern Cherokees, and procured through the Indian Office the reference of this question also to the Attorney, who decided against the payment. His arguments against the North Carolina Cherokees, and in favor of the payment of fees, are on file, and it requires no better evidence of the fees being claimed, not for advocating the claims of the North Carolina Cherokees, but for opposing them. I presume that these arguments and mine in reply are on file in the office of the Attorney General.

The following letter and memorial explain another effort of one who had been instrumental in defeating a portion of the claims of the North Carolina Cherokees, to obtain from them fees, which under the circumstances now constitute a just claim against the United States.

" Department of the Interior,

" Office Indian Affairs, *April* 27, 1853.

" Sir: In compliance with the request contained in your letter of the ' 16th instant, I enclose to you a copy of the memorial of December 23d, ' 1851, addressed to the President of the United States, and purporting to ' be executed by certain Cherokees residing in North Carolina, who com- ' plain of the conduct of Johnson K. Rogers, Esq., in obtaining, by mis- ' representation, a portion of their *per capita* money.

" Very respectfully, your obedient servant,

" GEO. H. MANYPENNY, *Commissioner*.

" Wm. H. Thomas, Esq., *Washington, D. C.*"

"*To the President of the United States:*

"The undersigned Cherokee Indians, who remained in the State of 'North Carolina under provisions of the treaties of 1835 and 1846, beg 'leave to make known to their Great Father the manner in which they 'have been treated by one of his agents, by the name of Johnson K. 'Rogers, appointed to assist in paying their *per capita*, due from the 'United States under said treaty. When the disbursing agent came on to 'make payment, their agent, William H. Thomas, was absent, not having 'been informed or notified of the time payment would be made. The 'Cherokees of Bird-Town were notified to meet for the purpose of being 'paid, when the said Rogers, through the United States interpreter, repre-'sented that he had gained the money for them, and prevented it from go-'ing to Arkansas; and though payment was optional on their part, yet 'they ought to pay him for the work he had done. He further represented 'that the payment to him was sanctioned by the Government. They at 'first refused to pay him, on the ground that they had never employed 'him, but had employed William H. Thomas to attend to their business at 'Washington, and presumed that he (Rogers) was paid for bringing the 'money by the Government. But upon the repetition of the great services 'he had performed, the payments were made as represented and annexed 'to each of our names. The undersigned respectfully request their Great 'Father to cause the said Rogers to refund the money paid upon false 'representations, as they have reason to believe; and, as in duty bound, 'they will ever pray.

"Executed at the Council House, December 23, 1851.

'Stekoih	$20.00	Ca-to-gah	$20.00
'Chic-a-sut-ta-hee	20.00	Oo-no-he-lah	10.00
'Cho-ga-bien-ne	20.00	Big Cal-loxie	130.00
'Co-tut-tah	25.00	Too-ne-yeh	20.00
'So-kin-ne	20.00	Jakeh	20.00
'Chares-town	20.00	Su-keh	20.00
'Ka-lo-na-hes-ke	27.50	Wah-che-too-ga	10.00
'Skit-tah	20.00	Too-ches-tla	20.00
'Wa-yo-nes-ka	20.00	Too-wallie	10.00
'A-kin-ne	20.00	Tah-wieh	35.00
'Col-lox-ie	55.00	Ci-u-to-gah	20.00
'Oo-san-ih	20.00	Nie-ca	25.00
'O-cun-ne-ah	20.00	Ecueh	15.00
'Ooh-lan-ne-he	20.00	John Lige	30.00
'Big-su-a-ga	20.00	Ama-chaina	40.00
'Oo-tah-e-eutah	20.00	Will Auter	20.00
'Chu-chu	40.00	Wa-che	10.00
'Ta-le-gees-kah	10.00	I-zu-kih	20.00
'Willie	20.00	Che-lah	20.00
'Oo-yos-ka	20.00	Cha-wah-cha-cah	40.00
'Oos-ta-zettah	20.00	Wille-geeska	20.00
'Wa-ha-che	5.00	E-e-so-skie	10.00
'Walking Stick	10.00	Oo-che-gees-tah	50.00
'Aguo-ta-ga	60.00	Tah-cheu-la-nah	13.00
'Nau-che-oh	20.00	I-ee-kah	25.00
'Su-a-ga	20,00	I-yah-a-nih	30.00
'Chu-no-whin-ka	20.00	Old Aroneah	40.00
'Ne-to-ne-ah	20.00	Ned-de	30.00
'Joe	20.00	Oo-nele-cho-ee	20.00

' Tah-ju-se	20.00	Standing Deer	20.00
' Sit-o-wa-gah	20.00	Con-tees-kah	5.00
' Chu-gol-to-zeh	20.00	Little John	80.00
' To-nah-ee	63.00	Su-ya-tak	20.00
' John Willson	10.00	Sam-ned-son	20.00
' Ya3nah	20.00	E-ta-la-co-teah	30.00
' Tom-co-naught	20.00	Aroneach	40.00
' Ti-ze-hah	60.00	Starr	10.00
' Che-an-stutlah	10.00	Hullah	30.00
' Big Jack	20.00	Arch-auter	5.00
' Che-lo-lah	20.00	Elueh	10.00
' Oo-la-oh-ah	33.00	Sallanah	10.00
' Oo-tal-ska	20.00	Betsey	10.00
' Les-sah	20.00	Chu-no-la-keh	40.00
' Choo-la-les-la	u5.00	Steve Arch	5.00
' Tus-que-zan-tah	20.00	Cun-no-ske-ske	20.00
' Nu-e-towah	20.00	Pigeon	30.00
' Wa-kah	20.00	Cos-su-yo-gih	20.00
' Tah-che-tah	40.00	Ginney	20.00
' Chi-u-lah	20.00		
		"Total	$2,321.50"

The memorial sets forth some of the facts connected with this transaction, which are deemed to require some additional explanations.

It seems that Rogers succeeded in getting an appointment as clerk to the paymaster, by representing to some men of influence, at Washington, that the few Cherokees in Georgia, who had employed him to prosecute some of their claims, owed him fees, which the appointment would enable him to secure. The result, however, proves that his purpose was to use the official character which an association with the paymaster gave him, to practice a fraud on the North Carolina Cherokees, who had never employed him, and to extort from them fees for pretended services, when he had not only rendered them no service, but actually opposed their rights and interests as far as his influence extended.

He claims to be an Indian; and if being one-eighth Indian blood and seven-eighths white blood makes a man an Indian, in that pretension at least he is correct.

The disbursing agent being unacquainted with the country, also with the Indians to whom payment was to be made, it was but natural that the necessary arrangements preparatory to making payment were left to Mr. Rogers. Hence, instead of appointing the interpreter usually employed, residing at the largest settlement of Indians remaining east, one by the name of Smith was appointed in the

county of Cherokee, sixty miles off; and in the letter written to him to meet Mr. Rogers at Qualla Town, secresy was enjoined. Another interpreter in Georgia also received notice, and came over to Qualla Town to meet the paymaster and Mr. Rogers. The former was appointed interpreter, and the latter was appointed doorkeeper. The memorial sets forth the representations made to the Indians. But that probably would have been insufficient, had not other arrangements more effectual been planned by Mr. Rogers. No doubt the paymaster supposed that Mr. Rogers had performed the services for which he claimed compensation, and therefore interposed no obstacles to his obtaining his dues. The arrangement was to pay off one Indian at a time, and the balance of the Indians were kept out of the room, except one, who usually resides most of his time in Cherokee county, and was selected to stand by the pay-table. As the roll was examined the name of the Indian to be paid was announced at the door by the doorkeeper, in the Cherokee language. He was told to come in, get his money, and pay Mr. Rogers for getting it. When the Indian came to the pay-table, and received and receipted for his money, the Indian selected for the occasion would tell him, in the Cherokee language, "Now pay the Government agent, Mr. Rogers;" and the amount claimed was paid. Probably a more effectual plan could not have been adopted. It worked admirably until Bird Tom was paid off, and payment had been commenced at Paint Town. I happened to get home, and on being informed that the Government clerk was collecting fees for services which he alleged he had performed, I went immediately to the paymaster, and informed him of the imposition being practised- I also informed the Indians, and advised them, as the Government agent had represented that he alone had performed all the services, and that no other persons had performed any in securing the money to be paid, and that the Government had decided that the Greens and myself were entitled to nothing, that no fees should be paid to any one until the facts were ascertained. By the disbursing officer and the Indians refusing to make further payments, this grand scheme was arrested, and no further payments made. But for this timely interference, it is probable, instead of $2,321.50, it would have been at least six times that much.

The Indians afterwards held a council, and determined to send a messenger thirty miles, to consult a lawyer, with a request, if he deemed it advisable, to issue writs for the recovery of the money thus obtained upon false pretences.

The lawyer prepared and issued the writs, and forwarded them to the Indians. But the great number of writs required so much time to prepare them, that when the runner arrived, Mr. Rogers had passed into Macon, and thence passed on to Cherokee. His faithful friend, who stood at the pay-table and directed the fees to be paid, upon ascertaining that writs had been sent for, took a bye-way through the mountains, headed Mr. Rogers, and, it is supposed, informed him of the pursuit of the sheriff. He obtained a horse, left the paymaster, and crossed the line into Tennessee; and thus, by getting out of the reach of civil process, saved himself the trouble of procuring evidence which would have been more than the reflection of his own statement.

This gave rise to the foregoing petition to the President, which, though unauthenticated, was forwarded to the Secretary of the Interior, and by him transmitted to the Commissioner of Indian Affairs for a report.

Mr. Rogers being called, admitted in his report that he received the money of the Indians, but not so much as represented. He goes on to state—

"1st. That he informed the Indians that if one man of them was dis-
' satisfied with his own voluntary payment, to come forward and express
' themslves, and that he would then and there, on the spot, return every
' dollar; and not one of them came forward to express dissatisfaction.

"2d. He goes on to state he extorted nothing and demanded nothing.
" I did admonish the Indians of the truth, that I had in this city rendered
' them in respect to this fund, (which fact can here be made manifest,) and
' that said Thomas's claim of per centage on his contract with them in re-
' spect to the same fund, were extortionate; that I said with the utmost
' publicity."

As to the amount of money, the Indians whose names are signed to the memorial are much more likely to be correct than Mr. Rogers. As to his offering to give the money back to any of the Indians who were dissatisfied, it would seem very strange, if he had done so through an interpreter, that the interpreter should not know it, and that the Indians should send for writs to compel him to refund the money.

The fact that he ran into the paymaster's room, and, after

obtaining a revolver, came out where the Indians were, of whom he had obtained fees, trembling like an aspen leaf, looked but little as if he supposed they were so well satisfied as at a distance his imagination now leads him to state they were. He states that his proposition to give back the money was made through an interpreter. This interpreter of whom he speaks was a man by the name of Thompson Carter. He is part Indian as well as Mr. Rogers, and therefore his evidence will not, I presume, be objected to.

The affidavit of said Carter was taken before Joseph Keener, on the 13th of April, 1853.

Question [asked by counsel for the Indians]—"Were you present at 'Paint Town when William H. Thomas directed the Indians to stop the 'payment of any further attorneys' fees until proof was made of services, 'so that they could know whom to pay?"

Answer—"I was present."

Question—"After said Thomas had told the Indians not to pay any 'more fees to Rogers—that he was not entitled to them—did you hear 'Rogers offer to return the money to any of the Indians who had paid him 'fees?"

Answer—I did not. I interpreted for Mr. Rogers at Paint Town, and he 'did not offer to return the money, through me."

On the same day, the affidavit of Charles Hornbuckle, the interpreter of the Methodist Missionary Society at that place, was taken before Mr. Keener:

Question [by the counsel of the Indians who had made payment]—"Did 'you see the Indians make payment to Mr. Rogers at the pay-table?"

Answer—"I did, at Mr. Pete Sherril's."

Question [by the same]—"Were you present at Paint Town when Wm. 'H. Thomas directed the Indians to stop the payment of any other attor-'ney fees until proof was made of services, so that they could know whom 'to pay to?"

Answer—"I was present."

Question [by the same]—After the said Thomas had told the Indians not 'to pay any more fees to Rogers—that he was not entitled to them—did 'you hear Rogers offer to return the money to any of the Indians who had 'paid him fees?"

Answer—"I did not. I heard no such offer, and I understand both lan-'guages."

Next in order is the affidavit of Flying Squirrel, chief of Paint Town:

Question [by the counsel for the Indians who had paid fees to Mr. Rogers]—"Were you present at Paint Town when Wm. H. Thomes di-'rected the Indians to stop the payment of any further fees until proof was 'made of services, so that they could know whom to pay?"

Answer—"I was present."

Question [by the same]—"After said Thomas had told the Indians not 'to pay any more fees to Rogers—that he was not entitled to them—did

' you hear Rogers offer to return the money to any of the Indians who had
' paid him fees?"
Answer—"I did not."

These affidavits, sworn to before Joseph Keener, clerk of the court, are in my possession, and will be filed in your office if it is desired. I have other affidavits of the same character, which it is not deemed necessary to refer to.

Thus it seems that, from the testimony of Mr. Rogers's interpreter and other persons present, instead of offering to give back the money, and the kind disposition of the Indians leading them to refuse it, when he went among them to tell of the services he had performed, it was with a revolver sticking out of his pocket. A Government officer, who had by false pretences obtained money of Indians by imposing upon their ignorance, probably thought that, without his revolver, they might resort to physical force to get back their money. A man of his courage, agreeably to his own reports of himself, certainly did not want any revolver to defend himself against any of the whites who were present, for they were peaceable and unarmed.

But it is probable that Mr. Rogers supposed, if he could keep the Indians off of him until he could get out of the State, and thus make his escape with fees which he had never earned, and get safe to Washington, and invest the money in property under another persons's name, as it is known he did do, he could then defend himself by drawing upon his imagination for whatever might be necessary in defence, or in slandering a man he had robbed of his hard earnings, and against whom, if he had not been like the frozen serpent totally destitute of the sense of gratitude, he would not have attempted to add insult to injury by defaming his character.

In the close of his report, he exonerates the disbursing officer, Mr. Chapman, "*as wholly free from any encouragement of, or participation in, the payments made to him*" by the Indians. While his statement, by itself, would with me have but little weight, Mr. Chapman's statement and report have satisfied me that there is at least one truth in Mr. Rogers's report—that Mr. Chapman had nothing to do with this disgraceful transaction.

In Mr. Chapman's report of the 7th of February he says, in speaking of his assistant, Mr. Rogers, having collected fees of the Indians—

"That on the first day of payment at Bird Town, this matter was sprung ' in my presence, suddenly and without the least admonition. * * * ' It was stated by Mr. Rogers, as I was made to understand, to the Indians ' assembled, that he had labored in their behalf, and was prepared with let- ' ters of members of Congress to prove that he had done so. * * * * ' At the close, I think, of the second day, on consultation with Mr. A. ' Austin Smith, one of the assistants, that this proceeding might not wear ' even the appearance of my sanction, I concluded to request and require ' of Mr. Rogers, and did so, that nothing of the kind should be again re- ' peated within my presence. Of what occurred subsequently, I know ' nothing of my own knowledge."

The report of Mr. Chapman explains how Mr. Rogers was looked upon by ignorant Indians; and the representative of their Great Father, the President of the United States, strengthened his position by the assertion that he had letters "from members of Congress" in his possession, which proved that he "*had labored in their behalf.*"

The letter to which he has resorted to prove this shows conclusively that he had by misrepresentation contrived to make the writer *suppose*—and he gives it only in that form—that he had procured the insertion of the provisions in the treaty of 1846, which secured to the Eastern Cherokees their portion of the *per capita*, when the reverse, as has been shown, was true. And that letter does not state that Mr. Rogers ever performed any services for the North Carolina Cherokees separately. At that time I represented, under powers of attorney, more of the Cherokees remaining in Georgia, even, than Mr. Rogers was authorized to represent; and with the evidence I have furnished, I might, with more propriety, have gone and claimed fees for representing the interest of the persons who employed him to prosecute their claims, because I had been the means of procuring this saving clause to be inserted in the treaty, when he was not in a condition to represent himself. At the time that treaty was concluded, Mr. Rogers, instead of opposing John Ross, whom he had abused for years, was walking about the Capitol with him, holding on to his arm, for two evident objects—one to induce him to suppose he had become friendly with him; and the other to enable him to navigate, being in need of physical as well as pecuniary means at that time, both of which Mr. Ross had the ability to supply.

By examination of the records and papers filed in your office by the Commissioners who negotiated the treaty of 1846, you will very likely discover that Mr. Rogers's name is only to be found on one paper, and that is a rejected gold

mine claim for himself, of only about $18,000, not presented by himself, but by Col. Stambaugh, one of the attorneys of the Western Cherokees. This claim, if I remember correctly, was founded upon a supposition of what he could have made in a few years, if Georgia had permitted him to dig gold ; which, with his habits and energy, was probably more money than ten such men would have made in a lifetime by working gold mines.

While I was prosecuting the claims of the Cherokees to which reference has been made, I became acquainted with the unfortunate lady his wife, who is an excellent woman, worthy of a much better fate. I boarded a part of the time where they boarded, about 1843. From that time to 1849, his habits were such that it was obvious he would soon be incapable of attending to business of any description, and would be totally destitute of the means of supporting himself and family ; and his imagination became so much perverted by the long-continued influence of *delirium tremens*, that, agreeably to his own statement, he sometimes imagined very remarkable transformations.

I will name one instance, which shows how far the imagination may carry an individual. Coming home one night, between midnight and day, he got to the room occupied by his wife, and, pulling off his boots, he imagined that a transformation had taken place, and that he had become the boots, and the boots himself, and accordingly it was necessary to reverse positions ; so the boots were put into the bed, and he seated himself outside the door, to be blacked. It was only the known sound of his wife's voice that corrected the error of his imagination, and transformed him back to himself.

While his estimable wife was striving to keep soul and body together by her needle and teaching a few scholars, this man, who, by virtue of an official position as assistant to the paymaster, was enabled to defraud the ignorant Indians by representing that he had rendered them such valuable services, was obtaining his drink after the fashion of a noted character about Washington, known as Beau Hickman—"*ringing in*" upon acquaintances and strangers for sums ranging from twenty-five cents to a dollar, under the false pretence of buying wood, going to market, &c.

Upon its being suggested to me that employment might reform him, I went round to my acquaintances in Congress,

to get him employed to direct documents, but none wanted to employ such a drunken sot. Failing in my efforts to procure him employment, I determined to give him a fair trial myself; and, after communicating to his friends what I designed doing, I went to the librarian of the State Department, and asked his aid in an experiment for his reformation, which was to set him to copying old books, without letting him know my purpose until I could get him cool enough to reflect. The librarian readily entered into the project, and informed Rogers he could have the use of a desk to copy any books I desired. Here he remained, passing through a gradual reduction to the cold-water system, which took about a month, at no small expense to me, until restored to himself. He then concluded that, if he had the money, he would join the Sons of Temperance ; and, wishing to give him a fair trial, I advanced him the money he wanted. He joined the "Sons," and I believe has since remained sober ; but, as his subsequent conduct to me shows, he has not yet acquired any sense of gratitude or regard for truth. In addition to the report made to the Commissioner of Indian Affairs, he addressed a letter to Hon. Robert Johnson, dated 2d August, 1852, which contains a tissue of false assertions, to which, when the proper time arrives, and Mr. Rogers procures an endorser possessing either honor, veracity, or means, I may also give attention. At present, it suffices to show that by the legislation of Congress and the appointment of the person above described as an agent of the Government, not only have I been deprived of the compensation justly due me for long years spent in the service of the Indians, but that agent, as a representative of their Great Father, has been enabled to perpetrate a gross fraud on them.

After the United States, by my long perseverance as counsel for the Indians, had been compelled by public opinion to concede that injustice had been done to the Indians, and to provide for correcting the past errors in the execution of the treaty—well knowing that the Indians were totally incompetent, if left to themselves, to accomplish these results, and that they had been produced by the labor of their counsel, whose authority to act for them had been recognised from the commencement—Congress, by the assumption of power rarely if ever exercised before by this or any other Government that made any

pretensions to be influenced by justice, passed an act that not only impaired the obligation of the contracts existing between the Indians and their creditors, but placed it out of the power of the latter ever to secure the payment of their debts. This was done by attaching the following proviso to the act making an appropriation to pay the Indians the money due under the treaties of 1835 and 1846, which is in these words :

"*Provided*, that in no case shall any money hereby appropriated be ' paid to any agent of said Indians, or any other person or persons than ' the Indians to whom it is due."

Under this provision of the law, many of the merchants who had credited the Indians in the States of Georgia, Alabama, Tennessee, and North Carolina, to whom under the 9th article the United States were required to make payment out of the money due to the Indians, after waiting for the payment of their debts sixteen years, could not fail to see that the effect of the law was to violate the treaty, and enable the Indians to evade the payment of their debts. The creditors of the Indians had on their part complied with the requirements of the Government ; a Board of Commissioners had been appointed to examine and adjudicate these debts against the Indians ; judgments had been rendered in their favor, as the books on file in your office prove.

During the removal of the tribe, the Government agents had to make fair promises, to enable them to remove the Indians west of the Mississippi. But, after thus getting the Indians beyond the reach of their creditors, instead of retaining the amount of their debts, as required by the treaty, the law authorizes the money to be sent west, and thus enables the Indians to evade and defraud their creditors. And by this act of the Government, there are but few merchants in four States, that ever had any dealings with the Indians, who have not sustained more or less loss. In those States, if an individual aids to remove debtors to defraud their creditors, they become liable for the debts. If the Government is to be held liable in the same manner as individuals, it will be necessary to provide for the payment of those debts, with interest, in the next treaty to be concluded, unless Congress provides otherwise for their payment. The amount of each debt can easily be ascertained by reference to the books of the Commissioners, on file in your office.

It is probable that Congress, in passing the act referred to, overlooked the treaty stipulation that the just debts of the Indians should be paid, and that the proviso directing the payment to the Indians, in disregard of powers of attorney, was not intended to have the effect it had in North Carolina, where the Indians are recognised as citizens of the State, and special laws have been passed, recognising and regulating contracts entered into with them. For certainly Congress would not intentionally pass laws impairing the obligations of contracts existing under the laws of a sovereign State, between individuals amenable to those laws.

But, however pure and praiseworthy the motive which prompted such legislation, its practical effect has been to abolish the relation of debtor and creditor, created by and under the laws of the State. It is a species of abolitionism, twin-sister to that which assails the rights of the States, and would destroy the Constitution, to abolish slavery. The one seeks to destroy the relation of master and slave, established by the laws of the Southern States; the other has repudiated, if not destroyed, the relation of debtor and creditor, established by the State of North Carolina. Both are equally unjust, equally opposed to the spirit of the Constitution, and alike mistaken and mischievous in their effects on those whose benefit is purposed or pretended. One teaches the black man to be disobedient and discontented, forcing upon his master more stringent laws and harsher measures to keep him in subjection; the other teaches the red man to be dishonest, while it would deprive him of the benefit of counsel to protect his interest, and leave him unprotected and without a channel through which to utter a complaint—to be swindled and defrauded at pleasure by such Government officials and employees as Johnson K. Rogers. This is cruelty to the poor and ignorant Indian, as well as gross injustice to the counsel, who have spent much time and money in protecting their rights from the misconstruction of the treaty by the agents of the Government, as well as against the intrigues of other portions of the tribe, seeking to appropriate to themselves the entire fund paid for the common property.

The whole history of the Cherokee treaty and its execution, shows in every page the necessity of counsel to protect the rights and interests of the small portion of the

tribe remaining in North Carolina. Could they have procured counsel, if it had been anticipated that the Congress of the United States would repudiate and set aside their contracts? Would they have been able, without counsel, to prevent the attempt of John Ross and his counsel to deprive them of their due share of the benefits of the treaty? Why should they be thus virtually denied the privilege of employing counsel for the protection of their rights? Does not the Government of the United States, in all questions arising upon the construction of Indian treaties, employ and *pay* able counsel, in the persons of the Attorney General and the Commissioner of Indian Affairs? And if so, why should the Indians be deprived of counsel, or their counsel be deprived of just compensation for their services? The United States Government have the exclusive privilege of making treaties for the purchase of Indian lands, and there can be no reason for denying to the Indians the aid of counsel to represent their rights under those treaties, the only effect of such denial of justice being to enable unworthy Government officials to cheat the Indians out of the money promised them by the Government.

All which is respectfully submitted.

WILLIAM H. THOMAS.