

APPALACHICOLA INDIANS.

MAY 24, 1842.

Read, and laid upon the table.

Mr. CHITTENDEN, from the Committee on Indian Affairs, submitted the following

REPORT :

The Committee on Indian Affairs, to whom was referred a communication from the Commissioner of Indian Affairs to Major Wm. Armstrong, acting superintendent, &c., on the subject of an appropriation of money for the purpose of fulfilling a promise made, by the late Commissioner of Indian Affairs to the Appalachicola Indians, to pay them, out of a fund of \$15,400 belonging to the Seminoles, for improvements made upon lands which the Appalachicolas had by treaty surrendered to the United States, having given to the subject that attention which its importance seemed to demand, respectfully report :

That it appears from a treaty made between the United States and the Seminole Indians, at Payne's Landing, on the 9th of May, 1832, that the United States, in consideration of the relinquishment, by the Seminoles, to the United States, of lands which they then occupied in the Territory of Florida, and as a full compensation for improvements which they had made upon those lands, stipulated to pay to said Seminoles the sum of fifteen thousand four hundred dollars, in the manner mentioned in said treaty.

By reference to that treaty, (Laws of U. S., vol. 9, p. 1240,) it will be seen that the said sum of \$15,400 was to be paid to the Seminoles only, and that no other tribe or band of Indians had any claim to any portion of it; nor had the United States the right to withhold the payment of it to the Seminoles, or apply it to any other use, without their consent; and the committee have no evidence of such assent.

That such is the proper construction of the treaty, and that it was so construed by Congress, will be seen by a reference to the act passed on the 28th of June, 1834, which appropriates the said sum of \$15,400 "to carry into effect the stipulations of the treaty with the *Seminoles* of the 9th of May, 1832."

On the 18th of June, 1823, a treaty was made with the Florida Indians, at Camp Moultrie, to which the Seminoles and Appalachicolas were parties, by which they made a cession of their lands to the United States, the consideration of which was an annuity of \$5,000 for twenty years, the establishment of a school at the agency, and the support of a gun and blacksmith's shop for the same length of time. From the cession made by the Indians was excepted a district of country which was set apart for the Florida

Indians generally. By a supplemental article to that treaty, special reservations were made to Mulatto King and Econchatimico, and their people; and on the 18th of June, 1833, cessions were made by two bands of the Apalachicolas of those reservations, in consideration of which, other reservations were allotted to them, respectively. Those bands were headed by Mulatto King and Econchatimico; and in case said bands should emigrate west, they were at liberty to sell their lands, and defray the expenses of their emigration, subsistence, &c., from the sales of said lands; or if they preferred, they might, by surrendering to the United States all the rights and privileges acquired under that agreement, "become parties to the obligations, provisions, and stipulations of the treaty at Payne's Landing, with the Seminoles, on the 9th of May, 1832, as a constituent part of said tribe, and reunite with said tribe in their new abode on the Arkansas; the United States, in that event, agreeing to pay \$3,000 for the reservation relinquished in the 1st article of this treaty, in addition to the rights and annuities the parties may acquire under the aforesaid treaty at Payne's Landing."

By a reference to the letter of T. Hartley Crawford, Esq., the Commissioner of Indian Affairs, to Major Wm. Armstrong, a copy of which is hereunto appended, (marked A,) which was referred to this committee, and forms the basis of its inquiry, it will be seen that a most singular error was committed by his predecessor, (C. A. Harris, Esq.,) in supposing that the Apalachicolas had any claim upon the \$15,400 fund mentioned in the second article of the treaty at Payne's Landing.

The following extracts from the instructions of C. A. Harris, Esq., the former Commissioner of Indian Affairs, to Daniel Boyd, under date of July 18, 1838, will show the extraordinary error that was committed by that officer:

"The Apalachicola Indians having relinquished their reservations to the United States, and come under obligations to emigrate to the West, it becomes necessary to make arrangements for that operation. You will therefore take the direction and superintendence of this business, in addition to your present duties in relation to the fugitive Creeks

"By this surrender of their lands, these Indians have made themselves parties to the treaty with the Seminoles, concluded at Payne's Landing on the 9th of May, 1832, and become entitled to all the rights and immunities therein stipulated.

"In the first place, they were entitled to payment for their improvements, so far as their proportion of \$15,400 will go, on their arrival in their new country west. These are such as add real value to the land, and consist of houses and other buildings, improved fields, fruit trees, wells of water, ferries, &c. These improvements are to be valued at what they are worth in money. This duty, it is believed, you can easily perform yourself, with such information as you can obtain upon proper inquiry. You will therefore proceed to make the valuations of such improvements as shall be shown to you, and within the meaning of the treaty."

By reference to an extract of a letter from the same Commissioner of Indian Affairs to George Walker, with which the committee have been furnished by the Department, which is hereunto annexed, (and marked B,) it will be perceived that an entirely different construction was given by that officer on the 12th of February, 1838, to the one given on the 18th of July following, and the committee are entirely unable to reconcile those

two constructions with an honest and faithful discharge of official duty. In the instructions to Walker, in February, 1838, the Commissioner says: "From the accompanying copy of the treaty with the Seminoles, of 1832, you will perceive what are the benefits offered to the Appalachicolas. These are contained in the 3d, 4th, 5th, and 7th articles. The stipulations in the 2d (the article embracing the \$15,400 fund) and 6th, having reference to the claims of and against the *Seminole*s, and providing specific sums for their liquidation, *cannot be extended*. But there will be found in the others, upon any just estimate, *an ample equivalent for the lands relinquished by the Appalachicolas.*"

The committee therefore have been unable to arrive at any other conclusion than that no other construction could rationally be given to the stipulations embraced in the treaty with the Seminoles, on the 9th of May, 1832, and that with the Appalachicolas on the 18th of June, 1833, than that which was given by Commissioner Harris, in his letter to George Walker; and they are wholly unable to account for that entire change of opinion expressed in his letter of instructions to Daniel Boyd, in July following.

The whole case, in the belief of the committee, is embraced and correctly stated in the opinion given by the present Commissioner of Indian Affairs, on the 12th of July, 1839, after he had been furnished with a list of valuations, made by Daniel Boyd, of the improvements of the Appalachicolas, under the instructions given by C. A. Harris, Esq., in July, 1838. A copy of that opinion is hereunto appended, (marked C,) and is adopted by the committee, as the only proper and correct view of the case. It will therefore be seen, and so clearly as not to admit of any just grounds for doubt or dispute, that the two bands of the Appalachicolas were to receive the sum of \$3,000 each, as an equivalent for the lands ceded by them, by their treaties in 1833, instead of any portion of the \$15,400, which belonged exclusively to the Seminoles.

The claim now made upon the Government, in favor of the Appalachicola Indians, to pay for their improvements, having, in the opinion of the committee, no foundation in any treaty stipulation, but resting entirely upon an unauthorized promise, made by the former Commissioner of Indian Affairs, and having for its basis nothing but an erroneous construction of the plain and palpable provisions of the treaties hereinbefore referred to; although the hopes and expectations of the Indians have been excited by means of that promise, and the valuation of their improvements, in pursuance of that construction, by an officer of this Government; yet, being entirely satisfied that those Indians have no claim upon the \$15,400 fund, out of which they were promised to be paid by that Commissioner; and as each of said bands of Appalachicolas has been paid the sum of \$3,000, as an equivalent for the lands ceded by them to the United States, in lieu of the said Seminole fund, the committee feel constrained, by a sense of duty and of justice, to withhold their sanction to the claim, amounting to some three thousand dollars. While the committee admit that the good faith and integrity of the Government should be faithfully preserved in all our intercourse and dealings with our red brethren, and most deeply regret that hopes and expectations have been excited, by an officer of the Government, which cannot be realized from the faithful performance of treaty stipulations, and which must terminate in disappointment and consequent dissatisfaction on the part of the Appalachicolas, they

feel bound not to countenance the idea that any officer of this Government can create any obligations which are binding upon it, without any authority whatever. Had the promise in this case been to pay the Indians out of the funds of the Government generally, without reference to any particular fund, and had the Indians been subjected to damages, trouble, or inconvenience, in consequence of that promise, an entirely different question would have been presented for consideration, and one not free from embarrassment; but inasmuch as the promise was to pay out of a fund which belonged exclusively to the Seminoles, and which was entirely beyond the control of this Government, and as the Appalachicolas have done nothing more than to fulfil their treaty obligations, the course of the committee seems to be plainly indicated, and wholly free from difficulty. To permit money to be drawn from the Treasury upon a claim which has no other foundation than a naked promise of one of the officers of the Government, based upon, not only an erroneous, but most extraordinary, construction of plain treaty stipulations, to pay out of a fund over which this Government had no control whatever, would not only be an act of injustice to the Government, but establish a precedent of a dangerous character. The committee, therefore, have come to the conclusion to report against the allowance of the claim submitted to them, and ask to be discharged from any further consideration thereof.

A.

WAR DEPARTMENT,

Office of Indian Affairs, August 24, 1841.

SIR: I received your letter of the 17th ultimo, calling my attention to the claim of the Appalachicola Indians emigrated by Daniel Boyd to be paid for their improvements according to his valuations, a copy of a certificate of one of which you enclose me.

You are correct in saying that the objection to paying these claims was that the \$15,400 mentioned in the 2d article of the treaty of Payne's Landing was not applicable to their discharge, but belonged to the Seminoles; and although the Appalachicola and Seminole Indians may be regarded as one tribe, when spoken of as Florida Indians, yet it is quite clear, to my mind, that an error was committed in supposing, as was done in July, 1838, that the former had any claim upon the \$15,400 fund. To put this matter to rest, as I think a full understanding of the subject must do, I will remark that this office seems to have thought, in February, 1838, precisely as I do now, as appears by a letter of that date to George Walker, of which I send you a copy; I also accompany this communication by a copy of an opinion drawn up by myself on the 12th of July, 1839, which goes into detail on this subject, and I think shows, conclusively, that the fund of \$15,400 is payable to the Seminoles alone. This opinion was expressed briefly in a letter to you of November 12, 1839. I will thank you to explain this matter fully to the Appalachicolas, and satisfy them that the Department has no power to apply any part of the above money to pay for their improvements. It would be a misapplication of an exclusively Seminole fund to their use, which could not be justified.

The error commenced, in my opinion, in the letter of instructions of 18th

of July, 1838, to Daniel Boyd, who valued the Appalachicola improvements, &c., in which the mistaken opinion is expressed, that they were payable out of the sum referred to; and the said agent is informed that "so soon as the required amounts, for improvements and cattle, can be ascertained, a remittance will be made, for the purpose of those payments."

The 5th article of the treaty made at Payne's Landing, on the 9th of May, 1832, would extend to the Appalachicolas; but Mr. Boyd, in a communication to this office of 3d of February, 1839, says: "No cattle were turned over to me, nor property of any kind, save the improvements embraced in the accompanying certificates." Still a claim for this species of property would not be a lien on the \$15,400, but would require a separate appropriation by Congress.

The letter of instructions alluded to, and the certificates issued by Mr. Boyd in accordance therewith, certainly contain (as appears by the copy of one sent by you) a promise to pay the Appalachicolas for their improvements, but I do not find any treaty stipulations to that effect. The whole proceedings grew out of the erroneous idea that the Appalachicola Indians were entitled to come in under the 2d article of the treaty of Payne's Landing, on the \$15,400. Still, as the promise has been made, and the Indians will be dissatisfied if there is not a compliance with it, I will ask Congress, at its next regular session, for an appropriation of the amount necessary to meet these valuations, amounting to some \$3,000—they may be a little more or less, as I have not cast them up. But, as these claims rest entirely on the promise of my predecessor, it will be in the discretion of Congress to grant or refuse the appropriation. If granted, immediate measures will be taken for their payment. This, too, please to explain to the Indians particularly, and assure them that I will do all I can properly to procure the amount of the Legislature, as I have the strongest desire to perform, to the letter, every promise made to them.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

Maj. WM. ARMSTRONG,

Act'g Sup't Indian Affairs, Choctaw agency, west of Arkansas.

B.

Extract of a letter from C. A. Harris, Esq., Commissioner of Indian Affairs, to George Walker, dated

FEBRUARY 12, 1838.

I transmit a copy of the treaty with the Appalachicolas of June 18, 1833. You will perceive that it contains two propositions: 1st. That they may, with the consent and advisement of the Executive of Florida, at any time previous to the expiration of three years, dispose of the sections assigned to them, and migrate to a country of their choice; but in that event they must defray the expenses of their migration, subsistence, &c., from the proceeds of the lands and their private resources. In respect to this proposition, it is only necessary to observe, that the period designated having expired, it is no longer optional with them to avail themselves of its terms.

The second proposition contained in the treaty is, that they may surrender

their lands to the United States, and by so doing may become parties to the obligations, provisions, and stipulations of the treaty with the Seminoles, and reunite with that tribe in their new country; in addition to which, the United States will pay them \$3,000 for the lands ceded by them. From the accompanying copy of the treaty with the Seminoles of 1832, you will perceive what are the benefits offered to the Appalachicolas. These are contained in the 3d, 4th, 5th, and 7th articles. The stipulations in the 2d and 6th, having reference to claims of and against the Seminoles, and providing specific sums for their liquidation, cannot be extended. But there will be found in the others, upon any just estimate, an ample equivalent for the lands relinquished by the Appalachicolas. You will please to enter into full explanations of this subject; and I presume they will be satisfied. If, however, they should manifest a disposition to require the payment of more than \$3,000, you are requested to ascertain the minimum of their demand, and report it, with your opinions, to this office. Measures have been taken for the removal of the Creeks mentioned by you; and, with due diligence, I trust all the arrangements with the Appalachicolas can be completed in time to obtain the action of Congress, if it shall be necessary.

C.

OPINION.

A list of valuations, made by Daniel Boyd, Esq., of Appalochicola Indian improvements, has been transmitted to this office by Captain Stephenson, per communication received 5th April last. It appears to have been expected by them that they were entitled to receive compensation for those improvements abandoned, out of a fund of \$15,400, set apart by the treaty of Payne's Landing, 9th May, 1832, between the Seminole Indians and the United States. The instructions to Mr. Boyd, dated 18th July, 1833, show that the opinion entertained in this office was that the Appalachicolas were so entitled, which is further manifest from a communication made to Archibald Smith, Esq., of 29th March, 1837. The treaty of Payne's Landing gave the above sum to the Seminoles, for and in consideration of the land thereby ceded, and in full compensation for all the improvements thereon. The act of Congress of 28th June, 1834, appropriates said sum of \$15,400 "to carry into effect the stipulations of the treaty with the *Seminole* of the ninth May, eighteen hundred and thirty-two." The money would thus seem to belong to the Seminoles. The view expressed by this office heretofore appears to be founded on the following facts: A treaty was made with the *Florida* Indians, at Camp Moultrie, on 18th September, 1823, to which the Seminoles and Appalachicola Indians were parties, by which they made a cession of land, and the consideration for which was an annuity of \$5,000 for twenty years; a blacksmith's shop for the same period; a district set apart for the Florida Indians generally; and, by a supplemental article, special reservations to Mulatto King and Econchatimico and their people. On the 18th June, 1833, two bands of the Appalachicolas (headed by Mulatto King and Econchatimico) made cessions of the above reservations, in consideration of which other reservations were allotted to them, respectively; and if at any time they should emigrate west,

they might sell the lands if they chose, and pay the expenses of their removal, or they might surrender the same to the United States, in which case they may become parties to the obligations, provisions, and stipulations of the treaty of Payne's Landing, made on the 9th of May, 1832, with the Seminoles, as a constituent part of said tribe, and reunite with them in their new abode on the Arkansas—the United States agreeing in the last event to pay \$3,000, to each of said Appalachicola bands, for the reservation relinquished in the first article of the treaty, and in addition to the rights and annuities the parties may acquire under the aforesaid treaty at Payne's Landing. The construction of these instruments, which would give the Appalachicolas an interest in the \$15,400, is, I think, a mistake. That sum, it seems, was awarded the Seminoles for improvements on the lands ceded by the treaty of Payne's Landing; it was a treaty made with them alone—for their own improvements surrendered or abandoned, and the money so appropriated. In the mean time the Appalachicolas held their reservations secured to them by the treaty of Camp Moultrie; and it was not until June, 1833, that they agreed to exchange them for other lands, retaining the power to sell the last-acquired property, and defray the expenses of their removal, or to surrender to the United States, and be removed and subsisted for twelve months, and receive \$3,000 (for each band) as an equivalent for the land ceded by the treaties of 1833. For the two Appalachicola bands the sum of \$6,000 stands against the \$15,400 for the Seminoles. The rights acquired by the Appalachicolas under the treaty of Payne's Landing, extended, I think, to annuities, blacksmiths, removal and subsistence for a year, and other general and common provisions, and not to the \$15,400, which was exclusively a Seminole concern. They sold, by deeds to the United States, (the Econchatimico band,) all their reservations for \$3,000, payable 20th October last; and the Mulatto King band, (he being dead,) and the tribe having transferred half their reservation to Yellow Hair, who sold it for \$3,200, and the rest to the United States for \$1,500; deeds dated 20th June, 1839.

T. HARTLEY CRAWFORD.

JULY 12, 1839.

