

THE LEASED DISTRICT CLAIMS OF THE
CHOCTAW CHICKASAW NATION

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CHOCTAW CHICKASAW NATION

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CHAPTER I.

Introduction

When the people of Europe began to settle in North America they found the Indians occupying great areas of very desirable land. The Choctaws were living in what is now the states of Mississippi and Louisiana, where they came in contact with the English, French, and Spanish. North of these people, in what is now Mississippi, lived their close relatives, the Chickasaws. Of them it is claimed in the tradition of the tribes, that once they were of the Choctaws, but broke away and established their own government. The Choctaw tribe had some twenty five thousand members while the Chickasaws numbered only about six or seven thousand. Each group had a government composed of chiefs and headmen who determined the affairs of the entire nation. Though they had established homes and always returned to their families in the villages where the women and old men raised a few crops, they were largely dependent on the chase for their livelihood.

During the entire period of the war with England, from which the United States of America evolved as a nation, the settlers pushed back into the interior until they were in possession of the lands available to the waterways other

than those held by the Indians. The states were becoming involved in discussions over their claims to western lands which had been conferred in their early grants. Unfortunately for the already overtroubled nation, the claims overlapped in so many cases that peaceful settlement was apparently impossible.

Gradually the various states surrendered their claims to the central government under the Articles of Confederation. At first, only the claims that could not under any circumstance be established were given, but not all of the states had decided upon this action before the Constitution was installed. One by one the claims were given to the United States Government and the land provided was to be made into new states. Georgia was the last to surrender her western lands. In doing so, she demanded a promise from the Federal government to the effect that the Indians within her borders would be removed, which was to take place only when the Indians could be removed peaceably and at the convenience of the United States.¹

In the ensuing year, 1803, the purchase of Louisiana was made for the purpose of securing the very important Mississippi River and a great expanse of lands to the westward, in which the people of the United States had little interest at this time. Jefferson intimated that it could be used as a home for the Indians when they were removed

¹

American State Papers, Public Lands, I, 125, 7 Cong., 1 sess. E. E. Dale and Jesse L. Rader, Readings in Oklahoma History (New York, N. Y., 1930), 138.

2
westward.

Nothing was done about the removal for a number of years, due to the unsettled conditions in Europe and the second war with England. The other states watched the outcome avidly, for they too had Indians within their borders. After the first treaty of Indian removal was effected, there was no stopping until all of the Indians had been removed from the settled areas. The Choctaws made their first cession of lands in 1820.

The Chickasaw and Choctaw Indians were closely allied one to the other by ties of blood and language. Within recent history they have not been allied except for a short period after their removal to Indian Territory. Though both tribes were agrarian, they depended upon the chase for a large part of their living. Their history appeared to be connected with a massive, fortified mound named Nanih Waya. Some traditions reveal that the Indians came in the beginning from under this mound, while others indicate that they came from the west led by a sacred pole, carried by their leader by day and stood in the camp by night. Each morning this pole leaned toward the east, which pointed to the Choctaw the route to be followed during the day. When they had reached this mound the pole remained upright and there they remained. However, they may have arrived at

2

E. E. Dale and James S. Buchanan, A History of Oklahoma, (Oklahoma City, Oklahoma, 1924), 91.

this point, they were found in Mississippi by peoples coming from Europe. There they had contact with the whites for two and a half centuries without a definite change in their manner of living. The Spanish visited them from time to time but during their visit nothing which was desired by the Spanish was found, so the Indians were left alone.

During the eighteenth century, the Choctaws, and to some extent the Chickasaws, became involved in the wars of Europeans. The French and Spanish used them to fight their battles, to the injury of the Indians. The English secured the aid of the Chickasaws while the Choctaws were the ally of the French. These two tribes almost managed to settle their difficulties, but were prevented through the good officer of the French Governor, Vaudreuil Adair.³

The gifts of the French were acceptable to the Choctaws, but when these gifts no longer were forthcoming, the Choctaws made definite threats to unite with the English. They were, by the Treaty of Paris, given to another European nation.

The intrigues between the Spanish and English for the aid of these tribes, later complicated by the United States' interests, made it impossible to examine completely the various treaties between these peoples and the nations, who were in every case using the Indians for their own purpose.

3

James Adair, History of the American Indians, (Johnson City, Tenn.), 1930, 335.

The first intercourse with the whites led the Indians to believe that they were to be given presents in exchange for treaties and the United States carried out the plan, making it personally desirable for the headmen to sign treaties with the commissioners.⁴

The desire of the various states to secure additional territory free of Indians was shown at an early date. Various proposals were made to remove the Indians from a part of their territory. Georgia was particularly active in this effort and appointed commissioners to negotiate a series of treaties with the several tribes. One of the plans was that the Indians should give up their lands to a certain point, beyond which no white man could go. Governor Elbert wrote to Colonel Elijah Clark, one of the commissioners, to request him to complete the line before the central government sent men on the same errand. The governor preferred to keep the matter a state, and not a national plan. The states, however, could not agree upon an Indian policy and the matter was not settled until the commissioners from the central government arrived. A treaty was made between the Cherokees and the Congress at Hopewell. Both the states and central government were represented in the conference. While no extensive sessions were required in the treaty, the policy of the control of trade by the Congress was worked

4

Senate Document, 23 Cong, 1 sess., 512, 251-255.
Angie Debo, The Rise and Fall of the Choctaw Nation, 54-55,
(University Press, Norman, Oklahoma, 1934).

out and it was the beginning of the Indian policy, which was carried out by the United States.

Spain also had a definite interest in the trade and it was of some importance to the states to secure definitely⁵ all trade of the era.

Finally, the treaty of Hopewell was made between the Choctaws and Chickasaws. This treaty did not take a great amount of Indian land but it did establish a border between⁶ the territories of the red man and the white. This was supposed to close the matter entirely and the members of each race were, with the exception of certain trading rights⁷ specified in the treaty, to remain within their own lands.

Before long Georgia was attempting to secure more lands from the various tribes, who were holding a council with the Choctaws and Chickasaws. Benjamin James, a commissioner to the Indians, was advised that Georgia was to have a troop of fifteen hundred men to attend the meetings and that it was thought that it would be possible to have the Choctaws assist in this work. Nothing came of this, however, and the commissioners continued without much success. There is little doubt that Georgia intended to use the lands of her grant as far as the Mississippi River and that she

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Walter H. Mohr, Federal Indian Relations 1774-1778, 146, (University of Pennsylvania Press, 1933).

⁶

Ibid., 153.

⁷

Ibid., 153.

had no intention of surrendering this land to the central government. She hoped to manage to remove the Indians from their lands.⁸ It was very necessary that Georgia have an increase in population if she were to survive, so she was determined to remove the Indians, invite white settlers with the best of terms, and to be one of the greater States of North America.⁹

Georgia was not the only state of the South interested in removing the Indians and in securing the lands. Cooperation between them was utterly impossible. No one of them could agree with the other on any phase except that each desired to rid itself of the natives. They were somewhat hampered by the Articles of Confederation, which gave the power of regulating trade and managing the affairs of the Indians to the central government, though this must not infringe upon the rights of any state within her own borders.¹⁰ This matter was then one of both the state legislatures and Congress. Where the Federal left off and the state began was not easily to determine. The states continued to attempt to secure additional territory, the work of one defeating the work of the other, until gradually all of the states had surrendered their western lands and had an Indian

⁸
Ibid., 162.

⁹
Ibid., 143.

¹⁰
Frances M. Thorpe, Articles of Confederation, Article IX, 12, House Document, 87, 59 Cong., 2 sess., 12.

question within their own borders. With these the Articles did not concern themselves. While this was being done the Constitution had been placed in operation.

Georgia surrendered her lands to the United States government with the understanding that it would remove the Indians from within its borders in exchange for these lands, which were to be made into new states. The Indians were to be removed when it could be done peaceably, and when their lands could be secured for a reasonable price.¹¹ An effort was made on the part of the President of the United States, Thomas Jefferson, to induce the Cherokee Indians to remove to the newly acquired lands across the Mississippi River.¹² This action clearly showed that it was but a matter of time until all of the Indians east of the Mississippi should be requested to exchange their lands for the lands across the river.

In the treaty with the Creeks of Hopewell the statement was made that these peoples surrendered all claim to lands not within these borders.¹³ Another treaty was made between the United States and Chickasaws to the effect that the United States should make a wagon road through the nation for the use of their citizens when needed, and also that the Indians were to be paid seven hundred dollars for the

¹¹ American State Papers, Public Lands, I, 114.

¹² Dale and Rader, Readings in Oklahoma History, 141, (1924).

¹³ Kappler, op. cit., II, 48.

14
land.

About the same time a similar treaty was made with the Choctaws under the terms of which the Indians were paid the sum of two thousand dollars for the use of their land for roads and for the right to determine the boundary between
15
the United States and the Indian land.

James Wilkinson negotiated an arrangement between the Choctaws and the United States, in which the Indians agreed to surrender forever claim to the lands:

"bounded by the Choctasawhy River on the west, by the Tomigby and Mobile Rivers on the east, and the boundary of the United States on the south."¹⁶

Wilkinson also made an earlier treaty of cession with the Choctaws in which the boundaries of the Choctaw lands were defined and their claims to much of the land was forever surrendered. They were to receive a number of
17
presents for this act. It appeared that the commissioners making the treaties for the tribes had begun to be paid by the United States. In the treaty with the Choctaws the United States had paid the commissioners a dollar per day during the time the treaty was being made. This policy seemed to be generally adopted at this time. Thus the

¹⁴ Kappler, Indian Laws and Treaties, II, 55, (Washington, D. C., 1904). ok

¹⁵ Ibid., 63.

¹⁶ Ibid., 63.

¹⁷ Ibid., 63.

commissioners of the Indian tribes were, at the same time, in the employ of the United States and their own nation as well.

The summer of 1805 again found the United States commissioners among the Chickasaws for the avowed purpose of securing additional lands. The treaty required the cession of the lands between the Ohio and the Tennessee Rivers for the sum of twenty thousand dollars and a thousand dollars each to the men making the treaty as well as paying the debts to the traders.

The Choctaws were met by James Robertson and Silas Dinsmore in November of 1805 for the purpose of securing a cession of land for which the debts of the tribe to the traders and three thousand dollars worth of goods annually were to be paid. The right to construct roads was repeated and each of the Indian commissioners was given five hundred dollars for his services.

These treaties stood unaltered for ten years when the commissioners waited upon the Chickasaw and Choctaw nations for the purpose of securing cessions of additional lands. In 1816 the Indians were met by Andrew Jackson, David Meriwether, and Jesse Franklin, the commissioners of the United States to the Chickasaws. This cession included

18

Kappler, Indian Laws and Treaties, II, 79, (Washington, 1904).

19

Ibid., 87-88.

all lands on the north side of the Tennessee River and all lands south of that stream east of a line drawn at Canney Creek. For these lands the Chickasaws were to receive twelve thousand dollars per year for ten years and forty five hundred dollars within sixty days after ratification²⁰ of the treaty.

The Choctaws were met by John Reea and John M'Kee on October 28, 1816 and ceded to the United States all lands lying east of the mouth of the Oaktibbaha River and running down the Tombigby River to the northern boundary of the line set in the previous treaty.²¹ They were to receive six thousand dollars for twenty years and ten thousand dollars in supplies immediately.

In 1818 more lands were ceded by the Chickasaws and a definite reserve was given them and payment was again made for the lands thus taken. Nothing was said of the proposed removal advanced in the Georgia compact and considered by Jefferson as a means for using the lands west of the Mississippi River.²²

Notes
In 1820 the first treaty suggesting removal of the Choctaws was made on the Treaty ground near Doak's stand on the Natchez road. *notes* These people had surrendered so much of

20

Kappler, II, 185-186, Indian Laws and Treaties (certain exceptions were included in this agreement for various individuals).

21

Ibid., II, 137.

22

Ibid., II, 176.

their land that they had not enough to exist on as they had formerly lived. Andrew Jackson and Thomas Hind met with them and secured an additional cession. This included all of their lands in Mississippi and in exchange they were given lands in Arkansas and Oklahoma. To those Indians who desired to remove but were too poor to do so, the agents of the United States agreed to provide the necessary funds to remove them. ²³ In 1825 the Choctaws who had removed discovered that their lands in Arkansas were already occupied by whites. In a treaty made by John C. Calhoun, January 20, 1825, these lands in Arkansas were ceded for a permanent annuity of twenty thousand dollars. The United States guaranteed this land in Oklahoma to the Choctaws and Chickasaws forever, promising that such whites as should be already settled in this territory should be removed. ²⁴

In each of these treaties the Indians who migrated did so upon their own desire, though they were encouraged to do so. The Indians did not desire to leave their homes in the east but many of them found the situation unfortunate since it was becoming impossible to maintain their own cultures under the circumstances. Many were afraid that they were going to be subjected to such treatment from the great inroads of whites that removal was the better of the

23

Ibid., II, 176 (While they were agrarian, they secured a large part of their living from the chase).

24

Ibid., II, 211-214.

two evils. Others of the tribe were adamant to remain in the lands occupied by their forefathers since time immemorial and did not attempt to prepare for the removal to the new lands in the west.

The whites were impatient with the government for taking so little land each time. Only the amount in immediate demand for settlement was secured in each of the treaties. Though it was anticipated that the Indians would be removed into the land newly purchased from France, no mention was made of it in any of the treaties with the Choctaws. Each treaty declared that the Indians should retain their lands forever. The settlers felt that they could secure more and more lands and that the Indians were making much less use of the land than they would when they secured it. It was not at this time a question of justice, but rather the question of the invader taking that which he desired regardless of the interests of the persons formerly holding the desired lands.

The Treaty of 1830 was the most important of the removal treaties of the Choctaws. This treaty ceded all of the Choctaw lands in Mississippi and all lands east of the river to the United States and gave this tract of land to the Choctaws:

.....in fee simple to them and their descendants, to insure to them while they shall exist as a nation and to live upon it, beginning near Fort Smith whence the Arkansas boundary crosses the Arkansas River running thence to the Canadian Fork if in the limits of the United States or to those limits; thence to Red River, and down Red River to the west boundary

of the Territory of Arkansas thence north along that line to the beginning.²⁵

This treaty of 1830 made by the noted Andrew Jackson did convey the lands to the Choctaw in fee simple even though the patent to the land was not secured until twelve years after the treaty was made. This patent made the lands definitely theirs and contained all of the wording considered essential to hold the lands without a shade of doubt on the title. This gave them the land west of the Mississippi, not quite two acres for one east of the Mississippi, sans improvement, sans the tradition of home, sans the assurance of life, but possessing the one great promise, freedom from aggression on the tribal estate and the assurance that the United States government would do all possible to hold this for the Indians.

This tract was ceded to the Indians with the rights and privileges of a nation under the protection of the United States. No states were given or were ever to be given the right to pass laws over this land owned by the Indians. Protection was guaranteed to the Choctaws from the invasions of foreign peoples. No intruders were to be allowed to come into and remain within the boundaries of the nation. All Indians were to remove within the ensuing

25

Kappler, Indian Laws and Treaties, II, 311, (Washington, D. C., 1904).

26

Grady Lewis, Choctaw and Chickasaw Nations vs. the United States of America, 279, united ct. cl. No. 17641, 1935.

three years, with the fall of 1831 set as the date for the first migration. A group was sent ahead to examine the lands and to decide on the best locations in which to settle.

The United States government had promised that those who wished to remain within the boundaries of the United States in the state in which their lands were located could accept allotments and become citizens of the United States. About one-third of the tribe filed applications but William Ward was a true white man and failed to complete the applications, thus making it difficult for any who became persistent. At last these Indians removed to join their brethern in the west.

No money was paid for these lands but lands in the west were given in exchange. It should appear that there was an exchange of lands on the part of both parties but the lands of the Indians were steeled, improvements constructed, and the fields were already tillable. The distance was long and the cost of reestablishment in time, money and life, was naturally great. The removal of the Indians was forced and the journey was hard. Thousands died enroute and after arrival from various fevers and

27

Ibid., 311-319.

28

Senate Document, 23 Cong. IV, 556 Senate Report, 35 Cong., 2 sess., No. 374.

28A

disease.

In 1832 the Chickasaws found themselves harassed on every side by the land-hungry whites, who were adamant to secure their lands. This, in addition to state laws, which clearly discriminated against the Indians and their lack of comprehension of the laws of the state, made the Chickasaws willing to remove to a place far distant to the current difficulties. In October of this year, General John Coffee came to confer with them and to make a treaty concerning their removal. The treaty as completed promised that the Indians would send out a scouting party to locate a new home in the west and that when they had decided to remove they would advise the United States government. The treaty determined the amount of land to be given to each family; those holding more than ten slaves were given additional land. The lands in Mississippi were to be sold at public sale and the price above the cost of the sale was to be paid to the Indians. The cost of removal was to be borne by the United States government, and improvements on their lands were to be assessed and paid for by the government. No person was to be allowed to settle in the new lands until it was sold and the Indians had removed.

29

A treaty made with the Chickasaws in 1834 definitely

28A

The story of their removal is well told by Grant Foreman in Indian Removal and does not have a place in this introduction.

29

Kappler, op. cit., II, 356-361.

showed that they were to remove, and expressed the hope that they could find a suitable location within the United States; but that if not, the United States would advance the funds necessary to purchase the lands and be reimbursed from the funds that would come from the sale of their lands in Mississippi.
30

In 1837 the United States Commissioners met with the Choctaws and Chickasaws jointly and made a treaty, under which the two tribes were to be united in Indian Territory and were to have a joint government and a joint interest in the lands. The sum of five hundred thirty thousand dollars was paid for the land. The boundary of the joint lands was given as the one hundredth meridian on the west, the Red River on the south, the Canadian River on the north and Arkansas on the east.
31

Following this arrangement was not very successful, as the Choctaws outnumbered the Chickasaws and were able to elect all of the officers. Their difficulties were many and varied and their requests to the United States for a division in their lands and a separate government were soon being sent to Congress. After a number of years a council was called, in which the various groups met for the purpose of dividing the lands and the people. In November, 1854, the two groups met and divided the lands,

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Kappler, II, 422.

31

Kappler, op. cit., II, 486.

giving to the Chickasaws the lands west of the Choctaws.

³²
(See map).

In 1855 the George W. Manypenny met with the representatives of the two tribes and made a treaty, giving the approval of the United States to the division, and declaring that no part of the land should ever be sold without the consent of both tribes. The United States reserved the rights to maintain military posts, construct post roads, agencies, which might be necessary for the benefit of the peoples and the United States. For all properties destroyed in the district or invasions from any other peoples the United States promised to bear the cost.³³

During the period between 1800 and 1855 the Chickasaws and Choctaws had surrendered all of their lands east of the Mississippi, and had removed from their old homes to the Indian Territory, established a joint government, dissolved it and formed independent governments, secured a patent in fee simple to all of the lands in the new area, and were gradually restoring themselves to a nation far from the influence of the whites. They were dependent on the United States to carry out its parts of the treaties, to pay the annuities provided for in the treaties, and to protect them from foreign invasion. They were beginning to establish schools for their children, missionaries were

32

Kappler, op. cit., II, 652.

33

Kappler, op. cit., II, 710.

instructing them in the arts of the white, aiding them in agricultural development, teaching their children, and the Indians were attempting to secure a delegate to Congress as a territory. Nothing came of this, since the Congress of the United States tabled the memorials sent from the tribes.

The treaty of 1859 provided that the United States government should lease the lands of the Chickasaws and Choctaws west of the ninety-eighth meridian, for the homes of the Wichita and other tribes as the government should desire to locate in this territory, excluding forever the Indians of New Mexico, but the territory remained the territory of the Chickasaws and Choctaws and to them was given the title and the right to settle within the borders of this land when ever they should so desire. For this the United States was to pay the Chickasaws two hundred thousand dollars and the Choctaws, six hundred thousand
34
dollars.

Under this treaty the United States also agreed to give further study to the case of the lack of proper payment to the Choctaws for the lands in Mississippi, and to the individuals who had attempted to hold allotments but had not been permitted to do so by the actions of Ward. The case was to come before the United States Senate whose decision was to be final. In 1859 the matter came up before

the Senate and an award of two million, nine hundred eighty-one thousand, two hundred forty-seven dollars and thirty cents was made to the Choctaw government, which was to pay the individual claims for property damage, stock abandoned or stolen. Although it did not pay the entire loss, it was a victory for the Choctaws, showing that the Senate recognized their claims to the lands they had occupied since
 35
 time immemorial.

The period from 1833 to 1861 was one of orderly development in all fields of government and social development. A constitution and legal system was adopted, again development moved apace, and they showed no animosity toward the government or the peoples who had driven them into exile, other than that of regulating the marriage of Indian women to white men. These men were required to meet approval of the Council, and a "bad man" under no circumstance was
 36
 allowed to marry into the tribe. The outlook for the development of an Indian state looked bright and the Indians felt secure from a second invasion of the whites.

 35

House Miscellaneous Document, 45 Cong., 2 sess., No. 251, relating to Indian affairs.

Debe, op. cit., 73-74.

36

Report Com. Indian Affairs, 1851, 268.

Debe, op. cit., 78.

CHAPTER II.The Civil War as it Affected the Choctaws and Chickasaws

The Civil War had a very definite effect upon the Indian Territory. The case of states rights did not touch them, but the slave issues did affect their culture, by the association with the negroes. By their treaty of 1832, the Chickasaws were individually granted additional lands for every ten slaves.¹ Slavery was recognized as an institution among them and the Republican party had cast a gloom over the people through the statements of Seward, who had advocated the policy of taking the lands of the Indians and filling it with white settlers.² Due to the excellent usage of propaganda, the Indians were brought to believe that the United States was on the verge of collapse.

The General Council of the Choctaws was summoned for a special session in which it passed an act, approved February 6, 1861, instructing the Choctaw delegates to confer with the authorities in Washington concerning their invested funds and to withdraw, if advisable, and place them in southern banks. The ensuing day the Council authorized the Principal Chief to appoint delegates to any inter-tribal council or convention which might be called to decide upon their relations with the United States, "so long as said government is in existence; otherwise, to urge

¹ Charles J. Kappler, II, 352-361.

² Debo, op. cit., 60.

a renewal of such relations as may be framed among the
Southern States."³

On the same day the Principal Chief was instructed to advise the various governors of the Southern States of their regret over the unfortunate situation and to advise them that the Choctaws would feel that they belonged to the South due to their "natural affection, education, institutions,
and interests."⁴

The Council acted with great speed in electing twelve men who were to accompany the Principal Chief when he met the Chickasaws, who had sent a similar group to confer with the Choctaws at Beggy depot on March 11, 1861. Their purpose was "to consult on the common safety of these two tribes, in the event of the dissolution of the American Union."

The Choctaw commission in Washington desired to keep the tribe out of war, and in April, 1861, assured the Commissioner of Indian Affairs that the Choctaws would be neutral. Peter P. Pichlynn returned home to do all in his power to make this possible. He was threatened by a Texas

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Acts and Resolutions of the General Council, 1860, and January-February Session, 1861.

⁴

The War of Rebellion Record, a compilation of the Official Records of the Union and Confederate Armies, (Washington, 1880-1901) First Series 1, 681.

⁵

Acts and Resolutions of the General Council, 1860, (Phillips Collection) 121-122.

vigilance committee; however, the Principal Chief, George Hudson, prepared a neutrality message to deliver to the special session of the council called for June first. Robert J. Jones became aware of this plan through Douglas H. Cooper. Jones attacked those who declared themselves against secession and the Chief changed his mind and advised the council to treat with the Confederacy.

In the spring of 1861 Pike was sent out by the Confederate States to secure the allegiance of the various Indian tribes. He first visited the Cherokees but was not able to negotiate a treaty with them, since Ross and a large number of his followers were firm in their refusal. On May 29, 1861 he wrote to Robert Toombs, Secretary of State, Confederate States of America, advising him of his failure with the Cherokees and assuring him that he was certain of securing treaties with the other tribes. He requested that arms be procured for the Indians, specifying muzzle-loading rifles, as the Indians would not use muskets and without arms they would not remain long in the army since the inertia would scatter them to the four winds. He had borrowed the funds necessary for the purchase of the supplies for the council, explaining that it was necessary to feed the Indians during such a meeting. Pike advised the government that since there were no mails in the Indian

Territory it would not be possible to advise them concerning
 7
 his movements.

Pike met with the officials of the two tribes, the Choctaws and Chickasaws, at North Fork Village, on the North Fork of the Canadian River, in the Creek Nation, and signed a treaty by which the Confederate Government assumed all obligation owed by the United States. This treaty was long and covered all phases of their relationship with the whites of the south. It held out to the Indians everything they had been denied, allayed their fears, and was more desirable than any they had ever had the opportunity to
 8
 make.

The Confederate Government took over the position formerly held by the United States as the protector of the Indians, guaranteed peace and friendship, and promised to defend them from invasion. It assured them of their titles in fee simple to their lands, but maintained the lease for the locations of the various friendly tribes for a period
 9
 of ninety-nine years.

The Confederate states assumed the right to build the usual forts as well as military roads within the borders

7
War of the Rebellion Official Records of the Union and Confederate Armies, Series IV, I, 359-61, 1880-1901.

8
Ibid., 447 (William B. Pitchlynn, who had attempted to assure the Commissioner of Indian Affairs of their neutrality, who had almost been mobbed for his loyalty to the union, was one of the commissioners who signed this treaty.

9
Ibid., 448.

of the territory but this land was to be purchased for the purpose. Any property taken by a citizen of the Confederacy was to be paid for upon the presentation of a claim.¹⁰

Commerce was to be protected and all traders were required to secure a license from the Confederate States in order to carry on trade within the area. The Choctaws and Chickasaws were to be permitted to tax all traders within their respective nations.

A delegate to Congress was permitted to these people, to be elected jointly by the two tribes, and the promise of statehood was held out to them very definitely. This, however, was limited by the treaty with the qualification that this statehood would be jointly between the two nations and that the Creek and Seminole nations might decide to unite with them.¹¹ Arrangement for the punishment of offenders against the laws of either of the nations was made and a district court of the Confederacy was provided for. The Indians were definitely promised that they would not be required to pay for the war, and that their annuities¹² would be paid by the Confederate Government.

The treaty placed the Indians on what appeared to them to be a safe basis, awarded them the position in the family of states which they had so long desired, and at

¹⁰

Ibid., 450-451.

¹¹

Ibid., 453.

¹²

Ibid., 457-465.

the same time restrained none of their privileges, but continued their annuities. That the south was unable to carry out the treaty was not the fault of either, but was one for which both parties suffered accordingly.

The war in the Indian Territory was very hard on the Indians. Almost immediately the troops of the Federal Government were withdrawn. In fact, the western forts were evacuated in April and May and were in full control of the Texans.¹³ The Choctaw country did not immediately suffer from invasion, though the Confederate stores were destroyed within their territory at Perryville shortly after the capture of Fort Smith, Arkansas. The Union troops also captured Skullyville and held it along with the other posts captured for the duration of the war.¹⁴

The Chickasaws and Choctaws raised three regiments, called the Second Indian Brigade, under the command of Tandy Walker. These saw service in Arkansas and Missouri and took part in the battle of Honey Springs, but for the greater part of the war they were located in camps within their own territory.¹⁵

As the Indians in other parts of the territory were

¹³

Ibid., 648.

¹⁴

Angie Debe, "Southern Refugees of the Cherokee Nation," Southwestern Historical Quarterly, XXXV, (April, 1932), 255-266.

¹⁵

War of the Rebellion Official Records of the Union and Confederate Armies, Series 1, XXX, Part IV, 694.

defeated, the Choctaws and Chickasaws faced a crucial shortage of food, for thousands who fled from the attack took refuge within the Choctaw country. Refugee camps were established on the Boggy, Blue, and Kiamichi Rivers, where many of the people remained until the end of the war.¹⁶

The Indian Territory was organized after 1863 into one government. The Grand Council of all tribes held its meetings at Chaha Tamaha. The Choctaws cooperated fully with this group, though the Chickasaws were more divided as a nation, with a great number of adherents to the Union. As the Confederates weakened, many felt that the Choctaws were also becoming more and more interested in the returning of their allegiance to the United States. This was revealed in a letter, dated December 16, 1863, to General McNeil from Jackson McCurtain, an officer in the Choctaw army, in which he assured McNeil that he was doing all within his power to induce his people to make peace with the United States but he did not desire to make a division within the tribe because of the difficulty such conditions had caused for the other Indians. He anticipated success at some future time but declared that slow procedure would be essential.¹⁷

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Angie Debe, The Rise and Fall of the Choctaw Republic, 82, (University Press, Norman, Oklahoma, 1934).

¹⁷

Annie Heloise Abel, The American Indian Under Reconstruction, III, 15-16, (Cleveland, Ohio, 1925).

The fear of the internecine strife which had so devastated the Cherokee and Creek nations, and to some extent the Chickasaws, was one of the factors of utmost importance in holding their allegiance to the Confederacy. Toward the close of the war a few of the Choctaws, who claimed to be in favor of the United States, attempted to form a government and to secure recognition of the United States. This government was drawn up at New Hope on March 14, 1864, but nothing came of it.¹⁸

In February, 1864 the Chickasaw Nation was invaded by the troops under Colonel William A. Phillips. He distributed copies of Lincoln's Amnesty Proclamation, and did all in his power to bring about a break in the alliance between the Indians and the south. He addressed a message to the Choctaw Council on February 15, advising them to "choose between peace, mercy, and destruction." The Choctaws refused to discuss a treaty with him.¹⁹ Immediately following the attempt on the part of Phillips to bring about a break in the loyalty of the Choctaw to their chosen group, the Choctaw Regiment re-enlisted for the duration of the war and then went so far as to issue a statement that the support of any man for election of the council would be fought if he did not come out in favor of universal conscription.²⁰

¹⁸ War of Rebellion, First series XXX, Part IV, pp. 694-695.

¹⁹ Ibid., First Series, XXXIV, Part 1, 110-112.

²⁰ Ibid., First Series, XXX, Part IV, 694-695.

Those Chickasaws and Choctaws who were loyal to the United States fled to the north and remained with the Sac and Fox for the duration of the war, while the Confederate Indians in the environs of the Union invasion, fled to Texas and remained until after peace had been made. ²¹ The greater number of the Choctaws remained in the vicinity of their homes and maintained their loyalty to the Confederacy.

With the collapse of the Confederate government, the Indians were left at the mercy of the Federal government, since they had violated their treaties with that government in taking up arms against the United States. To increase the melee, the people of Kansas were demanding the immediate removal of all Indians within the state, and the negroes were hopefully anticipating the donation of the forty acres of land and a mule for each of them. The lands of the "rebel Indians" seemed to provide one solution to the problem. To take this land and divide it up among the negroes, and to locate the various tribes in Kansas, ²² was loudly advocated.

In spite of the fact that the Choctaws and Chickasaws had had a delegate in the Confederate Congress or because of their conception of that government as being a Confederation of independent states they refused to permit the military authorities to include them in the terms of

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Annie Heloise Abel, American Indian as a Participant in the Civil War, 213, (Cleveland, Ohio, 1915).

22

Debo, op. cit., 84.

23
 surrender. The Indians fully realized the position in which their participation in the war had placed them and all of the tribes joined forces in the diplomatic struggle. At Camp Napoleon, near the present town of Verden, Oklahoma, the various representatives of fourteen tribes met and formed a council. Their resolutions were adopted in a called session of the Grand Council at Chaha Tamaha on the fifteenth of June. The culture of both the Choctaws and Chickasaws was formed upon the use of slaves to do all of the labor while the members of the tribes maintained their positions as gentlemen.

The Daughters of the American Revolution have erected a granite monument on the school grounds just off the highway pointing out the location of this place.

The council went ahead and accepted these principles as the basis for a treaty with the United States and invited the Union Indians to join with the body in a joint
 24
 negotiation for a peace treaty.

The Federal officer in command of the Northern District of Louisiana, General F. J. Herron, authorized the commissioners to treat with the council, but they were delayed. The Council, not having been informed of their proposed

23

War of Rebellion, First Series, XLVIII, Part II, 1095. (The treaty with Pike had promised that they should have no part of the cost of the war to bear and this may have had a bearing on the situation).

24

Ibid., First Series XLVIII, Part II, 1103-1104.

arrival, had adjourned before the commissioners arrived and therefore the commissioners made an armistice with each of the tribes separately. ²⁵ The Choctaws, represented by their governor, P. P. Pritchynn, signed the armistice first, ²⁶ and the Chickasaws signed a few days later.

The surrender of General Lee on April 9, 1865, marked the close of the war, but the Chickasaws who withheld their submission until July 14 of the same year, were the last of ²⁷ the nation to give up.

The Fort Smith Council convened with D. N. Cooley, Commissioner of Indian Affairs as president, and Charles E. Mix, chief clerk of the Indian Bureau, in the position of secretary. ²⁸ The delegates, with the exception of the Choctaws who were delayed by the meeting of the Grand Council, were all present. Two members of the tribe, who had been appointed by the agent, were supposed to accept all ideas advanced by the United States. The gentlemen, William S. and Robert B. Patton, represented according to ²⁹ their credentials, the Union Choctaws.

²⁵ Abel, The American Indian Under Reconstruction, III, 146-47.

²⁶ Wars of Rebellion, First Series, XXX, Part IV, 694-695.

²⁷ Onis Gaines Jones, Chickasaw Governors and their Administrations, 1856-1893.

Thesis, University of Oklahoma 1935, 84.

Victor E. Harlow, Oklahoma, Its Origin and Development, 194. ²⁸

Report of the Commissioner of Indian Affairs, September 8, 1865, 120.

²⁹ Debo, op. cit., 85.

On September 9, 1865 the commissioners for the United States delivered the ultimatum concerning the abolition of slavery and the incorporation of the negroes into their tribes on basis of equal citizens or to make other arrangements satisfactory to the tribes. They were also to surrender a portion of their lands for the location of friendly tribes of Indians from Kansas. The commissioners reminded the Indians of their position in relation to the United States Government on the second day of the council, gave the dates of the various treaties the tribes had made with the defunct government of the Confederacy, and stated:

By these nations having entered into treaties with the so-called Confederate States, and the rebellion being now ended, they are left without any treaty whatever or treaty obligation for protection by the United States.

Under the terms of the treaties with the United States, and the law of Congress of July 5, 1862, all these nations and tribes forfeited and lost all their rights to annuities and lands. The President, however, does not desire to take advantage of or enforce the penalties for the unwise actions of these nations.³⁰

The Commissioners declared that all whites other than the representatives of the United States would not be allowed to settle in the Indian Territory. The Indians heard all this without comment, but when they were called upon to express their position, asked that the Council be adjourned for a time in order that they might consider

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Report of the Commissioner of Indian Affairs, 1865, 318-19.

the matter and promised to be ready to present their ideas
31
the following Monday.

The members of the Chickasaw delegation declared that they could not speak for the nation, since they represented only the refugee group but would first have to consult the others of the tribe and treat with them, as they desired. They were willing to provide for the negroes but did not
32
wish to make them members of the tribe.

The Choctaws, represented at this time by the Pattons, who were also representing the Union Choctaws, declared that they had no authority to enter into a treaty with the United States since they also represented only a minor part of the tribe. They agreed to the terms proposed, with the exception of the article involving the people permitted to settle within the territory, because they did not want any
33
more negroes in their territories.

On the fifth day of the council the Commissioners presented a treaty to the various tribal representatives, which began with the statement:

that...the aforesaid nations and tribes, or bands of Indians or portions thereof were induced by the machinations of the emissaries of the so-called Confederate States to throw off their allegiance to the government of the United States and to enter into

31
Ibid., 310.

32
Ibid., 320.

33
Ibid., 321. (The various Indians were greatly worried over the proposal of Kansas to locate the freedmen from the various states within the Indian country).

treaty stipulations with the so-called Confederate States...

The prepared treaty then went into great detail concerning the magnanimity of the United States and its desire to re-establish peace and friendship between the nations, to establish protection for the tribes again, and to enter into such negotiations as would be best for all. There were no terms in the treaty. It was simply an agreement for peace, with the veiled threat of treaties during the ensuing year which would settle all of the issues.

Various tribes signed the treaty but the Chickasaws and Choctaws withheld their approval until the afternoon session of the ninth day. Before affixing their signatures they presented an address, signed by all of the delegates, which showed their understanding of the treaty and their attitude toward the present proposed agreement. It was presented by R. M. Jones and read by Assistant Secretary Garrett for the members of both delegations. In this, they declared they had examined the treaty, had recognized it as a preliminary proposal, and were ready to sign it. They declared that to them it meant that the United States did not intend to assume control over them, other than in relation to foreign affairs and the question of slavery, which was in itself open to further negotiation. They

34

Ibid., p. 331.
Joseph P. Folsom, Constitution and Laws of the Choctaw Nation Together with the Treaties of 1855, 1865 and 1866,
 pp. 407-409.

denied that they had been inveigled into making the agreement with the Confederacy, as was stated in this treaty, but maintained that they had made it because it seemed best for the preservation and maintenance of their independent nations with separate political organizations. The document showed that in 1861 the Choctaws and Chickasaws believed the states had the right to withdraw from the union; that the Confederate Government extended to tribes the protection which the United States had promised, but failed to give in time of need; ³⁵ that since the United States had placed itself in the supreme position, the Indians were eager to resume their former relationship with that government. The Commissioners were reminded of the loyalty of these peoples to the United States from the time of their first treaty, loyalty which they would have been justified in discarding at many times, since the government had so often failed to carry out its agreements. The address concluded with the hope expressed that the Indians should never again be called upon to cast their lot with one of two opposing sections ³⁶ of the nation. Following this address, which, under the circumstances was somewhat bold, the Chickasaws and Choctaws

³⁵

Ibid., 345-346.

³⁶

Ibid., 345-346.

(This is one of the best prepared documents of the United States. There were no wasted words, every word was excellently selected and forcefully portraying no shame, assuming full responsibility for their actions and a determination to remain an independent nation forever).

signed the treaty on September 18, 1865.

The final treaty was to be submitted to the various legislatures for ratification. The Chickasaws and Choctaws decided that their first statement to the council might have been somewhat unwise, so on the eleventh day of the council, September 20, 1865, they submitted another document requesting the withdrawal of their former statement. This withdrawal was refused and they were invited to present the additional explanatory document and leave the other "spread" upon the record.

38

In this, they allowed the explanation of the reason for their signing the treaty with the south to be covered by the statement that they had signed through the false representations of the Confederate Representative. They cognized that the United States had exclusive jurisdiction over the foreign affairs, but not of internal affairs, with the exception of slavery. They explained that when the Confederate troops had assumed military control over the area they had to turn to them for the protection the United States had not afforded them. Again they reminded the commissioners of their loyalty to the United States since the making of the first treaty in 1786, and again they expressed the hope that there would be no future conflicts in which they would have to choose sides.

39

37

Ibid., 346.

38

Ibid., p. 349.

39

Ibid., 350.

A draft of a permanent treaty was submitted to the Chickasaws and Choctaws, under which they were to abolish slavery, and declare a general amnesty to protect the citizens who had supported the North. They were to surrender not more than one-third of their occupied territories for the use of the Indians in Kansas, and the government was to have the right to place whatever Indians in the leased district that it should see fit. The United States was to restore their annuities, protect them against white immigration, and restore moneys, except that which had been expended in the protection of the loyal Indians. The loss of territory as specified under this treaty was quite obvious, but the statement that the United States Senate could amend the treaty without the consent of the Chickasaws and Choctaws with an agreement as binding as if it were signed by the two tribes, made the treaty utterly unacceptable.⁴⁰

This proposed treaty meant ruin to the Chickasaw and Choctaw Nations, because of the loss of the leased district, which was one-third of their occupied territory, the unrestricted colonization of the freedmen among them, and the utter extension of their tribal autonomy and any other punishment the United States might see fit to add to the treaty. This treaty was rejected by the tribes and the preliminary negotiation signed on October 7, 1865, with a

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J. R. Folsom, Digest of Choctaw Law, 581-582.

specific reservation concerning the interpretation of the "exclusive jurisdiction" of the United States which was declared to concern only foreign affairs and the freedom of the negroes.⁴¹

Delegates were appointed by the Choctaws and the Chickasaws to meet in Washington to negotiate a final treaty. They were given instructions to cede no portion of the occupied territory and in case of objections on the part of the commissioners, to refer them to the people directly. They might make concessions concerning the Leased District for which they were to seek payment or to seek to maintain ownership of the lands while they permitted other Indians to be located thereupon. They were to demand payment for the slaves freed though this was probably included for bargaining purposes, since they could not anticipate payment for their negroes.⁴²

The third article of the instructions to the Choctaw delegates declared:

The failure of the United States permanently to settle the Wichita and other Indians as was agreed under the ninth article of the Treaty of June A. D. 1855, remains the sole jurisdiction of the leased territory or district to this Nation. This Nation will not, however, hesitate to make arrangements for the permanent settlements of the Kansas and other Indians in the so-called leased district, provided reasonable compensation be paid for the same.⁴³

41

Ibid., 580-581.

42

Abel, The American Indian Under Reconstruction, III, 327-29.

43

Ibid., III, 328.

In spite of the very precarious situation in which the Indians had been placed by the war, their position in relation to the United States Government was undefined, and they were still eager to maintain ownership of their territory. They were willing to carry out the terms of the treaty with the Confederacy, under which various tribes were to be allowed to settle within their territory, but control was to be exercised over them and they were to maintain the ownership of the lands.

Under the treaty of 1855 they had not thought that they had given up any of their ownership to the territory nor were they willing to do so unless forced, and not then unless they received compensation for this territory. They were ready to confer with the United States and they prepared to send men second to none in the field of diplomacy to the capitol of the United States to secure the best possible arrangements.

CHAPTER III.Treaty of 1866 and 1867 Which Affected the Claims of the
Choctaws and Chickasaws

The making of a permanent treaty of peace with the United States and the settlement of the various outstanding difficulties were of paramount interest to the Chickasaw and the Choctaw Indians, as both tribes were afraid of the punishment which might be meted out to them for their part in the Civil War. They had great hopes of securing a better contract than had been offered them in 1865. Representing the Choctaws were Alfred Wade, Allen Wright, James Riley, and John Page, while the Chickasaws were represented by Edmund Pickens, Holmes Colbert, Colbert Carter, and Robert H. Love. The United States Commissioners were Dennis N. Cooley, Elijah Sells, and E. S. Parker.

Both tribes cooperated to the greatest possible extent in reaching an agreement. The greatest troubles arose over the negro question and the matter of the leased district. Before long these two problems became one. The United States hoped to secure the approval of the two tribes to the adoption of their freedmen as members of the tribes, or, if this were not possible, to secure the leased district for the establishment of the negroes in a colony of their own.

¹ Union Agency Files, Choctaw Federal Relations, printed circular, July 12, 1866. Signed by Pitchlynn of the Choctaw Nation and Winchester Colbert of the Chickasaw Nation for the purpose of securing the ratification of the treaty.

The delegates felt the need of a capable attorney so they secured the services of John H. V. Latrobe, who did² much in assisting them in their efforts.

The treaty when concluded, assured the usual peace and friendship and gave the promises of good offices to the various members of the two tribes in inducing the Indians of the plains to maintain peaceful relations with the United States and with each other. Slavery was abolished. The rights of the negroes were assured. Each negro was to be given forty acres of land, but was to receive no part of the moneys of the tribes. The Choctaws and Chickasaws agreed to cede to the United States the lands west of the ninety-eighth meridian, known as the leased district, for the sum of three hundred thousand dollars. This money was to be held in trust at five per cent until acts of the legislature had been made, guaranteeing freedmen the right to be witnesses in all civil and criminal cases in the courts. It was further provided that in case these laws were not enacted within a period of two years, the amount would be taken for the use of the negroes, and the United³ States would remove them from the territory.

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Debo, op. cit., 88. (Latrobe discovered that the treaty of 1855 had not been abrogated by the war and he maintained that he wrote the treaty and secured its adoption. He was to be paid one hundred thousand dollars for his services. He took the amount and then divided with the Choctaw delegates, each of whom received ten thousand dollars. This information became public and ruined the political career of Allen Wright).

³

Kappler, op. cit., VII, 919. (Art. 4 of treaty of 1866).

General amnesty was granted to the various tribesmen who had committed offenses against the laws of the United States, and the same was to be given by the Chickasaw and Choctaw governments to their own citizens. Rights of way to various railways were given, as was incorporated in the Treaty of 1855.⁴

The tribal government was assured of existence even though the United States assumed the right to make such laws as would be for the benefit and protection of the people within the territory. An elaborate plan of unified government was then provided for the various Indian Tribes, somewhat in the form of an Indian Confederacy.⁵

The tribes agreed to the establishment of a United States Court within their territory, which was not to interfere with the tribal courts of the nations. This had been one of the bitter questions, because of its direct bearing upon the maintenance of the national government of these two peoples.⁶ Immediately following the statement of the formation of the courts within the territories of the Chickasaws and the Choctaws, a promise of a delegate to

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Kappler, Laws and Treaties, II, 710 Art. 18.

⁵

This government was supposed in time to do away with the tribal governments and to organize the various governments into one. This council met annually as specified in all of the various Indian treaties. It published the conditions throughout the territory and attempted to function, but it did little more than prepare the Indians for leadership after statehood.

⁶

Ibid., 922.

Congress was held out and provisions were made for his election from the members of the Councils of the various tribes.⁷

Provisions were made for the allotment of the land to individuals, and an office for the purpose was established at Boggy Depot. The lands of the schools, churches, and those held by the missionaries were not to be interfered with by the allotment.

A survey of the lands was provided for in the treaty. Parents were to be allowed to select the lands for their children, and certain improvements had to be made before allotments could be registered. Sections sixteen and thirty-six were to be reserved for schools. Towns were to be established by the legislatures and the lots sold under their proposed decisions.⁸

The Choctaws and Chickasaws were required to accept not more than ten thousand Indians on their lands, who were to be removed from Kansas and extended the same rights and privileges as the members of the two tribes. No white persons, other than those having permits upon government business or permits from the council to trade, were to be

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This Council was later called the Okmulgee Council and published the records of its meetings under that title. (These were examined in the preparation of this thesis).

8

Kappler, *op. cit.*, 926, Art. 18. (This was never carried out and it was not until the Dawes Commission acted thirty years later that allotments were made, or sale of town lots provided for).

allowed to enter the nation. Nothing was said about the negroes coming into the territory, but it was hoped by the Indians that there would be nothing of this kind done.

For the Kansas Indians to live among them, and for the leased district, the tribes were to be paid the sum of two hundred thousand and one hundred and fifty thousand dollars to the Choctaws, and fifty thousand dollars to the Chickasaws.⁹ Other funds were to be retained by the United States and to be paid annually to the treasurers of the two tribes.

The treaty definitely provided that the Indians ceded the lands to the United States Government, and did not specify the purpose, though it was understood by both parties that the Chickasaw and Choctaw lands were being given for the use of their fellow Indians who did not have homes. They were under the impression that all lands not used in this manner were to be returned to them. They did not understand that they had given up title to these lands other than to allow other Indians to be settled thereon. They realized the right of the United States to locate negro colonies within the district, but hoped that it would not be done.

The treaty was ratified April 28, 1866. Considering the conditions of the times and the treatment meted out to

9

Kappler, II, op. cit., 929, Indian Office Files Choctaw, O. I. A., May 21, 1869.

the members of the Confederate States, the treaty was very liberal. These two tribes retained their inhabited lands, permitted the leased lands to be used for other Indians, and agreed to admit the Kansas Indians.¹⁰

The Report of the Commissioner of Indian Affairs for 1866, states that the treaty had been made and that:

...the Indians ceded to the government the whole of tract of land known as the "leased lands," which have been held rented by the government for the use of Indians removed from Texas and amounting to six million eight hundred thousand acres.¹¹

There is no question but that the government intended to use these lands for the location of other tribes of Indians. The various states were determined to have their Indians removed and were demanding that they be placed on reservations outside the boundaries of the states. The people of both Texas and Kansas were demanding that the plains Indians be restrained from invading these states; that they be placed upon reservations located in the Indian Territory and kept upon these reserves. These tribes were not agrarian and depended upon the hunt to secure their living. They had never remained for any long period of time in one place and were noted for their numerous acts of depredation on the frontier.

¹⁰This was never carried out. Of the various tribes, these two secured the best treaty terms. (Compare with the others in Kappler for affirmation of this statement).

¹¹Report of the Commissioner of Indian Affairs, 1866, 9.

¹²Martha Buntin, "The Removal of the Wichitas, Kiowas, Comanches, and Apaches to their present Agency," Panhandle Plains Historical Review, Summer, 1931, 75.

Immediate arrangements were made by the Indian Department to make treaties with these Indians and to locate them somewhere within the Indian Territory. A council was called by the Commissioner of Indian Affairs to meet at Medicine Lodge, Kansas, in the summer of 1867 for the purpose of making permanent treaties with the Kiowa, Comanche, Cheyenne and Arapaho, and Apache tribes. This Council did not meet until October 21, 1867, with representatives from all of the tribes present.

Treaties were made with the Kiowa Apache (considered a part of the Kiowa tribe) and the Comanches and between the Cheyennes and Arapahoes, separately. The Kiowas and Comanches were given a reservation in the leased district, beginning with the ninety-eighth meridian at the point where it crosses the Washita River, and from there proceeding westward up that river to a point thirty miles west of Fort Cobb, thence due west to the north fork of Red River, provided the line reached the river east of the hundredth meridian, and, if not, to this line and then south to the Red Fork and down this river to the intersection with meridian ninety-
13
eight.

These Indians promised according to their treaty, to remain within these boundaries and to refrain from crossing into the Chickasaw Nation, Kansas, or Texas, and to maintain peace with all citizens of the United States. A

detachment of the United States Army was required to enforce this part of the treaty. Under these circumstances, the Chickasaws were constantly afraid of being raided in their own territory.

The treaty with the Cheyenne and Arapaho Indians gave them a reservation not in the leased district, but which was just south of Kansas.¹⁴ The Cheyenne and Arapaho Indians refused to establish themselves upon this reservation and their agent, Brinton Darlington, set out with a committee of Indians selected by himself and the chiefs of the tribe to locate a suitable reservation. They found unoccupied land of sufficient area on the North Fork of the Canadian River, to which point they were removed in the fall of 1869.¹⁵ The Indians were removed into this area without any arrangement with the government or any title to the land, and nothing was done about the situation for several years because the United States was very anxious to locate them anywhere they would stay, and the people of Kansas were determined to have them as far from their borders as possible. It is true that the President of the United States did approve the selection of the reservation on August 10, 1869, but the borders of the reservation

14

Ibid., II, 185.

15

Martha Buntin, "Difficulties in Issuing Cheyenne and Arapaho Substance," Chronicles of Oklahoma, March, 1935, 41-45.

16

were not laid out until some years later.

The Wichitas were not located by any ratified treaty, but were given lands in the leased district north of the Washita River and south of the Canadian. This tribe had always occupied this land, with the exception of a few years spent in Texas on a reservation, and the time during the Civil War when they fled either to Butler County, Kansas, or to the vicinity of Pauls Valley. As the fort provided for their protection, Fort Cobb was one of the first posts to be taken by the Texans. The Wichitas were driven from their homes, not to return until 1867 just prior to the coming of the railroad.

17

The Choctaws realized before construction of the railroad reached the borders of their country that it would create a market for their timber and stone. They placed the sale of timber and stone under national control. The national agent was to make all contracts between Choctaw citizens and railroads for materials used in construction. The railroad did not adhere to the agreement in 1870.

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Chief William Bryant protested to the Secretary of Interior, and in 1871 the railroad was ordered to stop shipping timber.

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16

Jessie Bender, The Cheyenne and Arapaho Indians, 1861-92. (Thesis, University of Oklahoma, 1930, 197).

17

Martha Buntin, The Kiowa Comanche and Wichita, M. S. Thesis.

18

Acts of Choctaw Nation, November 1, 1870.

19

Ibid., November 1, 1871.

Chief Bryant presented a claim for one thousand, five hundred and five dollars, which was paid by the railroad agent, Parsons, to the Choctaw General Council for illegal shipping out of timber in 1873.

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In 1876 President Grant issued an order permitting the Choctaws and Chickasaws to bring suit against the railroad for damages to stock injured and other damages of one thousand, ninety-two dollars and forty-two cents.

21

No other tribes were located within the Chickasaw-Choctaw leased lands, though there was a plan during the 1870's to remove the various Indians from New Mexico to the unassigned portion of the Creek and Seminole land cessions of the first Oklahoma opening. These Indians refused to accept this land, declaring that it was not good enough. On May 1, 1879, Hon. Carl Shurtz, Secretary of Interior, in a letter to the Secretary of War, with reference to these lands said:

The title acquired by the government by the treaties of 1866 was secured in pursuance and furtherance of the same purpose of Indian settlement, which was the foundation of the original scheme.

That purpose is expressly declared in the treaties. The cessions of the Creeks and Seminoles are stated to have been made "in compliance with the desire of the United States to locate Indians and Freedmen therein."

The lands ceded by the Choctaws and Chickasaws were by Article 9 of the Treaty of 1855 "leased to the United States--for permanent settlement of Wichitas and

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Report of Com. of Indian Affairs, 1873, 209.

21

Indian Office Files Special Case No. 136 to Commissioner Hoyt, January 3, 1878.

such other tribes or bands of Indians as the Government may desire to settle therein." The Treaty of 1866 substitutes a direct purchase for the lease, but did not alter the trust. In 1867 the Kiowas, Comanches, and Apaches were settled upon these lands. In 1869 the Cheyennes and Arapahoes were located by Executive order, the Wichitas being already upon a portion of the same prior to the purchase.²²

The Chickasaw and Choctaw tribes did not object to the use of this land for these purposes. They held the promise of the United States that this land would not be used for any other purpose and that no whites would be allowed to settle within their lands. They did not understand the wording of the Treaty of 1866, under which they were reputed to have surrendered all claims to the territory. Though neither of the two tribes, the Chickasaws and Choctaws, had ever occupied the territory west of the ninety-eighth meridian, partly because it had been infested with tribes of wild Indians, they still retained legal ownership. While they had agreed to this usage of the land as they had under the Treaty of 1855, they did not consider that they had surrendered all claims to it in 1866, since Congress still called it the "leased district." The Indians did not understand the meaning of the word "cede" as permanently conveying the lands to the United States. The funds, according to the treaty, were withheld until certain things had been done. The negroes had to be provided for, though they were not to be adopted as bona fide members of the

22

Senate Document No. 146, 56 Cong., 1 sess., 1901.

tribe. If this were not done, then the money was to be taken for the use of the negro. This does not appear to constitute the sale of the lands, since a sale would have stipulated a price for the land, and not merely a sum of money to be used for the colored people within the nation. ²³

The Wichitas were certain that the lands of the leased district between the Wichita Mountains and the Washita River belonged to them, since they had occupied it long before the coming of the Choctaws. They had not been advised of their intrusion and felt that this land was their own. They had not been happy during their sojourn in Texas, since their avowed habit of acquiring horses was very objectionable to the Texans, who retaliated in "Indian hunts," killing any Indian off the reservation, as one would any other animal whose presence was dangerous to the stock of the ranch. ²⁴ For this reason, Neighbors, Superintendent of the Southern Agency, had them removed to their former habitat. The Treaty of 1855 specified:

.....for the permanent settlement of the Wichita and such other tribes or bands of Indians as the government may desire to locate thereon; excluding the Indians of New Mexico, and also those whose range is north of the Canadian River, but including those bands whose permanent ranges are south of the Canadian River, or between it and the Arkansas River; which Indians will be subject to the exclusive control of the United States, under such rules and regulations not inconsistent with the rights and interests of the Choctaws and Chickasaws as may from time to time be prescribed by the President for their

23

Jones, Chickasaw Governors and their Administrations, 96-97.

24

Report of Com. of Indian Affairs 277, 1858, 162.

government; provided however that the territory leased shall remain open to settlement by the Choctaws and Chickasaws as heretofore.²⁵

The Wichitas were not given any claim whatsoever to the territory. A treaty was made with them in 1872 but it was never ratified by the Senate and no compensation was made to the Choctaws and Chickasaws for this land, other than
26
the first rental.

In the discussion of the treaty of 1866 between the United States and the Chickasaws and Choctaws, it is of utmost importance to see what terms were granted to the others of the Five Civilized Tribes. Each agreed to return to the position of Ward-Nations of the United States, to come under the military protection of the United States, which had proved so very inadequate in the Civil War, and to permit the erection of forts, the establishment of
27
military posts, and the construction of roads and railroads.

Negro slavery was no longer to be practiced in any of the five nations, but the Seminole, Creeks, and Cherokees agreed to give the negro citizenship while the Choctaws

25

Kappler, op. cit., II, 708. There was no treaty of removal, no cession of land other than the treaty of 1855 which permitted the United States to locate Indians in the lands of the Choctaws and Chickasaws west of the ninety-eighth meridian.

26

There is the possibility that this land did belong to these people and not to the tribes to whom it was conveyed by the United States, but either the United States was exceeding its rights by the first cession or these people should have paid for the lands.

27

Kappler, op. cit., 910, 918, 931, 943.

and Chickasaws refused, thus forfeiting the moneys paid for
 the use of the leased district.²⁸

The Seminole Indians surrendered all of their lands for
 the price of fifteen cents per acre and agreed to purchase
 a reservation from the Creek lands for the sum of fifty
 cents per acre.²⁹ The Creeks were to surrender the western
 half of their lands to be used as homes for the small tribes
 and the plains Indians.³⁰ The United States then sold a
 portion of this land to the Seminoles for fifty cents per
 acre, which was objectionable to the Creeks. The Cherokees
 were not required to cede any of their lands except those
 in Kansas. They were to allow other tribes to be located
 within the Cherokee Strip, which they had never occupied.
 Not less than one dollar per acre was to be paid for the
 lands ceded in Kansas.³¹ They were to be sold to the highest
 bidder or taken at the price of one dollar per acre by the
 United States.³²

The Chickasaws and Choctaws were required to continue
 the lease of the "leased district" for the sum of three

28

Ibid., 911, 919, 932, 943. Roy Gittinger, The Formation of the State of Oklahoma, 82, University of California Press, 1917.

29

Ibid., 910, (The United States had paid but thirty cents per acre for this land).

30

Ibid., 933.

31

Kappler, op. cit., 948 Art. 17, Treaty of 1866.

32

Ibid., 948.

hundred thousand dollars, to be held in trust until they had adjusted the negro problem. They were forced either to make the negroes citizens of the nations or to forfeit the money paid for the land. The sum, had it been a purchase price, would have been less than ten cents per acre. Why were the lands of these people worth so much less than the lands of other nations? It was, for the most part, the best land in Oklahoma, taking in the valleys of the Washita and Canadian Rivers. The United States recognized the fact that it had not been paid for this land in 1892, when Congress paid for the Cheyenne and Arapaho Reservation. The United States government also recognized that these lands were leased in the report of the lands in Indian Territory in 1883, with this notation: "Unoccupied Choctaw and Chickasaw leased lands, 1,511,576, acres. Along with the other reservations, nations, etc." In this statement of lands in the Indian Territory there appeared to be no question but that these lands, not occupied by other tribes, belonged in fee simple to the nations to whom they had been patented in 1842. The list of lands designated the Creek and Seminole ceded territory as "Unoccupied Creek and Seminole ceded lands." This appeared that the opinion of the House of Representatives was that this land still belonged to the Chickasaws and Choctaws.

33
(This will be discussed later).

34
Miscellaneous Documents No. 1977, House of Representatives, 44 Cong., 1 sess., 459.

By the ninth article of the treaty of June 22, 1855 (11, United States Statutes at Large, p. 613) the Choctaw and Chickasaws leased to the United States all their lands west of 98°, viz; 7,713,239 acres for the permanent settlement of the Wichita and other Indians, the United States paying therefor the sum of \$800,000 and by the first article of the treaty of April 26, 1866 (14, United States Statutes, p. 769) in consideration of the sum of \$200,000, the Choctaw and Chickasaw Indians ceded all of the lands west of 98°, named in the treaty of June 22, 1855 and known as the "leased lands" to the United States.....

The statement was made that the remainder of the land was to be used for the location of other Indians and to locate the freedmen when the government was fit to do so, but no statement was made concerning the use of the land for any other purpose. The ambiguousness of the comment made in the House of Representatives showed clearly that the United States still adhered to the original policy of using the lands for the location of other Indians and perhaps for the establishment of the negro. However, they considered that the Chickasaws and Choctaws still had a legal claim to the territory. This claim states:

Your committee therefore believes that when the Choctaws relinquished their interest in the lands between the Red and Canadian Rivers west of the one hundredth meridian of west longitude, on the 22nd day of June, 1855, they were entitled to receive in compensation for that relinquishment the just value of those lands. What, then was the just value of those lands in 1855? The territory of the Choctaws west of the one hundredth meridian of west longitude contained 6,589,440 acres of land. At the price of twelve and one-half cents an acre this land amounted in value to \$823,680. But in the treaty of July 22, 1855, the sum of \$800,000 was constituted the entire pecuniary

consideration, not only for their relinquishment by the Choctaws of their interests west of the one hundredth meridian, but also for the lease of the Choctaws and Chickasaws to the United States of the land between the 98th and the 100th meridians of west longitude. The sum of \$800,000 was not more than enough to compensate the Choctaws for the relinquishment of the land west of the one hundredth meridian of west longitude. Nothing remained, then, to apply on the lease of the land between the ninety-eighth and the one hundredth meridians, which amounted to 7,713,239 acres. The rent of this land between these meridians was therefore, altogether nominal--it did not amount to \$1.00. For less the \$1.00 then, the United States have held 7,713,239 acres of land from June, 1855, down to March, 1892, a period of more than thirty six years.³⁶

The treatment of the Creeks, Seminoles, and Cherokees by the government was a sharp contrast to its treatment of the Choctaws and Chickasaws. When the government opened to public entry the lands of Greer County and allotted and sold the lands in the Kiowa, Comanche and Apache reservations and those in the reservations of the Wichitas and affiliated bands, all located in the leased district area covered by claim, the Choctaws and Chickasaws received no payment therefor. The Indians however, did receive compensation³⁷ for the Cheyenne and Arapaho Reservation.

Since the purpose of the government in negotiating all of the treaties of 1866 with the Five Civilized Tribes was to procure the cession of their western lands for the location of other Indians, and since the language of the several treaties was practically the same, equity and fair

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Senate Report, No. 552, 469, 52 Cong., 1 sess., 1893.

³⁷

26 United States Statute, at Large, 51 Cong., 1891, 898-1025.

dealing required the government to give the word "cede" in the Third Article of the Seminole and Creek Treaties, and pay the Choctaws and Chickasaws for the residue of their lands as they had the Seminoles and Creeks. The obligation was to accord the Choctaws and Chickasaws the same treatment that it gave the other tribes not incumbent upon the government, since the relation that existed between it and these two tribes is that of guardian and wards.

It is an historical fact that the understanding the Choctaws and Chickasaws had of Article 3 of the Treaty of 1866 was concurred by the executive branch of government from the date of the treaty until 1891. Within a few years after the execution of the treaty of 1866, white settlers, claiming that the lands ceded by the Five Civilized Tribes to the Government were public lands, attempted to settle upon portions of them, including the leased district area. The executive department of the government in a series of public warnings and statements extending from 1879 to 1890, and consisting of proclamations of the President and statements of the Secretary of Interior and the Commissioner of Indian Affairs declared that these lands, including the leased district domain, had been set apart by the government in trust for the settlement of Indians and could not be used for any other purpose. Excerpts from letters

from two secretaries of interior are sufficient to show the position of the government during that period.

Honorable Carl Schurtz, Secretary of Interior, in a letter to the Secretary of War, with reference to said lands, stated:

The title acquired by the Government by the Treaties of 1866 was secured in pursuance and furtherance of the same purpose of Indian settlement, which was the foundation of the original scheme.---

That purpose is expressly declared in the Treaties. The cessions of the Creeks and Seminoles are stated to have been made in compliance with the desire of the United States to locate Indians and Freedmen thereon. These words may be held to create a trust equivalent to what would have been imposed had the language been 'for the purpose of locating Indians and Freedmen therein.'

The lands ceded by the Choctaws and Chickasaws were by Article 9 of the Treaty of 1855 'leased to the United States for permanent settlement of Wichitas and such other tribes or bands of Indians as the government may desire to settle therein.' The Treaty of 1866 substitutes a direct purchase for the lease, but did not alter the trust. In 1867 the Kiowas, Comanches, and Apaches were settled up on these lands. In 1869 the Cheyennes and Arapahoes were located by Executive order, the Wichitas being already upon a portion of the same prior to the purchase.³⁹

On February 17, 1888, Samuel J. Kirkwood, another Secretary of Interior, answering a resolution of the United States Senate as to the status of these lands, forwarded a statement to the Land Office, wherein it was said:

The treaties by which the United States acquired title to any of the lands in the Indian Territory or obtained the conditional right to control the

disposal of any of said lands were the treaties with the Seminoles of March 21, 1866, with the Choctaws and Chickasaws of April 28, 1866, with the Creeks of June 14, 1866, and with the Cherokees of July 19, 1866.⁴⁰

The Choctaw and the Chickasaw cessions of April 28, 1866 were by the tenth section thereof made subject to the conditions of the compact of June 22, 1855, and by the ninth article of which it was stipulated that the lands should be appropriated for the permanent settlement of such tribes or bands of Indians as the United States might desire to locate thereon. The title of the United States to lands in the Indian Territory is as heretofore shown, subject to specific trusts, and it is not within the lawful power of either the legislative or executive departments of government to annihilate such trusts or to avoid the obligations arising thereunder. Such trusts are for the benefit of Indian Tribes and Indian Freedmen.⁴¹

The statements, in the report above mentioned, which were very favorable to the Choctaws and Chickasaws, are interpretations which the Government placed upon its own treaties and are of special importance because they were made at a time not far removed from the execution of the treaties and are practically its contemporaneous interpretations of those treaties. It is also a rule of statutory construction that the construction which is placed upon a statute at or shortly after its enactment is entitled to great weight.⁴²

The construction placed by a subsequent congress upon an act of a former congress is also entitled to the highest con-

40

Ibid.

41

14 United States Statute at Large 769 Government Printing Office, Washington, D. C., 39 Cong., 1868. 11th U. S. Statute at Large, No. 613 and 615, Government Printing Office, 34 Cong., 1 sess., 1859.

42

36 cyc. 1139.

43
sideration. Immediately after the treaty of 1866 with the Choctaws and Chickasaws a treaty was made with the Delaware Indians, the preamble of which is:

Whereas the United States have, by Treaty negotiated with the Choctaws and Chickasaws, with the Creeks, and with the Seminoles, Indian Tribes living in the Indian Territory, acquired the right to locate other Indian Tribes within the limits of the same....⁴⁴

The above language shows that at the time of the making of the treaties of 1866 with the Five Civilized Tribes and other western Indians, the purpose of the government was to acquire portions of their land for Indian occupancy only.

Congress construed Article 3 of the treaty of 1866, when it had under consideration the act appropriating money to pay the Choctaws and Chickasaws for the Cheyenne and Arapaho Reservation, to mean that the Cheyenne and Arapaho lands had been ceded in trust to the government.⁴⁵

The United States had induced the Cheyenne and Arapaho Indians to accept allotments of one hundred and sixty acres for each citizen in their section of the leased district, and had prepared to throw the rest of the land open for white settlement. The Choctaw-Chickasaw delegation secured an appropriation of \$1.25 an acre or two million nine hundred ninety-one thousand, four hundred fifty dollars for the title to this land to be divided between the two tribes in

43

Ibid., 1142, 1143.

44

14th U. S. Statute at Large, Government, 39 Cong., 1868.

45

26th U. S. Statute at Large, 51 Cong., 1891, 989, 1025, Chap. 543.

the usual three to one ratio.

In paying the Choctaws and Chickasaws for the Cheyenne and Arapaho Reservation the government thereby admitted that the lands in that reservation were a part of the leased district and belonged to the Choctaws and Chickasaws. The status of the rest of the leased district domain is identically the same as that of the lands in the Cheyenne and Arapaho Reservation. If the government was liable to the Choctaws and Chickasaws for those lands, it is equally liable to them for the remainder of the leased district domain.

After passage of the act for payment for the Cheyenne and Arapaho Reservation, President Harrison, on February 18, 1892, sent a special message to congress advising against the payment of the appropriation. His message was referred to the committees on Indian Affairs, on April 11, 1892, submitted its report,⁴⁷ and the House Indian Committee also made substantially the same report and recommended adoption of the same resolution. So strongly convinced was congress of the equity of the claim that it disregarded the recommendation of the President and by solemn resolution, after extended debate, adhered to its former act and directed payment for those lands to the Choctaws and Chickasaws, thereby on two occasions giving legislative approval of the

46

Kappler, Laws and Treaties I, 418, March 3, 1891.

47

Senate Report No. 552, 52 Cong., 1 sess., 1893, Government Printing Office Washington, D. C.

trust character of the leased district lands.

While congress had under consideration the treaty with the Wichitas and affiliated bands of Indians to allot portions of their lands and to open the remainder to public entry, the Choctaws and Chickasaws asked compensation for those lands, because they were a part of the leased district. Congress referred their claim to the Court of Claims, authorizing them to sue the government for their interest in such lands. March 21, 1899, that court decided in favor of the Choctaws and Chickasaws.⁴⁸

The Court of Claims held in substance that the United States held the leased district lands in trust for Indian occupation only, and that when the lands were abandoned for that purpose they should be held in trust for the Choctaws and Chickasaws, or if sold, the proceeds belonged to the tribes.⁴⁹ The Supreme Court, on December 10, 1900, reversed the Court of Claims, dismissing the petition of the Choctaw and Chickasaw Tribes. It held that the Court of Claims was without authority in this case, much less to depart from the wording of the treaty.⁵⁰ It further held that the cession of the leased district lands by Article 3, of the Treaty of 1866 was absolute and not in trust, and by the word "cede" in that treaty the Choctaws and Chickasaws conveyed to the

48

Choctaw Nation et. al. vs. U. S., 34 Ct., C. S. 17.

49

U. S. vs. Choctaw Nation, 179, U. S., 494, 501, 502.

50

Ibid., 535.

government all their right, title, and interest in the leased district lands.⁵¹ However, the court suggested that if the treaty of 1866 did an injustice to the Choctaws and Chickasaws the remedy was with congress and not with the courts. The court said:

We may repeat, that if wrong was done to the Indians by the Treaty of 1866, interpreted as we have indicated, and we are not to be understood as expressing the opinion that they were not under the circumstances fairly dealt with, the wrong can be repaired by that branch of government having full power over the subject.⁵²

It may here be stated that the Choctaw and Chickasaw Nations claimed, in a suit instituted by them against the United States in the Court of Claims under an Act of June 7, 1924, that, of the three hundred thousand dollars, consideration for the cession of the leased district, under Article 3, Treaty of 1866, the sum of eighty-five thousand dollars is still due and unpaid them.⁵³ Under the said act of June 7, 1924, the Chickasaw Nation has brought suit against the United States in the Court of Claims to compensation for that part of the leased district known as Greer County. These cases, instituted under Act of June 7, 1924, are pending in the Court of Claims. According to the Honorable Grady Lewis, Choctaw National Attorney, in Washington, D. C., this case will be argued before the Court of Claims in 1936, "case No. 17641."

51

Ibid., 494, 536.

52

Ibid., 535.

53

43rd United States Statute at Large, 537, Chap. 300, June 7, 1924.

CHAPTER IVEfforts to Establish Rights and Collect Claims

Following the making of the treaties of 1866, the various members of the Five Civilized Tribes settled down to the re-establishment of their nations. Homes, schools, farming, and industry had to be begun again. The Chickasaws and Choctaws had to settle the difficulties created by the treaty in regard to the negroes. They refused to allow the negroes to become citizens of the nation, regardless of the fact that they would lose the money paid for the rental or cession of the leased district. The United States made no efforts to remove the negroes or to locate them in their own settlements in the leased lands.

It was not long before the boomers became active in demanding that the land be opened to white settlement. Whites came into the nations on permits to work for the Indians or to carry on business. The tribes attempted to accomplish some sort of regulation under the Okmulgee Council provided for in each of the treaties as well as in the actions of their own legislatures. However, they utterly failed since their laws constantly conflicted with the laws of the United States, and the question of the right of the nations to tax United States citizens was constantly causing difficulty.

The Choctaws and Chickasaws soon discovered that they

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Debo, op. cit., p. 140.

as well as other members of the Five Civilized Tribes had not been paid for the lands taken for other tribes, and began to demand payment. The Choctaws had discovered that the tribe had a better chance of carrying on if it had representation in Washington. The delegation, which went under the name of the "net proceeds" delegates, were maintained in Washington as long as they lived, attending to the business of the tribe. Their business was to work against the hostile legislation, to push the Choctaw claims, and received their rewards in a percentage of the monies collected. In addition to these men, the Choctaw Council appointed other men on special commissions to meet in Washington on specific matters and paid them for their services from the tribal funds.²

The Choctaws had discovered that it was well worth the cost to maintain these men in Washington to protect their annuities which were threatened from time to time, and to be on hand when certain of their lands were sold. In 1886 the Supreme Court awarded them fifty-nine thousand, four hundred forty-nine dollars and thirty-two cents, which had not been paid since the Civil War.³ During the next two decades they collected various amounts which had been withheld by the government or diverted from its proper channels. However, the most important efforts on the part of the claims committee have been their claims to the leased district. The

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Debo, op. cit., 195.

3

United States Reports, CXIX, 41.

history of the various treaties has been briefly stated, but the court battle has been left for a discussion by members of the court alone. This battle for the collection of payment for the lands taken has been in and out of the courts for more than a generation. At present the matter is particularly interesting since it is to be heard again during the ensuing year.

While the claim of the "net proceeds" does not come under the treaty of 1866*, it has a bearing on the later claims and should be stated for the advisement of those not acquainted with the case. The Choctaws had not been awarded the sum supposed to be paid them for the cattle and other properties abandoned when they removed to the west. The governor of the Choctaws declared that the awarding of each person for the amount lost would be too complicated and therefore suggested that the entire amount be paid to the nation as a whole. This gained for the group working on the claim the title of "Net Proceeds Committee."⁴ The amount of two million, nine hundred eighty-one thousand, two hundred forty-seven dollars and thirty-one cents was not sufficient to reimburse them for their entire loss, but it did remedy the matter to a limited degree. Congress began the payment of this debt by

4

Acts of the General Council, 1852-1857.

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(The Treaty of 1866 referred the matter to the arbitration of the United States Senate and declared that this decision should be final. The Senate made the net award in 1859 deciding that the awarding to the individuals was too difficult, and that the award was to be made to the government.)

appropriating two hundred fifty thousand dollars in cash and an equal sum in bonds to be delivered to the Choctaw Nation. The war beginning at this time caused a large part of the entire amount to be lost. The bonds were never delivered because the Choctaws had by this time joined the
 5
 Confederate Government.

Following the war, the attempts to collect the money were many and varied. Fourteen committees attempted to bring about the collection; various attorneys were employed, but nothing was accomplished.

The entire case rested on the bearing placed on the word "cede" in the treaty. Did it mean to "cede in trust" or cede all legal title? The Choctaws and Chickasaws maintained that they ceded the land in trust, while the United States maintained that the cession was permanent. This meaning is again being decided by the Supreme Court.

In 1881 the matter was referred to the Court of Claims.
 6
 Here they were given four hundred eight thousand, one hundred twenty dollars and thirty two cents.
 7
 Congress made the appropriation in 1888, giving the Choctaws two million, seven hundred thirty-one thousand, two hundred forty-seven dollars and thirty cents, less the two hundred fifty thousand dollars that had been paid at an earlier date. Interest was to be

5

House Misc. Doc. No. 251, 45 Cong., 2 sess.

6

U. S. Statutes at Large, XXI, 504, March 3, 1881.

7

U. S. Reports, No. 2, XIX, 41.

paid upon the claim. This brought about additional suits of the various heirs of the attorneys who had worked on the case for payment but their claims have no bearing on the question under discussion. After fifty-eight years the Choctaws had collected for the cattle and properties lost through the greed of the white men.

The Federal Government decided to open to white settlement the territory which had not been settled by the various Indian tribes, by an act of March 1, 1889. This action was strongly pushed by the Boomers and bitterly opposed by the cattle men and the Indians. A part of the country was declared to be opened on April 22, of the same year. Congress made an agreement to pay the Creeks and Seminoles for their unassigned lands immediately.⁸ Congress also immediately authorized the President to appoint a group of Commissioners to negotiate with the tribes owning lands west of the 96th meridian.⁹

The Choctaw Committee in Washington advised their government of the proposed negotiations, and the General Council of the Choctaws in the regular fall session acted upon the report of their governor, Chief Smallwood, who advised the appointment of a Commission to negotiate with A. M. Wilson, the head

⁸ Report of the Commissioner of Indian Affairs, 1889, 438-441.

⁹ Ibid., 462.

10

of the Commission. The Chickasaws were also preparing to join the Choctaws in the negotiations. The joint commission was advised that they were to actively and strenuously oppose and resist any attempt to include the lands within the proposed Oklahoma Territory until their rights had been assured. 11

The two commissioners met at Atoka and advised the United States Commissioners unofficially of their willingness to treat upon the question of the leased district. The United States Commissioners, however, declared that the United States already held a clear title to the leased district but were ready to negotiate for the Chickasaw lands west of the 96th 12 meridian.

The chief of the Choctaw tribe called a special session of the Council to decide on the next step. The Council met December 16, 1889 and drew up a memorial to the United States government, protesting that the Chickasaws and Choctaws had not received the same treatment as had the other tribes in the purchase of the Oklahoma lands. They pointed out the fact that the Creeks and Seminoles had been paid for their lands in Oklahoma, and that the Cherokees had received payment

10

Indian Citizen, November 2, 1889. (The Council immediately passed a law declaring that the tribes were willing to conform with the needs of the United States to use the leased district for a purpose other than the location of friendly tribes under the treaty of 1866.)

11

Acts of the Choctaw Nation, November 5, 1889. (The Commissioners were to receive \$6 per day and ten cents per mile for travel expenses to Washington, D. C.)

12

Indian Citizen, November 30, 1889.

for the lands taken in the Cherokee strip.¹³ In order to encourage the commission to labor in behalf of the tribe, the legislature enacted a law allowing the commissioners twenty five percent of the amount collected.¹⁴

The United States government in the meantime set about to induce the Cheyenne and Arapaho Indians to accept allotments of one hundred sixty acres each and planned, and when the allotting had been completed, to open the remainder of the land to white settlers. This land was also within the leased district and the commissioners set about to collect a purchase price for the land. This sum was to be divided between the two tribes with the usual ratio; i.e., the Chickasaws were to receive one-fourth and the Choctaws were to receive three-fourths.¹⁵ This seemed to point the way for the tribes to receive payment for all of the lands in the leased district and to show that the word "cede" meant to "cede in trust," but Congress amended the bill with this statement:

Provided however that neither the passage of the original act of appropriation to pay the Choctaw and Chickasaw tribes of Indians for their interest in the lands of the Cheyenne and Arapaho reservation dated March 3, 1891, nor any of this resolution shall be held in any way to commit the government for the payment of any further sum to the Choctaw and Chickasaw Indians for any alleged interest in the remainder of the lands situated in what is commonly known and called

¹³

Ibid., December 28, 1889.

¹⁴

Acts of the Choctaw Nation, December 24, 1889.

¹⁵

Kappler, Laws and Treaties, I, 418, March 3, 1891.

the "leased district." In this amendment the house concurred.¹⁶

The amount received was one dollar and twenty-five cents per acre or two million, nine hundred ninety-one thousand, four hundred fifty dollars. The Council was then convened on the first day of April, 1891, for the purpose of authorizing the various officials to make the requisition to the United States for the money and to sign the papers necessary in such a transaction. It was then decided that the delegates should receive the twenty-five percent as promised them and that twenty-five thousand dollars be set aside to pay the expenses of securing and the distribution of the money to those citizens of the nation who were of Choctaw blood on a per capita basis.¹⁷

But the Indians did not yet have the money, for when the representatives of the nation appeared in Washington, they were unable to accomplish anything. They considered the fact that it was almost the close of the fiscal year and that the government preferred to wait to balance the accounts. Soon they discovered that the Secretary and the President were both opposed to the payment.¹⁸ In the meantime the Indian Office found cause to investigate charges against the Choctaws. First Robert J. Ward, a member of a previous

16

Congressional Record, 52, Cong., 2 sess., XXVI, 173, 379, 868, 27 Statute at Large, no. 753.

17

Acts of the Choctaw Nation, April 10, 1891.

18

Indian Citizen, summer of 1891. (This paper constantly referred to the matter giving in detail the trials of the Commissioners in Washington.)

delegation, found that bribery had been practiced and there had been given from twenty-five hundred dollars to fifteen thousand dollars to five Choctaw Senators. The second came from an intermarried citizen who declared that since he had taken out citizenship papers in the United States he was disbarred from receiving a part of the payment. He conveyed the idea that the Choctaws, who took out United States citizenship papers were discriminated against.¹⁹

When the council met in October of this year the idea had been generally conceded that the high fee to be paid to the Commission might be the cause of the delay so the Council enacted a law declaring the commission dissolved on the grounds that they had failed, and provided a new commission to receive the money.²⁰ The National Attorney declared this act unconstitutional since it impaired the obligation of contracts²¹ and because of a technical irregularity in its passage.

A special session of the Council was then convened for the purpose of adjusting this situation. It reaffirmed the old delegation and created a new one with the powers to pay attorneys five percent of the contingent fee to institute suit against the United States.²² The President of the United States then sent a message to Congress announcing that he

¹⁹
Indian Citizen, November 14, 1891.

²⁰
Acts of the Choctaw Nation, October 19, 1891.

²¹
Indian Citizen, November 7, 1891.

²²
Indian Citizen, March 12, 1892.

would have vetoed the measure had it been possible to do so without the obstruction of other measures on appropriations. He declared that Congress should protect the wards of the nation against the unreasonable twenty-five percent fee. He declared that a previous session had been absolute and that this payment would open the way for additional claims on the part of the Choctaws and Chickasaws. The fact that the Choctaws who were citizens by blood would alone benefit, appeared unfair and stressed the fact that the freedmen should receive a share. The message showed a surprising lack of knowledge of the treaty and provided a decided contrast as to the amount of information concerning the treaties on the part of the United States and the Choctaws. The Choctaw officials were well-versed in their treaties while the United States officials knew but little about them.

23

The chairman of the first delegation immediately presented a memorial in answer to this message in which he defended the fee on the grounds that at first the salary had been so very small, and the failure of the United States Commission to be willing to treat with them made the ultimate collections so insecure that the nation was unable to finance the contest. He reminded the Congress that the net proceeds claim had run for fifty-eight years before the settlement was made. He referred to the question of bribes but advised the Congress that only one man, Ward, had been guilty and that his con-

fession had removed all the stain from the names of the other delegates, and that the Council had confirmed the agreement in April and again in December, 1891. He pointed out that the loss of one-fourth of the money was much less than the depriving of the entire amount, which appeared to be the plan of the United States governmental officials.²⁴ Concerning the white citizens, he quoted the opinion of the Attorney-General. W. H. Miller, who had stated that Congress had appropriated the money to be paid to the two nations, and that the Secretary of the Interior had no control over the distribution but that this was left entirely to the Choctaw and Chickasaw governments.²⁵

When the Cheyenne and Arapaho lands were opened to settlement the matter had not been settled. This fact caused much unrest in the Choctaw and Chickasaw nations. The Senate brought the matter to a vote and passed a resolution, "there is no sufficient reason for interference in the due execution" of the law appropriating the funds for the payment for the Cheyenne and Arapaho lands to the Chickasaws and Choctaws.²⁶ The house took action on this measure in December. Congress then passed an act providing for the retention of forty-eight thousand dollars for the original

24

(He reminded the Congress of the Treaty of 1866 under which the negroes were to receive only forty acres in the case of allotment and none of the tribal monies.)

25

Ibid., March 31-April 21, 1892.

26

Indian Citizen, December 22, 1892.

appropriation to pay for two hundred forty-four additional Cheyenne and Arapaho allotments. Congress then specified that this should not constitute a claim for additional payment for other lands in the district.

The Council of the Choctaw Nation was called into session February, 1893, changing the instructions of the delegates to meet the changes made by Congress in the amount of money to be received and the number of acres to be conveyed.²⁷ The release was signed February 23, but President Harrison was still opposed to the payment and on the declaration that he had had no time to examine the papers, went out of office without having made the authorization for the payment. President Cleveland approved the matter on May 24, 1893, and the money was paid to the Choctaw delegates on June 6, of the same year.²⁸

The Choctaws and Chickasaws did not receive any recompense for any of their other claims in the leased district. This land constituted the unallotted lands of the Kiowa-Comanche and Wichita Reservations, and Greer County.²⁹ On the fifteenth of April, 1896, the Choctaws and Chickasaws addressed a memorial to Congress setting out their claim to the territory known as Greer County. This territory had

27

Kappler, op. cit., I, 504.

28

Acts of the Choctaw Nation, February 17, 1893.

29

Indian Citizen, June 6, 1893.

30

(Allotments were also made to Apaches from this land).
(See Map).

been the source of much trouble in the United States Courts as it was not known whether it belonged to Texas or to the United States. ³¹ In the case United States vs. Texas, original docket No. 3, October term, the territory had been adjudged to belong to the public domain and added to the territory of Oklahoma. The Chickasaws and Choctaws then introduced their claim to the territory, declaring that they should receive payment for these lands since they were a part of the lands awarded them in fee simple, and leased to the United States, and ceded in trust to that government for the use of homeless Indians. This became a part of the suit against the United States and the Wichita and affiliated bands of Indians and was adjudged against the Indians of the Choctaw and Chickasaw nations in the Supreme Court which declared that the cession had been made in fee simple and not ³² in trust.

The Chickasaws and Choctaws brought suit in the United States Courts for their claim to the Wichita reservation. This case came up in the Court of Claims and was decided in ³³ the favor of the two nations.

31

(Suit had been brought in the courts to decide the ownership of this territory which had been made a county and opened to settlement in 1860 by the State of Texas).

32

(Memorial of the Choctaw and Chickasaw Nations of Indians Relative to their Claim to an interest in the lands embraced in Greer County, Oklahoma). Senate Doc., 214, 54 Cong., 1 sess.

33

(It was appealed to the Supreme Court and this August body decided that the cession of 1866 had been absolute, and that if the treaty had done the Indians an injustice, the adjustment lay with the Congress and not the Court.)

The Court declared that the lands were ceded in fee simple
 and not ceded in trust. ³⁴

The Choctaws immediately prepared a memorial to Congress in which they begged the Congress "not to take advantage of the language in which the treaty was drafted, but in the exercise of sovereign power, according to Conscience, grant us justice." ³⁵ This plea, like so many others of its kind, was printed and forgotten in the record of Congress, and the Congress did nothing to redress the claims of the Choctaws and Chickasaws. The Choctaws soon discovered that their redress did not lay with the Congress, as the Supreme Court had stated. Therefore, the Council authorized the Choctaw Chief to employ counsel to present their claim. The various acts of the United States Government had now placed the acts of the Choctaw Nation under Federal jurisdiction in preparation for the disposal of the tribal governments, and any act had to receive Federal approval. President Roosevelt promptly vetoed the bill, on the advice of the commissioner of Indian Affairs, who based his decision on the recent action of the Supreme Court. ³⁶ The Choctaws did not

34

U. S. Supreme Court Reports, 537-539. (It declared that the Treaty of 1855 gave claim to the lands owned and occupied by them, not to the lands for which they only held legal title. The decision also declared that the United States had definitely decided to abolish the position of lessee and lessor as provided by this treaty.

35

Acts of the Choctaw Nation, January 7, 1901.

36

Ibid., November 22, 1905.

give up hope for the collection with this rebuff but continued to attempt to secure their title in spite of the definite opposition of the Indian Office.³⁷

During this time there had been another problem concerning their claim to the territory in which they were settled. Even though a previous treaty had been definite in the statement that the various members of the tribe should receive allotments, the Chickasaws and Choctaws had been unwilling. Every citizen was allowed to take as much territory as he felt that he could use, to erect improvements upon it and to own the improvements. But there had been no question of personal ownership of any of this land. This type of ownership was becoming more and more complicated. The white citizens who had settled in the towns to carry on businesses and the members of the tribe who were also resident of the towns had no claim to the land upon which their improvements stood.³⁸

With the opening of Oklahoma, the need of a territorial government west of the Indian Territory became of utmost importance. This was used as the occasion for the introduc-

37

House Reports No. 1693, 71 Cong., 2 sess.

38

Report of the Commissioner of Indian Affairs, 1886, 5, 8, 10, 11.

Report of the Commissioner of Indian Affairs, 1888, 134.

(In 1886 the Commissioner of Indian Affairs declared: "The idea of nations within the nation was stupid, that it impaired progress, and that since the United States was bound to protect them, the government should decide what was best for them.

tion of a bill into Congress for the extinction of Indian Nations and all tribal governments. The Indian Citizen had begun to advocate the allotment of the lands as a means of protection of the people. However, this paper discovered that the United States Government could not use force and by 1893 were again advocating the postponement of the division of the territory.³⁹ This had a definite effect on the politics of the nation as the worst possible "mud" to use in a political campaign among the Choctaws and Chickasaws was to⁴⁰ accuse a person of favoring the allotment of their lands.

A circular letter was sent to the executives of the five nations by their delegates in Washington, advising them of the proposed legislation for the Dawes Commission. In this letter the delegates warned the tribes that the United States no longer considered the treaties binding in any way⁴¹ but they had no remedy to offer. The law allowed the President to appoint three Commissioners to negotiate with the Five Civilized Tribes to effect the extinction of tribal ownership and the cession of certain lands to the United States. As Henry L. Dawes headed the Committee, the title of the group became the Dawes Commission. This group met in Washington, and then came on to the Indian Territory. Of this the Choctaws and Chickasaws soon became aware and advised the tribes to meet and decide what instructions

³⁹ Indian Citizen, 1892-1893.

⁴⁰ Ibid., October 9, 1890, is an example of this.

⁴¹ Ibid., October 7, 1895, text of letter.

should be given to their representatives. The members of
 both tribes expressed themselves as definitely opposed.⁴²

The Council met and elected a delegation to the inter-
 tribal Council to protest against any change in the govern-
 ment or the land system.⁴³ The members of the Commission
 had spoken to the legislature, but were unable to secure
 any favorable consideration. The Dawes Commission presented
 a tentative plan to the Choctaw Commission which declared
 that all lands be allotted except mineral lands and town
 sites; that a territorial government be established; and
 that the Nation would retain full control over the Tribal
 funds and property and all suffrage would be retained to
 the citizens of the nation. The Choctaws refused to con-
 sider the offer and returned to their homes.⁴⁴

The Commission then went to meet in a General Council
 with all of the tribes except the Seminoles, but each and
 all were opposed to any change in their governments or
 tribal ownership of property.⁴⁵ In spite of this joint
 action, the Choctaw Council was convened in another special
 session, and directed the chief to notify the Commission
 that the Choctaws would not agree to any change in their
 land or in their government. It repudiated the idea

⁴² Indian Citizen, Dec. 14, 1893 - Jan. 18, 1894.

⁴³ Acts of the Choctaw Nation, Jan. 26, 1894.

⁴⁴ Acts of the Choctaw Nation, April 4, 1894.
Indian Citizen, Feb. 22, 1894.

⁴⁵ Commissioner to the Five Civilized Tribes, Annual
 Report, 1894, 7-11.

advanced by a member of the commissioners of the Choctaws in Washington to the effect that the treaties were out-dated and would not be given any recognition by the United States with this statement:

We cannot bring ourselves to believe that such a great, grand and Christian Nation as the United States Government would so stutify itself in the eyes of the civilized world by disregarding treaties here to fore regardless of justice and equite,- Simply because, she is numerically able to do so.⁴⁶

The resolution went on to authorize the appointment of three Commissioners who were able to speak both the Choctaw and English languages. Their duties were to offer every courtesy to the Dawes Commission in conducting them to all parts of the nation where they were to remain as long as was necessary to see all the members of the Nations from whom they could secure the real sentiments of the people regarding the mission of the Dawes Commission.⁴⁷

The Commission to the Five Civilized Tribes reported that they had submitted the same requirements to the Chickasaw nation through the governor of the tribe, the Hon. Jonas Wolfe. On February 6, 1894, the Commissioners addressed the Council explaining the purpose of the Commission and that which they desired to accomplish. The same were submitted to the Council for action on April 23, 1894, but the Council adjourned without having taken any

⁴⁶

Acts of the Choctaw Nation, April 2-4, 1894.

⁴⁷

Ibid.

action. Thus in both nations the Dawes Commission met with rebuff though the Choctaws were more adamant in their refusal than the Chickasaws.

In 1895 the Choctaws became more determined to maintain the status quo. They claimed that their lands had been given to them in fee simple in 1842 and that the treaty of 1866 maintained their ownership. The Commissioners notified all of the various tribal governments of their renewed activities in the spring of 1895. The Choctaws not only disdained to reply as did the Chickasaws but also introduced this act into their Council:

Be it further enacted, That any person or persons violating the first section shall be prosecuted against in the circuit court having jurisdiction, and if proven guilty of treason by two or more witnesses, shall be punished by confinement in jail not less than six months nor more than twelve months and fined not less than one thousand dollars nor more than ten thousand dollars at the discretion of the court.

Be it further enacted, That any person or persons violating this act a second time, he or she shall be arrested, sentenced, and executed until dead.

Be it further enacted, That any act or part of act coming in conflict with this act is hereby repealed, and that this act shall take effect and be in force from and after its passage.⁴⁹

The various tribes soon discovered that it was of little avail to oppose the work of the Commission. It was increased in size and powers and began to survey without the consent of the tribes. The tribes met

48

Senate Misc. Doc. No. 24, 53 Cong., 3 sess.

49

Senate Misc. Doc. No. 11, 54 Cong., 1 sess.

together at Tuskahoma on January 23, 1896, and agreed to allow changes in the tribal courts, but begged to retain their governments for at least another year, during which time the leaders would attempt to convince the populace of the need of the change.⁵⁰ The negroes or freedmen were protesting to the Commission of their mistreatment and received some sympathy, though they had received better treatment than was required by the treaty. The freedmen had been given schools, and in 1895 a boarding school was maintained for them at the expense of the nations. They were allowed to farm lands and to hire themselves to anyone they desired and to quit the position without protest.⁵¹

The Chickasaw Freedmen brought suit in the United States courts against the Chickasaw and Choctaw nations for equal rights, declaring that they had a right to participate equally with the Chickasaws in the funds of the nation and to receive equal allotments. The suit had failed in the Supreme Court in January, 1904, and the Dawes Commission gave to the negroes allotments of forty acres each. The Court declared that the treaty in the relation to the negroes had not been carried out, either by the United States or by the tribal government. The freedmen were to be removed or to remove from the territory and to receive the payment of one hundred dollars each.

50

Debe, op. cit., p. 253.

51

Ibid., p. 252.

or to remain and to receive rights in the court and the forty acres of land. They had not removed, though they might have been willing to do so, and had received no money. This case proved the successful culmination of the declarations on the part of the two tribes that the negro should never be an equal citizen within their nations. ⁵²

The work of the Commission proceeded in spite of the opposition and the Curtis Act, which provided for the allotment of the lands and the gradual elimination of the tribal government, was passed June 28, 1898. No act was passed, however, to create a territory of all the five nations, nor to create a joint government for the group. ⁵³

The Committee of the Choctaws and Chickasaws who still remained in Washington continued to press their claims before the various Congressmen, attempting to secure the permission of Congress to sue in the court of claims for the settlement of the funds due them for the leased district. Of the three hundred thousand dollars promised for this land, (under four cents per acre), eighty-five thousand dollars had not been paid. Regardless of the amount of money due them, in addition to this minute price, the two nations felt that they should at

52

Supreme Court of the United States, 193, United States, 126-127 (Law Ed. 645).

53

Report of the Indian Inspector for Indian Territory, 1905-1906. (To all this the Choctaws and Chickasaws had agreed on August 24, 1898).

least have this amount. In 1924, after years of labor on the part of the Indians, an act was passed by the sixty-eighth Congress permitting the tribes to use the Court of Claims to settle the question of such importance to the Chickasaws and Choctaws.

Immediately following this act a suit was instituted in the Court of Claims to collect the eighty-five thousand dollars still due the Choctaws and Chickasaws. The case reached the docket of the court in 1933, and the Court of Claims decided in favor of the Indians for an award of eighty-five thousand dollars on October 9, 1933. Other claims, up to five thousand dollars, were to be decided upon by the Secretary of the Interior. The matter was pushed by Senator J. S. Harreld and W. B. Pine, both of whom did all possible to benefit the Indians of their district.

It appeared that the case was being prepared and would reach the court without difficulty. The act of 1924 stated, however, that the cases had to be filed before the termination of the five year period following the act. Much time was required to prepare the cases, and for this and other reasons, they reached the docket when the period was almost over. An additional act was passed then permitting the

54

House Report, No. 5325, 68 Cong., 1 sess.

55

Senate Doc. No. 104, 73 Cong., 2 sess.

56

Senate Report, No. 440, 68 Cong., 1 sess.

case to be extended for another year. The President of the United States vetoed the permission granted by the Congress, declaring in his message that the claims to this district had already been decided and that the Court had declared that the redress, if any, lay with the Congress and not with the courts. He referred to the message of President Harrison, forty years before, in which the president declared that the amount paid for the Cheyenne and Arapaho reserve was a donation, and not the just dues of the tribe. He was adamant in his declarations that the treaty of 1866 had abrogated all claims to the lands; that the United States had at this time decided to remove the tribes to themselves, and that there was no possible claim for the tribes to present. ⁵⁷ Congress decided to permit the claim to be pressed, and at present the attorneys of the tribes are attempting to collect a fair price for their birthright so unwittingly surrendered. The decision of the Court will be final but what it will find cannot be predicted with any degree of certainty. It may, as in the case of Colombia, decide to pay, after the long period, for the land taken, and again it may decide that the wording of the treaty is the basis of the matter and refuse to grant any sort of consideration.

CHAPTER V.Conclusion

The claims of the Choctaws and Chickasaws to the leased district has a most interesting history beginning with their first contact with the land hungry nordies who found the Choctaws in Mississippi. Soon after the United States became a strong nation it found that the lands of the Indians were needed for white settlement, and in 1820 a treaty was made, under which the Choctaws surrendered some four million, one hundred fifty thousand acres of land in exchange for lands in the Indian Territory. The lands surrendered were excellent for farming, the homes of the Indians were there, and they gave them to the United States under the pressure of white settlement, feeling that they could maintain their nation only when they had removed from the midst of this alien civilization. They did not immediately remove to Indian Territory but went to other lands they still possessed in Mississippi.¹

For ten years they lived on these lands, not free from the molestations of the whites, but at least free from United States interference. In 1830 another treaty was effected which made their removal necessary. For this land they received nothing. Those who desired to remain were to be given patents to their lands which they were to

¹Senate Report, No. 652, 71 Cong., 2 sess.

accept in severalty, but these patents were not filed and most of the Indians were forced to remove whether it pleased them or not. In 1837 the Chickasaws purchased an interest in these lands and removed west to be united with the Choctaws.

In 1842 the United States gave to the Choctaws a patent in fee simple to all of the lands from Arkansas to the source of the Canadian, or if this were not in the bounds of the United States, to the one hundredth meridian. As this had been promised in both of the early treaties, the delivery was somewhat delayed, but when it did arrive it was cloaked in the words which made titles secure to all citizens of the United States and considered in any court in the land. This document made the members of the tribes feel secure within their titles, though they maintained representatives in Washington to see that nothing was done to cause grief to the people in far away Indian Territory.

The joint government of the two tribes was not acceptable by the groups. The people did discover that the Choctaws, having the greater population, secured all of the important offices and thus the Chickasaws felt that they were discriminated against. Therefore, in 1855, another treaty was concluded, under which the two tribes separated their governments and the United States secured claim to the territory west of the one hundredth longitude, which was not used by the tribes: the district between the ninety-eighth and one-hundredth meridians was leased for the location of the Wichitas and other friendly tribes

of Indians and promised that the Choctaws and Chickasaws should have free entry and could settle upon any of the lands not occupied if they should so desire. In 1859 the Wichitas and affiliated bands were to be settled on the Washita River and Fort Cobb was erected for the protection of the Indians and to prevent the raiding of the wild Indians into Texas.

There is a definite reason why none of the Choctaws and Chickasaws entered into this region, since it was infested with the roving bands of plains Indians who made life unsafe for other persons entering into the hunting grounds occupied periodically by them since time immemorial. Unless they entered this land granted to them by the United States government under the protection of a heavy guard, the people were apt to be killed. Therefore, no families could take any of this very valuable farming land even had they overlooked the undesirability of being so far separated from their people.

The protection given by the treaties with the United States was not sufficient to make it possible for these people to use the lands given to them. In 1860 the propaganda coming from the Confederate states to the effect that the United States government was on the verge of being destroyed, caused the Indians to be on the lookout for protection. The statements of the Republican leader, Seward, to the effect that the lands of the Indians should be taken and used for the location of the negroes and the

whites who had no homes, and the complete withdrawal of the troops from the territory, placed the Indians in a position to reach out for protection from another quarter.

The Confederate States of America offered this protection, promised to take the place of the United States in protecting the tribes, to pay their annuities, to continue the rental of the leased district for the location of other tribes, to give them a place in the family of independent states, and to protect their culture, which was based upon the use of the negro as a slave. (The United States had, in the past, recognized this culture and has promised additional lands to each Indian holding ten or more slaves). When Pike, the representative of the Confederate States, offered to these harassed, unprotected people the position of a state in the Confederate government and the United States had already withdrawn its support, the Chickasaw and Choctaw Nations surrounded as they were by the Confederates could but accept.

For this treaty they were truly punished. While the treaty of 1865 at Fort Smith was merely a peace agreement, another negotiation was prepared which was impossible, in that it took the right of controlling their own government from these nations. This later treaty made it possible for the Senate to amend the tribal constitutions by making any amendment to the agreement that the Senate should deem wise, without consulting the people of these nations. This treaty was rightly rejected by the two tribes, and delegates

were appointed to go to Washington to make another.

The Treaty of 1866 surrendered the right to maintain slaves within these nations and gave up the leased district to make homes for the various friendly tribes who had no lands, for the sum of three hundred thousand dollars, an average of four cents per acre. The Indians understood this to mean "ceded in trust" but the treaty used the word "cede" and said nothing about the usage to which the land was to be put. This sum was to be paid when acts concerning the citizenship of the negroes should have been made, and was hardly considered a sum to be paid for the land, since the payment was based on actions other than those of parting with the lands. To the members of both tribes the idea was that the treaty of 1855 in regard to the use of these lands was to be carried out.

Into these lands the Kiowa, Apache, Comanche, Cheyenne, and Arapaho and Wichita tribes were placed, the last named being returned to its former habitat at the termination of the war. Greer County and the part of the leased lands occupied by the first opening of Oklahoma (the unassigned lands) were not occupied by the Indians. The two tribes felt that they should be paid for these. In 1891 Congress granted them a sum of money for the Cheyenne and Arapaho lands, which was not immediately paid, since the President of the United States protested that the cession of 1866 had been final and no payment should be made. Congress amended the motion recently made to withdraw two hundred forty-four

allotments, to the effect that the payment did not give the Chickasaws and Choctaws the right to collect for their other lands within the leased district.

In 1899 the Choctaws and Chickasaws instituted a suit in the Court of Claims for the rights of the two tribes to the unallotted lands in the Wichita country. While the Court of Claims gave the Choctaws and Chickasaws the decision, it was reversed by the Supreme Court's maintenance that the meaning of the word "cede" was used to convey all of the territory to the United States, in fee simple, and not in trust, as maintained by the attorneys for the two tribes.

The Choctaws and Chickasaws have attempted to collect the remaining eighty-five thousand dollars of the three hundred thousand dollars due them, and received a decision in their favor in the Court of Claims in 1933. Effort is now being made to collect a fair price from the United States for the lands ceded under the treaty of 1866. The other tribes received payment for their lands so taken, and the members of the Choctaw and Chickasaw tribes feel that they have been unjustly treated. The question is one in great need of interpretation by the Supreme Court. Should it be taken as the noted Justice McLean stated in the case, *United States vs. Kagame*, (118 United States 374):

How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.²

Should the meaning of the word "cede" determine the right

² Supreme Court Report No. 531.

of these tribes to be paid for land promised by the United States and granted to them in fee simple in 1842? The case rests with the courts of the United States. It is not for a layman to decide that the Choctaws and Chickasaws do or do not have a right to the lands. It is hoped that from this organization of the facts of the case unbiased opinions may be reached.

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