

CHEROKEE, CHOCTAW, CHICKASAW, CREEK, AND SEMI-  
NOLE NATIONS AND THEIR CITIZENS.

---

MARCH 10, 1888.—Referred to the House Calendar and ordered to be printed.

---

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

REPORT:

[To accompany bill H. R. 8311.]

*The Committee on Indian Affairs, to whom was referred House bill No. 6184, having had the same under consideration, beg leave to submit the following report:*

The bill, if enacted into a law, will operate to repeal sections 2129, 2133, and 2138 of the Revised Statutes. It will also modify section 2116. It will have this effect, however, only in so far as these four sections apply to the nations named in the bill.

Sections 2129, 2133, 2138, and 2116 were enacted by the act of 1802, to carry into effect certain treaty stipulations then existing between the United States and these, among other, Indian tribes of the country. Under these stipulations the Indian surrendered and the Government of the United States assumed entire control over the commercial interests of these people, and in return guaranteed to them protection against aggression from its own citizens.

Article 9 of the treaty of November 22, 1785, between the United States of America and the Cherokee Nation of Indians reads as follows:

For the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians, the United States in Congress assembled shall have the sole and exclusive right of regulating the trade with the Indians and managing all their affairs in such a manner as they think proper.

Article 6 of the treaty of February 7, 1792, between the same parties, stipulates:

It is agreed on the part of the Cherokees that the United States shall have the sole and exclusive right of regulating their trade.

Again, article 8 of the same treaty stipulates:

If any citizen of the United States, or other person, not an Indian, shall settle on any of the Cherokee lands, such person shall forfeit the protection of the United States, and the Cherokees may punish him or not, as they please.

Literally these articles occur as articles 4 and 8 in the treaty with the Choctaws of January 3, 1786, and as articles 4 and 8 of the treaty with the Chickasaws proclaimed January 10, 1786, and substantially they occur in every treaty negotiated at that period between the United States and the various Indian tribes.

In these stipulations the Indians surrendered, and the Government of the United States assumes, sole and exclusive control over the commercial relations between their respective people; on the other hand the Government of the United States surrenders the protection of its own citizens, if found in the Indian country; or, in other words, the Government of the United States surrenders, and the Indians receive, the sole and exclusive control of the question of citizenship, or as to who should be permitted to reside in their country. These mutual concessions were based upon the conviction that peace between the parties could only be preserved by preventing indiscriminate intercourse between their respective citizens, and as the trade of these people was the chief incentive for that intercourse, it was placed under the exclusive control of the power most capable to deal with it.

In the discharge of the obligations thus assumed in accordance with its own conviction, the Government enacted, from time to time, a series of statutes, which were repealed by the act of 1802, and in lieu of them that statute provided in substance:

(1) That no citizen of, or resident in, the United States who shall enter into the Indian lands to hunt, or for any other purpose, without a license shall be subject to a fine and imprisonment.

(2) If any person should attempt to survey, or actually survey, the Indian lands, he shall be liable to forfeit a sum not exceeding \$1,000 and be imprisoned not exceeding twelve months.

(3) No person is permitted to reside as a trader within the Indian boundaries without license or permit.

(4) All persons are prohibited under heavy penalty from purchasing Indian lands, and all such purchases are declared to be void.

(5) It is made lawful for the military power of the United States to arrest offenders against the provisions of this act.

Subsequent to this statute we find additional provisions enacted from time to time, all of which are resumed in the act of June 30, 1834, as this repeals the acts of May 13, 1800, of March 30, 1802, of April 29, 1816, of March 30, 1817, of April 16, 1818, of April 20, 1818, of February 24, 1819, of March 3, 1819, of May 6, 1822, of May 18, 1824, of May 25, 1824, of May 20, 1826, and of February 25, 1831.

The act of June 30, 1834, with some unimportant modifications, remains the law of the land to this day.

Your committee, however, find that while these sections of the statute have remained substantially the same from 1802 to the present day, the treaty stipulations which they were enacted to enforce, so far as they relate to these five nations, have been abrogated.

The control surrendered by these Indians and assumed by the Government of the United States in 1785, 1786, 1787, 1788, 1789, and subsequently, was surrendered back by the United States and resumed by the Indians in 1866, so that with the ratification of the treaties of 1866 these people, that is, the five nations in question, were reinvested with the control over their commerce as fully as if no former treaties had ever been entered into. This statute, therefore, seeks to give effect to treaty stipulations that have ceased to exist, and is in direct conflict with the treaty stipulations now in force.

Section 2138, page 373, of the Revised Statutes, provides:

That every person who drives or removes, except by authority or by an order lawfully issued by the Secretary of War connected with the movement or subsistence of troops, any cattle, horses, or other stock from the Indian country, for the purpose of trade and commerce, shall be punishable by imprisonment for not more than three years, or by a fine of not more than \$5,000, or both;

while article 10 of the treaty of July 10, 1866, entered into between the United States of America and the Cherokee Nation of Indians, stipulates—

Every Cherokee and freed person resident in the Cherokee Nation shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and shall drive the same to market without restriction, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside the Indian Territory.

And article 40 of the treaty of July 10, 1866, between the United States of America and the Choctaw and Chickasaw Nations stipulates—

All restrictions contained in any treaty hitherto made, or in any regulations of the United States upon the sale or other disposition of personal and chattel property by Choctaws or Chickasaws, are hereby removed.

Yet section 2129 of the Revised Statutes provides—

No person shall be permitted to trade with any of the Indians in the Indian country without a license therefor from the Superintendent of Indian Affairs, or Indian agent, or subagent, which license shall be issued for a term not exceeding two years for the tribes east of the Mississippi River and not exceeding three years for the tribes west of that river.

And section 2133 of the Revised Statutes provides—

Any person other than an Indian who shall attempt to reside in the Indian country as a trader, or to introduce goods, or to trade therein, without such license shall forfeit all merchandise offered for sale to the Indians, or found in his possession, and shall moreover be liable to a penalty of \$500.

Article 39 of the Choctaw treaty, above cited, stipulates :

No person shall expose goods or other articles for sale as a trader without a permit of the legislative authority of the nation he may propose to trade in, but no license shall be required to authorize any member of the Choctaw or Chickasaw Nation to trade in the Choctaw or Chickasaw country who is authorized by the proper authority of the nation, nor to authorize a Choctaw or Chickasaw to sell flour, meal, fruits, or other provisions, stock, wagons, agricultural implements, or tools brought from the United States into said Territory ;

while article 8 of the Cherokee treaty of 1866, likewise cited above, stipulates :

No license to trade in goods, wares, or merchandise shall be granted by the United States to trade in the Cherokee Nation unless approved by the Cherokee national council.

So that not merely are all the restrictions upon commerce between these people and citizens of the United States removed by express treaty stipulation, but the exercise of the power to regulate such intercourse has been transferred from the Government of the United States to the authorities of these respective nations.

Again, article 43 of the treaty of 1866 with the Chickasaw Nation stipulates :

The United States promise and agree that no white person, except officers, agents, and employés of the Government and of any internal improvement company, or persons traveling through or temporarily sojourning in the said nation, or either of them, shall be permitted to go into said Territory unless formally incorporated, or naturalized by the joint action of the authority of both nations of Choctaws and Chickasaws, according to their laws, customs, and usages ; but this article is not to be construed to affect parties heretofore adopted, or to prevent the employment temporarily of white persons who are teachers, mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or be taken to interfere with or to invalidate any action which has hitherto been had in this connection by either of said nations.

Under this article the legislative authority of the Choctaw Nation has authorized the employment of non-citizens of said Nation in the

various vocations of industry. It has also authorized the renting out of farms, and fully 90 per centum of the agricultural produce of the country is the result of this action. Under the power to authorize such works of internal improvement as "they may deem essential to the welfare and prosperity of the community," they have authorized the development of their mineral resources, and a revenue of \$150,000 is derived by them annually from the skill and capital of citizens of the United States employed in their mines.

Under the provisions of the Cherokee treaty cited above, which authorized them to dispose of the products of their farms, they have leased out a tract of land containing between five and six million acres at an annual rental of \$100,000, payable semi-annually in advance, and thus turned the yearly product, the grass of this vast area to human use, which was previously an utter waste. Their farming operations are carried on with white labor, either in the capacity of hired men or as renters. And what is true of the industries of the Choctaws, Chickasaws, and Cherokees is also true of the Creeks. In short, there is not a thrifty, well-to-do citizen of any of these nations who is not either the employer or landlord of one or more citizens of the United States. Thus, while we see farms, pastures, mines rented out to our citizens, farms whose extent in the aggregate amounts to hundreds of thousands of acres, pastures counted by the millions of acres in area, mines whose annual product is more than \$1,000,000 in value—while we see this done under the treaty stipulations above recited, our statute provides, section 2116:

No purchase, grant, lease, or conveyance of land, or any title or claim thereto from any Indian nation or tribe of Indians, shall be of any validity in law and equity.

In view of these conflicts and contradictions, too obvious to require comment from your committee, between the stipulations of the treaties and the provisions of the sections of the statute, both of which are presented above, the latter have become inoperative and barren of beneficial results, but are transformed into fruitful sources of confusion to the minds of the people and into hinderances to progress in all the phases of material, moral, and political development.

The bill under consideration if enacted into a law will remove these evils, and as it also provides that the transaction to which it refers shall be placed under the protection of the judicial arm of the Government of the United States, your committee, finding some objections to the original bill, recommend the accompanying as a substitute and recommend its passage.