50TH CONGRESS, 2d Session. | SENATE. | EX. DOC. No. 122.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A proposition relative to the Seminole Indian lands in Indian Territory

FEBRUARY 19, 1889.—Read and referred to the Committee on Indian Affairs and ordered to be printed.

To the CONGRESS:

I herewith submit for your consideration a communication from the Secretary of the Interior, transmitting a proposition made on behalf of the Seminole Nation of Indians for the relinquishment to the Government of the United States of their right to certain lands in the Indian Territory.

GROVER CLEVELAND.

EXECUTIVE MANSION,
February 19, 1889.

DEPARTMENT OF THE INTERIOR,
Washington, February 18, 1889.

SIR: I have the honor to submit herewith a communication from John F. Brown and Thomas Factor, delegates of the Seminole Nation of Indians, duly appointed by the national council, and authorized to represent that nation and finally dispose of its claim mentioned in this communication.

This communication seeks to place the claim of the Seminole people for additional compensation on account of their lands ceded by the treaty proclaimed August 16, 1866, upon the same foundation as that of the Creek Nation, whose agreement you have recently submitted to Congress. The difference lies in few words, but is important. Article III of the treaty with the Creeks, concluded June 14, 1866, reads as follows:

In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Creeks hereby cede and convey to the United States, *to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon*, the west half of their entire domain, to be divided, etc.

But, as shown in this communication, the Seminole treaty reads as follows:

In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey to the United States their entire domain, being the tract, etc.

The Seminole treaty omitted, therefore, the words such as those underscored [*italic*] in the above extract from the Creek treaty, by which a condition subsequent, or a limitation to a use, was provided. A new conveyance or cession by the Seminole Nation would add nothing in law to the title which the United States already possess. There is nothing, as it seems to me, in this condition of things which authorizes this Department, without legislation distinctly providing for it, to make any further agreement for additional compensation, even conditional.

It is claimed, however, and perhaps with force, that the cession by the Seminoles was, in fact, made upon the same understanding, in support of which they refer to the words of recital above quoted, and aver in further proof that they have always so understood it, and that that understanding has been in some degree recognized by the act of 1885, which directed negotiations to be opened with them as well as with the Creeks and Cherokees, and otherwise. In view of this, they ask that the whole matter be submitted to Congress with such recommendation as may be deemed proper, and express their willingness to abide by the decision and action of that body. There appears to be reason to suppose that the treaty was made with the expectation that the lands would be used as homes for other Indians and freedmen, and that the Seminoles have claimed that a failure to so use them gave them some right, but in the clear absence of any stipulation for that purpose I am unable to recognize any demand upon the Government or to fix upon any sum which might, in generous consideration, be granted them, if any such action should be esteemed desirable or proper by the Congress.

I therefore submit the communication for such action as you may think proper to take in respect to presenting it to Congress or otherwise.

I have the honor to be, very respectfully, your obedient servant,

WM. M. VILAS,
Secretary.

The PRESIDENT.

WASHINGTON, D. C., *February* 15, 1889.

Hon. WILLIAM F. VILAS,
Secretary of the Interior:

SIR: We, the undersigned delegates duly appointed and empowered by the Seminole Nation of Indians to enter into negotiations with the proper authorities of the United States for the final disposition and relinquishment of certain lands in the Indian Territory, have the honor to state—

That by treaty proclaimed August 16, 1866, the Seminoles made a conditional cession to the United States of their lands in the Indian Territory, estimated at 2,169,080 acres, at the rate of 15 cents per acre, for the purpose of locating other Indians and freedmen thereon.

Article 3 of said treaty shows clearly the intent and purpose of the contracting parties. It reads as follows:

> In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey to the United States their entire domain, being the tract of land ceded to the Seminole Indians by the Creek Nation under the provisions of article first, treaty of the United States with the Creeks and Seminoles, made and concluded at Washington, D. C., August 7, 1856 (11 Stat., 699). In consideration of said grant and cession of their lands, estimated at 2,169,080 the United States agree to pay said Seminole Nation the sum of $325,362, said purchase being at the rate of 15 cents an acre. (14 Stat., 756.)

These lands, at the date of said treaty of 1866, were the property of the Seminole Indians, secured by the treaty of August 7, 1856.

Articles I, III and IV, of the said treaty of 1856, are as follows:

ARTICLE I. The Creek Nation doth hereby grant, cede, and convey to the Seminole Indians the tract of country included within the following boundaries, viz: Beginning on the Canadian River, a few miles east of the ninety-seventh parallel of west longitude, where Ock-he-appo, or Pond Creek, empties into the same; thence due north to the North Fork of the Canadian; thence up said North Fork of the Canadian to the southern line of the Cherokee country; thence with that line west to the one hundredth parallel of west longitude; thence south along said parallel of longitude to the Canadian River, and thence down and with that river to the place of beginning.

ARTICLE III. "The United States do hereby solemnly guaranty to the Seminole Indians the tract of country ceded to them by the first article of this convention; and to the Creek Indians the lands included within the boundaries defined in the second article hereof; and likewise that the same shall respectively be secured to and held by said Indians by the same title and tenure by which they were guarantied and secured to the Creek Nation by the fourteenth article of the treaty of March 24, 1832, the third article of the treaty of February 14, 1833, and by the Letters Patent issued to the said Creek Nation on the 11th day of August, 1852, and recorded in volume 4 of records of Indian deeds, in the Office of Indian Affairs, pages 446 and 447."

ARTICLE IV. "The United States do hereby solemnly agree and bind themselves, that no State or Territory shall ever pass laws for the government of the Creek or Seminole tribes of Indians, and that no portion of either of the tracts of country defined in the first and second articles of this agreement shall ever be embraced or included within, or annexed to, any Territory or State, nor shall either, or any part of either, ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same."

Thus it will be observed that the Seminoles purchased the said lands from the Creek Nation, with the advice and consent of the United States, and held them by title in fee-simple from the date of purchase until conditionally ceded to the United States as aforesaid.

It is unnecessary for us at this time to state or refer to the causes which induced our people to agree to the terms and conditions of the said treaty of 1866. We might say, however, that our people were anxious to maintain harmonious relations with the Government, and in order to do so they were led to believe that it was necessary to surrender their domain to be used as homes for other Indians and freedmen.

But, in thus surrendering their homes, it was not their intention or purpose to endow other Indians or the United States with lands for speculative purposes.

They ceded the said lands, as shown by the treaty, for the express purpose of locating other Indians and freedmen thereon and for no other purpose. Had they known or suspected that said lands were to be used or disposed of by the United States for any other purpose than the one specified in the treaty, they would not have ceded the lands at any price, and certainly not for the pittance of 15 cents per acre.

The said lands when so ceded were worth not less than $2.50 per acre, and some of them were worth and could have been sold for $5 per acre and more. But the Indians throughout the Indian Territory having been greatly disturbed and broken up in their internal and political relations by the late war of the rebellion, the Seminoles, like other tribes, were willing to make liberal concessions in order to maintain harmonious relations with the Government, and at the same time save the Indian Territory as a permanent home for Indians only, rather than have the laws of a State or Territory extended thereover and the Indians brought within the jurisdiction and control of the same. That was the real consideration for said cession, instead of the 15 cents mentioned in said treaty.

Mark the language used in the treaty. "In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede," etc.

The meaning and intent of this language was fully understood by all parties in interest when the treaty was made. Nobody intimated or thought for a moment that any part of the lands so ceded would or could, under such a conditional cession, ever be used or disposed of by the United States in any other way than as expressed in the treaty.

Nor can they be diverted to any other purpose or included within the limits of a Territorial government without the consent of the Seminole Nation, and without just compensation for said lands.

The status of these lands, as shown by Senate Executive Document No. 50, Forty-eighth Congress, second session, is the same as that of the lands conditionally ceded by the Creek Nation under the treaty of 1866, only the language used in the Seminole treaty is stronger and more explicit, if possible, than that used in the Creek treaty.

The Creek lands, as will be observed, were ceded to the United States to be sold to other Indians, etc., while the Seminole lands were ceded for the express purpose of locating other Indians and freedmen thereon and for no other purpose.

Nor could freedmen generally be located thereon, but only such as had been slaves among the Indians in the Indian Territory. See letter from Commissioner of Indian Affairs to Hon. John Q. Tufts, U. S. Indian Agent, Union Agency, Ind. T., of date February 18, 1885. Also letter from Commissioner Atkins to the honorable Secretary of the Interior, of date March 22, 1886, herewith transmitted.

Whatever amount of the land so conditionally ceded was necessary and has been used by the Government as provided in said treaty for locating other Indians thereon, as, for instance, such an amount as the United States gives to its citizens under the homestead law (160 acres each) or such an amount as the Dawes bill allows to each Indian, or such an amount as the act of Congress approved May 23, 1872 (17 Stats., 159) allows to each Pottowatomie and absentee Shawnee in the Indian Territory; that, we submit, would be a proper disposition of said lands as contemplated by the treaty of 1866. Again, if a tribe or band of Indians, as for instance the Pottowatamies, was located partly on lands ceded by the Creeks and partly on lands ceded by the Seminoles, then we submit that in justice the Pottowatamies should be required to take their proper allotments proportionally from the lands ceded by each nation.

But to take said lands and by an executive order set them apart to tribes of Indians, as, for instance, the Cheyennes and Arapahoes, who paid nothing for the lands they occupy, and whose reservation embraces several million acres more than is necessary for homes for such Indians, we submit is not in keeping with the letter or spirit of the treaty of 1866.

Again, a few Pottawatomies and Absentee Shawnees, most of whom are citizens of the United States, as we are informed, have spread themselves out over a reservation embracing 575,877 acres, a part of which was ceded by the Seminoles under the treaty of 1866. These Indians have no right to the lands they occupy, except such as they acquired under the act of Congress approved May 23, 1872, viz:

> To each head of a family, and to each other member twenty-one years of age, not more than one-quarter section, and to each minor of the tribe not more than eighty acres. (17 Stat., 159.)

When, therefore, the individual Indians, now occupying the lands so ceded by the Seminole Nation, shall each have been provided with the amount to which they are entitled under treaty or existing law, the remainder of said lands, we insist, should take their place by the side of

the 495,093.37 acres of unassigned Seminole lands embraced in Oklahoma proper, and in the negotiation and settlement of the matter be considered the same as the said Oklahoma lands. But if, under the technical rules of construction, we are mistaken as to the legal effect of the third article of the treaty of August 16, 1866, we insist that we are not to be held to such construction, but on the contrary, we are entitled in justice and good conscience to have the treaty construed by the rule laid down by Chief-Justice Marshall in Worcester *vs.* Georgia (6 Peters, pp. 515, 582), and re-affirmed in Choctaw Nation *vs.* United States (119 U. S. Supreme Court Report, pp. 27 and 28), where it is said:

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

That we understood it as herein set out is a fact evidenced by our whole course of conduct, and likewise recognized by the repeated action of the United States, the latest expression of which is the act of March 31, 1885, authorizing the President to open negotiation with the Seminole Indians for the extinguishment of their claims to these very lands.

We are advised that Congress proposes to use the unoccupied lands ceded by the Seminoles under the treaty of 1866 for purposes other than those intended and specified in said treaty. To this the Seminoles do not object, provided they are paid for said lands the difference in price between fifteen cents per acre and the real value of said lands. The said lands are centrally located in the proposed new Territory of Oklahoma, and are unsurpassed in fertility. We are here, as already stated, with full authority from the Seminole Nation to negotiate for the final disposition of the lands in question.

If, however, after examining the questions involved, you should be of the opinion that the legal rights of the Seminole Nation in and to the said lands conditionally ceded as aforesaid are not sufficient to warrant you in negotiating with us on behalf of said nation, then and in that event we would, and do hereby, respectfully ask that you submit the whole matter to Congress with such recommendation as you deem right.

We are willing to abide by such decision and action as that honorable body may deem just and equitable.

Respectfully submitted.

JOHN F. BROWN,
THOMAS FACTOR,
Seminole Delegation.

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