

TREATY STIPULATIONS WITH CHICKASAW INDIANS.

L E T T E R

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

An estimate from the Secretary of the Interior of an appropriation to fulfill treaty stipulations with the Chickasaw Nation of Indians.

JANUARY 9, 1888.—Referred to the Committee on Indian Affairs and ordered to be printed.

TREASURY DEPARTMENT, *January 5, 1888.*

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Secretary of the Interior of the 20th ultimo, submitting an estimate for an appropriation of \$240,164.58 to fulfill treaty stipulations with the Chickasaw Nation of Indians under the fourth article of treaty of June 22, 1852, as per finding of the United States Court of Claims therewith.

Respectfully, yours,

C. S. FAIRCHILD,
Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR,
Washington, December 20, 1887.

SIR: I have the honor to inclose herewith for presentation to Congress, in accordance with the provisions of section 2 of the act of July 7, 1884 (23 Stat., 254), copy of a letter of the 17th instant from the Commissioner of Indian Affairs, with the estimate of appropriation noted therein, in the sum of \$240,164.58 required to fulfill treaty stipulations with the Chickasaw Nation of Indians under the 4th article of the treaty with the Chickasaws of June 22, 1852, as per certified copy of the findings of the United States Court of Claims, also herewith inclosed. The amount named in the estimate is the principal sum found due to said Indians by the court, without interest.

The court remarks in its findings on the subject of interest that—

In an action between individuals interest would also be allowed, for the issue presented is one of unauthorized disbursement by a trustee of trust funds expressly stipulated to be held invested in interest-bearing securities.

We refrain, however, from expressing any opinion on this subject, as the question must necessarily be taken to the legislative department of the Government, which alone has power to grant relief, which will consider the equities of the case, and which will decide whether it is one wherein the doctrine should be waived that, as the sovereign does no wrong and is ever ready and willing to pay just debts, the Government pays no interest.

The findings of fact and the opinion of the Court of Claims in the case have been adopted as the decision of the Department in the matter.

I have the honor to be, very respectfully,

L. Q. C. LAMAR,
Secretary.

The SECRETARY OF THE TREASURY.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, D. C., December 17, 1887.

SIR: I have the honor to acknowledge the receipt of your communication of the 12th instant, returning the papers in the matter of the claim of the Chickasaw Nation vs. the United States, under the fourth article of the treaty of June 22, 1852 (10 Stats., 974-976), with advice that, after a careful consideration of the case, you have concluded to adopt as the decision of the Department in the matter the findings and opinion of the Court of Claims thereon, as set forth in the certified copy of opinion filed April 25, 1887.

In this communication this office is instructed to report the case to the Department, with such brief statement of the history relating thereto as may be necessary, to the end that it may be presented for the action of Congress.

In reply, I have to state that under treaties made with the Chickasaw Nation in 1832 and 1834, a large trust fund was created for their benefit from the net proceeds of sale of their lands lying east of the Mississippi River.

This fund was deposited in the United States Treasury prior to the year 1839, subject to reductions on account of certain charges for specific expenses authorized by said treaties. Prior to 1852, the Chickasaw Indians had complained that errors existed in the accounts of their trust funds kept at the Treasury Department, and that in consequence of such errors the balance had been represented as much less than its actual amount; therefore, the semi-annual payments of interest which they had received on their trust funds were less than they were entitled under the said treaties to receive, and they requested that the matter be corrected. The alleged errors of account were divided into two classes: 1st, those pertaining to charges for disbursements from the Chickasaw general fund and, 2d, those pertaining to the orphan and incompetent funds.

By treaty with the Chickasaw Nation, dated June 22, 1852, the fourth article was inserted to correct these alleged errors, as follows:

"ARTICLE 4. The Chickasaws allege that in the management and disbursement of their funds by the Government they have been subjected to losses and expenses which properly should be borne by the United States. With the view, therefore, of doing full justice in the premises, it is hereby agreed that there shall be, at as early a day as practicable, an account stated, under the direction of the Secretary of the Interior, exhibiting in detail all the moneys which from time to time have been placed in the Treasury to the credit of the Chickasaw Nation resulting from the treaties of 1832 and 1834 and all the disbursements made therefrom. And said account as stated shall be submitted to the Chickasaws who shall have the privilege, within a reasonable time, of filing exceptions thereto, and any exceptions so filed shall be referred to the Secretary of the Interior, who shall adjudicate the same according to the principles of law and equity, and his decision shall be final and conclusive on all concerned.

"It is also alleged by the Chickasaws that there are numerous cases in which moneys held in trust by the United States for the benefit of orphan and incompetent Chickasaws have been wrongfully paid out to persons having no right to receive the same. It is therefore further agreed that all such cases shall be investigated by the agent of the United States, under the direction of the Secretary of the Interior; and if it shall appear to the satisfaction of said Secretary that any of the orphans and incompetents have been defrauded by such wrongful payments, the amount thus misapplied shall be accounted for by the United States as if no such payment had been made: *Provided*, That the provisions of this article shall not be so construed as to

impose any obligation on the United States to reimburse any expenditures heretofore made in conformity with the stipulations contained in the treaties of 1832 and 1834: *And provided further*, That the United States shall not be liable to repay money held in trust for the benefit of orphan and incompetent Chickasaws in any case in which payment of such moneys has been made upon the recommendation or certificate of the persons appointed for that purpose in the fourth article of the treaty of 1834, or of their successors, and in other respects in conformity with the provisions of that article: *And provided further*, That the United States shall not be held responsible for any reservation of land, or of any sale, lease, or other disposition of the same, made, sold, leased, or otherwise disposed of, in conformity with the several provisions of said treaties of 1832 and 1834."

Prior to 1868 the United States failed to perform the duties imposed by the above treaty stipulations. In 1868 an account was stated, under direction of the Secretary of the Interior, and submitted to the said nation. In 1869 the Chickasaws filed their exceptions to this account with the Interior Department. It remained on file until 1883, at which time it was transmitted to the Court of Claims under the provisions of the second section of the act of March 3, 1883. The agent of the United States, under the direction of the Secretary of the Interior, in 1869 investigated the cases of alleged illegal disbursements of the orphan and incompetent funds, and closed his report in that year. This report remained on file until its transmission to the Court of Claims in 1883.

On the 23d day of May, 1887, the Court of Claims caused its findings of facts and conclusions of law in the case to be filed in this Department, showing that the Chickasaw general fund and the Chickasaw incompetent fund had been subjected to erroneous reductions on the books of the United States, as follows:

Chickasaw general fund:

Payments of transportation and demurrage to S. Buckner (charged against the trust fund prior to December 31, 1840).....	\$58,299.00
Payments to conductors of emigration (charged prior to December 31, 1840).....	26,563.68
Payment to assignees of William M. Gwinn (charged prior to December 21, 1844).....	56,021.49
	140,884.17

Chickasaw incompetent fund:

Payments from incompetent fund (charged prior to December 31, 1840).....	99,280.41
Total.....	240,164.58

In order that the matter may be laid before Congress I have caused to be prepared an estimate of appropriations required to pay the award made under the treaty. The question of interest has not been considered in preparing this estimate, in view of the absence of instructions from the Department in the premises. I submit herewith said estimate, together with the certified copy of the findings of the Court of Claims.

Very respectfully,

J. D. C. ATKINS,
Commissioner.

The SECRETARY OF THE INTERIOR.

Estimate of appropriation required to fulfill stipulations contained in the fourth article of treaty with the Chickasaw Nation of Indians, dated June 22, 1852.

Amount necessary to reimburse the general fund of the Chickasaw Nation for moneys improperly disbursed from said fund, as ascertained by the Secretary of the Interior, as required by article 4 of the treaty with the Chickasaws dated June 22, 1852, \$140,884.17;

Amount necessary to reimburse the Chickasaw incompetent fund for moneys improperly disbursed from said fund, as ascertained by the Secretary of the Interior, as required by article 4 of the treaty with the Chickasaws dated June 22, 1852, \$99,280.41; total, \$240,164.58.

[Court of Claims. Department Case No. 2.]

THE CHICKASAW NATION v. THE UNITED STATES.

FINDINGS OF FACT.

This case, referred to the Court of Claims by the honorable the Secretary of the Interior under the provisions of an act entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," approved March 3, 1883, having been heard by the court, Halbert E. Paine, esq., appearing in behalf of the claimants, and B. P. Dewees, esq., assistant attorney, appearing for the defense and protection of the interests of the United States, the court, upon the evidence, find the facts to be as follows:

I.

Pursuant to the provisions of the treaty between the United States and the Chickasaw Nation of June 22, 1852, an account was prepared under the direction of the Secretary of the Interior, exhibiting in detail all the moneys which from time to time had been placed in the Treasury to the credit of the Chickasaw Nation resulting from the treaties of 1832 and 1834 and all the disbursements made therefrom. This account was submitted to the Chickasaw Nation in the year 1868, and in the year 1869 that nation filed exceptions thereto in the Department of the Interior. While partial investigation has been made as to some of these exceptions no adjudication by the Secretary of the Interior has been had, and the United States have not accounted for any of the moneys alleged by the Chickasaw Nation to have been misapplied.

II.

May 8, 1883, the honorable the Secretary of the Interior transmitted the matter to this court by the following letter:

DEPARTMENT OF THE INTERIOR,
Washington, May 8, 1883.

To the United States Court of Claims, Washington, D. C. :

I have the honor to transmit herewith the papers, proofs, and documents pertaining to the disputed disbursements made by the United States from the funds of the Chickasaw Indians, and certain alleged wrongful payments made from the trust fund of the orphan and incompetent Chickasaws, the adjustment of which is provided for in Article 4 of the treaty of June 22, 1852 (10 Stat., 974-976).

The accounts of all moneys which from time to time have been placed in the Treasury to the credit of the Chickasaw Nation, resulting from the treaties of 1832 and 1834, and of all the disbursements made therefrom, have been prepared and submitted to the Chickasaw Indians as required by the treaty, and certain exceptions thereto have been filed by Holmes Colbert, commissioner for and on behalf of those Indians. The matter of alleged wrongful payments made from the orphan and incompetent Chickasaw trust fund has been investigated, and objections or exceptions to certain of those payments have been filed by the same party.

All the papers, herewith, in the case are more particularly enumerated in the accompanying report of the Commissioner of Indian Affairs dated the 7th instant.

The matters are respectfully transmitted to you for your consideration and action in accordance with the provisions of section 2 of the act of March 3, 1883, entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government"; which reads as follows:

"SEC. 2. That when a claim or matter is pending in any of the Executive Departments which may involve controverted questions of fact or law, the head of such Department may transmit the same, with the vouchers, papers, proofs, and documents pertaining thereto, to said court, and the same shall be proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall not enter judgment thereon, but shall report its findings and opinions to the Department by which it was transmitted for its guidance and action."

Very respectfully,

H. M. TELLER,
Secretary.

III.

Certain of the exceptions originally filed by the nation are now at this hearing withdrawn or modified, so that the issues presented are as to the following payments appearing on the accounts:

Payment to John Bell, president Branch Agricultural Bank of Mississippi.	\$20,000. 00
Payment to William M. Gwin's assignees	56,021. 49
Charge for clerk-hire in Washington	79,969. 46
Transportation, S. Buckner	37,749. 00
Transportation, S. Buckner	5,877. 50
Demurrage, S. Buckner	14,672. 50
Rations	199,098. 03
Conductors of emigration	26,563. 68
Payments from the incompetent fund	99,280. 41
Payments from the orphans' fund	80,809. 55
Total	610,041. 62

IV.

April 12, 1836, John Bell, the president of the Branch Agricultural Bank of Mississippi, was informed by Mr. Cass, Secretary of War, that he had been selected to perform the duties in relation to the sales of Chickasaw reservations indicated in the ninth article of the regulations of February 5, 1836; regulations prescribing the mode in which the lands stipulated to be granted by the treaty of May 24, 1834, might be sold.

This ninth article provided that, should—

“The necessities of the seller and his situation, in the opinion of the said chiefs in council and of the agent, render it proper that a portion of the purchase-money shall be received by the seller for the relief of his wants before the funds belonging to him, which may be in the Treasury, can be drawn out and paid to him, it shall be competent for the said chiefs and agent to give a certificate stating their recommendation that a portion of the purchase-money should be thus paid, and expressing the amount. Whereupon the same may be presented either to the agent or to some person who may be thereafter expressly designated for that duty, and in whose hands a sufficient fund for this purpose shall be placed, under the regulations of the Treasury Department, who shall pay the amount to the proper Indian on the presentation of the certificate, taking his receipt therefor, witnessed by at least one respectable white person. * * *”

Bell was instructed that should the Treasury consider it proper that the requisite sums be paid out by him before their receipt in the Treasury Department no other arrangement for funds would be necessary; otherwise a requisition would issue in the usual form for such amount as might appear necessary, and he would receive from the Treasury a warrant therefor; for that purpose he was also instructed to transmit from time to time an estimate of the funds necessary.

April 14, 1836, the Secretary of War requested the Secretary of the Treasury to place \$20,000 in the said bank to the credit of its president, Bell, to meet the expenditures under said ninth article of the regulations for the sale of Chickasaw reservations.

May 3, 1836, a warrant was issued by the Treasury Department in favor of said John Bell, as president, etc., for \$20,000, and the same was remitted to him in a draft on William Edmonson, receiver of the land office at Pontotoc, Miss., into whose hands came the proceeds from the sale of Chickasaw lands. This warrant was drawn upon the Chickasaw fund and debited against it. In cashing the warrant the receiver used Chickasaw funds in his hands. The money was not required by said Bell for the benefit of the Indians; it was returned by him, covered into the Treasury, and March 29, 1837, was carried to the credit of the Chickasaw fund. In addition there was credited to the fund, August 12, 1836, the sum of \$20,000, which properly showed the correct account. The credit of August 12, 1836 (appropriation warrant No. 3), arose in the following manner: The money advanced to Bell was sent him by a draft on Edmonson, receiver, who cashed it from Chickasaw funds then in his hands and made the following entry in his accounts: “To this amount paid president of the branch of the Agricultural Bank at Pontotoc, on Treasury warrant No. 1, \$20,000.” In the settlement of receiver's accounts for the year ending June 30, 1836, the Commissioner of the General Land Office and the First Comptroller of the Treasury gave him credit for this sum, and as this sum, proceeds of the Chickasaw lands, was thus withdrawn from the receiver and paid to Bell, the Chickasaw fund was credited with the amount, July, 26, 1836, by the Secretary of the Treasury's draft and covering-in warrant No. 4, paid by warrant No. 1, dated May 3, 1836, for \$20,000. August 12, 1836, appropriation warrant No. 3 was issued, based upon said covering-in warrant and set-

ting said \$20,000 to the credit of the Chickasaw fund. So that, at the close of the transaction, the Chickasaw account was debited once with \$20,000 and was credited twice with \$20,000, and showed a net balance of \$20,000 in favor of the tribe, to which it was entitled.

This item has, since the hearing, been abandoned by the claimants.

V.

In 1844 William M. Gwin, a citizen of the United States, was appointed by the Chickasaw Nation their agent to attend generally to their business with the United States; as such agent he rendered valuable service. Under one of the powers of attorney given him he was to receive as compensation one-half of the interest on the State stocks in which Chickasaw funds were invested and as to which default had been made in the payment of interest. Surrendering what he had earned in fulfilling the agreement and all claims thereunder in deference to the wishes of Armstrong, superintendent of the Indian Territory, Gwin received in return another power of attorney, authorizing him to collect, for a fee named, certain other Chickasaw claims, to wit: In prosecuting his labors under his other powers Gwin had discovered that the Chickasaws were entitled to a credit of \$112,042.99 for damaged flour and pork furnished by the United States under treaty stipulations, and he was given authority to collect this sum for a contingent fee of 50 per cent. The consideration given by Gwin for this contract was the discovery of the error, also labor done in making the collection, also claims alleged against the Chickasaws under the previous agreements, which were surrendered without compensation. This last agreement was sanctioned by the superintendent, Armstrong, in the following language:

"I confess I feel gratified that you of your own accord have given up one-half of the appropriation of interest, which your contract clearly entitles you to, for a different interest, which is got in part already, and if anything else is received it will be through your exertions. The interest entered into the general fund of the nation in such a way that if you are to receive what you clearly earn and is yours by the power of attorney, it might lead to bad feeling with the Chickasaws toward the chiefs. Not so with what you propose to substitute. The money from the Agricultural Bank and the provisions improperly purchased by the Government are already lost sight of by the Chickasaws. You may by great trouble and labor get some remuneration from the provision account. If you fail, you lose your labor. My object is, however, briefly to say that I will use my best exertions to effect the change. If I do not succeed (which I have no fear of), I will, of course, hold on to your power of attorney."

The contract for the 50 per cent. contingent on recovery of cost of provisions and flour begins as follows: "Memorandum of an agreement made and entered into between William M. Gwin, of the State of Mississippi, of the one part, and the chiefs, commissioners, and headmen of the Chickasaws, acting in behalf of nation, of the other part," and is signed by Isaac Albertson, Chief Bing-Lovi-Lion-Lovi, James Gamble, James Wolf, and Joseph Colbert. With these united four chiefs and headmen, who also subscribed the contract, and all the signatures were attested by the highest judicial functionary of the Chickasaw Nation. This power of attorney was signed in 1845. Gwin took some action under this power; five years thereafter Congress allowed the claim for the provisions and flour, and Gwin, through his assignees, Messrs. Corcoran & Riggs, received 50 per cent. thereof, to wit, \$56,021.49. It does not appear that the Chickasaws protested against this payment at the time it was made or at the time objected to it.

VI.

At Pontotoc, Miss., February 17, 1837, the chiefs and headmen of the Chickasaw tribe addressed the President in substance as follows: Gladly saying that they were pleased with the prospect of obtaining among their friends and allies, the Choctaws (then in Indian Territory), a new and, as they hoped, a permanent home for their people, who were almost destitute and homeless; to that end they hoped the President would aid them to procure speedy removal to their new homes, and hoped that the necessary arrangements might be made by the first of the following May, when a considerable portion of their people would be ready to emigrate to the country which had been procured for them among the Choctaws. Instructed by the advice of a Chickasaw delegation which had just returned from the Choctaw Nation and had learned of the difficulties, privations, suffering, and expense attendant upon a removal of the tribe by land, the chiefs and headmen suggested—

"That one or more discreet persons be appointed to superintend the removal of such of their tribe as shall be in readiness to start in the ensuing spring; that it be the duty of such superintendent, under instructions from the Great Father, to take all the steps necessary to ascertain as near as may be the number of their people now

ready to remove and to provide means for their transportation and subsistence. That the salary of the superintendent [to be fixed] and all other necessary expenses be defrayed out of the fund of their nation, and that suitable precaution be taken to secure the faithful application of such money as may be paid to the superintendent.

"The chiefs and headmen further suggest to their Great Father, that for the purpose of carrying their people to their new home in the best manner instructions should be given to the superintendent to charter steam boats and purchase provisions in Kentucky or Tennessee, and that the steam-boats laden with the provisions should receive on board at some point on the Mississippi River, and also, perhaps, on the Tennessee River, such of their people as shall be ready, and land them at the mouth of the Canadian River, in the country of the Choctaws. And it will also be necessary that some mode be provided of carrying them by land from the mouth of the Canadian to that portion of the Choctaw Nation provided for the Chickasaws."

This plan the chiefs and headmen state was recommended to their delegation by William Armstrong, acting superintendent of the Western Territory, and the document, written in English, bears the certificate of J. M. Leih and Pitman Colbert; that it was interpreted to the chiefs and signed by them in the presence of Leih and Colbert.

A. H. M. Upshaw was appointed superintendent of the removal of the Chickasaws and was assisted by various conductors or aids. After the above-mentioned memorial had been signed and before July 4, 1837, the chiefs who recommended conveyance by water refused to go by water. But in September, 1837, the chiefs in council at Pontotoc were asked particularly by the superintendent (Upshaw) whether they wished to go by water; that if they did he had but a short time to have the boats ready; the next day they informed him that they wished to go by water. Thereupon the boats were procured by Phillips under Upshaw's direction, pursuant to the following contract, and in consequence of the delay of the Indians some of their boats remained at Memphis one month on expenses. Pursuant to the request above recited, said Phillips, who was a captain in the United States Army and a disbursing officer of the Chickasaw removal, on the first day of October, 1837, entered into the following agreement with Simeon Buckner.

Articles of agreement made on the 1st day of October, 1837, between Capt. J. A. Phillips, U. S. Army, of the one part, and Simeon Buckner, of Louisville, Kentucky of the other part.

This agreement witnesseth that the said Capt. James A. Phillips, U. S. Army, for and on behalf of the United States of America, and the said Simeon Buckner, for his heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other, in manner following, to wit:

1st. That the said party of the second part agrees to transport, in good and substantial steamboats, with keels attached, if required, from Memphis, Tennessee, to Little Rock or Fort Coffee, as many of the Chickasaw Indians, their baggage and their agents, as may be designated by the superintendent of the emigration, on the following terms, to wit: For the transportation of said Indians to Fort Coffee, Arkansas, at the rate of \$14.50 per head; for the transportation of said Indians to Little Rock, at the rate of \$9 per head; for the freight on all Indian baggage, at the rate of \$2 to Little Rock and \$2.50 to Fort Coffee for every hundred-weight.

The conductors of parties on board are to have the entire control of the Indians and of the steam-boats, so far as regards the time of stopping and starting of said boats, and the safety and comfort of the Indians; but, in the management of the boats and the crew, the master alone is to control.

And the party of the first part agrees, for and on behalf of the United States, to allow to the party of the second part, for such of the steam-boats as may be employed in the emigration, and awaiting the arrival of the Indians at Memphis, \$100 a day for each of the boats, as demurrage; and for the transportation of said Indians and their baggage, the rates as above stipulated.

The conductors of parties will give certificates of the number of Indians and the amount of freight transported; on which payment will be made if the agent is in funds, and of such funds as he may receive for the purpose.

That the United States will be responsible for no accidents arising under, or growing out of, the foregoing stipulations.

In witness whereof the parties have hereunto placed their hands and seals the day and date above written.

J. A. PHILLIPS,
Captain, U. S. A., Disbursing Officer.
SIMEON BUCKNER.

Witness:
BENJAMIN REYNOLDS.

TREATY STIPULATIONS WITH CHICKASAW INDIANS.

October 20, 1837, Phillips wrote to Buckner from Pontotoc as follows:

"You will be allowed for the transportation of the Chickasaw Indians, per head, to Fort Coffee, \$14.50, from Memphis; \$9 to Little Rock, and \$8 to Rock Rowe; and you will be allowed for each of the four steam-boats in the Indian removal, \$100 for each day they have been or may be detained while awaiting the arrival of the Indians at Memphis."

This letter was approved by Upshaw, the superintendent of removal.

The parties to the contract contemplated the use of four boats, but six boats were employed at different times during the removal in consequence of the arrival of the Indians at Memphis in larger bodies than was contemplated when the contract was made. The average capacity of these boats was about 230 passengers.

Prior to July, 1840, the Government disbursing officers, Collins and Phillips, paid Buckner for transportation the sum of \$39,652; later Buckner complained that 5,338 Indians had been designated for removal; that he had been ready to remove them; that through no fault of his, but by failure of the Indians to report, he was damaged, whereupon the following letters were written and Buckner was paid \$37,749. This payment was opposed by the Commissioner of Indian Affairs.

TREASURY DEPARTMENT,
Second Comptroller's Office, July 1, 1840.

In regard to the legal title of Captain Buckner, under the contract, of which the annexed is a copy, it is my opinion that if the superintendents of the emigration designated the whole tribe of Chickasaw Indians, or any certain portion of the tribe, to be removed by water, by Captain Buckner, and if, by direction of the superintendent, Captain Buckner provided the means of transportation, agreeably to his contract, for the whole number so designated, but was prevented from effecting such transportation, not by any laches of his own, but by the failure on the part of the United States to induce or compel the Indians to be transported in the way provided them, then in such case, Captain Buckner would be entitled to remuneration for the loss by him sustained for the non-compliance with the contract on the part of the United States; and if the expense of transporting the whole number designated would not have been greater than the expense necessarily incurred, under the direction of the superintendent, in transporting the number actually transported by Captain Buckner, then and in such case the contract price would be the legal measure of damages.

ALBION K. PARRIS,
Comptroller.

TREASURY DEPARTMENT,
Second Auditor's Office, July 2, 1840.

I certify that there is due from the United States to Simeon Buckner, contractor, the sum of \$37,749, being the balance of his account for the transportation of 5,338 Chickasaw Indians from Memphis, Tennessee, to Fort Coffee, Arkansas, per contract 1 October, 1837, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

WM. B. LEWIS,
Second Auditor.

Rec. 304.

The evidence upon which the Treasury Department took this action is not before us. The total number of Indians carried by Buckner is uncertain, but was not much over 3,000; it does not appear that Upshaw or Phillips formally designated to him the number to be transported, but correspondence which took place at the time tends to show that the parties expected that about 4,000 Indians would emigrate, while the proof shows that in fact not even 3,000 emigrated by water all the way from Memphis to Fort Coffee, a large proportion going the entire distance by land, and others at least as far as Little Rock by land, whence they were taken by water. The Indians, on the other hand, carried a supply of stock and wagons, and an amount of baggage much in excess of what had been expected. Assuming that Buckner had the right to anticipate being called upon to transport 4,000 Indians and their baggage, and that by the terms of the contract he was under obligation to have ready boats sufficient for this purpose for the through trip, Memphis to Fort Coffee, he would have been entitled to receive \$61,000, to wit:

Passage money for 4,000 Indians, at \$14.50 each	\$58,000
Add the regulation amount, viz, 30 pounds baggage to each Indian, 120,000 pounds, at \$2.50 per 100 pounds.....	3,000
Total	61,000

The baggage, stock, and wagons were far in excess of the amount anticipated, and the irregularity in arrival at Memphis of the Indians occasioned delay and loss to the contractor, but to what extent is not shown by the proof. The delay, however, is covered by another item for \$14,672.50 paid Buckner as demurrage, and a large number of Indians were carried to Fort Coffee from Little Rock and not from Memphis.

The following payments were made to Simeon Buckner on account of transportation of Indians:

1838.		
Jan. 17.	Transportation of 1,459 Chickasaws, at \$14.50 each (\$21,155.50), and 400 tons baggage, at \$50 per ton (\$20,000), Memphis to Fort Coffee	\$41, 155. 50
Mar. 9.	Transportation of 447 Chickasaws, at \$7 each (\$3,129), and 186 tons baggage, at \$2 per 100 pounds (\$7,440), Little Rock to Fort Coffee	10, 569. 00
Mar. 9.	Transportation of 900 Indians, at \$14.50 each (\$13,050), and 455 tons baggage, at \$2.50 per 100 pounds (\$23,550), Little Rock to Fort Coffee	36, 600. 00
Aug. 31.	Transportation of 20 Chickasaws, at \$7 each (\$140), and 1,500 pounds baggage, at \$2 per 100 pounds (\$30), from Little Rock to Fort Coffee	170. 00
Dec. 16.	Transportation of 120 Chickasaws, at \$14.50 each, and 140,000 pounds of baggage, at \$2.50 per 100 pounds, from Memphis to Fort Coffee; and 48 Indians from Little Rock to Fort Coffee, at \$7 each, and demurrage two days at Little Rock (transportation, \$2,177.50; baggage, \$3,500; demurrage, \$200)	5, 877. 50
1837.		
Nov. 11.	Demurrage	500. 00
Mar. 9.	Demurrage	14, 172. 50
1840.		
July 2.	Transportation of 5,338 Chickasaws from Memphis to Fort Coffee, at \$14.50 each (\$77,401), less amount already paid by Capts. R. D. Collins and J. A. Phillips, viz, \$39,652	37, 749. 00
1837.		
Dec. —.	Freight on corn	1, 600. 00
Total amount paid Buckner		148, 393. 50

VII.

The nation was charged with between five and six million rations, furnished under treaty provisions. As nearly as may be ascertained from the general account furnished, these rations were made up as follows:

Full rations	2, 581, 604
Rations of beef, corn, and salt	1, 649, 752
Rations of salt	34, 085
Rations of corn	1, 524, 417

The general charge was excepted to by Colbert, the Chickasaw representative, upon the ground that the greatest number of emigrating Indians, including slaves, did not reach 8,000, of whom 500 commuted rations for money, leaving 7,500 Indians and slaves. The number of Indians in the Chickasaw tribe in the year 1837, and the number of those who emigrated, is very uncertain; Colbert said 7,500; the emigration rolls show 6,079, of whom about 4,058 were adults, and of children under ten years of age there were approximately 2,013. The reservation rolls show the tribe as made up of not far from 7,000 all told. The Boggy Dépôt roll, made up in August, September, and October, 1839, in the Indian Territory, shows over 8,000 Chickasaws as having then emigrated; there is, however, every reason to believe that of this number something in the neighborhood of 1,000 were erroneously entered on the roll. The Commissioner of Indian Affairs reported (1844) the total number of Chickasaws at 9,000, of whom 5,990 had already emigrated. The following report, that of 1845, shows 4,090 as having emigrated and 4,211 as still living east of the Mississippi. Neither of these reports includes slaves. Superintendent Armstrong's report for 1843 shows something over 5,000 Chickasaws in the Indian Territory. Upshaw, reporting on the census of 1844, places the number at 4,111, while other contemporaneous reports, not necessary now to refer to in detail, place the total emigration at not far from 6,000. It was impossible at the time, it is doubly impossible now, to tell with accuracy the population of the tribe or the number of emigrants. Remembering the way in which they emigrated, that many parties

moved independently, not under control, and therefore probably escaped record; remembering the vast territory from which they removed and to which they moved; noting the lack of discipline manifested by the Indians in their removal, and in many instances their impatience under control, we are led to the conclusion reached by Colbert, that some 8,000 Chickasaws in all emigrated to the Indian Territory. These were subsisted by agreement some nineteen months, or five hundred and seventy-eight days, which, at a ration per day, amounted to 4,335,000 rations. Those Indians who emigrated by land were accompanied in most instances by conductors, teamsters, and similar attendants. The emigration was not entirely orderly; some Indians went by water; some by land in organized parties in charge of Government officers; some went independently; some of the parties halted on the way; others went by land part of the way and then took boat. The distance from point of departure to point of destination was great; the intervening country was wild and sparsely inhabited. The emigration, while principally occurring before 1839, went on at intervals during seven or eight years. The Indians took with them their beasts of burden and much baggage, one party taking not only wagons and teams, but also some four or five thousand ponies.

To the horses of this party were issued two quarts of corn per day, and to their work horses and steers one peck per day, and some fodder and hay when it could be had. The Indians refused suggestions of economy in transportation made by Government officers on the ground of economy in other directions, to be attained by carrying with them their baggage and beasts of burden, and also on the ground that the cost of the emigration was to be defrayed from their own funds.

It is not shown that rations to the full value charged were not in fact issued by the United States, nor is it shown that these rations were not received by the Indians.

VIII.

The account against the Chickasaw Nation is charged with clerk-hire in Washington, amounting in the aggregate to \$79,969.46. This embraces the hire of clerks employed in relation to Chickasaw affairs in the Land Office, the Indian Office, the First and Second Comptrollers' offices, the offices of the Treasurer and the Register of the Treasury; it also embraces some contingent expenses properly incidental to the work of the clerks. These classes of payments, which make up the gross sum of \$79,969.46, extended over some seventeen years, to wit, from the year 1834 to the year 1851. Under the system of administration adopted by the Government, and which involves various checks and counter-checks, intended to secure accuracy and to prevent dishonesty, this expenditure was reasonable in amount, and is of a class which it has been customary to charge against the trust funds of Indian tribes.

The duties of these clerks were directed to the care of the Chickasaw interests, involved in the sale of their lands, their removal, and the guardianship of the trust fund under the system of administration officially prescribed.

IX.

February 17, 1837, the Chickasaw chiefs and headmen in general council adopted the communication to the President already referred to, in which they suggested that "One or more discreet persons be appointed to superintend the removal of such of their tribe as shall be in readiness to start in the ensuing spring; that it be the duty of such superintendent, under instructions from the Great Father, to take all steps necessary to ascertain as near as may be the number of their people now ready to remove, and to provide means for their transportation and subsistence; that the salary of the superintendent be fixed, and all other necessary expenses be defrayed out of the fund of their nation." In the last paragraph of this communication the chiefs and headmen recommend the appointment of two individuals by name, "the appointment of either or both of whom would be satisfactory to them and to their people." Upshaw was appointed superintendent of removal, and conductors were also appointed, who took charge of the successive parties of emigrants, using transportation and supplies furnished by said superintendent.

The emigration was fragmentary, extending over several years, and the services of conductors and other employés, styled assistant agents or having some similar designation, were necessary.

There was charged against the Chickasaws the sum of \$67,988.76 for services and expenses of persons furnished by the United States under article 13 of the treaty of May 23, 1834, to conduct the Chickasaws from the State of Mississippi to the Indian Territory; this was excepted to, the Chickasaws insisting that it was the duty of the Government, under the tenth article of the treaty of 1834, to furnish competent persons to conduct them at the cost of the United States, and that supplies were the only

item connected with the emigration chargeable to the fund. Of this sum, to wit, \$67,988.76, the sum of \$14,672.50 was paid Buckner for demurrage, leaving a balance of \$53,316.26. Objection has since been withdrawn to all of this but the sum of \$26,563.68, made up of the following items:

1837.		
June	9. E. P. McDowell & Co., camp equipage for officers.....	\$80.00
	25. J. M. Caldwell, assistant agent	150.50
	30. J. D. Searight, traveling expenses	286.00
	30. W. A. M. Brooke, for services as assistant agent, etc	392.00
	30. Lieut. G. Morris, traveling expenses	275.00
	30. C. Langtree, for services as assistant agent	252.00
July	5. C. Vanderslice, as agent, etc	471.20
	5. W. R. Guy, services as agent	328.75
	5. F. G. Roche, services as agent.....	350.87
	6. J. L. Mizell, agent, traveling expenses	239.13
	12. Lieut. J. Van Horne, expenses	83.50
Aug.	1. Lieut. G. Morris, traveling expenses	86.00
Sept.	18. C. Langtree, assistant agent	342.88
	29. Steamer Indian, passage of G. Morris and horse, etc.....	75.00
	30. Traveling expenses of G. Morris, etc	167.50
	30. J. M. Millard's pay as assistant agent, etc	956.13
	30. G. P. Kingsbury, acting agent	355.89
	30. W. R. Guy, services as enrolling agent	368.00
Nov.	4. B. N. Hampton, services in collecting Indians.....	36.00
	9. C. Langtree, services as agent.....	237.50
	11. W. A. P. Jones, services as assistant	20.00
	12. W. R. Guy, services as agent.....	124.00
	19. D. Vanderslice, assistant agent.....	244.00
	20. F. G. Roche, as enrolling agent	492.00
	23. George Gray, conductor	230.00
Dec.	1. C. Langtree, assistant agent	219.00
	9. S. B. Cherry, assistant agent	32.00
	16. E. M. Yard, assistant agent	653.64
	20. W. B. Kimball, assistant agent	191.00
	20. W. S. Henderson, assistant conductor.....	161.00
	21. F. G. Roche, enrolling agent	493.87
	31. S. Love, assistant.....	10.00
1838.		
Jan.	12. W. A. M. Brooke, assistant agent.....	987.50
	13. J. L. Mizell, expenses, etc.	149.37
	15. S. B. Cherry, assistant agent, etc.....	513.00
	17. J. Hensley, agent and conductor	259.00
	21. C. Langtree, as conductor	403.67
	29. W. J. Wilbern, assistant agent	479.10
Feb.	7. J. M. Shelton, conductor	55.00
	8. C. Johnson, assistant agent	339.00
	8. W. R. Guy, enrolling agent, etc	581.62
	9. G. Winders, assistant agent	1,008.86
	20. A. Chase, clerk to Captain Collins.....	153.00
Mar.	8. Steamer Little Rock, passage of Captain Collins	42.50
	17. D. Vanderslice, assistant agent.....	162.00
	25. R. B. Crockett, conductor	411.85
Apr.	17. D. Vanderslice, expenses	556.42
	24. Lieut. G. Morris, expenses at Little Rock and in settling his account	265.94
July	6. G. P. Kingsbury, expenses.....	159.63
Aug.	11. W. B. Kimball, expenses.....	81.00
Sept.	20. J. M. Millard, assistant superintendent	1,367.13
	20. D. Vanderslice, assistant superintendent, extra pay.....	1,398.00
	21. Capt. J. A. Phillips, expenses.....	2,259.00
1839.		
Sept.	30. G. P. Kingsbury, assistant agent	1,200.00
Nov.	4. E. F. Neal, clerk to Captain Collins	68.00
	30. L. Chase, clerk to Captain Collins.....	200.00
1839.		
Jan.	26. C. Langtree, horse hire.....	92.00
	28. J. Walker, horse hire.....	111.00
	28. D. Vanderslice, horse hire.....	361.00

1839.		
Jan.	28. D. Vanderslice, assistant superintendent and horse hire, etc....	\$820. 80
Feb.	2. W. A. M. Brooke, assistant superintendent	2, 119. 93
Mar.	6. G. P. Kingsbury, assistant agent.....	500. 00
June	30. J. K. Taylor, services as clerk to Captain Collins.....	724. 00
1840.		
Sept.	7. J. M. Millard, horse hire	330. 00
		26, 563. 68

These payments were in fact made for services actually rendered, and they seem to have been for expenses and services necessarily incurred in the removal.

X.

The Chickasaw Nation is charged on the books of the United States with the sum of \$198,560.82, paid out of the proceeds of sales of the reservations of Chickasaws incompetent to manage their own affairs. These payments were made upon twenty-nine certificates, all signed by Ishtohotopa, the king, and Isaac Albertson, by their marks. In addition the several certificates bore the following signatures: Seven were signed by James Colbert, Slone Love, and James Wolf; three were signed by Slone Love and James Colbert; twelve were signed by Slone Love and James Wolf; four were signed by James Colbert and Benjamin Love; and two were signed by Slone Love and Benjamin Love, the last certificate being unaccounted for. Slone Love was not a chief; the others were chiefs or headmen. The chiefs in council were composed of the king, chiefs, and headmen. Sometimes as many as fifty were in council. There was no smaller or executive council at the time of the transactions in question.

The names attached to the treaty of Pontotoc are those of the Indians composing the council at that time.

Indian traders purchased the claims of the different Indians called incompetent, and received powers of attorneys to collect the moneys. In return they gave due bills, some of which the Indians lost or destroyed, while the others were redeemed by the traders in ponies, calicoes, or other goods, furnished at extravagant prices. Many of the certificates purporting to be signed by the king were in fact signed with the king's name by Albertson, who alleged that he was authorized so to do. The king afterwards, about 1843, when complaint had been made on the subject, denied having given such authority. Albertson was one of the persons named in the fourth article of the treaty of 1834. None of the certificates and no recommendations were given by the chiefs in council. The Indians did not receive the full value of their claims, but were imposed upon; nor did their assignees receive full value, as payment was made by the Government in State stock, in which the fund was invested, and which was worth much less than par. The certificates were all substantially in the form set forth below, and the certificate of the agent was affixed without careful inquiry into the facts peculiar to each individual's case. It is not shown that these facts were known in Washington at the time, or that complaint was then made by the Indians. It does appear that the latter received some value for the certificates. But less than one-half of \$198,560.82 was received by the said incompetents.

The body of the commissioners' certificates hereinafter set forth contains in no case names in the handwriting of the Indians, but each certificate, except the signatures at the end above the agent's certificates and except his certificate, appears to be in the same handwriting, including the names of the several Indians.

Incompetents No. 1.

We, the undersigned, Choctaw Indians, whose names and roll numbers are heretofore annexed, To-nubby, No. 266; Fo-li-chah, No. 570; Chish-wah, No. 204; Ha-la; No. 884; Shu-ma-chah-chah, No. 746; I-yun-ta-tubby, No. 756; Cun-ne-ta, No. 763; Po-cha, No. 407; Lap-pim-mi-ubby, No. 226; I-yoch-ha-ta, No. 488; Arch. McGee, No. 712; O-wil-lah-na-ha, No. 162; O-nah-chubby, No. 210; Kil-lah-chah, No. 999; Tush-pah-tubby, No. 239; Im-mi-ha-tubby, No. 645; Ish-tim-mul-lah-kah, No. 530; O-nah-hubby, No. 345, who were declared incompetent by the Chickasaw chiefs or commissioners, under the fourth article of the treaty of 1834 between the United States and said Chickasaw tribe of Indians, do hereby acknowledge to have received of Daniel Saffarrans and Felix Lewis the amount of the annexed note, and do further relinquish to the said Daniel Saffarrans and Felix Lewis so much of the invested stock and interest accruing thereon invested for my benefit, as an incompetent Chickasaw,

under the above-mentioned article of said treaty, as will satisfy the debt of said Daniel Saffarrans and Felix Lewis, amounting to \$17,362.15:

Roll No.	Names.	Amount.	Roll No.	Names.	Amount.
266	To-nubby	\$494.94	712	Arch, McGee	\$953.28
570	To-le-chah	200.13	162	O-willah-nah-ha	461.50
264	Chish-wa	1,002.00	210	O-nah-chubby	500.00
746	Shu-ma-chah-chah	972.74	999	Kil-lah-chah	1,180.30
756	Iyun-ta-tubby	1,300.00	239	Tush-pah-tubby	421.79
884	Halah	1,000.00	645	Im-mi-ha-tubby	1,200.00
763	Cun-ni-tah	401.25	530	Ish-tim-mul-lah-kah	755.44
813	If-bah-no-wah-tubby	1,556.15	345	O-nah-chubby	985.00
407	Po-cha	956.00			
226	Lap-pim-mi-nubby	2,166.50		Total amount	17,362.15
488	Iyoch-ha-ta	854.31			

And we do further request the chiefs or commissioners of the Chickasaw tribe of Indians to give their assent and recommend the transfer of said stock and interest thereon to said Daniel Saffarrans and Felix Lewis.

We, the undersigned, chiefs or commissioners of the Chickasaw tribe of Indians, having examined the annexed notes, amounting to \$17,362.15, and the same being duly acknowledged, do respectfully recommend that the same be paid from the investment of State stocks and interest made under the 4th article of the treaty of 1834 by the United States for said claimants. The said Daniel Saffarrans and Felix Lewis agreeing to take said stock, with the interest thereon, at par.

ISH-TA-HO-TA-PA (his x mark).
 JAMES COLBERT.
 SLONE LOVE.
 ISAAC ALBERSON (his x mark).
 JAMES WOLF.

I certify that the annexed notes were examined and the above instrument signed by the Chickasaw chiefs or commissioners in my presence, and that the same is correct to the best of my knowledge and information.

A. M. M. UPSHAW, C. A.

BOGGY DEPOT, August, 1841.

Incompetents No. 1.

No. 264.

\$1,002.

One day after date I promise to pay Dan'l Saffarrans and Felix Lewis, or order, \$1,002, and the interest on the same, it being the amount of my deposit in the hands of the General Government, for value received.

CHISH-WA (his x mark).

BOGGY DEPOT, June 30, 1841.

Witness:

CHAS. JOHNSON, *Inter.*
 WM. BARNETT.

No. 756.

\$1,300.

One day after date I promise to pay Dan'l Saffarrans and Felix Lewis, or order, \$1,300, and the interest on the same, it being the amount of my deposit in the hands of the General Government, for value received.

I-YUN-TA-TUBBY (his x mark).

BOGGY DEPOT, July 23, 1841.

Witness:

CHAS. JOHNSON, *Inter.*
 WM. BARNETT.

No. 884.

\$1,000.

One day after date I promise to pay Dan'l Saffarrans and Felix Lewis, or order, \$1,000, and the interest on the same, it being the amount of my deposit in the hands of the General Government, for value received.

HA-LAH (his x mark).

BOGGY DEPOT, June 29, 1841.

Witness:

CHAS. JOHNSON, *Inter.*
 WM. BARNETT.

14 TREATY STIPULATIONS WITH CHICKASAW INDIANS.

No. 813.

\$1,556.15.

One day after date I promise to pay Dan'l Saffarrans and Felix Lewis, or order, \$1,556.15, and the interest thereon, it being the amount of my deposit in the hands of the General Government, for value received.

IB-BAH-NO-WAH-TUBBY (his x mark).

BOGGY DEPOT, June 4, 1841.

Witness:

CHAS. JOHNSON, *Inter.*
WM. BARNETT.

No. 226.

\$2,166.50.

One day after date I promise to pay Dan'l Saffarrans and Felix Lewis, or order, \$2,166.50, and the interest on the same, it being the amount of my deposit in the hands of the General Government, for value received.

LAP-PIM-MI-UBBY (his x mark)

BOGGY DEPOT, June 4, 1841.

Witness:

CHAS. JOHNSON, *Inter.*
WM. BARNETT.

Incompetents No. 11.

We, the undersigned, Chickasaw Indians, whose names and roll numbers are unto annexed, Fal-ha-cha, No. 913; We-yum-na-cha, No. 567; Nock-ho-mo-chubby, No. 73; I-yah-kin-tubby, No. 132; Low-ish-tubby, No. 582; Ne-kah-ta-cha, No. 454; She-wah, No. 504; Ish-te-ho-yo-ka, No. 166; Hul-lut-le-tubby, No. 87; Oke-loo-hash-tubby, No. 755; In-con-chubby, No. 141; Ho-ta-cha, No. 452; I-yuke-pah-che-tubby, No. 191, who were declared incompetent by the Chickasaw chiefs or commissioners, under the fourth article of the treaty of 1834 between the United States and said Chickasaw tribe of Indians, do hereby acknowledge to have received of Daniel Saffarrans and Felix Lewis the amount of the annexed note.

Roll No.	Names.	Amount.	Roll No.	Names.	Amount.
913	Fal-ha-cha	\$2,000.00	166	Ish-te-ho-yo-ka	\$256.00
567	We-yum-na-cha paid	1,000.00	87	Hul-lut-le-tubby	200.00
73	Nock-ho-mo-chubby	633.44	755	Oke-loo-harsh-tubby	100.00
132	I-yah-kin-tubby	500.04	141	In-con-chubby	75.22
582	Low-ish-tubby	439.86	452	Ho-ta-cha	800.00
454	Ne-kah-ta-cha paid	400.00	191	I-yuk-pah-che-tubby	608.34
504	She-tah paid	400.00			
					7,412.86

And do further relinquish to the said Daniel Saffarrans and Felix Lewis so much of the invested stock, and interest accruing thereon invested for my benefit, as an incompetent Chickasaw, under the above-mentioned article of said treaty, as will satisfy the debt of said Daniel Saffarrans and Felix Lewis, amounting to \$7,412.86. And we do furthermore request the chiefs or commissioners of the Chickasaw tribe of Indians to give their assent and recommend the transfer of said stock and interest thereon to said Daniel Saffarrans and Felix Lewis.

We, the undersigned, chiefs or commissioners of the Chickasaw tribe of Indians, having examined the annexed notes, amounting to \$7,412.86, and the same having been duly acknowledged, do respectfully recommend that the same be paid from the investment of State stocks and interest made under the fourth article of the treaty of 1834 by the United States for said claimants. The said Daniel Saffarrans and Felix Lewis agreeing to take said stock, with the interest thereon, at par.

ISH-TE-HO-TO-PA (his x mark).
ISAAC ALBERTSON (his x mark).
JAMES WOLF.
SLONE LOVE.

DECEMBER 2, 1841.

I, A. M. M. Upshaw, Chickasaw agent, certify that the annexed notes were examined and the above instrument signed by the Chickasaw chiefs or commissioners in my presence, and that the same is correct to the best of my knowledge and information.

A. M. M. UPSHAW,
Chickasaw Agent.

Incompetents No. 11.

No. 913.

One day after date I promise to pay Saffarrans and Lewis, or order, \$2,000, and the interest on the same, it being the amount of my deposit in the hands of the General Government, for value received.

OCTOBER 4, 1841.

Witness:

WM. BARNETT.

FAL-HA-CHA (his x mark).

No. 73.

\$633.44.

One day after date I promise to pay Saffarrans and Lewis the sum of \$633.44, the same being the amount of my deposit in the hands of the General Government, for value received.

BOGGY DEPOT, October 7, 1841.

Witness:

CHAS. JOHNSON.

NOCK-HO-MO-CHUBBY (his x mark).

No. 132.

\$500.

One day after date I promise to pay Saffarrans and Lewis the sum of \$500, for value received, the same being the amount of my deposit in the hands of the General Government.

BOGGY DEPOT, October 30, 1841.

Witness:

CHAS. JOHNSON.

I-YAH-KIN-TUBBY (his x mark).
By his widow, AH-HO-NAH (her x mark).

No. 582.

\$439.86.

One day after date I promise to pay Saffarrans and Lewis, or order, \$439.86, and the interest on the same, it being the amount of my deposit in the hands of the General Government, for value received.

SEPTEMBER 17, 1841.

Witness:

THOS. HAWKIN.

LOW-ISH-TUBBY (his x mark).

No. 166.

\$256.

One day after date I promise to pay Saffarrans and Lewis the sum of \$256, for value received.

BOGGY DEPOT, October 12, 1841.

Witness:

CHAS. JOHNSON.

ISH-TO-HO-YO-KA (his x mark).

Incompetents No. 15.

We, the undersigned Chickasaw Indians, whose names and roll numbers are hereunto annexed, No. 279, Sha-un-key; No. 460, In-to-nubby; No. 54, Tah-no-tubby; No. 131, Sta-lut-ka; No. 370, Ish-tim-mul-la; No. 177, Im-me-a-che-tubby; No. 87, Hal-lut-le-tubby; No. 755, Oke-loo-harsh-tubby; No. 93, Shi-ho-chi-ka; No. 51, Ish-ta-koyah; No. 1020, Lut-to-key; No. 1092, Mush-shu-la-cubby; No. 425, Isk-ar-key; No. 965, Pi-ha-che; No. 36, Un-ta-ka-she; No. 418, Thlif-fo-ni-yea; No. 642, Tow-wim-mah; No. 974, Tom-ho-cha; No. 526, Noos-tuck-chubby; No. 815, In-took-loo-tubby; No. 29, Te-wa-ha; No. 1069, Oke-lah-umby; No. 624, I-yock-a-hun-tubby; No. 433, Cun-na-mah-tubby; No. 89, Wy-o-la; No. 368, Tun-nup-ha-cubby; No. 546, E-nock-sho-po-tubby; No. 476, Ish-pah-hah-tubby; No. 521, Ib-bah-no-yah; No. 114, Im-mathlish-tubby; No. 897, Im-pah-tubby, who were declared incompetent by the Chickasaw chiefs or commissioners, under the fourth article of the treaty of 1834 between the United States and said Chickasaw tribe of Indians, do hereby acknowledge to have received of Daniel Saffarrans and Felix Lewis the amount of the annexed note, and do further relinquish to the said Daniel Saffarrans and Felix Lewis so much of the invested stock and interest accruing thereon invested for our benefit, as incom-

16 TREATY STIPULATIONS WITH CHICKASAW INDIANS.

petent Chickasaws, under the above-mentioned article of said treaty, as will satisfy the debt of said Daniel Saffarrans and Felix Lewis, amounting to \$19,023.61.

Roll No.	Names.	Amount.	Roll No.	Names.	Amount.
279	Sha-un-key	\$659. 13	974	Tom-ho-cha	\$1,168. 60
460	Un-to-nubby	332. 18	526	Noos-tuck-chubby	882. 00
54	Tah-no-tubby	1,461. 87	815	In-took-loo-tubby	1,038. 45
131	Sta-lot-ka	660. 00	29	Te-wa-ha	160. 19
370	Ish-tim-mul-lah	400. 00	1069	Oke-lah-umby	634. 00
177	Im-me-ak-che-tubby	372. 00	624	Lyock-a-hun-tubby	736. 07
87	Hul-lut-le-tubby	836. 44	433	Cun-na-mah-tubby	121. 90
755	Oke-loc-harsh-tubby	846. 69	89	Wy-o-la	296. 20
93	She-ho-chi-ka	425. 55	368	Tum-nup-ha-cubby	440. 00
51	Ish-ta-ka-yah	300. 54	546	E-nock-sho-pah-tubby	42. 87
1020	Lut-to-key	14. 00	476	Ish-pah-hah-tubby	872. 92
1092	Maah-shu-la-cubby	423. 33	521	Ib-bah-mo-yah	1,206. 03
425	Ish-ar-key	412. 40	114	Im-mah-thlish-tubby	435. 50
965	Pl-ah-chi	784. 73	897	Im-pah-tubby	63. 35
36	Ud-tah-ka-sha	775. 38		Total amount	19,023. 61
418	Thlif-fo-ni-yea	942. 03			
642	Tow-wim-mah	1,278. 86			

And we do furthermore request the chiefs or commissioners of the Chickasaw tribe of Indians to give their assent and recommend the transfer of said stock and interest thereon to said Daniel Saffarrans and Felix Lewis.

We, the undersigned, chiefs or commissioners of the Chickasaw tribe of Indians, having examined the annexed notes, amounting to \$19,023.61, and the same having been duly acknowledged, do respectfully recommend that the same be paid from the investment of State stocks and interest made under the fourth article of the treaty of 1834 by the United States for said claimants. The said Daniel Saffarrans and Felix Lewis agreeing to take said stock, with the interest thereon, at par.

ISH-TE-HO-TO-PA, KING (his x mark).

ISAAC ALBERSON (his x mark).

JAMES WOLF.

SLONE LOVE.

I certify that the annexed notes were examined and the above instrument signed by the Chickasaw chiefs or commissioners in my presence, and that the same is correct, to the best of my knowledge and information.

A. M. M. UPSHAW,
Chickasaw Agent.

Incompetents No. 15.

No. 54.

\$1,461.87.

One day after date I promise to pay Saffarrans and Lewis, or order, \$1,461.87, for value received.

BOGGY DEPOT, January 3, 1842.

Witness:

JAMES WOLF.

TAH-NO-TUBBY (his x mark).

No. 642.

\$1,278.86.

One day after date I promise to pay Saffarrans and Lewis, or order, \$1,278.86, for value received.

BOGGY DEPOT, January 7, 1842.

Witness:

WILLIAM BARNETT,
Interpreter.

TOW-WIM-MAH (his x mark).

No. 974.

\$1,168.60.

One day after date I promise to pay Saffarrans and Lewis, or order, \$1,168.60, for value received.

BOGGY DEPOT, January 6, 1842.

Witness:

CYRUS HARRIS.

TOM-HO-CHA (his x mark).

No. 815.

\$1,038.45.

One day after date I promise to pay Saffarrans and Lewis, or order, \$1,038.45, for value received.

IN-TOOK-LOO-TUBBY (his x mark).

BOGGY DEPOT, January 7, 1842.

Witness.

WILEY DICKINSON.

No. 521.

\$1,206.03.

One day after date I promise to pay Saffarrans and Lewis, or order, \$1,206.03, for value received.

IB-BAH-NO-YAH (his x mark).

BOGGY DEPOT, January 8, 1842.

Witness:

JAMES WOLF.

*Incompetents No. 17.**Daniel Saffarrans' certificate of claims against incompetent Chickasaws.*

Rept. No.	Names.	Amount.	Total.
33	Tin-nah-key	\$4.68	\$54.00
810	Til-lo-wah60	6.50
892	Ho-nu-chah	16.64	104.00
814	Fat-ho-cha	51.00	150.00
591	Elias	10.88	102.00
		83.80	416.50

We, the undersigned, commissioners of the Chickasaws, certify the foregoing accounts, amounting to \$500.30, were acknowledged by Tin-nah-key, Til-lo-wah, Ho-nu-chah, Fat-ho-chef Elias, to be just and owing Daniel Saffarrans. We therefore recommend a transfer of so much of the stock invested by the Government of the United States for the benefit of the said incompetent Chickasaws as will discharge the above amounts, according to the decision of the honorable Secretary of War, dated June the 30th, 184 .

ISH-TO-HO-TO-PAH (his x mark).

ISAAC ALBERSON (his x mark).

JAMES COLBERT.

BENJ. LOVE.

I certify that the foregoing accounts were examined and acknowledged in my presence, and that the same were satisfactory proven to be just and owing.

A. M. M. UPSHAW, C. A.

Incompetents No. 17.

\$54.

One day after date I promise to pay Daniel Saffarrans \$54, for value received, with interest at 8 per cent. per annum until paid.

TIN-NAH-KY (her x mark).

BOGGY DEPOT, November 28, 1839.

Witness:

A. P. SHELDON.

Interest to 1st January, 1841, \$4.68.

No. 810.

\$6.50.

One day after date I promise to pay Daniel Saffarrans or order \$6.50, for value received, with interest at 8 per cent. per annum until paid.

TIL-LO-WAH (his x mark).

BOGGY DEPOT, November 6, 1839.

Witness:

A. P. SHELDON.

Interest, 60 cents.

18 TREATY STIPULATIONS WITH CHICKASAW INDIANS.

\$104.

One day after date I promise to pay to Ho-to-ka \$104, for value received January 7, 1839.

HO-YOU-MISH-CHAR (his x mark.)

ISAAC JEFFERSON.

Interest to 1st January, 1841, \$16.64.

One day after date I promise to pay John W. Owden the sum of \$150, for value received of him this September 16, 1836.

LAR-TE-CHA (his x mark.) [SEAL.]

Witness:

JAMES WOLF.

Interest to 1st January, 1841, \$51.

(Indorsed:) I assign the within to Daniel Saffarrans, for value received.

JOHN W. ODEN.

XI.

The Chickasaws are charged on the books of the United States with the sum of \$161,619.10, paid out of the proceeds of the sale of lands of Chickasaw orphans upon certificates similar in form to the following, with agent's certificate as annexed.

The payments were in most, if not in all, cases made directly to Indian traders, who held powers of attorney similar in form to the following, with the agent's certificate as annexed:

ORPHANS No. 1.

Statement showing the disposition of the proceeds of the land set apart for the Indians designated under 8th Article, Chickasaw treaty of 1834; powers of attorney to receive the same presented by Daniel Saffarrans, esq.

Reservees' names.	Sales proceeds first investment.	Sales proceeds second investment.	Sales proceeds third investment.	Sales proceeds fourth investment.	In Treasury United States not invested.	
9 Im-me-ah-ho-ka	\$1,905.18					
14 Viney, by heir	797.05				\$480.99	
46 Ah-no-ah-ho-ka	867.29				480.90	
50 Kul-kah	806.55					
103 Che-ka-ta	1,600.00					
114 Un-tock-ah-ne-ubby	1,693.92					
116 On-tim-ah-ho-ka	880.00		\$480.00			
121 Maria Love	1,862.73					
134 Cyrus Harris	1,604.20					
149 Co-pah-kah-ish-tubby	1,603.20					
150 Shin-ah-to-key	801.25					
151 Im-ronke-loon-tub-tubby	1,904.61					
153 Ah-ha-kin-tubby	1,597.20					
193 Colon-o-tubby	799.60		479.76			
22 Ish-tim-mut-la-cha, by heir		\$479.40	479.40			
47 Alexander		480.42		480.92		
42 Bah-pah-sah			980.24			
77 Mah-cha-ma-cha			478.20			
122 Chim-e-sha			480.66			
163 Seley Cooper			502.35			
45 Ut-ho-ya-sha				480.72		
185 Johnson					\$479.70	
	18,722.78	959.82	3,860.61	1,923.53	479.70	\$25,946.44
Interest on sales from date of investment to 1 Jan y '42, at 5 per cent..	4,198.51	191.96	541.01	225.28		5,156.76
						31,103.20

Stock for investments	\$25,466.74
Interest	5,156.76
Requisition for amount in Treasury	479.70
	31,103.20

Received, Washington, April 30, 1842, from the Secretary of War, the following stocks and money on account of claims above designated:

Twenty-five certificates of Arkansas State stocks, of \$1,000 each, dated January 1, 1837, No. 14 to 38, both inclusive	\$25,000.00
Requisition on Treasury United States for	479.70
One United States bond for \$2,000, with interest at 6 per cent. from January 1, 1842, to April 30, same year	2,040.00
One United States bond for \$2,000, with interest at 6 per cent. from December 4, 1841, to April 30	2,049.00
D. Kurtz, check on cashier Bank America, New York, for	1,534.50
	31,103.20

SAFFARRANS & LEWIS.

\$102.

One day after date I promise to pay Hoy-ea \$102, for value received of her this the 2d day of September, 1839.

ELIAS (his x mark).

Witness:

WILLIAM BARNETT.

Interest to January 1, 1841, \$10.88.

No. 9.

Whereas, under and by virtue of the 8th article of a treaty made and concluded at Washington on the 24th day of March, A. D. 1834, between the United States and the Chickasaw Nation of Indians, the south half of section 32, in township 2, and range 2 west, in the Chickasaw Cession and State of Mississippi, was located for Im-mi-ah-ho-ka, a Chickasaw orphan, Roll No. 9; and whereas by virtue of said 8th article of said treaty, and in pursuance thereof, the said location has been sold for the benefit of the said Im-mi-ah-ho-ka, and by and under the authority of the said United States;

Now be it known to all men that I, Im-mi-ah-ho-ka, a Chickasaw orphan, enrolled and located as such, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Dan'l Saffarrans and Felix Lewis my true and lawful agents and attorneys in fact for me and in my name, place, and stead to ask, demand, and receive of and from the proper officers of the United States all such sum or sums of money as may be due and owing to me on account of the sale of my said reservation under the treaty aforesaid, hereby authorizing my said attorneys, for me and in my name, to give such full and ample receipts and acquittances as may be necessary for all such sum or sums of money as may be found due to me, or may be paid over to them on my account, in consequence of the sale or sales aforesaid.

In testimony whereof, I, the said Im-mi-ah-ho-ka, have hereunto set my hand and seal this 21st day of October, A. D. 1841.

IM-MI-AH-HO-KA (her x mark).

Signed, sealed, and acknowledged in our presence.

CHAS. JOHNSON.

A. P. SHELDON.

I certify that the above-named Im-mi-ah-ho-ka is the identical person who is entitled to the proceeds of No. 9 on the Chickasaw orphan roll, under the treaty of the 24th May, 1834, and that she has and did assign to Saffarrans & Lewis by power of attorney her respective interest understandingly, and that she acknowledged to have been paid a full consideration, and is therewith satisfied.

A. M. M. UPSHAW, C. A.

MARCH 29, 1842.

CHOCTAW NATION WEST.

We, the undersigned, commissioners recognized and appointed by the treaty made and concluded at Washington on the 24th day of May, A. D. 1834, between the United States and the Chickasaw Nation of Indians, do hereby certify that the south half of section 32, in township 2, of the second range west, in the Chickasaw Cession and State of Mississippi, was reserved for Im-mi-ah-ho-ka, a Chickasaw orphan, Roll No. 9, and that said location has been sold by the United States for the benefit of said Im-mi-ah-ho-ka; that said Im-mi-ah-ho-ka is well-known to us, and has married, and is fully capable of managing her own affairs, and, in our opinion, it would be to the interest and advantage of said Im-mi-ah-ho-ka for the money arising from said sale to be paid to her by the United States in pursuance of the provisions of said treaty.

Given under our hands and seals this 21st day of October, A. D. 1841.

ISH-TE-HO-TO-PA (his x mark). [SEAL.]
 ISAAC ALBERSON (his x mark). [SEAL.]
 JAMES WOLF. [SEAL.]
 SLONE LOVE. [SEAL.]

TREATY STIPULATIONS WITH CHICKASAW INDIANS.

CHOCTAW NATION WEST.

I, A. M. M. Upshaw, Chickasaw agent, do hereby certify that the foregoing instrument was signed by the commissioners whose names appear thereto, and that to the best of my knowledge, information, and belief their statement is correct and accurate, and I unite with them in their recommendation.

Given under my hand this 21st day of October, A. D. 1841.

A. M. M. UPSHAW, C. A.

No. 14.

Whereas, under and by virtue of the eighth article of a treaty made and concluded at Washington on the 24th day of May, A. D. 1834, between the United States and the Chickasaw Nation of Indians, the west half of section 32, in township 4 and range 3 west, in the Chickasaw Cession and State of Mississippi, was located for Viney, a Chickasaw orphan, Roll No. 14; and whereas, by virtue of the said eighth article of said treaty, and in pursuance thereof, the land so reserved has been sold for the benefit of the said Viney, by and under the authority of the said United States;

Now, be it known to all men that I, Viney, a Chickasaw orphan, enrolled and located as such, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Dan'l Saffarrans and Felix Lewis my true and lawful agents and attorneys in fact for me and in my name, place, and stead to ask, demand, and receive of and from the proper officers of the United States all such sum or sums of money as may be due and owing to me on account of the sale of my said reservation under the treaty aforesaid, hereby authorizing my said attorneys, for me and in my name, to give such full and ample receipts and acquittances as may be necessary for all such sum or sums of money as may be found due to me, or may be paid over to them on my account, in consequence of the sale or sales aforesaid.

In testimony whereof, I, the said Viney, have hereunto set my hand and seal this 13th day of September, A. D. 1841.

VINEY (her x mark),
By the only heir, PUCK-SHA-NUBBY.

Signed, sealed, and acknowledged in our presence.

CHAS. JOHNSON.

WM. BARNETT, Int'r.

I certify that the above-named Viney is dead, and that Puck-sha-nubby is her legal heir and is the identical person who is entitled to the proceeds of Roll No. 14, on the Chickasaw orphan roll, under the treaty of the 24th May, 1834, and that he has assigned to Saffarrans & Lewis, by power of attorney, his respective interest understandingly, and that he acknowledged to have been paid a full consideration, and is therewith satisfied.

MARCH 29, 1842.

A. M. M. UPSHAW, C. A.

CHOCTAW NATION WEST.

We, the undersigned, commissioners recognized and appointed by the treaty made and concluded at Washington on the 24th day of May, A. D. 1834, between the United States and the Chickasaw Nation of Indians, do hereby certify that the west half of section 31, in township 4, third range west, in the Chickasaw Cession and State of Mississippi, was reserved for Viney, a Chickasaw orphan, Roll No. 14, and that the land has been sold by the United States for the benefit of said Viney; that said Puck-sha-nubby, the heir, is well known to us, and is of age, and is fully capable of managing his own affairs, and, in our opinion, it would be to the interest and advantage of said Puck-sha-nubby for the money arising from said sale to be paid to him by the United States in pursuance of the provisions of said treaty.

Given under our hands and seals this 13th day of September, A. D. 1841.

JAMES COLBERT.

ISAAC ALBERTSON (his x mark).

SLONE LOVE.

ISH-TA-HA-TO-PA (his x mark).

[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

CHOCTAW NATION WEST.

I, A. M. M. Upshaw, Chickasaw agent, do hereby certify that the foregoing instrument was signed by the commissioners whose names appear thereto, and that to the best of my knowledge, information, and belief their statement is correct and accurate and I unite with them in their recommendation.

Given under my hand this 13th day of September, A. D., 1841.

A. M. M. UPSHAW, C. A.

No. 46.

Whereas, under and by virtue of the eighth article of a treaty made and concluded at Washington on the 24th day of May, A. D. 1834, between the United States and the Chickasaw Nation of Indians, the west half of section 34, in township 2 and range 4 west, in the Chickasaw Cession and State of Mississippi, was located for Ah-no-ah-ho-ka, a Chickasaw orphan, Roll No. 46; and whereas, by virtue of said eighth article of said treaty, and in pursuance thereof, the land so reserved has been sold for the benefit of the said Ah-no-ah-ho-ka, by and under the authority of the said United States:

Now be it known to all men that I, Ah-no-ah-ho-ka, a Chickasaw orphan, enrolled and located as such, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Daniel Saffarrans and Felix Lewis my true and lawful agents and attorneys in fact, for me and in my name, place, and stead to ask, demand, and receive of and from the proper officers of the United States all such sum or sums of money as may be due and owing to me on account of the sale of my said reservation under the treaty aforesaid, hereby authorizing my said attorneys, for me and in my name, to give such full and ample receipts and acquittances as may be necessary for all such sum or sums of money as may be found due to me, or may be paid over to them on my account, in consequence of the sale or sales aforesaid.

In testimony whereof, I, the said Ah-no-ah-ho-ka, have hereunto set my hand and seal this 10th day of September, A. D. 1841.

AH-NO-AH-HO-KA (her x mark). [SEAL.]

Signed, sealed, and acknowledged in our presence.

CHAS. JOHNSON.

WM. BARNETT, *Interpreter*.

I certify that the above-named Ah-no-ah-ho-ka is the identical person who is entitled to the proceeds of Roll No. 46, on the Chickasaw Orphan Roll, under the treaty of the 24th of May, 1834, and that she has and did assign to Saffarrans and Lewis, by power of attorney, her respective interest understandingly, and that she acknowledged to have been paid a full consideration, and is therewith satisfied.

A. M. M. UPSHAW, C. A.

MARCH 29, 1842.

CHOCTAW NATION WEST.

We, the undersigned, commissioners, recognized and appointed by the treaty made and concluded at Washington on the 24th day of May, A. D., 1834, between the United States and the Chickasaw Nation of Indians, do hereby certify that the west half of section 34, in township 2, fourth range west, in the Chickasaw Cession and State of Mississippi, was reserved for Ah-no-ah-ho-ka, a Chickasaw orphan, Roll No. 46, and that the land has been sold by the United States for the benefit of said Ah-no-ah-ho-ka; that said Ah-no-ah-ho-ka is well known to us, and has married, and is fully capable of managing her own affairs, and, in our opinion, it would be to the interest and advantage of said Ah-no-ah-ho-ka for the money arising from said sale to be paid to her by the United States in pursuance of the provisions of said treaty.

Given under our hands and seals this 10th day of September, A. D., 1841.

JAMES COLBERT. [SEAL.]

ISAAC ALBERTSON (his x mark). [SEAL.]

SLONE LOVE. [SEAL.]

ISH-TA-HA-TO-PA (his x mark). [SEAL.]

CHOCTAW NATION WEST.

I, A. M. M. Upshaw, Chickasaw agent, do hereby certify that the foregoing instrument was signed by the commissioners whose names appear thereto, and that to the best of my knowledge, information, and belief their statement is correct and accurate, and I unite with them in their recommendation.

Given under my hand this 10th day September, A. D. 1841.

A. M. M. UPSHAW, C. A.

No. 50.

Whereas, under and by virtue of the eighth article of a treaty made and concluded at Washington on the 24th day of March, A. D. 1834, between the United States and the Chickasaw Nation of Indians, the south half of section 27, in township 7 and range 2 west, in the Chickasaw Cession and State of Mississippi, was located for Kul-kah, a Chickasaw orphan, Roll No. 50; and whereas by virtue of said eighth article of said treaty, and in pursuance thereof, the land so located, or some part thereof,

has been sold for the benefit of the said Kul-kah, by and under the authority of the said United States :

Now be it known to all men that I, Kul-kah, a Chickasaw orphan, enrolled and located as such, have made, constituted, and appointed, and by the presents do make, constitute, and appoint Daniel Saffarrans and Felix Lewis my true and lawful agents and attorneys in fact, for me and in my name, place, and stead to ask, demand, and receive of and from the proper officers of the United States all such sum or sums of money as may be due and owing to me on account of the sale of my said reservation under the treaty aforesaid, hereby authorizing my said attorneys, for me and in my name, to give such full and ample receipts and acquittances as may be necessary for all such sum or sums of money as may be found due to me, or may be paid over to them on my account, in consequence of the sale or sales aforesaid.

In testimony whereof I, the said Kul-kah, have hereunto set my hand and seal this 2d day of December, A. D. 1841.

KUL-KAH (his x mark). [L. S.]

Signed, sealed, and acknowledged in our presence.

JNO. PENN.

J. M. SKELTON.

I certify that the identical Chickasaw orphan above named, Kul-kah, is the identical Chickasaw entitled to the proceeds of Roll No. 50, on the Chickasaw Orphan Roll, under the treaty of the 24th May, 1834, and that he has and did assign to Saffarrans & Lewis, by power of attorney, his respective interest understandingly, and that he acknowledged to have been paid a full consideration, and is therewith satisfied.

A. M. M. UPSHAW, C. A.

MARCH 29, 1842.

CHOCTAW NATION WEST.

We, the undersigned, commissioners recognized and appointed by the treaty made and concluded at Washington on the 24th day of May, A. D. 1834, between the United States and the Chickasaw Nation of Indians, do hereby certify that the south half of section 27, in township 7, second range west, in the Chickasaw Cession and State of Mississippi, was reserved for Kul-kah, a Chickasaw orphan, Roll No. 50, and that a part thereof has been sold by the United States for the benefit of said Kul-kah; that said Kul-kah is well known to us, and has married, and is fully capable of managing his own affairs, and, in our opinion, it would be to the interest and advantage of said Kul-kah for the money arising from said sale to be paid to him by the United States in pursuance of the provisions of said treaty.

Given under our hands and seals this 2d day of December, A. D. 1841.

ISH-TE-HO-TO-PA (his x mark). [SEAL.]

ISAAC ALBERTSON (his x mark). [SEAL.]

JAMES WOLF. [SEAL.]

SLONE LOVE. [SEAL.]

CHOCTAW NATION WEST.

I, A. M. M. Upshaw, Chickasaw agent, do hereby certify that the foregoing instrument was signed by the commissioners whose names appear thereto, and that to the best of my knowledge, information, and belief their statement is correct and accurate, and I unite with them in their recommendation.

Given under my hand this 2d day of December, A. D., 1841.

A. M. M. UPSHAW, C. A.

Whereas, under and by virtue of the eighth article of a treaty made and concluded at Washington on the 24th day of May, A. D. 1834, between the United States and the Chickasaw Nation of Indians, the west half of section 26, in township 5 and range 4 west, in the Chickasaw Cession and State of Mississippi, was located for Che-kah-ta, a Chickasaw orphan, Roll No. 103; and whereas, by virtue of said eighth article of said treaty, and in pursuance thereof, the land so located has been sold for the benefit of the said Che-kah-ta, by and under the authority of said United States:

Now be it known to all men that I, Che-kah-ta, a Chickasaw orphan, enrolled and located as such, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Daniel Saffarrans and Felix Lewis my true and lawful agents and attorneys in fact for me and in my name, place, and stead to ask, demand, and receive of and from the proper officers of the United States all such sum or sums of money as may be due and owing to me on account of the sale of my said reservation under the treaty aforesaid, hereby authorizing my said attorneys, for me and in my name, to give such full and ample receipts and acquittances as may be neces-

sary for all such sum or sums of money as may be found due to me, or may be paid over to them on my account, in consequence of the sale or sales aforesaid.

In testimony whereof, I, the said Che-kah-ta, have hereunto set my hand and seal this 2d day of December, A. D. 1841.

CHE-KAH-TA (her x mark).

Signed, sealed, and acknowledged in our presence.

J. M. SKELTON.

A. P. SHELDON.

I certify that the above-named Che-kah-ta is the identical person who is entitled to the proceeds of Roll No. 103, on the Chickasaw Orphan Roll, under the treaty of the 24th of May, 1834, and that she has and did assign to Saffarrans and Lewis, by power of attorney, her respective interest understandingly, and that she acknowledged to have been paid a full consideration, and is therewith satisfied.

A. M. M. UPSHAW, C. A.

MARCH 29, 1842.

CHOCTAW NATION WEST.

We, the undersigned, commissioners recognized and appointed by the treaty made and concluded at Washington on the 24th day of May, A. D. 1834, between the United States and the Chickasaw Nation of Indians, do hereby certify that the west half of section 26, in township 5 and range 4 west, in the Chickasaw cession and State of Mississippi was reserved for Che-kah-ta, a Chickasaw orphan, Roll No. 103, and that the whole thereof has been sold by the United States for the benefit of said Che-kah-ta; that said Che-kah-ta is well known to us, and has married, and is fully capable of managing his own affairs, and, in our opinion, it would be to the interest and advantage of said Che-kah-ta for the money arising from said sale to be paid to him by the United States in pursuance of the provisions of said treaty.

Given under our hands and seals this 2d day of December, A. D. 1841.

ISH-TE-HO-TO-PA (his x mark). [SEAL.]

ISAAC ALBERTSON (his x mark). [SEAL.]

JAMES WOLF. [SEAL.]

SLONE LOVE. [SEAL.]

CHOCTAW NATION WEST.

I, A. M. M. Upshaw, Chickasaw agent, do hereby certify that the foregoing instrument was signed by the commissioners whose names appear thereto, and that to the best of my knowledge, information, and belief their statement is correct and accurate.

Given under my hand this 2d day of December, A. D. 1841.

And I unite with them in their recommendation.

A. M. M. UPSHAW, C. A.

The facts as to the signature of these recommendations and as to the agent's certificate are substantially the same as already hereinafter set forth in the preceding finding; and the result was the same, to wit, the Indian orphans did not receive the full value of their claims, but were imposed upon; nor did their assignees receive full value, as payment was made by the Government in State stock, in which the fund was invested and which was worth much less than par. The orphans did, however, receive some value, and it does not appear that in this matter or in that of the incompetents any protest or recommendation was made to the United States Government tending to put that Government on its guard or upon notice as to what was taking place between the traders and individual Indians. There was nothing suspicious upon the face of the certificates or recommendations described in this and the preceding finding other than what appears in these findings.

CONCLUSION OF LAW.

The court find the law as stated in the opinion.

OPINION.

DAVIS, J., delivered the opinion of the court:

The removal of the Choctaws, Cherokees, and Chickasaws from the territory which they occupied at the beginning of this century gave rise to numerous difficult and complicated questions; first, questions political in their nature, all now happily ended by the settlement of the different tribes in the Indian Territory, where they

are successfully pursuing the path of modern civilization; second, questions financial in their nature, springing from the treaties by virtue of which the Indians emigrated from the East.

It became necessary for the protection of the Indians, no less than for the advantage of the whites, that the tribes should move west of the Mississippi. The Indian was not prepared to surrender his tribal organization, and, taking land in severalty, to settle into the domestic life of the American citizen and into Caucasian methods of agriculture; on the other hand the United States could not, even had they desired, restrain the advance of their own people.

The Choctaws and Cherokees have already been before us demanding an adjustment of long pending controversies with the Government, and now the Chickasaws, coming by a very different channel and under a very different grant of jurisdiction, invoke our aid for the same purpose.

Cases of this kind are most intricate, and are, for a court of law, most difficult to decide satisfactorily. The questions of law founded on the treaties and statutes present obstacles surmounted with comparative ease, but the facts are most difficult to find upon evidence at once competent and convincing. Over fifty years ago these Chickasaw Indians were gathered from the broad plains of the Southern States; they came into the place of rendezvous in straggling detachments; steam-boats were employed to transport them, upon which many of them refused to go; the mode of the tribe's assembling caused delay and expense; conductors, agents, interpreters, and other guides or servants were necessarily furnished them; many of the tribe went overland, absolutely refusing water transit, and were, in some instances, months making the journey; others went part of the way by land and part of the way by water; the exact number taking either route is impossible of exact ascertainment, as is the total population of the nation at the time, and the number of those who remained at home preferring to share the white man's system of government to an emigration westward.

The Indians complain that the transfer was extravagantly managed by the Government agents; that the treaty agreement was not fulfilled; that waste at least, if not actual fraud upon their rights, was committed by the officers acting for the United States, the guardians, in aid of the Indians, the wards.

More than fifty years after the event, upon testimony enormous in quantity but unsatisfactory in quality, we are called upon to examine these numerous questions of fact, as well as others, in relation to the disbursement of trust funds held by the Government for certain specified classes in the Chickasaw Nation.

The case is important in that it involves the just dealing of a powerful and rich Government with a weak tribe whose valuable lands were taken for a consideration alleged not to have been fairly fulfilled; and in that it also involves a sum of money of the utmost importance to the claimants, and which, if allowed, will make serious inroad upon the treasury of the defendants.

In furtherance of the policy of transfer to the Indian Territory, several treaties were made with the Chickasaws, then principally resident in Mississippi. The first of these treaties was concluded October 20, 1832, to which certain explanatory articles were added two days later (7 Stat. L., pp. 381, 388); May 24, 1834, another treaty was concluded (*Ibid.*, pp. 450, 456); finally, the 22d of June, 1852, a third treaty was signed (10 Stat. L., p. 974) from which directly grew the reference to this court.

By the treaty of 1832 the Chickasaws declared that rather than be subject to State laws they preferred to remove to the West, where they might be governed by their own laws, and for that purpose had determined to sell their lands and to seek a new home. To accomplish this, and with the President's approval, they agreed to cede to the United States their lands east of the Mississippi, the lands to be surveyed as public lands by the Government and offered for sale, all the money received to be paid over to the Chickasaw Nation less "the whole cost and expenses of surveying and selling the land, including every expense attending the same." The nation agreed to hunt up a home west of the Mississippi, but in the event of failing in that prior to the first public sale of their eastern lands, they promised to select out of the surveys a comfortable settlement for every family upon a certain specified allotment basis. When the Chickasaws were ready to remove west they were to notify the President, who was then to furnish them with the funds necessary for their transportation and journey and for one year's provisions after reaching their new home, the cost thereof to be ultimately refunded from the proceeds of the ceded lands, the money from which was to be largely invested by the President in interest-bearing or dividend-paying stocks.

The treaty of 1834 related largely to the protection of those Indians entitled to land who were orphans or who were deemed incompetent to manage their affairs. It provides a plan for their protection, it makes various provisions affecting reservations of land, and generally covers the same subject as the treaty of 1832, which to some extent it repeats. These treaties we shall hereafter refer to more in detail.

In February, 1837, the chiefs and headmen of the Chickasaws notified the President that they were ready to remove to the Indian Territory, and asked that he provide means for their transportation and subsistence. This was done, and the tribe removed by degrees from Mississippi to the country of their friends and allies, the Choctaws, who had already gone west. After a temporary sojourn there they took up the lands upon which they still live. The expenses incurred by United States officers in the removal were charged against the nation's fund, and upon these charges is founded the first general complaint of the Chickasaws, the second being based upon the wrongful payment by the United States to persons not entitled to receive it of Chickasaw money held in trust under the treaty of 1834 for the incompetents and orphans.

Article 4 of the treaty of 1852 was designed to quiet these complaints, and, as amended in the Senate, it provided in substance as follows:

That an account should be prepared under the direction of the Secretary of the Interior, exhibiting in detail all the moneys which from time to time had been placed in the Treasury to the credit of the nation "resulting from the treaties of 1832 and 1834, and all the disbursements made therefrom," this account to be submitted to the Chickasaws, who in a reasonable time could file exceptions to it, these exceptions to be referred to the Secretary of the Interior, who (and we now quote the words of the treaty) "shall adjudicate the same according to the principles of law and equity, and his decision shall be final and conclusive on all concerned." As to the money of the orphans and incompetents alleged to have been "wrongfully paid out to persons having no right to receive the same," it was stipulated that the cases should be investigated by "the agent of the United States under the direction of the Secretary of the Interior, and if it shall appear to the satisfaction of the said Secretary that any of the orphans and incompetents have been defrauded by such wrongful payment, the amount thus misapplied shall be accounted for by the United States as if no such payment had been made."

This article (IV) the Senate amended by adding certain provisos, one of which was that the United States should not be under obligation to reimburse expenditures already made in conformity with the treaties of 1832 and 1834; another was that the United States should not be liable to repay moneys held in trust for the orphans and incompetents, "in any case in which payment of such moneys had been made upon the recommendation or certificate of the persons appointed for that purpose in the fourth article of the treaty of 1834, or of their successors, and in other respects in conformity with the provisions of that article;" and a third proviso absolved the United States from any responsibility as to land disposed of in conformity with treaties of 1832 and 1834.

The account called for by the treaty was prepared; it was submitted to the Chickasaws in 1868; and in 1869 exceptions to it were filed in the Department of the Interior; some preliminary investigation was thereafter made, but no definite action was taken until the 8th day of May, 1883, when the Secretary transmitted the matters in controversy to this court for our "consideration and action in accordance with the provisions of section 2 of the act of March 3, 1883," known as the Bowman act.

The Choctaw case came to us by special act of Congress (21 C. Cls. R., 59), as did the Cherokee case (20 C. Cls. R., 449), which was in effect an action between the eastern and western bands of the tribe, an action in which the United States were interested but as stakeholders. The Chickasaw case reaches us by authority of a legislative grant of jurisdictional power very different in its nature from the remedy and jurisdiction specifically given in each of the former cases with the express assent of the Indian tribes who were parties to them.

The rights of the Chickasaw Nation are founded upon a treaty, an instrument which is a contract between the parties, and also a law imposed by the Government upon its own citizens and agents. As a contract, the Chickasaws are entitled to all its benefits until it is varied by mutual consent or annulled in some manner recognized by law. The case now before us, as defined by the fourth article of the treaty of 1852, is divisible into two parts: First, the management and disbursement of the general funds—as to this branch the claimants are entitled to an account, to exceptions thereto, to a reference to the Secretary of the Interior, to an adjudication by him on principles of law and equity, and to a decision by him which shall be final and conclusive on all concerned; second, as to the money of the orphans and incompetents, the claimants have a right to an investigation by the agent of the United States under the direction of the Secretary of the Interior; and to an account for the moneys misapplied, should it appear to the Secretary's satisfaction that any wrongful payment has been made. On the first branch the Secretary is to finally adjudicate; on the second branch the Secretary is to be satisfied as to the wrongful payment.

In the treaty, therefore, is to be found no authority or permission from which any power can be inferred authorizing this court to act in any way in regard to the case at bar.

The only statute which could give us jurisdiction when this case was transmitted was the Bowman act.

The Indians are not citizens of the United States; their rights are founded upon treaty, and as this statute gives them no privileges, it can impose upon them no burdens which they do not voluntarily accept. The authority given the Secretary by the treaty is in its nature judicial, and as such cannot be delegated. It is specific, under a clear and unambiguous agreement, by which the Indians referred the dispute to him and to no one else; they agreed to abide by his decision, and did not agree to abide by the decision of this court. The power of final decision the Secretary can not delegate, and if that were all in the case we could proceed no further in it. But the treaty also authorizes, as a preliminary to the Secretary's decision, an investigation or examination; that he not only has a right to depute, but the treaty in terms provides for such action on his part. Such an examination, while it was begun some years since, has never passed beyond the preliminary stages, and is therefore a matter pending in the Department and capable of reference hither. (*Jackson v. U. S.*, 19 C. Cls. R., p. 508.)

We do not understand that the restriction of section 1066 of the Revised Statutes, excluding from our jurisdiction a claim "growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes" affects this case. That restriction is upon cases defined in sections 1059 and 1063 of the Revised Statutes, cases in which final judgment is entered, and it can not be held to apply to the jurisdiction since given by the act of 1883, a jurisdiction which in this case, as to the Secretary of the Interior, is in effect advisory, and subject to the exceptional power, in terms given him by treaty, of final adjudication of the issues raised between the United States and the Chickasaw Nation.

It has been suggested, but not argued at the trial, that the report of the conference committee upon the bill which in part became the act of March 3, 1887, indicates their opinion, if not their purpose, to exclude treaty cases from the jurisdiction of this court under the Bowman act.

But the twelfth section, which the committee struck out because "the conferees thought best not to allow an alien to sue on the basis of treaty or intentional (*sic*) [*international?*] obligations at the will of the Secretary of State, and thought that the political power of the Government should be consulted," contained a provision that the Secretary of State might refer a claim in behalf of an alien against the United States growing out of any treaty power or international obligation, with the consent of the representatives of the Government of such alien, "to hear and determine the same upon the principles of justice and international law, and to render judgment as those principles require," with right of appeal to the Supreme Court. This was an extension of the jurisdiction of the court to enter judgment, or a modification of section 1066, excluding treaty cases from such jurisdiction.

The committee was not willing to go thus far; but, while striking out that section, they re-enacted, in the very next section—now section 12 of the present act—the second section of the Bowman act, authorizing the head of a Department to transmit any claim or matter to the court with two changes only: one that the reference should be with the consent of the claimant, and the other omitting the words "for its guidance and action" in reference to the effect of the report of the facts and the law to the Department.

The jurisdiction of the Bowman act is much like that of the organic act of February 24, 1855, whereby the court was to report the facts and the law to Congress, without entering judgment, and under that act the court always took cognizance of treaty cases, and reported the facts and law thereon. This construction was affirmed by Congress by the act of 1863, extending jurisdiction to the entry of judgment, from which, section 9 of that act—now Revised Statutes, section 1066—excepted treaty cases other than those then pending in the court.

The only claim or matter excepted from our jurisdiction under the Bowman act are specifically named in sections 3 and 4, and treaty claims are not among them.

The courts in all controversies between the Government and the Indian tribes have adopted a theory of interpretation favorable to the tribes; and while the rules of law applicable to such controversies are not so strict as those governing differences between guardian and ward, they go this extent, as has been held, that doubts are to be resolved in favor of the Indians, that they are not to be prejudiced by mere technical construction, and that words of doubtful import are to be taken most strongly against the United States.

By the two treaties of 1832 and 1834 the United States undertook a general supervision and care of the Chickasaws; a supervision and care more detailed in definition, more important in essence than that of trustee to *cestui que* trust, or even than that of guardian to ward, in effect much resembling the relation of parent to child. The Indian lands were to be surveyed and sold by the United States; the proceeds were to be invested and held for the Indians by the United States. The agent, the land surveyor, register, and clerks, paid for by the Indians, were to be named by the

United States; the Indians were not to go to war without the consent of the United States, except in self-defense, and then were to be protected by the United States—in fact, without proceeding further with an analysis of the two treaties, it may be assumed that any one who examines them will find the Government accepting most exceptional and almost parental relations towards the Indians.

The nation was oppressed (Art. I, Treaty 1832) by being made subject to State jurisdiction. Ignorant of the language and the laws of the white man, they could not understand or obey them. Rather than submit to such an evil they preferred to seek a new home, where they might live and be governed by their own laws. Sympathizing with them and agreeing with them, the President entered into the treaties—treaties manifestly intended to protect the Indians, to guard them so far as possible from the hardships and evils of enforced emigration. The United States assumed therefore a peculiar trust, a trust of guardianship and control; a trust not only financial, but largely personal in its nature.

One branch of this trust, the financial one only, is now before us; and on one side it is contended that objection being made by the Indians to the accounts furnished by the United States, it is essential for the latter to prove the honest and economical disbursement of the disputed items, while on the other hand it is urged that the presumption is in favor of the honesty of the account.

Fifty years have passed since the first of these expenditures was made, and the last was made some years before the treaty of 1852. Many important events have occurred since then; the country has been convulsed by civil war; the officers having charge of the emigration are dead, or at least are not obtainable; no fraud is alleged or shown on their part; the Indians were to some extent cognizant at the time of what took place; the evidence on either side is necessarily scanty in substance, however full in volume; there is a strong probability of honesty in every such transaction, and there is also an inevitable waste. These considerations, with others which will occur to any one who scans this voluminous record, induce us to eliminate any *prima facie* presumption, and forbid us from throwing upon either side the onus of meeting such a presumption. In fact, at this late day to allow the claimants to rest on their exceptions and to require of the Government proof that each of the hundreds of small items in the accounts represents an honest, economical, and legal disbursement would produce an immediate final decision adverse to the defendants; while a demand upon the claimant for proof of a dishonest, extravagant, or illegal disbursement in each instance would throw them out of court at the outset, without substantial investigation into their rights.

No arbitrary rule of presumption can be introduced into a case of this nature. On the contrary, a middle course, aiming at substantial justice, must be pursued; and while each side has formally and properly reserved all its rights, the case has been in effect presented substantially upon this theory.

We now proceed to the consideration of the several specific objections made by the claimants to the account made and presented to them by the United States in fulfillment of the provision contained in the treaty of 1852.

William M. Gwin was an agent of the Chickasaws, deputed to attend generally to their business with the United States, and, among other duties, he was to secure the payment of interest upon State stocks in which the Chickasaw funds had been invested, and wherein default had been made. The compensation provided for him in his power of attorney was enormous, and he surrendered it, together with all claims under it, for another instrument, authorizing him, for a contingent fee of 50 per cent., to recover the value of certain damaged provisions furnished the Indians by the United States. He had discovered the charge made against the Chickasaw account for these provisions, and he was successful in securing a credit for the Indians of the provisions' value, less the 50 per cent. fee, which was paid him by the United States and charged against the Chickasaws.

We eliminate from the controversy questions as to the validity, between the Indians and Gwin, of the power of attorney, and as to the right of Gwin to assign any emolument coming to him under it, for Gwin did perform service; the result desired was attained; his assignees were in fact paid; and the Chickasaws' fund is diminished by the amount so paid.

The question presented, then, is that of a trustee bound to feed his *cestui que trust* out of the trust fund, who furnishes the latter spoiled food, and thus forces the *cestui* to pay a large sum of money to obtain from the trustee the return of funds thus improvidently disbursed. Such a charge, it seems to us, should, in all equity and justice, be borne by the trustee. That the fee was too large, under the circumstances set forth in the findings of fact, if that be true, is not a defense, for the trustee paid it with open eye and full knowledge of the circumstances. The matter was fully discussed, and in two opinions did the Attorney-General approve the disbursement. If fair in amount as against the injured Chickasaws it was fair in amount as against the United States, through whose fault, error, or laches the injury occurred which caused the agent's employment and his compensation. The provisions furnished were damaged;

the Chickasaws were charged with the cost; the United States did not voluntarily make good the loss; and the Indians were put to expense in enforcing their claim to reimbursement. On the record as it stands, the trustee seems to have been negligent, for nothing is shown to excuse the bad quality of the food furnished, and being so negligent, and not having voluntarily repaired the fault, he should be held to account for the damage suffered by his innocent *cestui que trust*. We think courts of chancery in a controversy between individuals would reach a similar determination; but whether that be so or not, we, in the advisory capacity in which we act in this case, a case between a strong nation and a weak tribe, its wards, are of opinion that equity and justice require the United States to credit the Indians with this disbursement to Gwin of \$56,021.99.

Strict provisions were made to protect the Chickasaws from extravagance in the management of the sales of their lands; the officers to be employed were carefully designated; their salaries were fixed; even the number of clerks and their rate of pay was specified, while the Land Office was to have temporary use of a section of Chickasaw territory. No complaint is presented of this class of expenditures made in Mississippi; but during some years clerks were employed in Washington attending here to the business of the nation in the Treasury and Interior Departments, and their pay, together with some minor and incidental expenses incurred in the usual course of their duty, are objected to by the claimants.

At the outset it may be admitted that nothing in the treaties in terms authorizes such expenditures. The only specific provisions in any way similar in nature to those thus incurred are for the salaries of officers to be stationed in Mississippi and employed in the survey and sale of lands; most careful limitation is put upon the number of such officers and upon their pay. There was to be a surveyor-general, with deputy surveyors, a clerk and a draughtsman, a land register, and a receiver of moneys, with a clerk each; the salary for each being limited and fixed (Art. VIII, treaty 1832). The United States, however, had assumed other duties than those directly pertaining to the survey and sale of lands; those duties were many and varied. For example, after survey allotments of lands were to be made to each family not immediately removing West until a determination to remove should be indicated to the President, when the allotments should be sold by him and the net proceeds paid over to the nation, as were the net proceeds of other lands (Art. IV, *ibid.*). Improvements were to be valued by a discreet person appointed by the President, and the amount of this valuation was to be paid to the owner out of the proceeds of land sales (Art. V, *ibid.*); the President, when notified, was to advance funds for the Chickasaw emigration and for the nation's support during a certain period, the amount thereof to be afterwards refunded from the proceeds of land sales (Art. X, *ibid.*); the United States were to invest Chickasaw funds in proper stocks for the benefit of the nation, to be drawn upon and disposed of in a manner described in the treaty upon certain contingencies (Art. XI, *ibid.*).

It seems unnecessary to cite further from the treaties to show that the United States assumed very important and onerous duties, entirely apart from and different from those to be performed by the surveyors, register, and receiver in Mississippi; the handling of the trust funds, the advance and refunding of money, the decisions as to the payment of incompetents' and orphans' moneys, and the numerous other burdens imposed could not be performed by the officers provided for in terms, but must be performed in Washington by the Government, acting by the President and his subordinates; nor were these expenses those attending the "surveying and selling" of lands. For the proper performance of this duty clerks are necessary, stationery and other similar expenses are necessary, and as it is elementary law that a trustee is entitled to be reimbursed from the trust fund the reasonable expenses necessarily incurred by him in the performance of the trust, we need now only inquire whether this sum of money includes only expenses necessary in their nature and reasonable in amount.

That they are necessary in nature is apparent; but it is objected that they are unreasonable in amount, and were incurred because of the uselessly cumbersome system of administration in force in Washington, which, however valuable in the general affairs of a great Government, is too intricate and expensive when applied to the care of trust funds.

When the Indians turned over the care of their finances to the United States they, it must be assumed, knew what they were doing, with whom they were dealing. A great governmental machine, with its lack of individual responsibility corrected by a system of checks and counter-checks can not be conducted as cheaply as the office of a private merchant or banker. But in return for the greater expense the Indians received two very substantial benefits; first, absolute responsibility, which they never could have got from an individual trustee; second, freedom from any charge by way of compensation to the trustee, which it is unlikely that they would have received from any individual, if it were possible for any individual to assume the multifarious cares of this trust.

Nor can they complain of surprise; for the system of Hamilton is to-day in force in the Treasury; the theories of executive administration have been wonderfully conservative in all the Departments, and disbursements of this nature have been uniformly charged against the various Indian funds. Something less than \$5,000 a year we do not consider extravagant under all the circumstances for the care and administration of Chickasaw interests, and we therefore are of opinion that this charge of \$79,969.46 for clerk-hire in Washington is proper in its nature and not unreasonable in its amount.

In assisting the emigration various individuals were employed by the Government styled conductors, assistant agents, or having some other similar title; their pay and expenses were charged against the nation's fund, and these charges are objected to not as unnecessary or extravagant, but because, as is alleged, they should under the treaties be borne by the United States and not by the Indians. Article X of the treaty of 1832 provides that when the President shall receive notice from the Indians of their intention to remove, he shall furnish them "the necessary funds and means for their transportation and journey, and for one year's provisions after they reach their new homes in such quantity as the nation may require, and the full amount of such funds, transportation, and provisions [was] to be paid for out of the proceeds of the sales of the ceded lands"; further, should the Chickasaws remove before that money was available, then the United States should furnish them "any reasonable sum of money for national purposes which may be deemed proper by the President," to be afterwards refunded by the Indians.

The payments complained of were actually made; they were necessary; they are not shown to be extravagant; whether they were authorized by treaty is the real question in issue. The treaty of 1832 is rather ambiguous on this point, and it is contended that the means for the Indians' "transportation and journey" which the President was authorized to furnish naturally and properly included charges of this nature, as without such assistance the Indians could not emigrate with safety and comfort. On the other hand it is urged that the phraseology of the treaty of 1832 allowed the Government to charge against the Indians only the cost of transportation and supplies, and these being expressly mentioned, other charges are excluded on the doctrine of *expressio unius exclusio alterius*. The Indians are entitled to have all doubts settled in their favor, and words of doubtful import are to be taken most strongly against the United States. An application of this doctrine to the case at bar might support the claimants' position. The treaty of 1834, however, gives a clear statement of the intention of the parties when it provides in its thirteenth article that the United States shall furnish competent persons to conduct the Indians to their destination, and also supplies for a certain period, "the supplies so afforded to be chargeable to the general Chickasaw account." Here is a distinct provision for conductors, a distinct provision for supplies, and a distinct provision that the cost of supplies only shall be charged against the Indians. It is evident that the conductors were to be furnished by the United States and paid by the United States.

The letter of the chiefs, dated in October, 1837, is without effect upon this branch of the case, first, because the treaties standing together are clear in intent and the chiefs could not vary them; and, second, because the letter manifests no such purpose or desire. The letter suggests the appointment of superintendents, not conductors, and suggests the appointment of only "one or more" such officers, manifesting an intention to confine the number within very narrow limits; an intention further shown by the fact that the chiefs give the names of two, and only two, individuals the appointment of either or both of whom would be satisfactory to them and their people. The duties of these officers were different in nature from those of conductors; they were to superintend the removal, to take a census, to provide means for transportation and subsistence; in short, the superintendent (for in fact one only was appointed) was a superior and supervising officer, while the conductors were merely subordinate employes, acting under his direction in carrying out the duties imposed upon him. The facts that the chiefs desired all "other necessary expenses" attending the emigration to be paid out of the nation's fund does not extend the scope of the treaties, and must be read and understood in the light of their provisions, which, as we have seen, are on this point sufficiently clear. In our opinion, the thirteenth article of the treaty of 1834 is decisive of the question, and the Chickasaw fund should be credited with the sum of \$26,563.68.

The United States officers having charge of the emigration entered into a contract with one Simeon Buckner to transport the Chickasaws and their baggage on steamboats, at an agreed rate, to the Indian Territory. The nation authorized an arrangement for water transportation, and pursuant to this authority the contract was made and the necessary boats were provided. When the time came to start many of the Indians refused to take the boats, and large bodies of them went overland, either all the way or in some instances as far as Little Rock, where they were taken up by the boats and carried on to their destination. The contract with Buckner provides a rate of compensation, but it does not designate the number of passengers for whom he was ex-

pected to provide transportation, nor does it limit the time within which the service was to be performed. On these points we are left in the dark; but we find that Buckner was ready on time to perform the duty imposed upon him; that he was much delayed by the Chickasaws, who were irregular and dilatory in reporting on board; that the amount of baggage was far in excess of what had been expected, while a large number of Indians declined to accept the transportation provided for them by their own request. After careful consideration of all the facts developed in this branch of the case and set forth in the findings, we are of opinion that the Government agents were fully authorized to contract with Buckner as they did, and that he had a right to expect and was bound to provide for the transportation of some four thousand Indians. If this were all, we should find Buckner entitled only to \$61,000, the contract price for the transportation of this number of Indians, with the prescribed amount of baggage. But it is by no means all; the Indians delayed the boats; they carried baggage far in excess of the allowed amount; they carried a great deal of stock; some were picked up on the way, failing to get through by land, and Buckner was much impeded and delayed in the performance of his contract, and undoubtedly put to increased expense. He received under this contract \$148,393.50, a gross sum, made up as follows:

Transportation of Indians.....	\$39,652.00
Transportation of baggage.....	54,520.00
Demurrage.....	14,872.50
Damages.....	37,749.00
Corn freight.....	1,600.00
Total.....	148,393.50

Objection is made to \$5,877.50 of the charge for transportation, to \$14,672.50 of the charge for demurrage, and to the charge of \$37,749 for damages.

This latter sum was paid in July, 1840. Long prior to this the Government officers in charge of the removal had paid Buckner \$39,650 on account of his contract, but, apparently dissatisfied with this, Buckner had claimed additional compensation, on the ground that he had been ready for all the Indians, and through no failure of his they had not been transported as agreed; therefore he asked that his compensation be increased to the amount he would have received had all reported on his boats. The sum was allowed as "the balance of his account for the transportation of 5,338 Chickasaw Indians from Memphis, Tenn., to Fort Coffee, Arkansas, per contract, October 1, 1837." The contract price for transporting these Indians would be \$77,401; adding to this the cost of the regulation amount of baggage per head, 30 pounds, at the full contract rate, \$2.50 per hundred-weight, amounting to \$4,000, and Buckner would be entitled to receive only \$81,401. There is nothing to show that Buckner had a right to anticipate the removal of more than 4,000 Indians; a careful study of the evidence leads us to the conclusion stated in the findings that about that number he had a right to expect, and was bound to provide for. Then at the full contract price he would have received the sum of \$61,000, made up as follows: 4,000 Indians, at \$14.50 per head, \$58,000; 120 hundred-weight baggage, at \$2.50 per hundred weight, \$3,000.

He also should have received the amount allowed for transportation of corn, \$1,600, swelling the total to \$62,600, leaving an excess paid him of \$85,793.50.

The testimony is too unsatisfactory and incomplete for us to go into the detail of each item paid Buckner, and we are forced to treat the payments together, and to endeavor to discover, taking all the circumstances together, what would have been a reasonable and fair allowance under the circumstances. As he did not carry 4,000 Indians, as he had a right to provide for that number, as he provided for them, and through no fault of his they did not report on board, we think a fair measure of damage for the breach of contract is what he would have received had he been allowed to carry it out as stipulated and understood. This allowance, however, would include demurrage and other damage caused by the non-arrival of the Indians.

The objections made by the claimants, however, cover a sum much less in amount than would be allowed them on this theory of the case, and while the evidence is not sufficient to allow us to examine into the details of the various allowances to Buckner and the facts peculiar to each of them, still, considering the case as a whole, we are of opinion that he was overpaid certainly not less than the sum total of the various amounts objected to, and that sum (\$58,299) should be credited to the nation.

On the question of rations there is little to add to what appears in the findings of fact. Under all the circumstances therein detailed we think the charge a proper one against the tribe.

The treaty of 1834 (Articles IV and VIII) divided the Chickasaws holding reservations into three classes: adults competent to manage their own affairs; adults not competent to manage their own affairs, called colloquially the "incompetents;" and minor orphans. Adults were permitted to dispose of their reservations upon compliance with certain requirements, while the incompetents were not allowed to sell, lease, or

otherwise dispose of their reservations, and as to them the treaty provided (Article IV) that no transfer should take place unless certain well-defined conditions were fulfilled.

The Chickasaws do not complain that the "incompetents'" lands were improperly sold, but they claim that in many instances the money coming from the sales was paid out of the Treasury in violation of that part of the treaty which required that the consideration of the sales "shall remain as part of the general Chickasaw fund in the hands of the Government until such time as the chiefs in council shall think it advisable to pay it to the claimant or to those who may rightfully claim under said claimant, and shall so recommend it." (Article IV.)

They further complain that the Government's action enabled Indian traders to defraud the "incompetents" of the greater part of the proceeds of the sales of their lands.

These complaints are founded substantially upon the following grounds:

First, the Government never had proof tending to show that the chiefs in council advised payment to a single incompetent of the money coming from the sale of his lands; second, the chiefs in council in fact never did give such advice.

To this the Government sets up in answer the treaty of 1852, which provides that the United States shall "not be liable to repay moneys held in trust for the benefit of the" orphans and incompetents when the payments have been made "upon the recommendation or certificate of the persons appointed for that purpose in the fourth article of the treaty of 1834, or of their successors, and in other respects in conformity with the provisions of that article;" and the defendants contend that the persons "appointed" were the persons named in the article, that is those persons commonly called commissioners, upon whose certificate only land could be sold, and therefore any certificate bearing their signatures is valid and binding upon the Chickasaws.

Denying this position and still contending that the approval of the commissioners is important only as to the sale of the reservations, and that the after payment of money from the fund depends for its validity upon the judgment of the chiefs in council, the Indians urge other matter in rebuttal, which we shall consider later.

The claimants' position then is: first, under the treaty of 1834 that all money paid out of the fund on the recommendation of the commissioners, without the recommendation of the chiefs in council, was wrongfully paid; and second, having proved the fact that the chiefs in council did not recommend the payment of any of the money, a *prima facie* case is presented of wrongful payment to persons having no right to receive; and thus is established the condition of relief required by the treaty of 1852. Should these points not be conceded, the claimants then proceed a step further and endeavor to show that the recommendations upon which the money was paid were fraudulent in character, that the facts certified were not true, that some of the commissioners' signatures were forgeries, that the alleged assignments by the individual Indians to the traders were not valid, and that through a conspiracy, to which some of the commissioners, the Indian agent, and the traders were parties, the individual incompetents were grossly imposed upon. It is particularly urged that the king's cross, or mark, was not affixed by him but by Albertson, one of the commissioners. This we have found to be true in fact, but we do not find that the king did or that he did not authorize Albertson so to affix his cross, for the evidence on this point does not seem to us sufficient to rebut the presumption that officers acting in performance of a duty imposed by law act honestly; and if the commissioners had any power at all in the matter they acted as the agents, not of the United States, but as the agents of the Chickasaws in carrying out a duty imposed upon them by the treaties for the protection of members of their own tribe. There is nothing in the record bringing home to the United States knowledge of the fact, if it be a fact, that Albertson defrauded his own people, or knowledge of the fact, if it be a fact, that the king, Ish-to-ho-to-pa, either wittingly or unwittingly, through his neglect or otherwise, was actively or through negligence a party to the fraud, if one was committed.

Be it conceded that Ish-to-ho-to-pa never did affix his cross-mark, nevertheless others of the commissioners did sign the certificates and signed them knowingly, and in doing this they acted for the Indians and did not act for the United States. If there were fraud in this transaction, if there were mistake, if there were negligence, the fraud, mistake, or negligence was that of the commissioners, or some of them. It was the fraud, mistake, or negligence of the Indians themselves, of the persons deputed by the Chickasaw Nation to protect the interests of individuals in the tribe, and any loss which has occurred to the individuals should be made good by the tribe. A ward can not impose upon his guardian, dissipate and waste the funds acquired through the imposition, and then secure a second recovery upon substantially the ground of his own wrong or negligence. Individual incompetents and orphans were undoubtedly imposed upon, and received in calicoes and ponies much less than the values of their claims, but such a result could not have been attained unless Ish-to-ho-to-pa, or Albertson, or their colleagues had been negligent or dishonest. It has not seemed to us necessary to go into the morals of the transaction, for whatever immorality existed

was shared by the commissioners, to whatever wrong was committed they were parties, in whatever conspiracy was formed they were absolutely necessary and principal elements.

The United States paid over the moneys upon what appeared upon their face to be properly signed certificates, certificates undoubtedly signed by some of the commissioners, certificates as to which at the time no complaint was made. The individual Indians accepted the insufficient consideration given them by the traders, and their authorities and agents presented no complaint, put the Government upon no inquiry. Under all these circumstances we do not think the United States under obligations to pay again the moneys already once paid over by them on this account, provided the certificate of the so-called commissioners was in law sufficient authority for the payment. Here a distinction is to be noted between the position of the "incompetents" and that of the "orphans."

The treaty of 1834 required that the incompetent trust fund should remain in the hands of the Government "until such time as the chiefs in council shall think it advisable to pay it to the claimants or to those who may rightfully claim under said claimants, and shall so recommend it." (Article IV.) The recommendation of the chiefs in council was therefore necessary as authority for a disbursement by the United States from this fund. Nevertheless, between the years 1840 and 1843 payments were actually made upon the certificates hereinbefore recited and without, so far as is shown to us, any recommendation by the chiefs in council. Then followed the treaty of 1852 (10 Stat. L., p. 974), which was evidently intended to satisfy existing grievances of the Chickasaws, and which contained this provision:

"It is also alleged by the Chickasaws that there are numerous cases in which moneys held in trust by the United States for the benefit of orphan and incompetent Chickasaws have been wrongfully paid out to persons having no right to receive the same. It is therefore further agreed, that all such cases shall be investigated by the agent of the United States, under the direction of the Secretary of the Interior. And if it shall appear to the satisfaction of said Secretary that any of the orphans and incompetents have been defrauded by such wrongful payment, the amount thus misapplied shall be accounted for by the United States, as if no such payment had been made." (Art. IV.)

That is, if it appear that incompetents' money has been paid out wrongfully, and paid out to persons not entitled to receive the same, then, if it also appear that any of the incompetents have been defrauded by the wrongful payment, the amount thereof shall be accounted for. There must have been, to justify recovery under this article, a wrongful payment, this payment must have been made to an unauthorized person, and the incompetent must have been defrauded. The Senate, however, when the treaty was before them, added several provisos, among them this at the end of the article just cited:

"*And provided further*, That the United States shall not be liable to repay moneys held in trust for the benefit of orphan and incompetent Chickasaws, in any case in which payment of such moneys has been made upon the recommendation or certificate of the persons appointed for that purpose in the fourth article of the treaty of 1834, or of their successors, and in other respects in conformity with the provisions of that article." (10 Stat. L., p. 976.)

It now becomes important to determine who were the persons appointed in the fourth article of the treaty of 1834 for the purpose of making a recommendation or certificate. That article names by their proper names seven individuals, the certificate of two of whom was necessary for the sale of a reservation, and this certificate was to show that the Indian owning or claiming the land was capable to manage his affairs. These seven are the only persons named by name in the article. Their certificate was to be indorsed by the agent, and the action was to be approved by the President, or such person as he might designate. Then follows the provision we have already discussed as to the recommendation of the chiefs in council, and after further details, not now important, as to the sale of lands, comes a provision that as the king and the delegation who signed the treaty might die, resign, or remove, any vacancy should be filled by the Secretary of War, after selections made by the chief, and after certificate by the Indian agent as to the qualifications, discretion, and ability of the person so selected. Therefore, in this article are mentioned by name seven persons, of whom five were the five who signed the treaty on behalf of the Indians; also the President of the United States, the Secretary of War, the Indian agent, and the chiefs in council. When the treaty of 1852 was approved by the Senate and ratified by the President, all the facts were before them. This is a presumption of law, which, in this case, is also established as a fact by the form and phraseology of the treaty and its amendments. The President and the Senate knew that some ten years before money had been paid from the orphans' and incompetents' accounts upon commissioners' certificates; they knew of charges that this money had been improperly paid; and yet how carefully they protected this particular class of payments. The President required proof not only that the money had been wrong-

fully paid, but that it had been paid to persons having no right to receive it, and also that the orphan or incompetent had been defrauded. The Senate went a step further and said, in effect, let all of these three points be established, and still we do not agree to account for the moneys, provided the payment was made either upon the recommendation or upon the certificate of the persons "appointed for that purpose" in the fourth article of the treaty of 1834.

The money of the incompetents, says the treaty of 1834, shall be paid over when the chiefs in council think it advisable and recommend it.

It has been in effect contended that the use of the words "persons appointed for that purpose" indicates an intention to make valid the acts, illegal in their inception, of the commissioners in recommending the payment of incompetents' money, by which they usurped a power vested in the chiefs in council. The use of the word "successors" in the same clause is supposed to be an additional indication of the parties' intent, as the word would not naturally be applied to a permanent body like the chiefs in council, but would naturally be applied to a temporary collection of named individuals as to whom succession was specifically provided. To these and similar arguments it may be answered that the Senate, in one article, was dealing in concise language with two subject-matters: First, the incompetents who, by Article IV of the treaty of 1834, were to be paid only when the chiefs in council should so recommend; second, the orphans who, by Article VIII of the same treaty, were to be paid only when a majority of the seven persons named in Article IV should so recommend. The treaty-making power knew that payments had been made to incompetents without a sign indicating even acquiescence on the part of the chiefs in council, and they knew of the payments to the orphans upon certificates correct upon their face, but alleged to be in fact fraudulent through the acts of some at least of the commissioners, the representatives of the Indian tribe. In the one case the United States had paid upon vouchers illegal on their face, in the other they had paid upon vouchers valid upon their face, but in fact fraudulent through the fault of the tribe. Thus was presented a clear reason for the distinction intended to be made between the claims of the incompetents and those of the orphans. Not one of the recommendations for payment to incompetents was made by the chiefs in council, the only body or the only persons appointed or authorized for the purpose in the treaty of 1834; but the "persons appointed" to make recommendation as to the orphans or "their successors" had, or at least some of them had, recommended the payments made to the orphans. In the case of the incompetents, the vouchers were on their face worthless; in the case of the orphans, the vouchers were on their face valid and could only be invalidated by proof of some wrong, neglect, or error, to which the Indians' representatives were necessary parties.

Where, then, there has been a wrongful payment to an incompetent, and where the payment had been made to a person having no right to receive it, and no person is entitled to receive money by virtue of assignment from an individual confessedly incompetent to manage his own affairs, then if the incompetent has in fact been defrauded, as he evidently was to some extent in the case before us, then and to that extent the United States should account to the Chickasaw Nation.

The eighth article of the treaty of 1834 made provision for protecting what are called in this case "orphan" Chickasaws—that is, males and females, under full age "whose father being dead, the mother again has married, or who have neither father nor mother." Their reservations might be sold upon the recommendation of a majority of the seven persons named in the fourth article, that the sale would prove advantageous to the parties interested; this recommendation was to receive the approval of the President or his agent, after which the proceeds of the sale were to be retained by the Government, or, if practicable, invested until the orphans came of age or married, when payment was to be made to those entitled to receive it, provided a majority of the commissioners with the Indian agent should certify that such a course would be to the advantage of those parties. It is now contended by the claimants that payment from the "orphans" fund was made upon certificates not signed by a majority of the seven commissioners, and that but a small portion of the money ever in fact reached the orphans, the facts being substantially the same as in the case of the "incompetents." We have no doubt that the orphans were imposed upon and parted with their rights improvidently, but following the line of argument already marked out, we cannot hold the United States liable for their sufferings or hardships. The wards of the nation were not the individuals, Im-mi-ah-ho-ka, Viney, or Puck-sha-nubby, but the Chickasaw Nation; that nation set up in protection of its rights and in protection of the rights of its individual members, a set of men, Chickasaws, members of their own tribe, one their king, others headmen and members of their council, and to these the Government of the United States had a right to look with confidence for an honest and faithful performance of the duties imposed upon them in the treaty by their own nation's election. Their fraud, mistake, or laches can not raise any obligation in the United States, the party deceived of

misled by them, for they acted as the agents of the Indians, not as the agents of the Government.

We are of opinion that the treaty of 1852 applies to this claim, and while we have no doubt that individual orphans were badly treated we can not find that the Government is responsible therefor to the tribe whose members and selected officials and responsible representatives were parties to whatever wrong was done, to whatever injustice was committed.

We conclude from our examination of the case that the fund of the Chickasaw Nation should be credited with the sum of \$240,164.58. In an action between individuals interest also would be allowed, for the issue presented is one of unauthorized disbursement by a trustee of trust funds expressly stipulated to be held invested in interest-bearing securities. We refrain, however, from expressing any opinion on this subject, as the question must necessarily be taken to the legislative department of the Government, which alone has power to grant relief, which will consider the equities of the case, and which will decide whether it is one wherein the doctrine should be waived that, as the sovereign does no wrong, and is ever ready and willing to pay just debts, the Government pays no interest.

A certified copy of the findings of fact herein and of this opinion will be sent by the clerk to the Secretary of the Interior.

IN THE COURT OF CLAIMS,
Washington, D. C. :

I certify that the foregoing is a true and complete copy of the findings of fact and opinion of court filed April 25, 1887, in the case of *The Chickasaw Nation vs. The United States*. No. 2. Department case.

Test.

This 23d day of May, 1887.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.