

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1879.—Ordered to be printed.

Mr. DAVIS, of Illinois, from the Committee on the Judiciary, submitted the following

REPORT:

The Committee on the Judiciary, who were instructed by the Senate "to inquire into and report upon the validity of the so-called permit law, which was enacted by the legislature of the Chickasaw Nation on the 17th day of October, 1876," beg leave to report:

The law in question seems to have a twofold object: to prevent the intrusion of unauthorized persons into the Territory of the Chickasaw Nation, and to raise revenue. By its terms no citizen of any State or Territory of the United States can either rent land or procure employment in the Chickasaw country without entering into a contract with a Chickasaw, which contract the latter is to report to the clerk of the county where he resides, and a permit must be obtained for a time not longer than twelve months, for which the citizen is to pay the sum of twenty-five dollars.

Every licensed merchant, trader, and every physician, not a Chickasaw, is required to obtain a permit, for which the sum of twenty-five dollars is exacted.

A Chickasaw is liable to punishment for employing a citizen of the United States for a longer period than fifteen days without the required permit. The word "citizen," where it is used without other qualifying terms, obviously applies to and designates a citizen of the Chickasaw Nation. The law does not, however, impose any punishment upon a citizen of the United States other than by declaring that in case of the violation of any law of the Chickasaw Nation the offender shall be ordered out of the limits of the nation; but such citizen who, after having contracted with a Chickasaw and obtained a permit, shall, without the knowledge or consent of the latter person, leave his employment, forfeits his permit, and none other can be granted to him.

Such are the essential provisions of the law; and in passing upon the question of its validity the inquiry arises whether it conflicts with any act of Congress or treaty stipulation.

We have, from the organization of our government, recognized the fact that Indians, while maintaining their tribal organization, constitute distinct and independent communities, capable of entering into treaty stipulations with the United States. We have considered them as invested with the right of self-government and jurisdiction over the persons and property within the limits of the territory they occupy, except so far as that jurisdiction has been restrained and abridged by treaty or act of Congress. Subject to the supervisory control of the Federal

Government, they may enact the requisite legislation to maintain peace and good order, improve their condition, establish school systems, and aid their people in their efforts to acquire the arts of civilized life; and they undoubtedly possess the inherent right to resort to taxation to raise the necessary revenue for the accomplishment of these vitally important objects—a right not in any sense derived from the Government of the United States.

The intrusion of white men upon Indian reservations has been found to be injurious to the well-being of the Indians, and we have sought by stringent legislation to suppress the evil.

The seventh article of the treaty of 1855, between the Choctaws and the Chickasaws, is in the following words :

So far as may be compatible with the Constitution of the United States, and the laws made in pursuance thereof regulating trade and intercourse with the Indian tribes, the Choctaws and Chickasaws shall be secured in the *unrestricted right of self-government and full jurisdiction* over persons and property within their respective limits; excepting, however, all persons or their property who are not by birth, adoption, or otherwise citizens or members of either the Choctaw or Chickasaw tribe, and all persons, not being citizens or members of either tribe, found within their limits shall be considered intruders, and be removed from and kept out of the same by the United States agent, assisted, if necessary, by the military, with the following exceptions, viz: such individuals as are now, or may be, in the employment of the government, and their families; those peacefully traveling or temporarily sojourning in the country, or trading therein under license from the proper authority of the United States; and such as may be permitted by the Choctaws and Chickasaws, with the assent of the United States agent, to reside within their limits, without becoming citizens or members of either of said tribes. (11 Stats., 612, 613.)

The right of self-government by the Chickasaws, so far as it is compatible with the Constitution of the United States and the Indian intercourse law, is thus recognized, and all persons not citizens or members of the tribe are, with certain specified exceptions, declared to be intruders, and subject to removal and exclusion from the Territory by the agent. There is nothing in this or the other articles of the treaty which prohibits the Chickasaws from enacting that those who, with the assent of the agent, are permitted to remain, and who desire to be employed, shall be required to enter into a contract with a Chickasaw, and that the latter shall apply for a permit upon the prescribed terms.

The forty-third article of the treaty of 1866 is as follows :

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

While the United States promises and agrees that no white person, except certain classes specifically described, shall be permitted to go into the Chickasaw territory, and declares that the article shall not be construed to affect parties theretofore adopted, or to prevent the temporary employment of white persons who are teachers, mechanics, or skilled agriculturists, the Chickasaws are not prohibited from excluding, if they think proper, such persons, or from requiring that they, if permitted to remain, shall enter into a contract with Chickasaws, and that the latter shall not employ or contract with them unless the permit contemplated by the act shall have been obtained.

There is nothing in the act in conflict with the forty-seventh article of the treaty. That article, after providing that upon the application of the legislative council, and with the assent of the President, all the annuities and trust funds shall be converted into money, and the aggregate amount equally divided and paid per capita to the individual Chickasaws, respectively, declares that a sufficient sum shall be retained by the United States as, in the opinion of the President, shall produce an amount of interest adequate to defray the expenses of the government, together with a judicious system of education, until these objects can be provided by a proper system of taxation. Whenever this shall be done, the retained money shall also be divided. This article manifestly has exclusive reference to the division of the trust funds, and forbids the division of the whole of them in the contemplated manner until a certain contingency arises. It does not expressly or by necessary implication interfere with the exercise of the taxing power of the Chickasaws.

It is proper to remark that no such law can be applied to the officers of the government in the discharge of their appropriate duties. No permit can be exacted from them, and the act in question cannot, by any just construction of its terms, be extended to them.

The committee are, therefore, of opinion that the law is not invalid.

PERMIT LAW OF THE CHICKASAW NATION.

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That citizens of any State or Territory of the United States wishing to hire or rent land, or be otherwise employed in this nation, shall be required to enter into contract with a citizen; said contract to be reported by the citizen to the county clerk of the county where said citizen resides.

SEC. 2. *Be it further enacted*, That any citizen who shall employ any non-citizen, shall apply within fifteen days after entering into contract to the clerk of the county where said non-citizen wishes to reside, for a permit for male non-citizen over the age of eighteen years, in his employ, and for each permit so obtained, the non-citizen shall pay to the clerk issuing the same the sum of twenty-five dollars, and the clerk shall retain, for each permit issued, twenty-five cents for his services, and shall report to the auditor and treasurer quarterly, of all money received by him for permits, and after deducting out his fee, shall pay the balance over to the treasurer for national purposes.

SEC. 3. *Be it further enacted*, That every foreigner who shall come into this nation for the purpose of farming or being otherwise employed, without the proper authority of the United States Government, shall be deemed an intruder by virtue of section 2134 of the Revised Statute of intercourse law.

SEC. 4. *Be it further enacted*, That all licensed merchants and traders (non-citizens) shall, in addition to the tax paid on goods, be required to procure from the county clerk of the county in which they wish to trade, and all physicians, non-citizens, wishing to practice their profession, shall procure from the county clerk of the county in which they wish to reside, a permit, for which they pay each twenty-five dollars, conditioned upon the faithful observance of the laws of this nation, and the clerks shall dispose of the funds in the manner prescribed in section two of this act.

SEC. 5. *Be it further enacted*, That no permit shall be granted for a longer time than twelve months, and in case of violation of any law of this nation, the offender shall be ordered out of the limits of the Chickasaw Nation. And any citizen who shall employ any non-citizen for a longer time than fifteen days without procuring a permit for the same, shall be deemed guilty of misdemeanor, and be subject to a fine of twenty-five dollars before the county court having jurisdiction; and all fines collected under this act shall go to the county treasury for county purposes.

SEC. 6. *Be it further enacted*, That any non-citizen having entered into contract with any citizen of this nation and obtained a permit under his employ, and shall leave the employ of said citizen without his knowledge and consent, shall forfeit his permit, and no other permit shall be granted any non-citizen forfeiting the same by either clerk of either county of this nation.

SEC. 7. *Be it further enacted*, That any person living in this nation under permit shall not be allowed to bring into or hold more than five head of milch cows, and shall have no hogs outside of inclosure, but shall be allowed all the work-horses, mules, and cattle as may be necessary to work said farm, and shall be allowed to feed surplus crop to beef-cattle under fence.

SEC. 8. *Be it further enacted*, That all freedmen not owned by Chickasaws or Choctaws at the date of the treaty of Fort Smith shall be required by the sheriffs of the respective counties of this nation to procure permits, as provided in this act.

SEC. 9. *Be it further enacted*, That all acts and parts of acts in conflict with this act are hereby repealed, and this act take effect and be in force from and after its passage.

Approved October 17, A. D. 1876.

B. F. OVERTON,
Governor of the Chickasaw Nation.

NATIONAL SECRETARY'S OFFICE,
Tishomingo City, Chickasaw Nation, Ind. Ter.

I do hereby certify that the foregoing is a true and correct copy of the original act of the legislature of the Chickasaw Nation, which may be found on file in this office.

Given under my hand and seal of office this the 25th day of January, A. D. 1877.

JOSIAH BROWN,
National Secretary, C. N.