45TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 188.

THE ORGANIZATION OF THE TERRITORY OF OKLAHOMA.

MARCH 3, 1879.—Laid on the table and ordered to be printed.

Mr. NEAL, from the Committee on the Territories, submitted the following

REPORT:

[To accompany bill H. R. 1596.]

The Committee on the Territories, having had under consideration the bill (H. R. 1596) to provide for the organization of the Territory of Oklahoma, beg leave to submit the following report thereon, with the recommendation that said bill do not pass:

The object of the bill is to provide a Territorial form of government for the country heretofore held exclusively for Indians, and now known as the Indian Territory, being the region south of Kansas, west of Missouri and Arkansas, and bounded on the south by Texas and on the west by Texas and New Mexico. More than three-fourths of it consists of tracts called reservations, which have been set apart for the use of Indian tribes or bands, there being twenty such reservations occupied by thirty-three different bands.

Five of these reservations, equal in extent to nearly half the Territory, are owned and inhabited by the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles, who constitute more than three-fourths of its population.

Delegates representing these five nations have memorialized Congress and have appeared in person before the committee in opposition to the bill, and to any other measure of like nature.

It is objected:

1. That the fourth section of the bill provides for a legislative assembly, to consist of members "having the qualification of voters," *i. e.*, according to section 5, "all citizens of the United States, of the age of twenty-one years and upward, who shall have lawfully resided in the Territory one year prior to the passage of this act." This would embrace 12,287 whites who are now in the Indian Territory "lawfully," as shown by the annual reports of the Commissioner of Indian Affairs for 1876 and 1877. Deducting from that number 2,261 white citizens of the Cherokee, Choctaw, Chickasaw, Creek, and Seminole tribes, as shown by Report No. 95, H. R., second session Forty-fifth Congress, leaves 10,026 whites not citizens or members of said tribes to whom a share in their government would be given, without the consent of said tribes and contrary to the spirit and meaning of their treaties, namely:

First article Choctaw and Chickasaw treaty, 1855, Revision of Indian Treaties, 276.

Seventh article Choctaw and Chickasaw treaty, 1866. (*Ibid.*, 289.)

Tenth article Choctaw and Chickasaw treaty, 1866. (*Ibid.*, 292.)

Fifth article Cherokee treaty, 1835. (*Ibid.*, 69, 70.)

Thirty-first article Cherokee treaty, 1866. (*Ibid.*, 97.
Fifteenth article Creek and Seminole treaty, 1856. (*Ibid.*, 111.)
Twelfth article Creek treaty, 1866. (*Ibid.*, 121.)
Ninth article Seminole treaty, 1866. (*Ibid.*, 817.)

2. The eighth section provides for a judiciary with the jurisdiction now pertaining to United States courts in matters applicable to the Indian country, and "such other jurisdiction not inconsistent with this act as may be conferred by the laws of the Territory." This provision disregards the restrictions of the treaties of 1866 above referred to, all of which provide that the legislation of Congress "shall not in any manner *interfere with* or annul their present tribal organization, rights, laws, privileges, and customs," and it virtually abrogates the guarantees of exclusive jurisdiction in the treaties above cited prior to 1866.

3. Sections 18 and 19 provide for the allotment of the lands held by each tribe in tracts of 160 acres to each individual member, and also for the sale of the residue without any restriction as to purchaser.

These provisions, it is urged by the Indians, violate their ancient law and custom of tenure in common, as well as the provisions of their treaties with the United States.

In view of the two-fold character of these various objections, it is proposed to consider:

1st. The binding force of treaties, the power of Congress to change or to abrogate them, and, if such power exists, under what circumstances it is proper to exercise it.

2d. Whether sufficient cause exists for abrogating or annulling treaties with the tribes in the Indian Territory, and in that connection,

3d. To what extent the bill under consideration would violate such treaties, and

4th. How far such measures are justifiable or expedient.

1ST.—BINDING FORCE OF TREATIES.

The first expression of opinion in any official quarter after the adoption of the Constitution, as to the binding force of Indian treaties, is found at the close of Marshall's Life of Washington, in vol. 2, page 4, of *notes*.

A treaty had been made with the Creeks in August, 1790, containing a secret stipulation for the introduction of goods, duty free, for the benefit of the trading establishment of the Principal Chief, McGillivray. Respecting this article, President Washington consulted his cabinet before signing the treaty. The Secretary of State, Mr. Jefferson, was of opinion that the stipulation might be safely made. He said that "a treaty made by the President, with the concurrence of two-thirds of the Senate, was a law of the land and a law of a superior order, because it not only repeals past laws but cannot itself be repealed by future ones. The treaty, then, will legally control the duty act and the act for licensing traders in this particular instance." From this opinion Chief Justice Marshall adds, "There is no reason to suppose that any member of the cabinet dissented." It is worthy of especial notice as relating to the first treaty ever negotiated under the present Constitution.

In direct contradiction to Mr. Jefferson's opinion is the decision of the Supreme Court in the

CHEROKEE TOBACCO CASE,

(11th Wallace pp. 616–624,) upon the question whether certain provisions of the United States revenue laws, extending to "articles produced any-

where within the external limits of the United States," annulled a right given the Cherokees in Art. 10 of their treaty of 1866 to sell any of their manufactured products without paying any tax which is now, or may be, levied by the United States.

The court decided that an act of Congress may supersede a prior treaty; that the same principle which was applied in Taylor *vs.* Morton (2d Curtis, 454) to treaties with foreign nations, applied with equal force to treaties with Indian tribes which could not be more obligatory. In other words, if a treaty points one way, and a subsequent act of Congress points another, the courts are bound to conform to the act of Congress, regardless of inconsistent treaty stipulations.

The opinion of the dissenting Judges Bradley and Davis rests on points not material in this connection, and does not conflict with the doctrine laid down in TAYLOR vs. MORTON.

That case turned on a violation under the revenue laws of a treaty stipulation with Russia, admitting her goods on as favorable terms as like articles from other countries. "The Constitution," said the court, "has made treaties a part of our municipal law; but it has not assigned to them any particular degree of authority, nor declared whether laws so enacted shall or shall not be paramount to laws otherwise enacted. No such declaration is made as to the Constitution itself." And when it became necessary to determine whether an act repugnant to either Constitution or treaty was an operative law, the question could only be answered by considering the nature and object of each species of law.

After speaking of municipal as distinguished from public law, and of the importance of preserving national faith, the court says the question is not whether the act of Congress is consistent with the treaty, but *whether that is a judicial question to be here tried.* That the act in question is within the legislative power of Congress, unless that power is controlled by the treaty, is not doubted. * * * There is nothing in the mere fact that a treaty is a law which would prevent Congress from repealing it. Unless it is for some reason distinguishable from other laws the rule which it gives may be displaced by the legislative power at pleasure.

The court then refers to power to declare war, which, *ipso jure*, repeals all provisions of existing treaties with hostile nations, and adds:

> To refuse to execute a treaty for reasons which approve themselves to the conscientious judgment of the nation is a matter of the utmost gravity and delicacy, but the power to do so is prerogative of which no nation can be deprived without deeply affecting their independence.

The power to repeal, it is urged, must exist somewhere; no body other than Congress possesses it; Congress exercised that power in the act of July 7, 1798, abrogating treaties with France. The power to decide whether a treaty with a foreign government has been violated; whether a particular stipulation has been disregarded by one party, so that it is no longer obligatory on the other, is a power which has not been confided to the judiciary, but to the executive and legislative departments. (2d Curtis, 459.)

The substance of the decision, therefore, is, that as the power to annul treaties, or rather *to declare them no longer obligatory*, must exist somewhere, it properly belongs to Congress as a necessary consequence of other powers, especially that of declaring war.

DEBATE ON JAY'S TREATY.

The general drift of opinion in the early days of the republic respecting the rights and duties and powers of Congress in connection with

treaties is shown by the debates in the House of Representatives in 1796 on the treaty made in the preceding year with Great Britain, known as "Jay's treaty"; debates characterized by Colonel Benton as the "groundwork of high constitutional knowledge," standing forth as the "first class which our Congressional history has afforded." They were started by a resolution calling upon the President for papers relating to the treaty, and were chiefly confined to the question whether or not the assent of Congress was in any case essential to the validity of a treaty made with the sanction of the President and the Senate. In this debate Mr. Gallatin said a law could not repeal a treaty, "because a treaty is made with the concurrence of another party, a foreign nation, that has no participation in framing the law. * * * It is a sound maxim in government that it requires the same power to repeal a law that enacted it." (1 Bent. Abrid., 644–5.)

Mr. W. Smith, of South Carolina, said several treaties had been concluded with Indian tribes under the present Constitution. These treaties embraced all the points which were now made a subject of contest, settlement of boundaries, grants of money, &c. When ratified by the President and Senate they had been proclaimed as the law of the land. They had not even been communicated to the House, but the House, considering them as laws, had made the appropriations as matters of course, as they did in respect to other laws. * * * * It was not pretended that the Constitution made any distinction between treaties with foreign nations and Indian tribes; and the clause which gives Congress the power of regulating commerce with foreign nations, and on which the modern doctrine is founded, includes as well Indian tribes as foreign nations. (*Ibid.*, 652.)

Mr. Williams said there was no other way of repealing treaties but by mutual agreement of the parties, or by war. To break one article of a treaty was to break the whole, and war or a new treaty must be the consequence. (*Ibid.*, 682.)

DEBATE ON A TREATY WITH GREAT BRITAIN.

A debate of the same nature occurred in 1816 upon a bill to carry into effect the stipulations of a treaty with Great Britain; a bill described by Mr. Wm. Pinkney, Representative from Maryland, as the "echo, the fac simile" of the treaty. Like the debates in 1796, it turned mainly on the power of Congress to control treaties made by the President and Senate.

Mr. Gaston, of North Carolina, A law may repeal a treaty. This was done in the case of the treaty of 1798 with France, repealed by an act of Congress; and a treaty may repeal a preceding act of Congress, as must be admitted to be the case with the treaties of peace with Great Britain and the regency of Algiers repealing the acts declaring war against those nations. (5 Bent. Abridg., 500.)

Mr. Throop. Because a treaty is a compact it is superior to a law. This is the distinction between a treaty and a law which renders a treaty paramount to a law. A treaty is a compact between two States, which cannot be departed from by one without violating the faith of that State and the rights of the other. (*Ibid.*)

Mr. Calhoun, "It is said that a subsequent law can repeal a treaty." Strictly speaking he denied the fact. Whenever a law was proposed declaring a treaty void, the House acted not as a legislative body but judicially. The only question that could occupy its attention when a treaty is to be declared void is whether, under all the circumstances of the case, the treaty is not already destroyed by being violated by the

nation with whom it is made, or by the existence of some other circumstance, if other there can be, the House determining this question, is the country any longer bound by the treaty? Has it not ceased to exist? The nation passes in judgment on its own contract, and this from the necessity of the case, as it admits no superior power to which it can refer for decision.

If any other consideration moves the House to repeal a treaty, it can only be considered in the light of a violation of a contract acknowledged to be binding on the country. A nation may violate its contract, may even do it under form of law, but he was not considering what might be done, but what might be *rightfully* done. It is not a question of *power* but of right. (*Ibid.*, 502. Also Annals Cong., Jan., 1816, 530.)

Mr. Cuthbert. Who in this country is the party concerned as principal in a treaty contract? The people. Who their agent? The treaty-making power. Where are the instructions of the agent to be found? In the Constitution. And can a contract be considered as complete and of binding force that has not received the sanction which, according to its character, is required by the instructions of the principal? * * * But the faith of the nation, we are told, is pledged by a treaty. Ah! that is the question in discussion. *Is* the faith of the nation pledged? Certainly the faith of the nation is not pledged, when a treaty requires the sanction of a law, until that sanction is afforded. It is the seal manual that stamps the hitherto incomplete engagement. (5 Bent., 509.)

Mr. Stanford did not believe the Constitution gave the House of Representatives any direct share in the treaty-making power, yet that it had an indirect control over a certain class of treaties he could not doubt, meaning such only as could not go into effect without the passage of some act of Congress. (*Ibid.*, 529.)

Mr. Pickering. According to the doctrine maintained by the advocates of this bill, there have never been any valid treaties between the United States and foreign nations since the organization of the government, for no law of Congress has re-enacted their articles, as is attempted by this bill, or by a general enactment pronounced them to be the law of the land. For instance, treaties of 1795 with Great Britain and Spain. Congress passed laws making appropriations, not to give validity to treaties, but simply to carry them into effect. But shall treaties operate a repeal of laws of the United States? Yes. But as treaties may thus annul laws, so may those laws annul treaties; and when Congress shall, by a formal act, declare a treaty no longer obligatory on the United States, the judges must abandon the treaty and obey the law; and why? Because the whole authority on our part which gave existence and force to the treaty is withdrawn by the annulling act. He referred to treaties with France abrogated in 1798, and said, "As in this, so in every other case in which Congress shall judge there existed good and sufficien cause for declaring a treaty void, they will so pronounce either because they intend to declare war, or because they are willing the United States should meet a war to be declared on the other side, as less injurious to the country than an adherence to the treaty. But should Congress, without adequate cause, declare a treaty no longer obligatory, they must be prepared to meet the reproach of perfidy." *Ibid.*, 531.)

Mr. Hopkinson. This House may, in the exercise of power over some collateral matter (as money), interfere with and perhaps prevent the fulfillment or execution of a treaty, but they do it by a violation of public faith and not by invalidating a treaty which bound it. They may refuse to grant the means necessary to perform the contract, but they cannot decree it to be no contract. (*Ibid.*, 541.)

ABROGATION OF TREATIES WITH FRANCE.

Turning back to 1798 for a debate more directly in point, the House of Representatives, having under consideration a bill from the Senate declaring treaties with France void—

Mr. Sewall. It is a novel doctrine to pass a law declaring a treaty void. But the necessity arises from the peculiar situation of the country. In most countries it is in the power of the chief magistrate to suspend a treaty whenever he thinks proper. Here Congress only has that power. We have during this session, in a variety of cases, suspended the treaties in question by authorizing measures of hostilities against France. It would be proper to set the treaties aside by legal authority; but we ought not to say the treaties are void and of no effect. They must have effect as historical facts. They must have effect in our appeal to the world on the ground of their having been violated, and in our claim on France on account of those violations. He therefore proposed a new form of bill. (Annals of Cong., July, 1798, 2120.)

Mr. Dana. The proper mode is to declare the stipulations of the French treaties no longer obligatory on the United States. This we may justly do in consequence of their being disregarded by France. Such a declaration must be regarded as abrogating all those articles of treaties which are executory, such as stipulations for the future conduct of the parties. Declaration would not have any effect on articles which are executed, such as contain cessions or renunciations of territorial claims, and where a corresponding possession has taken place. (*Ibid.*, 2121.)

Mr. Dana moved to amend by substituting, "The United States are of right freed and exonerated from the stipulations of the treaties heretofore concluded between the United States and France, and that the same shall not henceforth be regarded as legally obligatory on the government or citizens of the United States"; which was adopted without a division, and now appears on the statute-book. (*Ibid.*)

Mr. Gordon. If this bill passes it will be considered a novel thing—tantamount to a state declaration to annul a treaty—and there ought to be the grounds annexed to it which led to the measure. (*Ibid.*, 2122.)

Mr. Dana did not generally favor preambles; but whence is it that the United States may abrogate treaties with France? Is it because the legislature may at pleasure set aside a treaty? If it is proper to do this without any external cause a preamble is needless. France has violated the faith pledged by her treaty with America. This, by the law of nations, puts it within the option of the legislature to decide as a question of expediency whether the United States shall any longer continue to observe their stipulations. It is owing to the perfidy of the French Government that the abrogation of our treaties with that nation has become justifiable and necessary. As an American he hoped the United States would always regard the faith due to treaties, and that all their acts would on the face of them appear consistent with it. In this respect he wished the conduct of the American Government to exhibit a marked contrast to French perfidy. (*Ibid.*, 2123.)

A violation of treaties was not of itself sufficient for setting them aside. A treaty might be violated by the imprudence of some one in authority, or by persons without authority, and yet the foreign government might be willing to redress the injury. In such a case it would ill become the government to dissolve friendly relations. Why is it now deemed requisite to abrogate? It is because France has not only violated but persists in violating; therefore, to show that the United

States were justifiable, he was in favor of retaining the preamble. (*Ibid.*, 2124.)

Mr. Gallatin was opposed to preambles; but this is a novel proceeding. He knew of no precedent of a legislature repealing a treaty. It is therefore an act of a peculiar kind, and it appeared to him necessary that Congress should justify it by a declaration of their reasons. (*Ibid.*, 2126.)

The preamble was then adopted as it now stands on the statute-book in the following words:

> Whereas the treaties concluded between the United States and France have been repeatedly violated on the part of the French Government, and the just claims of the United States for reparation of the injuries so committed have been refused, and their attempts to negotiate an amicable adjustment of all complaints between the two nations have been repelled with indignity; and whereas, under the authority of the French Government, there is yet pursued against the United States a system of predatory violence infracting the said treaties and hostile to the rights of a free and independent nation: (1 Stat. at Large, 578.)

Thus it will be seen from the tenor of the debates that the question of abrogating treaties, or rather of declaring them no longer obligatory, is one for Congress and not for the courts, and that whenever any such step is under consideration, Congress, in the language of Mr. Calhoun, acts "not as a legislative body, but judicially;" that it is a question of right, of justice, and of good faith.

The only treaties which Congress has thus far abrogated by any special act are the treaties with France referred to in the foregoing debates. The justification in that instance, as shown by the preamble above quoted, rested upon the repeated violations by France of its treaty stipulations.

2. DOES ANY CAUSE EXIST FOR ABROGATING TREATIES WITH TRIBES IN THE INDIAN TERRITORY?

No such ground is assigned for the proposed infraction of the treaties with the tribes in the Indian Territory. It is not pretended that the Indians have not executed their part of the contract embodied in those treaties. They gave up large bodies of valuable lands, and a material part of the price of those lands was the guarantee of certain rights. It is now proposed to repeal those guarantees, not for any failure of consideration on their part, but on the ground that their welfare and the welfare of the whites requires that the right thus guaranteed be annulled.

It is proposed in the bill before the committee—

1st. To open their country to white settlements.

2d. To extend the laws of the United States and the jurisdiction of United States courts over them.

3d. To abolish tribal relations and make them citizens of the United States.

4th. To change their land titles from a tenure in common to a tenure in severalty.

These measures are urged as essential to the welfare alike of the Indians and the whites.

The welfare of the whites who made the contract and have received the price paid by the Indians for their immunities need not be considered in determining the question whether or not the contract should be abrogated, unless, indeed, it should appear that such abrogation was absolutely necessary as a matter of self-preservation, that the destruction of the rights of 60,000 Indians was essential to the safety of 40,000,000 whites, which will not be pretended in any quarter.

So far as the Indians are concerned, the evidence is overwhelming and

conclusive that some at least of the changes proposed instead of benefiting are calculated to destroy their race, and it will be seen that they are all in violation of the very essence of the agreement under which the five nations were induced to cross the Mississippi.*

As far back as 1822, Mr. Calhoun, then in charge of Indian affairs as Secretary of War, called attention to the evil effects of surrounding Indian tribes with a dense white population. "In that state," he says, in reply to a resolution of the House of Representatives, "tribe after tribe will sink with the progress of our settlements and the pressure of our population into wretchedness and oblivion. Such has been their past history." (Am. State Papers, 2d Ind. Aff., 276.)

His successor, Mr. Barbour, made a treaty in May, 1828, with the Cherokees west of the Mississippi, which speaks of them as having "freed themselves from the harassing and ruinous effects consequent upon a location amidst a white population, and secured to themselves under the solemn sanction of the guarantee of the United States, as contained in this agreement, a large extent of unembarrassed country, and offers inducements to their brothers yet remaining in the States to join them and enjoy the repose and blessings of such a state in the future." (7 Statutes, 313.)

This is the language of the Secretary of War, uttered in a treaty approved by the President (John Quincy Adams) and Senate. Expressions of the same characacter occur constantly in the War Department correspondence during the succeeding administration of President Jackson.

The Secretary of War, Governor Cass, writes to the Creek chiefs, in November, 1831, that—

> For twenty years I have been in habits of daily intercourse with the Indians. I have seen and lamented their misfortunes, and still see and lament them. * * * I have not found a single tribe which is not poor, dispirited, and declining, * * * and why is this? You know as well as I do, it is because your people will drink ardent spirits, will be indolent, and will associate with our bad citizens. * * * Can you avoid this state of things in your present situation? * * * You have but one remedy before you, and that is to remove to the country west of the Mississippi. (8 Indian Removals, 365.)†

January 10, 1832, he writes to a Cherokee delegation:

> If, as the President believes and as all experience has heretofore shown, your people are not in a condition to resist the operation of those causes which have produced incalculable injuries to the Indians, every dictate of prudence requires that you should abandon your present residence, &c. A removal west of the Mississippi being the only remedy for the evils of your position. (*Ibid.*, 738.)

In his letter to the Creek chiefs, January 16, 1832, he urges them to go "where no bad white men will trouble you." (*Ibid.*, 743.)

To the chairman of the Senate Committee on Indian Affairs, he writes, January 30, 1832, that "the same general causes which are everywhere producing want and misery among the Indians *who are placed in immediate contact with our settlements* are operating upon the Seminoles." (*Ibid.*, 751.)

To Hon. D. Newnan, February 10, 1832: "I consider this measure (Cherokee removal) indispensable to the very existence of these Indians." (761.) And to Hon. R. H. Wilde: "Where they are, ruin awaits them at any rate." (763.)

To the President, February 16, 1832, speaking of the emigration policy, he says that—

> Circumstances beyond the control of this government, which may be traced to the earliest periods of the intercourse between the Europeans and the Indians of this continent, and which are yet in active operation, have reduced this once powerful race to

* Contract with whites.

† Part of Senate Doc. No. 512, 1st sess. 23d Cong.

a condition which seems to leave no alternative between extinction and immediate removal." (Page 770). And, again, on page 777, "An *interdict upon all communications between our citizens and the Indians*, except so far as may be necessary for the comfort and improvement of the latter, is an essential part of any plan for their permanent establishment."

One of the features of certain propositions for the removal of Cherokees, made by Secretary Cass, April 17, 1832, was that "all white persons, unless specially authorized by the laws of the United States, shall be excluded from their country." (816.)

To the same general effect is a passage in the message of Governor Gilmer to the Georgia legislature, December 11, 1829:

Long experience has satisfied all that the Indian tribes, when surrounded by white men, continue to disappear till shut out from existence. (223.)

The Creek chiefs, in a letter to the Secretary of War, dated April 8, 1831, say:

We cannot avoid repeating to you the necessity of keeping white people out of our country. It never will answer for the *white and red men to live together*. They cannot agree. Murders have already taken place both by the reds and whites. We have caused the red men to be brought to justice. The whites go unpunished. We are weak and our words and oaths go for naught. Justice we don't expect nor can we get. We may expect murders to be more frequent should the whites be permitted to move among us. They bring spirits for the purpose of practicing fraud. They daily rob us of our property. They bring white officers among us and take our property for debts we never contracted. We are made subject to laws we have no means of comprehending. We never know when we are doing right. (*Ibid.*, p. 425.)

Subsequent experience does not seem to have changed the opinions of the Indian Department on this subject.

The Secretary of the Interior, Mr. Cox, on the 21st May, 1870, in a document indorsed by the President, said:

The policy of preserving the Indian Territory as free as possible from intrusion by white settlers in any form has been hitherto regarded as firmly established in this country. Negotiations for the removal of Indians from the small reservations in Kansas and Nebraska to the Indian Territory have been based upon this policy, and in order to carry it out with any degree of success it is necessary to adhere to it as firmly as possible. (Ind. Office Rep. 1871, 467.)

The Board of Indian Commissioners, in their fourth annual report, for the year 1872, on page 11, say:

The convictions of the board that it is the imperative duty of the government to adhere to its treaty stipulations with the civilized tribes of the Indian Territory, and to protect them against the attempts being made upon their country for the settlement of the whites, have undergone no change. To repudiate either directly or by any indirection our solemn treaty obligations with this feeble people would be dishonor, meriting the scorn of the civilized world. The passage of any law for the organization of a Territorial government not acceptable to the civilized tribes (which have long since ably demonstrated their capacity for self-government), *and which would open their country for the ingress of the whites*, would, in the opinion of the board, be such an infraction of our obligations.

Commissioner E. P. Smith, in his annual report for 1875, on page 13, speaking of the Indian Territory, says, "The time has not arrived for throwing this country open for settlement." On the same page he refers to the "alarming intrusion of outlawed white men"; and on page 17 says that Indians in the States are regarded "as outcasts and intruders, a prey for anybody strong or cunning enough to defraud them."

In the report for 1876, Commissioner J. Q. Smith speaks at length of the evils of small reservations "surrounded by white settlers," and urges concentration on a few larger reservations by which the "danger of violence, bloodshed, and mutual wrong would be materially lessened." He also opposes, on page xii, "the spirit of rapacity which demands the *throwing open to white settlement* the country set apart half a century

ago as the home of the Indians," and he recommends a legal provision that "no white man should become a citizen of the Territory, or own or lease any real estate therein."

The report for 1877 recommends the same policy of concentration upon large reservations, and speaks of the "encroachments of *greedy white men*, who surround them and continually plot to deprive them of their property."

Thus the Indian Bureau of the present day repeats the opinions expressed by Mr. Calhoun in 1822, welding together as it were the official experience of half a century, and preserving unbroken the policy of excluding from their country all who are not Indians prescribed in the early treaties as far back as 1785,* enforced by Congress in the different acts regulating intercourse with the Indian tribes from 1802 down, and reiterated in the railroad land-grant clauses of the treaties of 1866 with the Choctaws, Chickasaws, Creeks, and Seminoles, which all provide that such lands shall neither be conveyed to nor occupied by any one not a citizen of the nation in which it lies. (Revision of Indian Treaties, 118, 288, 814.) Still stronger provisions for the exclusion of white persons are embraced in the treaties of 1865, which secure homes in the Indian Territory for the Cheyennes and Arapahoes, the Comanches and Kiowas. (*Ibid.*, 123 and 316.)

EXTENSION OF UNITED STATES LAWS TO INDIAN CONTROVERSIES.

The application of the laws of the United States and of the jurisdiction of its courts to offenses committed by one Indian against the person or property of another Indian and to civil causes of action is objected to on the ground that such extension would violate the following treaty stipulations.

The fourth article of the Choctaw treaty of 1830 obliges "the government and people of the United States" "to secure to said Choctaw Nation of red people the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of red people and their descendants; and that no part of the land granted them shall ever be embraced in any Territory or State; but the United States shall forever secure said Choctaw Nation from and against all laws, except such as from time to time may be enacted in their own national councils, not inconsistent with the Constitution, treaties, and laws of the United States, and except such as may and which have been enacted by Congress to the extent that Congress, under the Constitution, are required to exercise legislation over Indian affairs." (7 Statutes, 333.)

The seventh article of the treaty of June 22, 1855, with the Choctaws and Chickasaws provides that "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" all who are not citizens of either tribe, &c. (Revision of Indian Treaties, 277.)

The fifteenth article of the Creek and Seminole treaty of August 7, 1856, contains the same guarantee expressed in the same words. (*Ibid.*, 111.)

*7 Stat. at Large, 17 and 19.

The fifth article of the Cherokee treaty of 1835 secures "to the Cherokee Nation the right, by their national councils, to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country belonging to their people or such persons as have connected themselves with them; provided always, that they shall not be inconsistent with the Constitution of the United States and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians." (7 Statutes, 481.)

The thirty-first article of the Cherokee treaty of 1866 provides that "all provisions of treaties heretofore ratified and in force, and not inconsistent with the provisions of this treaty, are hereby reaffirmed and declared to be in full force." (Revision of Indian Treaties, p. 97.)

The twelfth article of the Creek, the ninth article of the Seminole, and the tenth article of the Choctaw and Chickasaw treaties of 1866, all contain similar provisions, reaffirming all former treaty stipulations; and the tenth article of the Creek, seventh article of the Seminole, and seventh article of the Choctaw and Chickasaw treaties, of the same date, all contain provisions that Congress shall not "interfere with or annul their present tribal organization," or their "rights, laws, privileges, or customs." (Revision of Indian Treaties, pp. 120, 121, 289, 292, 815, 817.)

These provisions are broad, full, and complete. Their validity has been uniformly recognized by Congress. Its legislation has carefully avoided any interference with crimes committed by one Indian on the person or property of another Indian, and also anything like the extension of jurisdiction over civil cases.

The Indian office reports for the last three years have recommended a departure from this policy of non-interference, but in this it varies from all the earlier expressions and pledges of the government and ignores its past experience.

President Jackson, in his message to Congress of December, 1829, urging the setting apart unoccupied territory for the permanent home of Indians, recommended that it should be guaranteed to the Indian tribes as long as they should occupy it, each tribe having a distinct control over the portion designed for its use, and where they may be *secured in governments of their own choice*, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes. In August, 1830, before any of the treaties providing for a final cession and consequent emigration had been made, he wrote to the Chickasaws, calling attention to the recent extension of State laws, and urging them on that account to emigrate. He says: "States have been created which claim the right to govern and control your people as they do their own citizens and to make them answerable to their civil and criminal code." He asks, "if you are prepared to submit yourselves to the laws of Mississippi, surrender your ancient laws and customs, and live under those of the white man?" He goes on to say that those laws are not oppressive, but expresses the opinion that the Chickasaws can only be perpetuated by removing to a country beyond the Mississippi (8 Ind. Rem., 240–1).

Commissioners Eaton and Coffee, a few days later (August 30, 1830), speaking for the President to the same people, at the same place, said:

He knows you cannot live under those laws. To do so will render you a miserable, unhappy people. * * * * He knows that all your ancient usages will be broken down and constant interruptions, troubles, and difficulties be felt. * * * * We advise our red brothers for their own sake to remove, that they may rest in a country free from the white man's interruption." (*Ibid.*, 245.)

On page 246, they are told that the Northwestern tribes "cannot live amongst the whites."

On the 18th September the same commissioners addressed the Choctaws on the same subject, the extension of the laws of Mississippi and the consequent necessity of emigration. They asked, "Are you willing to be sued in courts, there to be tried and punished for any offense you may commit? to be subjected to taxes, to work upon roads, and attend in musters? for all these you must do." They urged the Choctaws to go to a country where the President "can keep *the white man's laws from interrupting and disturbing you.* * * * *There no State or Territory will be created, and he will have it in his* power to protect you *fully in your usages, laws, and customs.*" (*Ibid.*, 257).

The preamble to the treaty made by these commissioners with the Choctaws, assigns the extension of the laws of Mississippi over the Choctaws as the reason for making the treaty. (7 Stat., 333.)

Secretary Eaton to the Creek chiefs, May 16, 1831, speaks of the extension of the laws of Georgia, Alabama, and Mississippi over the Indians within their limits, and points out the consequences which the Creeks can only escape by emigration. (8 Ind. Rem., p. 290.)

Secretary Cass, in a letter to the same people of November 1, 1831, already referred to, says to them that in the West "you will be remote from the white people, independent of any State authorities, and *allowed to manage your concerns in your own way*" (p. 366). And on the 16th January, 1832, he writes to the Creek delegation then in Washington, that west of the Mississippi, "beyond the jurisdiction of any State, and under the protection of the United States, you can *enjoy your own institutions* without the fear of interruption" (p. 742).

In a letter to Governor Gilmer, of Georgia, on the removal of the Cherokees, General Eaton, Secretary of War, said:

> It is undeniably true that to remove from their present home affords the only hope for their preservation and happiness. * * * Pending the examination of these questions before Congress, the suggestion has been frequently made that the Indians if placed in the West may again be subject to intrusion and interruptions. *This is assuming too much and more I should fain hope than the good faith of this government will authorize to be conjectured.* * * * If Congress shall do no more for them they will doubtless place at the disposal of the executive, authority sufficient to prevent the white people from ever interfering or intruding upon their soil and their rights. * * * Their only reliance for the future against these imputations upon the faith of the government which are so gratuitously made *must be on the magnanimity and high sense of justice* which prevail with the people and authorities of this country in their favor, and *in this confidence they should not and will not be disappointed* (p. 2).

In a letter of appointment to the superintendent of Cherokee emigration, B. F. Currey, September 1, 1831, Secretary Cass says:

> Let them know that the President feels for their situation; that he is satisfied they had better remove and soon; and that where we wish them to go they will find a mild climate, a fertile country, and the *means of preserving their institutions without the interference of the white people* (p. 331).

In the instructions to the commissioners appointed to treat with the Indians under the act of July 14, 1832, Secretary Cass says, "in the great change we are now urging them to make it is desirable that all their political relations as well among themselves as with us should be established *upon a permanent basis beyond the necessity of any future alteration* (p. 873).

Finally, in 1838, after the greater part of the work of emigration had been accomplished, President Van Buren, in his message to Congress, spoke of the guarantee to the Indians of their exclusive possession of their country West, "*forever exempt from all intrusion by white men,*" as part of a policy settled more than thirty years previously.

These extracts show conclusively, that so far as the leading tribes are concerned, the main consideration held out to induce them to emigrate was that they would escape from the white man's law and go where they could confidently rely on being governed by their own peculiar customs. That feature, as is shown above, was incorporated in the treaties of 1830–'35, was renewed again in the treaties of 1846, 1855, and 1856, and was again renewed in 1866.

How well fitted they were to exercise that right is shown in a passage already quoted from p. 11 of its report for 1874, in which the Board of Indian Commissioners assert that the "civilized tribes" of the Indian Territory "have long since ably demonstrated their capacity for self-government." On p. 13 of the same report the board says that "life and property are more safe among them and there are fewer violations of law than in the Territories."

The Indian agent Marston, in his official report on the condition of these tribes September 11, 1877 (Annual Report, p. 107), says, "The Indians in each of the five tribes of this agency have laws of their own by which to govern themselves. By these laws the innocent are protected and the guilty punished." In the report for 1876, p. 61, he says that the Cherokee government "is conducted with marked ability and dignity." On p. 60 of the same report he says that each one of the five "tribes or nations" "has a constitutional government with legislative, judicial, and executive departments, conducted upon the same plan as our State governments, the entire expenses of which are paid out of their own funds."

There is certainly nothing in these official accounts to justify any violation of treaty stipulations by Congressional interference with the governments they describe.

The reports show:

That the tribes who are governed by their own laws in the Indian Territory as a general rule have done better and are now doing better than those out of it who are governed by State laws.

That the tribes who have kept up the tribal organization as a rule have done better than those who have dissolved it.

That the best progress heretofore made by any considerable number of Indians has been made by those who have adhered to the tenure in common, while, on the other hand, the tenure in severalty has in most cases worked badly.

CITIZENSHIP—TENURE OF LAND—TRIBAL RELATIONS.

The plan of making citizens of Indians, with separate titles to their improvements, to be held on the same footing with other citizens, was first officially recommended by Mr. Crawford, while Secretary of War under President Madison, in a report dated March 13, 1816. (2d Indian Affairs, 27.)

The same idea is indicated in the report, heretofore quoted, from Mr. Calhoun, of February 8, 1822 (*Ib.*, 276), and was incorporated in the treaty made with the Choctaws in 1820, while he had charge of Indian affairs.

During Mr. Adams's administration Secretary Barbour prepared a bill for the organization of an Indian Territory, based on the general principles of excluding whites, abolishing tribal relations, and apportioning lands among individual Indians, upon which great stress was laid. A leading feature, however, was that nothing was to be done without the consent of the Indians.

Treaties were made in President Jackson's first term with the Choctaws and the Creeks, having emigration for their object, but intending

to give each emigrant the privilege of selling his improvement, and to secure to each family desiring to remain, a home with title in fee-simple. (See fourteenth and nineteenth articles Choctaw treaty 1830, and first three articles Creek treaty 1832; 7 Statutes, 335, 336, 366.) Both treaties, in their reservation features, proved to be miserable failures. Large claims are now pending on the government to make good the injuries sustained by the Indians.

The report from the House Committee on Indian Affairs, No. 663, first session Twenty-fourth Congress, contains evidence, on page 43 and page 44 (see eighth volume Public Lands), showing that the agents of the government actually interfered to prevent the Indians from securing the lands provided for in the treaty. The nature of the difficulties they had to encounter in other respects is also shown on pages 52 and 78 of Senate Document No. 168, first session Twenty-eighth Congress.

The operation of individual reservations under these treaties doubtless caused the plan to be abandoned, as appears from expressions in the supplementary Cherokee treaty of 1835 (7 Statutes, 488) and the Ottawa and Chippewa treaty of 1836. (*Ib.*, 494.) With one or two exceptions nothing more of it was heard until 1854, when the experiment was renewed on a large scale by Commissioner Manypenny. The history of the

MANYPENNY TREATIES

and of their working throws more light on the subject under consideration than it is possible to obtain from any other source.

The original design of the emigration policy was to secure to the Indians the entire country west of the Mississippi outside of Missouri and Arkansas, and as late as 1825 all of what is now Wisconsin. (2d Indian Affairs, 543.)

In a report to the President February 16, 1832, Secretary Cass speaks of the country south of Missouri River and west of the State of Missouri and Territory of Arkansas as having been purchased for "division among emigrated Indians, with a view to their *final establishment.*" (8 Ind. Rem., 768.) The idea of *final permanent* establishment in those regions was impressed upon the Indians in all the negotiations preliminary to their removal. The acquisition of California was not then anticipated, much less the discovery of gold and silver on the Pacific coast. When those events occurred, an immense transcontinental thoroughfare was unavoidably opened through the country set apart for Indians, and into which they had been assured that white people should not be permitted to penetrate. One of the results was an act of Congress approved March 3, 1853, authorizing the President to negotiate with tribes west of Missouri and Iowa for the purpose of extinguishing their title. The duty was assigned to Commissioner Manypenny, who reports on the 9th November, 1853, the result of councils held with some fourteen or fifteen tribes.

He says in the annual report for 1853, p, 28, that it had always been understood that none but Indians were to occupy that country, and that consequently the Indians were "excited"; that the emigrant Indians "seemed to have a vivid recollection of the assurances made to them at the time of their removal, that their present locations should be their permanent homes, and that the white race should never interfere with their possessions" (p. 32). The commissioner told them they would do better to sell out and remove to some less exposed place. He adds in his report that "the position of Nebraska, with reference to our Pacific

possessions, renders it a matter of vast importance that it be speedily opened and actual settlers invited into it on the most liberal terms."

No treaties were made that year. Out of a large number subsequently negotiated by him, six were with emigrant tribes living in the country previously set apart exclusively for Indians. All of these treaties embody the allotment principle, and one of them provides for the dissolution of tribal relations. Two others with Indians in Michigan contain both features. Of these treaties all but one were made in May and June, 1854. The bill organizing the Territories of Kansas and Nebraska became a law May 30, 1854, and of course an overwhelming stream of settlers began to pour in.

The policy inaugurated by Commissioner Manypenny was followed by his successors. Treaties were made in 1859, with the Sacs and Foxes of Mississippi, and with the "Kansas" Indians, both providing for allotments, and in 1860 a treaty was made with the Delawares, the first of a series which added to the allotment system the new feature of providing for

RAILROADS.

In November, 1861, a similar treaty was made with the Pottawatomies, and in June, 1862, one with the Kickapoos.

The phraseology of these three treaties is peculiar. They all express a conviction on the part of the Indians of the benefits to be derived from railroads in enhancing the value of their lands, and in one case—the Pottawatomies—in carrying the surplus product of their farms to market. Two of the tribes entertain the opinion that the "Leavenworth, Pawnee and Western" possesses advantages over all other railroad companies. The third "entertains the opinion" that the "Atlantic and Pike's Peak Company" possesses those advantages. All three tribes desire that the companies specified shall have the preference in buying their lands, the Kickapoos and Pottawatomies at $1.25 per acre; the Delawares at an appraisement, which practically amounted to the same thing, 223,966 acres being appraised at $286,742. (Revis. Ind. Trea., 351.)

Whether the lands thus secured to railroad companies, and which then as now were considered the best in Kansas, were or were not worth more than $1.25 an acre, the reports do not indicate. But they do show that most of the Indians who prized railroads so highly got out of their way as soon as they could secure homes elsewhere. The three tribes seem to have numbered when the treaties were made about 3,400. Of these, according to the last report for 1877, less than 700 remain in their former homes, the largest proportion being in the smallest band, the Kickapoos. The Delawares went in a body to the Indian Territory, and of the Pottawatomies, the tribe that wanted the means of getting the surplus product of their farms to market, more than three-fourths went to the Indian Territory. The place marked with their name on the Indian Office map is more than 100 miles beyond the reach of any railroad. The 450 left to enjoy the facilities for getting "the surplus product of their farms to market" are described in the report for 1877 (page 118) as cherishing "prejudices against civilized customs," residing in dwellings made of bark, "generally with an open space in the top for the smoke to escape, and really unfit for occupancy." Out of 50 of their dwellings, the report for 1870 says that 35 were bark lodges, and describes them as adhering "tenaciously to ancient Indian customs." These are some of the same Indians described in the treaties as desiring to promote civilization by selling part of their land and to increase the value of what they retained by getting a railroad to cross it, and as preferring one par-

ticular company, because they believed the construction of its road "is now rendered reasonably certain."

It will be seen a little further on that the working and effect of these treaties has been such as no doubt to add to, if it has not created, a general feeling of hostility to railroads on the part of the Indians affected by them.

One more treaty remains to be mentioned, that of 24th June, 1862, with the Ottawas of Blanchard's Fork and Roche de Bœuf, which was modeled on the Manypenny plan of dissolving tribal relations, and dividing lands in severalty. But before looking into the detailed working of any one case, it may be well to give an idea of the general result as described by Commissioner Manypenny himself, on page 21 of his report in November, 1856, two years and a half after the date of the first treaty. He says:

> The rage for speculation and the wonderful desire to obtain choice lands cause those who go into our new Territories to lose sight of and entirely overlook the rights of the aboriginal inhabitants. The most dishonorable expedients have in many cases been made use of to dispossess the Indian, demoralizing means employed to obtain his property.

In Kansas, he says:

> Trespasses and depredations of every conceivable kind have been committed on the Indians. They have been personally maltreated, their property stolen, their timber destroyed, their possessions encroached upon, and divers other wrongs and injuries done them.

He speaks of the "disorderly and lawless conduct" of those who, "while they have quarreled about the African, have united upon the soil of Kansas in wrong-doing toward the Indian."

That in this respect, history was simply repeating itself, is shown by the account given twenty years earlier by Col. J. J. Abert, of the United States Army, of his observations among the Creeks, to whom he had been sent on a special mission by the War Department in May, 1833, three years after the laws of Alabama had been extended over them, and thirteen months after the ratification of the treaty assigning a portion of their lands to each family:

> You cannot form an adequate idea of the deterioration which these Indians have undergone during the last two or three years from a general state of comparative plenty to that of unqualified wretchedness and want. * * *
>
> The free ingress into the nation of the whites, encroachments upon their lands, even upon their cultivated fields; abuses of their persons and property; hosts of traders who, like locusts, have devoured their substance, and have inundated their homes with whisky, have destroyed what little disposition to cultivation they may once have had. * * * * The corn crop this season will not be sufficient to feed more than one-fourth of them. * * * * They are browbeaten, cowed, and imposed upon, and depressed with the feeling that they have no adequate protection in the United States, and no capacity of self-protection in themselves.
>
> They dare not enforce their own laws to preserve order for fear of the laws of the whites; in consequence more murders have been committed in the last six months than for as many previous years. (10 Ind. Rem., 424.)

These two accounts, one of Indians in Alabama in 1833, the other of Indians in Kansas in 1856, so strikingly alike in their tenor, come from gentlemen of high character. Colonel Abert was long and favorably known at Washington as the head of the Bureau of Topographical Engineers. Commissioner Manypenny, twenty years after he had left the Indian Bureau, was requested by an administration to which he was politically opposed to serve as chairman of the commission to negotiate with the hostile Sioux.

Further particulars of the working of the system of treaties above enumerated will be found in later pages. For the present it is enough

to say that those treaties in their practical application made necessary the changes effected in the

TREATIES OF 1866

with the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles, who then owned all of what is now known as the Indian Territory except about 200,000 acres in its northeast corner, and as one of the results of the war were required to cede a portion of it for the benefit of their brethren in Kansas who, as it will be seen, had been brought to the verge of ruin by the system of allotments and the dissolution of their tribal relations.

Practically there was a repetition in 1866 of what had occurred between 1830 and 1840. Then a country west of the Mississippi had been purchased for Indians living east of that river. In 1866 part of the south half of that region had to be repurchased for Indians living in the north half of it. The limits of the region guaranteed to the emigrant tribes "forever" had already been curtailed, and the object of the treaties of 1866 was to provide for a further curtailment.

The door was opened by the then proprietors of what is now known as the Indian Territory to over 8,000 Indians from the State of Kansas, including between five and six hundred for whom a home was purchased in February, 1867, from the Senecas, Shawnees, and Quapaws, which brings to notice the treaties of 1867 with those bands of the one part, and also with the Wyandotts, Ottawas, and Confederated Peorias, all in one instrument, concluded February 23, 1867, and with the Sacs and Foxes of the Mississippi and the Pottawatomies about the same time, all having the same object—the securing of homes among Indians in the Indian Territory for Indians who could not live in security among white people—who were, in fact, clamorous to get out of the white man's reach.

Among the fifteen tribes visited by Commissioner Manypenny in 1853 there was one,

THE WYANDOTTS,

who, in case a Territory was organized, wanted to change their system, and "conform to the new order of things." In January, 1855, they made a treaty, which declares them sufficiently advanced in civilization, and that "being desirous of becoming citizens, their relations as an Indian tribe shall be dissolved and terminated," except so far as their continuance may be necessary for certain purposes, and such of the Indians as might desire it were to continue on a tribal footing. Those who wished it were to be citizens. Their lands were to be divided. Those who were able to take care of themselves were to receive patents in fee-simple. In other cases lands were to be inalienable for five years; and after that, could be sold only with the consent of the President.

It is doubtful whether any better subjects could have been selected for such an experiment. As far back as 1809 their progress in agriculture had attracted attention. (Morse's Rep. on Ind. Affs., appendix, p. 16.)

Mr. Calhoun, in a report to Congress January 15, 1820, places them in the front rank among Indians who had made advances in civilization (2d Ind. Affs., 200), and Judge Burnet, in his "Notes on the early settlement of the Northwest," speaks from personal observation of their rapid advances in civilization from 1821 to 1828 (pp. 386–7).

But the experiment was a signal failure. The treaty was proclaimed

March 1, 1855. Eleven years afterward a special agent was employed to investigate their affairs, whose statement appears in the annual report of the Indian Office for 1866. He says:

> By far the larger part of the Wyandotts prefer to continue the tribal organization, have long been absent from the lands patented to them, and are living in the Indian Territory. Many others who have lived and acted as citizens desire to return to the tribal state outside of the encroachment of white settlers. No matter how much they may try to live like white people, the whites think Indians have no rights white men are bound to respect. They are constantly robbed of stock and other property, &c. (p. 254).

He adds that both the citizen and Indian parties wish to remove to the Indian Territory, and that those constituting the "Indian party" claim to be the tribe, and insist that the government should ignore the others. *Ib.*

In February, 1867, a treaty was made which, after stating that some of the Wyandotts, having sold their land, are still poor and that others had become citizens who were not fitted for the responsibility of citizenship, proceeds in the thirteenth article to provide a home for them to be held "in common," and for a registration "which shall show the names of all who desire to be and remain Indians and in a tribal condition." (Revision of Indian Treaties, 840, 844.)

According to prevailing opinions and theories this was a step backward, and ought to have had an injurious effect. Practically it worked precisely the other way.

The annual reports from 1871 to 1877 show a steady and continuous improvement resulting from restoration to the tribal condition and tenure in common.

In the report for 1871, on page 499, they are described as "now a tribe, having recently completed a reorganization." Superintendent Hoag, on page 461, alludes to the "condition of poverty, ignorance, and demoralization into which it has been so unfortunately thrown." He says, "the present faction, holding tribal authority, are incapable of making advancement to a better condition. Having neither funds, credit, nor force, it is left to them to say whether their brethren, who were *unconsciously and unwillingly made citizens*, shall be reinstated as members of the tribe."

In 1872 the Commissioner says, on page 39, they are poor and making slight progress.

In 1873, they "have had a year of prosperity and have made considerable improvement in their farms and buildings; have kept the greater portion of their children in school" (p. 213).

In 1874, page 229, they "have been earnest in their efforts to improve their condition."

In 1875, they "are steady, industrious, and progressive, engaged in agriculture, and have raised crops sufficient for their subsistence" (p. 101).

In 1876, they are "in a very fair condition"; take great interest in education; as well disposed as the average whites in the adjoining settlements; have "good farms, and are improving financially" (p. 57).

In 1877, "they are as a rule enterprising and energetic. All are engaged in farming, some of them having fine large farms, with all the conveniences of civilized life about them." They "number about 250," and "have had 65 of their children in school during the year" (p. 103).

The foregoing details are given because they show beyond all doubt that it is a mistake to assert that the tribal condition with lands held in common is unfavorable to improvement.

There are other facts relating to this tribe worthy of serious attention.

The report for 1855 shows that on the pay-roll for 1854 there were 554 Wyandotts.

Commissioner Walker says, in 1872 (p. 38), "they number at present 222 souls. Ten years ago there were 435."

Thus, in 1862, seven years after they were made citizens and their lands were divided, the reduction in their number was 119—more than one-fifth, and this reduced number sustained a further reduction during the next ten years of nearly *one-half*.

On the other hand, from 1872 up to 1877, the reports show a small increase, last fall's statistical table indicating 246 against 222 in 1872.

It is possible that part of the loss prior to 1872 may have been due to "citizen Wyandotts" in Kansas, and that the subsequent gain may have been in part derived from the same source.

But of the fact that these Indians decreased in numbers while living in Kansas among white people and that their present condition is more favorable to longevity there can be little question.

Superintendent Murphy, in the report for 1868 (p. 259), calls attention to the rapid and general reduction in population of the tribes in Kansas, specifying in three instances periods subsequent to 1853 when the Many-penny negotiations commenced, and says that their well being demands removal "to a new home, away from the encroachments of white settlers."

OTTAWAS OF BLANCHARD'S FORK.

The same treaty of 1867 with the Senecas, Shawnees, and Quapaws, which secured a home for the Wyandotts, made a similar provision for the Ottawas of Blanchard's Fork, for the Confederated Peorias, &c., and for the Miamies, who were all holding lands in severalty in Kansas, and the first-named, the Ottawas, had, in 1862, made a treaty similar to the Wyandotts, dividing their lands, dissolving their tribal relations, and declaring them citizens, but with the restriction, that neither of the two latter changes should take place until the end of five years after the date of the treaty. In 1867 this restriction was extended two years, and a home in the Indian Territory was purchased for those who might prefer that region to their allotments in Kansas.

The report for 1872 speaks of their condition as anomalous; "they have become citizens of the United States, yet reside in the Indian country, possess a reservation there, and maintain a purely tribal organization." The Commissioner, on the same page (38), describes them as well advanced in civilization, many of them industrious and prosperous farmers. Although numbering only 150, they had 52 children at school.

The report for 1877 says they are energetic in farming, nearly every head of a family in the tribe having an improvement of his own, ranging from a few acres to one hundred and sixty (p. 103).

The removal of the Ottawas from Kansas to the Indian Terrtory is worthy of especial notice, as they had, with the evident intention of remaining permanently in Kansas, appropriated, by the treaty of 1862, 20,640 acres of their land for the support of a school for their children. The school was established, according to the treaty, but was ultimately managed, as shown by the Indian office report for 1872, page 87, "*wholly for the benefit of the whites*," *being* "*of no assistance or advantage whatever to the Indians.*" An act of Congress approved June 10 1872, required the Secretary of the Interior to have the school property appraised, and to take possession of it for the benefit of the Indians. The property was appraised at $108,318.55, but the person holding it refused to turn it over.

Another act was passed March 3, 1873, providing for a special commission to examine and dispose of the matter.

Whether the Ottawas ever derived any further benefit from the fund of which they were thus deprived does not appear in the subsequent reports. Superintendent Hoag, in whose district they live, speaks in the report for 1871, p. 463, of the injustice they have suffered from the loss of their school property in Kansas as calling loudly for redress (p. 463).

THE PEORIAS AND MIAMIES

Were also provided with homes in the country of the Senecas and Shawnees by the treaty of 1867.

Both tribes in 1854 had consented to a partition of their lands, and both had become considerably reduced in numbers. The Peorias removed to the Indian Territory soon after the treaty of 1867, and are described by the Commissioner in 1872 as intelligent, well advanced in civilization, and successful in raising crops (p. 38). The Miamies then still in Kansas on their allotments are said, on page 32 of the same report, to be "greatly demoralized, their school has been abandoned, and their youth left destitute of educational advantages." The Commissioner adds that "considerable trouble has been for years caused by white settlers locating aggressively on lands belonging to these Indians, no effort for their exclusion having been thus far successful."

One fact in connection with Miami lands which is stated on pages 144 and 145 of the report for 1874 is worthy of notice. A portion of them, amounting to 2,493 acres, were advertised for sale by order of the Secretary of the Interior on the 4th November, 1873; 165 acres were sold, for which the amount received was $1,823.56, from which of course was deducted the expense incurred in advertising. By a curious coincidence *the cost of advertising amounted to precisely the same sum!* The land brought $1,823.56 and the advertising bills were $1,823.56. It is true that only 165 acres were sold out of 2,493 offered. But it must have struck the Miamies that selling land was expensive, if 75 cents an acre had to be paid for advertising it.

In March, 1873, an act was passed to abolish the tribal relations of the Miamies, under which separate lists were to be made on the one hand of those who wished to become citizens, and on the other hand of those desiring to join the Peorias in the Indian Territory. Under that act, out of the remnant of 106 representing the 500 Miamies who emigrated in 1846, thirty-four became citizens, and seventy-two were placed on the Indian list to join the "United Peorias and Miamies."

"The good effect of this consolidation," says their agent in 1877, "has been seen in the energy with which they have been engaged in enlarging old and making new improvements. * * * They have good houses and barns, and many large farms well-stocked with cattle, horses, and hogs. Their children have attended school with regularity, the attendance aggregating 87" out of a population of 202 (p. 103).

POTTAWATOMIES.

But of all the experiments in citizenship and tenure in severalty, the one which is on the whole the most instructive is that tried upon the Pottawatomies, as for a while it promised to be eminently successful.

Their treaty of November 15, 1861, before referred to as providing for a sale to a railroad company, assigned land in severalty to those desiring it, while others were to hold, as before, in common. Those who received patents might at the same time become citizens. In

February, 1867, another treaty was made, looking to homes in the Indian Territory, and requiring a registration of those desiring to go to the new reservation and of those wishing to remain and become citizens. Under that provision more than three-fourths of them did become citizens, not all at once, but gradually. Of the first 600 who had thus registered the report for 1868 says, on page 255, that they "comprise the most industrious and intelligent of the tribe, and will make useful and respected citizens."

The report for 1869 (p. 33) speaks of the same Indians as "well educated and successful farmers."

In 1870 (p. 275) "a large number of those who have received land in severalty are proving themselves worthy of the high trust." They have "large cultivated fields, fine dwellings, and numerous herds of improved stocks of cattle, horses, hogs, &c., all bearing testimony to the wisdom of their choice."

In 1871 the accounts begin to change—speak of many of them as "good citizens, with large, fine stone and frame buildings for residences, barns and granaries, and some of the best fences around their fields; * * * many of them men of influence in church and state."

The agent adds, however:

> I regret to say that this is not the case with quite a large number of those who have thrown off their tribal relations. They now declare their act in becoming citizens to have been premature; in their sober moments say they were intoxicated with the idea of becoming citizens. They have squandered their land and money in gambling, drinking whisky, and other evil habits, and are now thrown upon their own resources as poor as the poorest (p. 496).

Superintendent Hoag, on page 460 of the same report, says of them that—

> A few have borne the change well and are prosperous; unfortunately a much larger proportion have retrograded into intemperance and poverty. The policy of allowing Indians to become citizens in the midst of white people is ruinous to the former, and should no longer be pursued. They are not usually able to withstand the corrupting influences which are thrown around them by designing and dishonest men, who cling to them like leeches until they have possessed themselves of all their property, and then abandon them to the charge of public or private charity.

The report for 1875 (p. 80) says that about 1,400 became citizens. "After having received and squandered their share of bountiful tribal funds they take refuge from white competition and taxes alongside their Sac and Fox brethren" on the Indian Territory.

Commissioner J. Q. Smith (p. xxv, report for 1876) speaks of "the Pottawatomies, who, after becoming citizens, squandered their substance, and have now returned as Indians *dependent upon the bounty of the government.*"

A letter from the Indian Office, dated January 14, 1878, to the Secretary of the Interior, states that "there are now 1,600 Pottawatomies, who have become citizens of the United States, residing in the Indian Territory," under an act approved May 23, 1872, providing that they shall neither acquire nor exercise, under the laws of the United States, any right or privileges in the Indian Territory other than those enjoyed by the members of the Indian tribes lawfully residing therein.

Of the Pottawatomies who have thus gone back to the Indian Territory on the footing of Indians, giving up their privileges as citizens, Commissioner Walker says, on page 39 of the report for 1872, "Most, if not all of them, are capable of taking care of themselves, and many of them are well educated, intelligent, and thrifty farmers."

DELAWARES.

This description seems to apply pretty generally to the Indians who declined to avail themselves of the privileges of citizenship. Out of over 1,000 Delawares having that right, according to Commissioner Walker (Ind. Question, p. 140), only twenty used it, the rest, numbering 1,005 (Report for 1869, p. 375), settled among the Cherokees as members of that tribe in 1869. The Cherokee agent says of them, on page 232 of the report for 1872, that "They are among our most industrious and enterprising citizens. Some of them are opening very large farms, and setting out orchards, and surrounding themselves with fine herds of horses and cattle." "They are now just finishing a beautiful house of worship. It is small, but will excel any house of worship in this nation as to style and general appearance. They have the means to pay for it already contributed by themselves. They are also taking great interest in personal religion and in education."

No one will pretend that such men are not competent to decide for themselves whether the tribal relation or citizenship is best suited to their wants, and whether or not their "very large farms" are sufficiently secure under the Indian title.

The same remark applies to various other tribes that preferred the Indian tenure, particularly to the Ottawas, who, as it has already been shown, were sufficiently intelligent to make extensive appropriations for education, and, after securing the privileges of citizenship, voluntarily abandoned them.

The Wyandotts, who returned from citizenship and severalty to their former tribal condition, are described in the reports, particularly in those for 1872 and 1875, as superior to the rest of their people in energy and intelligence.

KICKAPOOS.

Reference has already been made to the treaty of 1862 with the Kickapoos in connection with railroads. The same treaty provided for partition of lands, those receiving patents to become citizens, and a census to be taken, showing in a separate list those preferring to hold in common. To this latter class there belonged in 1872 (Rep., 387) 181, while 109 held by allotment. Commissioner Walker's "Indian Question" (p. 140) shows that 12 had become citizens, making a total of 302 in 1872, or 290 exclusive of citizens. The reports indicate a gradual reduction, the aggregate in 1877 being only 248. Whether the decrease is owing to recent citizens not enrolled, to stragglers, or to mortality arising from unfavorable surroundings in a white population, or any other cause, does not appear. In the report for 1877 (p. 119) the agent for these Indians says their treaty (of 1862) "established a division of interest between the allottees and those who hold in common, that in their present relations is prejudicial to both parties." He adds that several of the allottees have applied "to be received back in the reserve in common, and others seem to have abandoned the desire to receive head-money and become citizens." He thinks it would "be wise to place the parties making the request back into the tribe, and have the lands allotted to them appraised and sold, and the proceeds applied for the benefit of the tribe in common."

A similar division of interest and consequent ill-feeling among the

SHAWNEES

is indicated in the report for 1869 (p. 34), those holding in common not being on good terms with the "severalty Indians," the two classes being

created by the treaty of 1854. The latter class were then, in 1869, about to be, and have since been, incorporated in the Cherokee Nation.

Subsequent reports speak of constant encroachments upon the rights of both parties by intruders who "occupy and improve their fairest lands," the Indian owners being driven from their homes and appealing to the government for aid to keep them from actual starvation (1870, pp. 256 and 257). Similar statements appear in the report for 1871 (p. 461) and for 1873 (p. 200), the Indians being crowded out of reservations worth from $10 to $30 per acre, and compelled to seek homes as beggars in the Indian Territory.

The most striking instance of the impossibility of preserving Indian reservations from the aggressions of neighboring white settlers is that of the

SACS AND FOXES OF THE MISSISSIPPI,

who had their lands allotted in severalty under the treaty of 1859 In 1867 they made another treaty with a view to selling out their homes in Kansas and securing a tract in the Indian Territory, where they now live.

In the report for 1868 (p. 256), Superintendent Murphy says they have suffered many annoyances and losses from white settlers—so much so, that the military had to be sent to the reservation for their protection. He adds that "the reserve is still overrun with settlers who positively refuse to leave," setting at defiance all the authorities, as shown by the report for 1869, which says, on page 362:

> White men have taken possession of this reservation and have held it against President, Secretary of Interior, Commissioner of Indian Affairs, superintendent, agent, and the soldiers who have been sent there.

MICHIGAN INDIANS.

The cases of citizenship and tenure in severalty thus far considered have been confined to Kansas and the Indian Territory, those cited in Kansas numbering over 4,000, as will be seen by the subjoined table, p. 27.

The same experiment has been tried on a somewhat larger scale in Michigan upon the Ottawas and Chippewas, and the "Chippewas of Saginaw, Swan Creek, and Black River," comprising an aggregate population in 1875 of 7,695, more than half the aggregate of the fourteen bands specified in the table.

Commissioner Walker describes them in 1872 (p. 17) as "well advanced in civilization," with allotted lands for which they have received patents, and are "citizens of the United States." Those having no allotments can secure homesteads under the act of June 10, 1872.

Their agent, Richard M. Smith, who had known them twenty years, believes, in 1871 (p. 509), that their further advancement will be checked; that of over 8,000 Indians in Michigan very few are competent to take charge of their own affairs, and he speaks of heavy losses in land and timber immediately after the first issue of patents. He thinks the "general result will be an unnecessary amount of poverty and wretchedness, and hasten their utter extinction."

Subsequent reports in the main speak favorably of both tribes, giving precedence in point of civilization to the Chippewas of Saginaw, until the last, for 1877, when all but 600 out of a total of 2,500 in 1877 are said on page 122 to have sold their land, and "each band" has purchased elsewhere "a small tract," with a view to gardening in a small way, picking berries, making baskets, and fishing, "thus eking out an existence which,

if they could not have disposed of their lands," might have been made "comfortable." Others again are said to be working manfully on their farms.

On the same page the larger bands, the Ottawas and Chippewas, are said to be the most civilized from the fact of two hundred years of "intimate relations with the French," it being "really difficult to tell" one of this band from a Frenchman.

The opening of their unoccupied lands to homestead entry, the agent thinks, was "a great error, so far as the peace and well-being of these people was concerned." The Indians have "become discouraged, and think their labor will all be lost, their improvements and land taken from them as they have been in numerous cases. They do not work with that energy they otherwise would."

The statistical tables in the annual reports show an unmistakable decline in agricultural productions and in farm property in the years 1876 and 1877, as compared with former years.

All the accounts show a falling off in these two tribes in education.

Commissioner Walker states, in 1872 (p. 18), that in 1862 they had 30 schools with 1,068 scholars, while in 1872 there were but 8 schools with 323 scholars. The last report shows only 6 schools and 253 scholars. This was in a population of 10,056, as it included two other bands. The figures present a strong contrast to the statements respecting the small bands of Wyandotts, Ottawas, Peorias, Miamies, &c. of the Quapaw Agency in the Indian Territory, who to a population of 1,345 had 5 schools and 322 scholars. The later reports do not specify the schools in each separate tribe of Michigan Indians. In 1875 one of them, the Ottawas and Chippewas, are set down at a population of 6,115, with one school and 30 scholars. The details in the Quapaw Agency for that year are not given; but in 1877 they show 140 Ottawas of Blanchard's Fork with one school and 36 scholars, the difference in favor of those in the Indian Territory being in the ratio of 50 to 1.

Their agent, in the last report (p. 123), deplores the decline of the Michigan Indians in education—says very few of their children are receiving any instruction. They "are growing up in ignorance and consequently in vice."

WISCONSIN INDIANS.

Of the five remaining bands on the list of fourteen who have been made citizens, two are in Wisconsin, namely, the Brothertown Indians and the Stockbridges. Originally both were from New England. They afterwards lived more than fifty years in New York, and then bought land of the Menomonees in Wisconsin.

The Brothertowns state in a petition, dated December 27, 1830, on pages 206–9 of vol. 8 of "Indian Removals," that they are of the Mohegan, Montauck, Narragansett, Nahantic, and New England tribes, and that agriculture "has been the principal pursuit of ourselves and our ancestors for nearly one hundred and fifty years."

The same paper shows that there were then about 400 of them, living near Brothertown, New York.

By an act approved March 3, 1839, a partition of their lands was to be made by commissioners, composed of their principal headmen, "in such manner as shall be in accordance with existing laws, customs, usages, or agreements of said tribe." After the partition they were to be citizens. Governor Dodge says, in the Indian Office Report for 1843 (p. 174), that they are advancing rapidly; "for good husbandry cannot be surpassed

in Wisconsin," and there is no subsequent evidence to the contrary. The change in their case seems to have been in all respects for the better.

An act precisely similar was passed on the 3d March, 1843, for the benefit of the Stockbridge Indians, whose past history and antecedents had been substantially the same, and who it was said had an ardent desire to be made citizens of the republic. (Globe, December 26, 1842, p. 83.)

The effect of that act seems to have been simply to increase dissensions previously existing. It was repealed in August, 1846. Of the former act of 1843, Governor Dodge says, on the same page of the report above cited, "about half the tribe availed themselves of its provisions. The residue protested against its execution." He adds that the feelings of the parties were so highly excited that it became impossible for them to live together.

Eleven years later Superintendent Huebschman, contrasting the "Stockbridge" act with the one previously passed with such good results for the Brothertown Indians, says that "containing literally the same provisions" the consequences "were most disastrous to those whom it was intended to benefit" (Annual Report, 1854, p. 38), and Commissioner Manypenny, on p. 2 of the next year's report, says, "the Brothertowns on Lake Winnebago have, to some extent, been affected by the strife and bitter feelings among their neighbors; beyond this, are living comfortably."

To remedy all this trouble two treaties have since been made and several bills enacted by Congress. But the two parties of Stockbridge Indians, citizen and tribal, created by the act of 1843, still exist, as appears from the report for 1877. The only lesson to be learned from their case is substantially the same as that derived from the Wyandotts, the Kickapoos, and the Shawnees, that where there is any material difference of opinion in an Indian tribe on the question of either citizenship or division of land, any measure of enrollment which creates or classifies two parties has a tendency either to produce or to increase discord.

Of the three remaining bands, the Miamies in Indiana, the Winnebagoes in Minnesota, and the Santee Sioux at Flandreau in Dakota, no particulars are given respecting the

MIAMIES OF INDIANA

beyond the fact stated in the fourth article of their treaty of June 5, 1854, that there were then 302 of them, and the additional fact shown every year in the statistical reports that there is held on trust for them in the Treasury $221,257.86, upon which they receive annually 5 per cent.

WINNEBAGOES OF MINNESOTA.

In the report for 1877, page 149, the Winnebago agent says that 160 half-breeds remaining in Minnesota in 1863 have been paid their proportion of the Winnebago funds, being doubtless those referred to on page 20 of the report for 1871 as having become citizens. Complaint is made in the last report of injustice being done to the tribe in the distribution, but nothing is said of its effect upon the recipients, or of their condition as citizens, whether it has proved to be an advantage or not.

SIOUX OF FLANDREAU.

The sixth article of a treaty concluded April 29, 1868, with the "different bands of the Sioux Nation," permits any one belonging to that

nation to select a homestead to be held by certificate, and after three years' occupation, by patent, the holder to become a citizen of the United States.

In March, 1869, twenty-five families of "Santee" Sioux selected 160 acres each, under that article, on Big Sioux River, in Dakota. Commissioner E. P. Smith gives a favorable account of their proceedings in the report for 1874, pp. 41, 42. The report for 1877, pages 58 and 59, describes them as doing well, though they are still receiving aid from the government, having lost several crops by grasshoppers. Their agent thinks it will not be long before the government care over them will be confined to their education.

So long as they *do* require aid and the supervision of an agent, the experiment can hardly be regarded as complete.

But assuming that they have passed the ordeal, and in all respects successfully, it should be remembered that the treaty under which they became citizens has been in force ten years, and makes the same provision for the entire race of Sioux Indians, numbering 55,044, as shown by the report for 1875, while the Flandreau band are rated at 359. It is true that the report for 1877 varies the proportions by putting the latter at 364 and the former at 33,783.* The number even among the Sioux who could stand the test of citizenship with homes in fee-simple is doubtless very much larger than 364.

The table subjoined enumerates fourteen bands or tribes upon which the experiment of citizenship with tenure in severalty has been tried. Out of these fourteen there is no evidence in the reports of the Commissioner of Indian Affairs to show that it has been completely successful in more than one—the Brothertown band, in Wisconsin. The Sioux of Flandreau may and probably will ultimately succeed in taking care of themselves. For the present they need government help. Of the Miamies in Indiana, and the Winnebago half-breeds in Minnesota, no accounts are given. Assuming that with them the change was in all respects beneficial, and adding them to the Flandreau Sioux and the Brothertown Indians, gives a total of four cases of success out of fourteen—the four giving a total of 1,226, out of an aggregate of 13,653—1,226 cases of success against 12,427 cases of failure.

*Pages 390 and 396, Rep. for 1877. It is not easy to tell from the reports which bands are and which are not "Sioux," but the figures in the text are believed to represent the "tables" correctly.

List of Indian tribes made citizens in whole or in part, showing the treaty or act of Congress authorizing or recognizing such citizenship, the aggregate number of each tribe or band, and the authority for stating such aggregate number.

Name of tribe or band.	Location when made citizens.	By what act or treaty made citizens.	Whole number of tribe or band.	Authority for stating number.
Brothertown	Wisconsin	Act March 3, 1839	400	8th Indian Removals, p. 206.*
Stockbridge	do	Act March 3, 1843	338	Indian Office Report for 1865.*
Ottawas and Chippewas	Michigan	Treaty July 31, 1855	6,115	Indian Office Report for 1875, p. 51.
Chippewas of Saginaw	do	Treaty August 2, 1855	1,580	Do.
Wyandotts	Kansas	Treaty March 1, 1855	554	Indian Office Report for 1855—pay-roll, 1854.
Ottawas of Blanchard's Fork	do	Treaty June 24, 1862	207	Indian Office Report for 1861.
Peorias	do	Treaties May 30, 1854, and February 23, 1867.	242	Revised Indian Treaties, pp. 430, 431, and 432.
Pottawatomies	do	Treaty November 15, 1861	2,050	Indian Office Report for 1877, p. 118—450 as a tribe in Kansas. Indian Office letter, January 14, 1878†—1,600 "citizens" in Indian Territory.
Kickapoos	do	Treaty June 28, 1862	344	Indian Office Report for 1855—pay-roll, 1854.
Delawares	do	Treaty July 4, 1866	902	Indian Office Report for 1855.
Miamies	do	Act March 31, 1873	95	Indian Office Report for 1872, p. 31.
Do	Indiana	Treaty June 5, 1854	302	Revision Indian Treaties, p. 516.
Winnebagoes	Minnesota	Act July 15, 1870	160	Indian Office Report for 1871, p. 20.
Sioux of Flandreau	Dakota	Treaty April 29, 1868	364	Indian Office Report for 1877.
Aggregate population of bands made citizens in whole or in part			13,653	

* On page 556 of 7 Statutes at Large the number of Brothertown Indians is stated at 360; of Stockbridge and Munsees, at 349.
† Printed in the "Argument of Col. E. C. Boudinot before the Committee on Territories, January 29, 1878."

It is not pretended that these figures are strictly accurate. They are taken chiefly from the annual reports of the Indian Office, which are often contradictory; but they represent faithfully the general spirit of those reports. Take for example the

MICHIGAN INDIANS,

the Ottawas and Chippewas, and the Chippewas of Saginaw; the statements concerning them vary materially. The latter are sometimes said to number 1,580, sometimes 2,000, sometimes 2,500; to avoid any possibility of exaggeration, the lowest number is given. Again, there are doubtless in both tribes individuals, perhaps a great many of them, who have been benefited by the change; but the accounts show unmistakably that as a whole they have been injured.

In four successive reports the Chippewas of Saginaw are described as the most civilized Indians in Michigan. Those for 1876 and 1877 show that they are retrograding, and in 1877 the front rank is given to another band, the Ottawas and Chippewas, who, in their turn, are represented as losing heavily in property from the moment they had the control of their own affairs, and are said, in all the accounts, to be declining in education and intelligence. Both tribes are still under an agent. Three different persons have acted in that capacity during the last eight years. All three evidently wish to show the Indians in the most favorable light, but only one of them, Mr. Betts, claims any real progress. In his letters to the Indian Office, in 1874, and to the Board of Indian Commissioners, 1874 and 1875, he takes great credit to himself for their improvement over all former years, production being largely increased by his judicious expenditures of school funds for cattle, seeds, and farming implements. (Rep., 1874, p. 185.) He is convinced that money spent for them by an agent does five times as much good as if spent by themselves, which may be true, but is not consistent with the spirit of his letter to the Board of Indian Commissioners, two months later (November 21, 1874), quoted on page 8 of their report for 1874, to the effect that Indians thrown on their own resources make the better advancement in civilization, and that the policy of reservations and annuities is a stupendous failure, the "satisfactory results" among the Chippewas of Saginaw, and their "gratifying advance beyond any previous year," being due, as he tells the Indian Office, to his own expenditure of annuity moneys. (Report, 1874, p. 185.)

In 1875 he writes to the Board of Indian Commissioners (Rep., p. 106) that he had their lands allotted to them in severalty, which "has been an advantage to them. * * * Some shiftless ones have sold their lands, but white men have taken these lands and benefited the Indians by their example and showing them what can be done, and how to do it, in the way of farming; so that, though some have squandered their land, yet on the whole the Indians are the gainers."

Notwithstanding the "gratifying advance" effected by Mr. Betts, and the benefits gained by "squandering" their lands, none of the annual reports indicates any actual progress in either band as a whole, and the statistical tables show a change for the worse.

So far, then, as the 13,000 Indians enumerated in the table are concerned, 12,000 of them have been worsted by dissolving their tribal relations, becoming citizens, and holding their land in severalty; or, more accurately, the failures amount to 12,427 against 764 cases of reported success, and 462 from which no reports have been received, and in which success is therefore inferred.

On the other hand, the cases of improvement and progress under the opposite system of tribal relations and tenure in common are numerous and striking.

CANADIAN INDIANS.

The policy of the British Government in its dealings with American Indians has generally been regarded as eminently successful. A report upon the means employed in promoting their civilization was made by the United States consul at Hamilton, Ontario, in 1870, which was printed as Mis. Doc. 35, H. R., second session, Forty-first Congress. From that report it appears that the Canadian Parliament had repeatedly tendered citizenship on certain conditions to Indians desiring it, who could secure with it fifty acres of land and proportionate share of tribal funds, but would forfeit the right to a further voice in tribal proceedings. So far as the consul could learn, all such plans were likely to prove nugatory. He adds that—

> Hitherto the original system of government by the Indians themselves, as well as the policy adopted toward them, has tended to maintain the improvident as well as the careful and industrious; to check the accumulation of wealth in the hands of individuals as well as to prevent the extreme of poverty.
>
> Those who are impatient of the slow progress made towards civilization will see reason to moderate their ardor when they reflect upon the long lapse of the many centuries through which our own race has attained its present pre-eminence (p. 32).

On pages 5, 6, and 7 are accounts of the condition of the Six Nations, whose council-house near Brantford he visited. He says, "in dress, cleanliness, intelligence, and other marks of condition and character, the assemblage was at least equal to that of an ordinary town meeting in a good agricultural region." The Indians informed him (p. 8), through an interpreter, "that they were pagans, and yet adhered to their ancient institutions, holding the same opinion and practicing the same observances regarding religion and the Great Spirit as had been handed down to them from time immemorial."

These are the Indians described in the printed argument of the attorney for the railroad companies, Mr. Gardiner G. Hubbard,* as "the most civilized." Next to them he places the New York Indians; then the Indians of Wisconsin and Michigan, already referred to; and then the five nations inhabiting the Indian Territory. Following his classification, next to the Indians of Brantford, in Canada, are the

NEW YORK INDIANS.

It appears from the annual reports that efforts substantially the same as those tried in Canada have been made to induce the New York Indians to abandon the tribal character, become citizens, and to hold their lands by separate individual titles, and that they have shown the same reluctance to change as that evinced by the Canadian Indians.

Commissioner Walker, in the report for 1872, speaks in high terms of their progress in education and in agricultural skill, but says, "all six reserves are held and occupied by the Indians in common" (p. 16).

In the report for 1873 the agent, Mr. Sherman, replies to the question of Commissioner E. P. Smith, whether they are not prepared for citizenship, and whether steps should not be taken to bring them in condition with other people of New York. The reply resembles in character one of the objections urged by the Indians in the Territory, that their title depends upon the occupation of their lands as a tribe (page 174, Report for 1873).

* Before the House Committee on Indian Affairs, 1st sess. 44th Congress.

The State of New York, he says, passed in 1847 a judicious law providing for allotment of Indian lands. But they have been averse to the system, fearing it might prove an entering-wedge to dispossess them. In 1872 (Rep., p. 200) the law was still in force; but the Indians do not avail themselves of its provisions.

The Tuscaroras, according to the same report (p. 201), have the best regulations for division of lands and protection of timber. The improved lands are "practically allotted to the individual adult Indians in fee, who can buy and sell only as between themselves."

Substantially the same "regulation" exists among the five principal nations in the Indian Territory. "Improvements" are owned by individual Indians or citizens of the tribe, and may be bought and sold only as between themselves.

Whatever their system may be, that it works well with the New York Indians is fully demonstrated by the annual reports of the Indian Bureau and of the Board of Indian Commissioners.

The Indian Office reports show in the statistical tables a gradual progressive increase in agricultural productions since 1871, when the production of grain and vegetables amounted to 150,255 bushels, besides 4,200 tons of hay, the aggregate of acres cultivated being 19,122; while in 1877 the number of bushels was 233,900, the hay 5,150 tons, and the acres cultivated 22,000. This was exclusive of fruit, which, in 1871, is stated to be 4,500 bushels of choice varieties of winter apples. In 1872 "one Indian on the Tuscarora Reservation realized a profit of $2,000 on the sale of peaches alone."

In 1873 10,000 bushels winter apples were sold.

In the same year the Board of Indian Commissioners speaks of one Indian, on his own farm, besides large crops of grain, having 500 bushels apples and 300 bushels peaches, besides other fruit, and owning 2 reapers, 1 mower, and 2 thrashing-machines. The same board, in its report for 1874 (p. 74), gives the account of an inspecting visit by its secretary, in which he says, "It is surprising that they have done so much; that they have cleared and cultivated and improved lands which they do not own as individuals—whose tenure is not even secured to themselves by any law."

In its report for 1875, page 105, is the statement of the agent, Mr. Sherman, that the Indian population in his agency has increased 866 during the past ten years, and their wealth in individual property nearly doubled in the same time.

This last statement was based upon the State census returns, from which many details are furnished by the agent, as appears from the report for 1875, page 336. The number of Indians in 1875 was 4,955. They cultivated 22,989 acres, and raised, in 1874, 60,461 bushels of corn, 49,229 of oats, 12,906 of wheat, 57,648 of potatoes, 1,514 of pease, 1,266 of beans, and 3,490 tons of hay. They have 15,791 apple-trees, and raised, in 1874, 6,844 bushels of apples, besides peaches, pears, and grapes of choice varieties in considerable quantities. They held, in 1875, annual fairs for exhibiting stock, grain, and vegetables upon Cattaraugus, Tonawanda, and Onondaga Reservations. They cultivate 7,511 more acres than in 1865.

On comparing the accounts of the New York Indians for the last seven years with those for the same period of the Michigan Indians, who are citizens and hold in severalty, it will be found that while the former have been steadily going up, the latter have been as steadily going down.

4,906	New York Indians had,	in 1871,	28	schools,	940	scholars.
5,041	do.	do.	"	" 1877,	29 "	1,106 do.

An increase of 17 per cent. in the number of scholars.

8,685 Michigan Indians had, in 1871, 10 schools, 377 scholars.
10,056 do. do. " " 1877, 6 do. 258 do.

A falling off of nearly a third in the number of scholars.

The produce in grain and vegetables was—

In 1871, of 4,906 New York Indians, 150,255 bushels.
In 1877, of 5,041 do. do. 233,900 do.

An increase of over one-half; and—

In 1871, of 8,685 Michigan Indians, 135,914 bushels.
In 1877, of 10,056 do. do. 52,750 do.

A falling off of nearly two-thirds.

The New York Indians also cut from four to five thousand tons of hay each year. The Michigan Indians cut 5,000 in 1871, and then dropped gradually down every year till the amount was reduced to 1,000 tons. Their farm animals fell off in a still greater ratio. In 1871 they owned 9,085 horses, cattle, and hogs; in 1877, only 1,050.

Comparing them with some of the bands in the Indian Territory, it appears that the Seminoles numbered 2,300 in 1871 and 2,443 in 1877.

In 1871, cultivated 7,500 acres; raised 150,000 bushels corn; owned 34,500 animals.
In 1877, do. 13,000 do. do. 253,400 do. do. do. 44,650 do.

Indicating decided progress.

The reports from the several bands in the Quapaw Agency show, in some respects, still greater progress, the production of grain being more than three times as much in 1877 as it was in 1871.

The accounts of the Michigan Indians are furnished in part by one who had long known them, first as superintendent of missions, then four years as agent, and who wished to make a favorable impression—prides himself on the "gratifying advance" theyhad made under his supervission. Yet during those four years the reports show a diminished production in bushels, the aggregate being—

In 1872, of corn, 33,530 bushels; oats, 21,550 bushels; potatoes, 92,025 bushels.
In 1875, " do. 12,200 do. do. 10,150 do. do. 81,380 do.

The "gratifying advance" was in the single item of wheat, 7,550 bushels in 1875, against 5,400 bushels in 1872.

On the other hand, in the Fourth Annual Report of the Board of Indian Commissioners for 1872, page 152, is a statement in detail showing the progress made during the preceding four years by the Indians in the Indian Territory, not including the five leading tribes, but restricted to those designated on page 14 of the same report as uncivilized. It shows a considerable increase in production and live stock. It was prepared for and submitted by the executive committee of the Society of Friends to illustrate the good effect of the peace policy. It shows that the crop for 1872 is "increased about sevenfold over that of 1868, while the quantity and variety of their farm and garden products generally are largely increased also. The simple fact that they own ten times the number of cattle and hogs which they had four years ago, indicates an appreciation that their true interest lies in giving up the chase and pursuing the peaceful industries of civilized life." Their actual condition in 1872, as compared with others in the Territory, is exhibited on page 14 of the same report, which gives their average cultivation, production, and stock animals in a table containing similar details respecting the five tribes designated as "civilized," and contrasting them with the other twenty-one who are classed as "uncivilized."

These statements reduced to a per capita average show that as compared with their uncivilized neighbors the five nations in 1872 cultivated twelve times as many acres, raised more than twelve times as many

bushels of grain and vegetables, and owned more than three times as many animals in proportion to their relative number.

On examining the subsequent returns, the "carefully compiled" statistical tables in the annual reports of the Indian Office, referred to and relied upon by the Board of Indian Commissioners in their eighth and ninth reports, they will be found to contradict the assertion of page 7 of the ninth report that "It is too plain for argument that no people will make real progress in civilization without the incentive to labor and enterprise that the right to individual ownership to property inspires."

So far from this being true, the statistics prove that the only "real progress in civilization" ever made by any considerable number of North American Indians has been made by those holding land in common—a fact which seems to have been completely ignored by the board and by the several heads of the Indian Bureau and Interior Department, who have so often recommended the division of Indian lands.

The present condition of tribes holding in common, as compared with those holding in severalty, may be seen by the following exhibit compiled from the statistical tables in the Indian Office Report for 1877:

1.—*Statistics showing population, schools, and general condition of the—*

	Aggregate Indian tribes in the United States.	Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles.	New York Indians.	Nebraska Indians.	Michigan Indians.
Population	250, 809	56, 715	5, 041	3, 989	10, 056
Number that wear citizens' dress	112, 903	All.....	All.....	2, 533	Not stated.
Number of houses occupied	22, 199	12, 530	925	420	1, 000
Number of schools	330	180	29	15	6
Number of teachers	437	196	32	29	6
Number of scholars	12, 415	5, 496	*1, 106	398	253
Money spent in education	$337, 379	$137, 775	*$12, 892	†$21, 987	$2, 573
Number of Indians who can read	40, 397	31, 000	1, 718	722	600
Number of church buildings	207	102	10	5	13

*These Indians have the benefit of the New York school system. $8,916 of the money spent for their schools is paid by the State.

†More than half of this sum is expended by the government for the Santee Sioux, who number 744, less than one-fifth of the aggregate of 3,989 included in this column. One hundred and seventy of the 398 at school belong to that band.

2.—*Statistics showing acres cultivated, farm products, and stock animals owned by—*

	Aggregate Indian tribes in the United States.	Cherokees, Chickasaws, Creeks, and Seminoles.*	New York Indians.	Nebraska Indians.	Michigan Indians.
Population	250, 809	*40, 715	5, 041	3, 989	10, 056
Acres cultivated	292, 550	182, 000	22, 000	5, 933	2, 000
Bushels grain raised	5, 759, 380	4, 462, 400	152, 900	117, 520	20, 700
Bushels vegetables raised	578, 974	243, 000	81, 000	17, 205	32, 050
Tons of hay cut	153, 247	112, 000	5, 150	2, 250	1, 000
Horses and mules owned	209, 021	38, 925	990	2, 167	500
Cattle owned	217, 883	168, 000	2, 224	518	250
Hogs owned	121, 358	95, 000	2, 000	766	300

*The Choctaws are not included in any part of this column, as they are omitted in the agricultural statistics for 1877. Former reports show that they do not materially differ from the other four of the "Five Nations."

On analyzing the foregoing tables, compiled from the report of the Commissioner of Indian Affairs for 1877, page 288 to page 317, it will be found that among the different classes enumerated—

There are, for every thousand Indians—	Houses to live in.	Indians wearing citizens' dress.	Indians who can read.	Children at school.	Dollars spent for education.
Of the aggregate Indian population of the United States	89	450	160	50	$1,345
Of the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles	221	1,000	548	96	2,420
Of the New York Indians	183	1,000	341	220	*2,500
Of the Nebraska Indians	105	625	180	100	*5,500
Of the Michigan Indians	100	(†)	60	25	250

*See note to foregoing table, "Statistics," No. 1. †Not stated.

And that in the same ratio there are—

For every thousand of the—	Acres cultivated.	Bushels grain raised.	Bushels vegetables raised.	Tons of hay cut.	Horses owned.	Cattle owned.	Hogs owned.
Aggregate Indian population of United States	1,160	22,960	2,300	600	800	889	480
Cherokees, Chickasaws, Creeks, and Seminoles	4,470	111,070	5,960	2,750	950	4,120	2,330
New York Indians	4,400	30,330	16,070	1,020	190	440	390
Nebraska Indians	1,500	29,400	4,400	560	540	130	190
Michigan Indians	200	2,050	3,180	100	50	25	30

Or to give a clearer view of the whole by contrasting the two extremes of the foregoing tables with the general average of all the United States Indians, and regarding the Michigan Indians as the unit or standard of comparison, the official returns show in matters of education a relative grade in—

Ability to read:	Michigan Indians,	1.	00.	Average U. S. Indians,	2.	66.	Five Nations,	9.	00.
Children at school:	do.	do.	1. 00.	do.	do.	1. 44.	do.	do.	3. 84.
School expenditure:	do.	do.	1. 00.	do.	do.	5. 38.	do.	do.	9. 68.

In agriculture—

Acres cultivated:	Michigan Indians,	1.		Average U. S. Indians,	5.		Five Nations,	22.	
Grain raised:	do.	do.	1.	do.	do.	11.	do.	do.	55.
Hay cut:	do.	do.	1.	do.	do.	6.	do.	do.	27.
Horses:	do.	do.	1.	do.	do.	16.	do.	do.	19.
Cattle:	do.	do.	1.	do.	do.	35.	do.	do.	165.
Hogs:	do.	do.	1.	do.	do.	16.	do.	do.	77.

These figures speak for themselves. They show that the only one of the classes specified that contains any large proportion of "citizens" holding lands by separate titles is the class which stands lowest under nine heads out of the twelve analyzed. Of the remaining three, they are somewhat above the average in the number of dwelling-houses and the production of vegetables. How they dress is not stated.

On the other hand, the class which stands at the head of nearly every division, and is really at the head of them all, the Five Nations, have made all their progress under the system of tribal relations and tenure in common.

The extent of that progress is summed up by the Board of Indian Commissioners in its report for 1872, page 13. After stating that they "had their lands devastated and their industries paralyzed during the war of the rebellion in the same relative proportion as other parts of the South, and have not fully recovered from the effects," the Board adds that "the partially civilized tribes (the Five Nations), numbering about

fifty thousand souls, have, in proportion to population, more schools and with a larger average of attendance, more churches, church-members, and ministers, and spend far more of their own money for education than the people of any Territory of the United States. Life and property are more safe among them; and there are fewer violations of law than in the other Territories."

One other class, the

NEBRASKA GROUP,

consists of six different tribes, one of which, the Winnebago, holds its lands by patents issued to individuals in 1870. Yet it will be found on inspecting the Indian Office tables that the Winnebagoes are considerably below the average of the Nebraska Indians, while another of the six tribes, the Iowas, who hold in common, are not only above that average, but are equal in some respects to the Five Nations and to the New York Indians, and in most points superior to the Flandreaux Sioux.

As this latter band only number 364, it is not included in the foregoing exhibits. In the tables relating to education, &c., it stands on the whole as high as any other. In stock animals, acres cultivated, and grain produced, it is below, in other agricultural products above, the Nebraska group.

SCHOOL EXPENDITURES.

The school statistics are calculated to make a wrong impression in failing to show how the expenses are paid. The New York Indians have 220 children at school for every 1,000 of aggregate population. But the cost is borne chiefly by the State of New York, which extends to its Indian population the benefits of its school system. The Five Nations support their schools out of their own funds, the Cherokees and Choctaws having taken the lead in making special provision for that purpose as far back as their treaties of 1819 and 1820. Many of their children sent abroad to be educated are not included in the returns. Their aggregate expenditure for such purposes in 1877 was $137,775,* for a total population of 56,715, being nearly $2.50 per head. The aggregate expenditure in the United States for such purposes for 1876 was $84,005,333, being a little over $2 per capita.

The principal tribes in Michigan, the Ottawas and Chippewas, have no educational funds. It appears from the reports that their annuities have expired, and, being dependent upon church aid for instruction, they were not in 1872, according to Agent Betts, "in as encouraging a condition as they have been on account of a decline in the missionary enthusiasm."

More attention has been paid to these Indians than to any other, for the obvious reason that they include the largest number upon whom the experiments of citizenship have been tried, and also because they have been referred to in the reports of the Board of Indian Commissioners for 1874 as having "fully demonstrated the wisdom" of the policy of citizenship and severalty, and "abolishing all tribal relations." (Sixth Report, p. 17.)

It has been shown in the foregoing pages that the official returns do not confirm this view of the case. The full text of the annual reports of their agents indicates very plainly that such progress as they have made in civilization was made under the tribal system and before the division of their lands, and that since that division they have retrograded and in a measure gone back to the fishing pursuits, from which it seems to

* The delegates say the actual expenditure is much larger.

have been the object of their agent to divert them, and which the Indian Bureau has excluded from its statistical indications of improvement.

CHEROKEE, CHOCTAW, AND CREEK EXPERIENCE.

Besides the facts which appear in the statistical tables, others pointing the same way are referred to in the following extract from the memorial presented by the Indian delegates April 22, 1878:

> It is the conviction that disastrous consequences would result from the proposed changes which causes the nearly unanimous opposition to such measures on the part of the Five Nations. Their own experience tells them exactly what the system of allotment and citizenship means. Provisions for that purpose were made in the treaties of 1817 and 1819 with the Cherokees, of 1830 with the Choctaws, and of 1832 with the Creeks. Hundreds of Indians entitled to patents for land under those treaties have never secured a single acre. Many more whose rights were recognized by the government were shamefully wronged by the whites, and have to this day been unable to obtain relief or redress.

Allusion has been made on page 14 to these reservations. Further particulars concerning them are found in a letter from the Commissioner of Indian Affairs of January 14, 1878, who states in reply to questions of Hon. D. W. Voorhees respecting Cherokee and Choctaw reservations that 306 Cherokees took reservations under their treaty of 1817, "nearly all of whom, however, were deprived of the same by State laws, as was the case in Georgia, or by the general government."

He also states "that there were about 1,349 reservations taken under the fourteenth article of the Choctaw treaty of 1830, but the Indians were forced to abandon the larger portion of these reservations, and take land scrip in lieu thereof, under the provisions of the act of Congress approved August 23, 1842."

The second article of the Creek treaty of 1832 provides for the division of their lands east of the Mississippi. Each family was to have half a section.

The proceedings in the House of Representatives reported in the Globe of July 1, 1836, pages 479 and 480, indicate that the frauds practiced upon the Creek Indians in connection with these reservations had driven them into "a state of hostility, of actual war." A resolution was adopted requesting the President to investigate the frauds.

Commissioners were appointed for the purpose, but the result of their labors does not appear to have been printed.

These Cherokee, Choctaw, and Creek experiences of the efforts of individual Indians to hold land in severalty all occurred in their old homes east of the Mississippi, and account in a great measure for their strong aversion to any further experiments in the same direction.

The word "reservations" in their treaties refers to land "reserved" and to be secured for individual Indians or families out of cessions to the United States made by the nation of which they were members. As now used it is generally applied to tracts set apart by the United States for tribes or bands collectively.

And to prevent misapprehension, it should be remembered that the phrase "tenure in common," and all the references thereto in this paper, as distinguished from "tenure in severalty," relate exclusively to *title*, and not to *occupancy*.

The houses, farms, and other improvements of the Five Nations, and other Indians who have made any substantial progress in civilization, are owned and occupied, bought and sold among themselves just as such property would be among white people in any of the States. The ownership of the land, as distinguished from the improvements, is in the nation of which those claiming the improvements are citizens. Experience, they

insist, has shown that it is better for all concerned that the ownership should still be so held, and that a transfer of title to individuals would be injurious in its effects.

EFFECT OF CHANGE IN TENURE UPON INDIAN TITLES.

The delegates also urge in their memorial that such a transfer would lead to a conflict with railroad companies claiming land-grants. They say that—

Another serious objection to the proposed system of allotment and citizenship is found in the litigation which in case it is adopted must necessarily result from the land-grants to railroads running through the Indian Territory to take effect "whenever the Indian title shall be extinguished by treaty or otherwise."

The Indian title is held by each nation over whose land the railroads pass. It will of course be contended—

First, that when any one of those nations by the dissolution of its tribal relations ceases to exist; or,

Second, when its title is transferred from the nation holding in common to individual members holding in severalty who have become citizens of the United States, and have thus practically ceased to be Indians, that the "Indian title" will necessarily be extinguished.

Their comments on this danger and on the nature of their tenure embody a correct idea of the title by which the Five Nations hold their country, and of the protection intended to be secured by its peculiar features:

While deprecating any action that might lead to such litigation, the undersigned wish to place on record the conviction universally prevailing among their people that the Indian title rests on too firm a basis to permit them to doubt the ultimate result of a judicial test. It is true that they regard the railroad land-grants as a perpetual menace to the owners of the soil, and feel that they have been the main cause of the majority of the Territorial bills introduced during the last ten years. That the grants do harm rather than good, the companies claiming them have begun to discover, and have signified their willingness to have them repealed. The undersigned trust that they will be, and that Congress will relieve their people from further risk of annoyance on that account.

But whether those grants are repealed or not, the undersigned feel confident that the courts will never decide that the Indian owners can be deprived of the soil without their own consent.

Whatever words may have occasionally been used in describing the Indian title, on carefully sifting the controlling decisions, they will be found to concur in the opinion that the government interest in Indian lands is simply a right of pre-emption, or rather of purchase, and the history of the country from its earliest settlement shows that such lands have almost invariably been acquired by purchase from the original owners.

The transfer of the main body of the southern nations to their present homes was preceded by the act of Congress of May 28, 1830, authorizing an exchange of territory based upon the idea of perpetual possession, with the assurance to the "tribe or nation making the exchange that the United States will forever secure and guarantee to them and their heirs and successors the country so exchanged."

The same idea runs through the treaties made immediately before and after that act. The preamble to the treaty of 1828 expresses the "anxious desire" of the government to secure to the Cherokees "a permanent home which shall, under the most solemn guarantees, remain theirs forever." Its second article agrees "to guarantee it to them forever."

The preamble to the Creek treaty of 1833 states its objects to be to establish boundaries which will "secure a permanent home to the whole Creek Nation and to the Seminoles"; and the same idea is expressed in the third and fourth articles of the treaty. The Choctaw title rests on the same basis of perpetuity, though its history is materially different. Their country was acquired by the second article of the treaty of 1820, which makes an unqualified grant, without limitation or restriction of any kind. (7 Statutes, 211.) In 1837 they sold an undivided interest in the same to the Chickasaws.

In 1855 a treaty was made between the Choctaws, the Chickasaws, and the United States, by which the title was changed. The grant of 1820 was from the United States to the Choctaw Nation. The treaty of 1855 "forever secures and guarantees" their lands to "the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole."

Before this transfer to the "members of the Choctaw and Chickasaw tribes" two patents had been issued to the Choctaw Nation, one by President Jackson, the other by President Tyler under the treaty of 1830, which provides for a special conveyance of the country previously granted in 1820. These patents conform to the treaty under which they were issued in describing a smaller area and in certain restrictions not in the original grant; but they had no effect in injuring the Choctaw title, as the binding force and superior validity of the treaty of 1820, which was made under authority previously given by Congress, and under which the higher grade of title was acquired, was in various ways acknowledged both by Congress and the treaty-making power down to 1855, when the convention between the Choctaws, the Chickasaws, and the United States, by its twenty-first article, was made to "supersede and take the place of all former treaties." Fortunately, that convention is so framed that, while providing for and recognizing to the fullest extent the national existence and government of both Choctaws and Chickasaws, their title is placed beyond the reach of interference in the event and because of tribal dissolution, should any such calamity befall them. So long as a single Choctaw or Chickasaw is left, or the heir or successor of a Choctaw or Chickasaw, and occupies the country described in the treaty of 1855 east of the ninety-eighth meridian, so long will the courts recognize and enforce the right to hold that country against all adverse claimants.

The qualifying words in the Choctaw and Chickasaw treaty, and in the other treaties herein referred to, as applied to their title, obviously mean nothing more than the general principle under which, in the absence of legal representatives, land always reverts to the State, and by which it may be lost through a failure to occupy. The history of Indian legislation from the first settlement of the country shows that the restrictions upon alienation were meant for the benefit of the Indian, having their origin in the desire to guard against danger from the designs of evil-disposed white men. The wisdom of retaining those restrictions and the ancient safeguard of tenure in common as a protection against fraudulent devices the undersigned cannot doubt will be appreciated by every member of Congress who carefully examines the subject. Such examinations cannot fail to show the evils of the allotment system and of the proposed disintegration by making citizens of such tribal members as may desire it, which can only serve to stimulate efforts in behalf of a few individuals to divide national funds held for the good of the whole.

The

CONCLUSIONS

arrived at by your committee are—

1. That the bill under consideration conflicts with existing treaty stipulations.

2. That while the right to decide in the last resort that a treaty is no longer binding is undoubtedly lodged in Congress, the exercise of that right is a judicial act affecting the honor and dignity of the nation, requiring for its justification reasons which commend themselves to the principles of equity and good conscience, particularly where the parties to the compact with the United States are weak and powerless and depend solely on the good faith of the government.

3. That no such reasons exist for violating the treaty stipulations which reserve the Indian Territory exclusively for Indians and which secure to the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles the right of self-government under the restrictions of the United States Constitution.

4. That even if there were no opposing treaty stipulations—no objections resting on good faith—it would be unwise and impolitic to throw the Indian country open to white settlers without the consent of the Indian owners.

5. That while official recommendations, some of them entitled to the highest respect, are strongly in favor of making Indians citizens of the United States, and transferring their land titles from the national tenure in common to the individual tenure in severalty, experience has shown that in the great majority of cases, such measures, instead of benefiting, have proved injurious to the Indian.

6. That experience fully demonstrates that the holding their lands in

common by the Indian tribes is an effectual safeguard against the worst effects of Indian improvidence. Apart from any considerations of justice or humanity it would be unwise and unstatesmanlike to adopt measures which, by destroying that safeguard, would be calculated to reduce the great mass of them, in opposition to their own earnest protests to a state of hopeless penury and degradation.

Respectfully submitted.

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