

TRUST FUNDS OF CHOCTAW INDIANS.

JANUARY 30, 1869.—Ordered to be printed.

Mr. MUNGEN, from the Committee on Indian Affairs, made the following

MINORITY REPORT.

The minority of the Committee on Indian Affairs, to whom was referred Senate joint resolution No. 18, beg leave to report:

That the bill reported by the majority of the committee proposes to sell certain securities held by the United States, under treaty stipulations, in trust for the Choctaw Indians, for the purpose of paying off claims set up by Joseph G. Heald, and Reuben Wright, and others, under the 49th and 50th articles or sections of the treaty of April 28, 1866, with the Choctaws and Chickasaws.

The Choctaws have two funds of \$500,000 each; one derived through the convention between them and the Chickasaws of January 13, 1837, and ratified by the United States, nearly all of which was invested in Virginia State stocks, which, if they were to be sold now would have to be disposed of at a ruinous sacrifice. The other fund of \$500,000, derived from what has been denominated "leased lands," was never appropriated or invested by the United States government, but was retained in the treasury, the United States preferring to pay an annual rate of interest of 5 per cent. on the amount, that is \$25,000 per annum, equivalent to a perpetual annuity of that amount; an order, therefore, to the Secretary of the Treasury to sell \$180,000 or \$190,000, under both articles, of this fund is the same in effect as to make an appropriation of that sum to be paid out of the treasury of the United States. All these funds have been set apart by the Choctaws and Chickasaws to educational purposes, or made irreducible, and the 9th and 10th articles of the treaty of April 28, 1866, provides as follows:

ART. IX. Such sums of money as have, by virtue of treaties existing in the year 1861, been invested for the purposes of education, shall remain so invested, and the interest thereof shall be applied for the same purposes in such manner as shall be designated by the legislative authorities of the Choctaw and Chickasaw nations, respectively.

ART. X. The United States reaffirms all obligations arising out of treaty stipulations, or acts of legislation, with regard to the Choctaw and Chickasaw nations entered into prior to the late rebellion, and in force at that time, not inconsistent herewith, and further agree to renew the payment of all annuities, and other moneys, accruing under such treaty stipulations and acts of legislation, from and after the close of the fiscal year ending on the 30th of June, in the year 1866.

By an examination of the constitution of the Choctaw nation we find in article seven, section six, the following words:

No money shall be drawn from the treasury but in consequence of an appropriation made by law. No money from the treasury shall be appropriated to objects of internal improvements, unless a bill for that purpose shall be approved by two-thirds of both branches of the general council.

The treaty articles nine and ten above quoted provide that moneys invested, &c., shall remain in the treasury of the Choctaw nation. They provide that the interest may be used, but only in such manner as shall

be designated by the legislative authorities of the nation. If Congress pass this bill, and take money belonging to the Choctaws out of the funds referred to, it will, in the opinion of the minority, be in clear violation of treaty stipulations. The Choctaw nation never having by their legislature authorized even the appropriation of the interest, and the constitution of the nation being direct in its terms against the reduction of the principal of those funds, and the government of the United States being bound by the treaty of April 28, 1866, to see that moneys invested, and the interest thereof, &c., shall be applied for the same purposes, "in such manner as shall be designated by the legislative authorities of the Choctaw and Chickasaw nations respectively," the minority of the committee cannot consent to this appropriation of the fund as proposed by the bill reported from the committee.

Under the solemn treaty stipulations referred to, the minority doubt very much whether Congress has any right by legislative action to disturb these trusts. The treaty of 1866 makes provision for the settlement of large claims, by which it was expected that considerable sums of money would be paid by the United States to the Choctaws and Chickasaws, much more than enough to meet all their liabilities, without disturbing these funds so held in trust. The United States voluntarily assumed the guardianship of the Indian tribes, and in the exercise of such authority as guardian caused these moneys of the Choctaw nation to be so invested, the interest only to be used or expended for the education of the children, and support of the churches and government of the nation. It would, in the opinion of the minority of your committee, be an act of bad faith on the part of the United States, as such self-constituted guardian, to take the moneys of its wards thus sacredly invested for the promotion of their education and civilization, to pay a claim of doubtful justice, when at the same time the United States is largely indebted to those wards on other accounts.

The 50th article of the treaty of 1866 recites that Joseph G. Heald and Reuben Wright "were licensed traders in the Choctaw country, at the commencement of the rebellion, and claimed to have sustained large losses on account of said rebellion by the use of their property by said nation," &c., and then proceeds to provide for the appointment of a commission to investigate said claims, and to set aside a sum of money not exceeding \$90,000 to cover the amount to be allowed by said commissioners, "*provided*, that no claim for goods or property of any kind shall be allowed or paid, in whole or in part, which shall have been used by said nation, or any member thereof, in aid of the rebellion, with the consent of said claimant." The above recital that Heald and Wright were licensed traders at the time of the commencement of the rebellion is incorrect in point of fact. By reference to the records of the Indian office in Washington, it appears that the last license granted to J. G. Heald & Co., (F. E. Williams and Leonard B. Dow being the company,) was dated October 28, 1859, and approved December 7, 1859, and the last license granted to Reuben Wright was on the 28th day of January, 1858, and approved April 26, 1858. The licenses granted to traders are limited to 12 months, so that neither of these parties were licensed traders at the commencement of the rebellion, and consequently they were in the Indian country in violation of the intercourse acts of 1834, which established the rules for all such trading.

Under the 50th article of the treaty, Messrs. Rice and Jackson were appointed commissioners, and proceeded to Fort Smith, in the State of Arkansas, where they profess to have made the investigation required, and awarded the whole amount of \$90,000 to Heald and Wright. The

minority of your committee find that Messrs. Rice and Jackson made no such investigation as was contemplated by the 50th article of the treaty. The facts appear to be that several gentlemen of the Choctaw nation, sent here to negotiate the treaty under which the claim is made, and previous to the ratification of the treaty, agreed that the nation was indebted to the claimants, Heald and Wright, in the sums claimed, and an account of the items set out in their respective accounts. They excuse themselves to their nation for making such admission, by asserting that but for such admission they feared that what political influence Messrs. Heald and Wright could control with their very particular friend, the gentleman from Massachusetts, Mr. Boutwell, at the head, would be used to their injury in their pending negotiations with the United States.

Messrs. Rice and Jackson, doubtless honestly misled by the belief that such admissions were conclusive under the treaty, adopted them as evidence; and, so far as we can ascertain, the only further evidence they took or looked for under their commission was to show the items of their award to Hon. Allen Wright, one of the gentlemen who first made the admission, and had, in the mean time, been elected principal chief, and to John Page, another of the gentlemen who first made the admission before the making of this treaty. They took no testimony as to the alleged loyalty of Messrs. Heald and Wright, or as to the correctness of any item in their account against the nation. And thus was their award made. The Secretary of the Interior was induced to ratify the award made by Messrs. Rice and Jackson, through representations that the Choctaws were satisfied and made no objection to them. This is the reason given by the Secretary, and, we doubt not, given sincerely; but the fact is that the Choctaw council entered a solemn protest against the whole proceedings of Commissioners Rice and Jackson, so soon as they became cognizant of the fact that an award had been made against them, a certified copy of which we have obtained from the Indian office here, and reads as follows, and is hereby made a part of this report:

Whereas a commission appointed by the authorities of the United States did convene in the city of Fort Smith, Arkansas, in the month of September last, 1866, in compliance with the 49th and 50th articles of the late treaty concluded and signed in the city of Washington on the 28th day of April, A. D. 1866, to investigate the claims of the loyal Choctaws and Chickasaw Indians, and Joseph G. Heald and Reuben Wright, of Massachusetts, as provided in said articles, and whereas it appears from the report of the parties engaged in the defence, that fraudulent claims to a very large amount were presented and established against the national funds of the Choctaw and Chickasaw nations, upon the testimony of persons actuated by corrupt and mercenary motives; and whereas the convening of the court of commission beyond the limits of the Choctaw and Chickasaw nations was a hardship to the defendants, as well as unusual in practice to parties litigant to go beyond their limits to adjudicate their differences: Therefore,

SECTION 1. *Be it resolved by the general council of the Choctaw nation assembled, (the Chickasaw nation concurring,)* That a solemn protest is hereby presented to the honorable Secretary of the Interior against the confirmation of the awards recommended by the said commission for the reasons before stated; and further reason, that the hurried course of examination adopted by the commissioners gave the nation no chance to introduce rebutting testimony, nor to offer any legal remedy before the said court of commissioners. Hence they respectfully refer the final consideration of their interest to his honor, soliciting further indulgence

to prepare a series of depositions under the supervision of the United States agent for the Choctaws and Chickasaws, in order to correct as far as practicable the wrong done to the defendants.

Resolved further, That General Rice, one of the commissioners on the part of the United States, and Captain Campbell Leflore, junior counsel on behalf of the Choctaw nation, did agree "that testimonies might be taken by the defence and be considered as proper evidence by the said commissioners upon cases already reported, and that such testimonies be taken in the presence of the United States agent, who shall certify that the same has been taken according to the usual rules of taking evidence;" therefore, this nation being a party interested, respectfully request the honorable Secretary of the Interior to favorably respond to the solicitation of the Choctaw and Chickasaw nations.

And be it further resolved, That the principal chief of this nation be and he is hereby authorized and requested to transmit a certified copy of the above resolution to the Secretary of the Interior, through the proper channel of communication with the government of the United States, accompanied with such report and suggestions as he may deem necessary to make, to the effect that the claims made under the 49th and 50th article of the treaty above mentioned be suspended until this nation shall have further time to introduce rebutting testimony.

Approved December 21, 1866.

ALLEN WRIGHT, *P. C. C. N.*

I do hereby certify that the above is a true and correct copy from the original in the office of the national secretary, this 22d day of December, A. D. 1866.

[L. S.]

EDWARD DWIGHT,
National Secretary.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, March 25, 1868.

I certify on honor that the foregoing is a true and correct copy of an act of the general council of the Choctaw nation, approved December 21, 1866, relative to the 49th and 50th articles of the treaty with the Choctaws and Chickasaws of April 28, 1866, as appears from the records in this office.

CHARLES E. MIX, *Chief Clerk.*

This protest of the general council of the Choctaws was entered on their journals on the 21st day of December, A. D. 1866.

The report of Messrs. Rice and Jackson as commissioners under the treaty was filed in the Indian office at Washington on the 31st day of December, 1866, 10 days after the protest, and on the same 31st day of December the Choctaws placed the foregoing protest, being an official transcript from their legislative journals, on file in the Indian office here. There was no delay on their part, no neglect, no assenting to the payment of the claim of Heald and Wright, and the Secretary of the Interior must have approved the report made by Rice and Jackson without knowledge of the existence of the Choctaw protest. But beyond the treaty stipulations and legislative authorities resting upon the government in regard to the funds of those Indians in a plain and direct manner, there are other questions which should engage the attention of Congress and weighty reasons against the passage of the proposed bill. It is certainly competent for Congress when called upon to appropriate money to inquire what the appropriation is for, whether it is just and equitable, whether there is any fraud attaching to the matter if it be a claim, and all the

surrounding circumstances. It may be unnecessary to say that fraud vitiates all contracts. The minority propose to call the attention of Congress to some of the facts connected with this case.

On the 8th day of April, 1858, as appears by the papers in the Indian office, Joseph G. Heald entered into partnership with F. E. Williams and Leonard B. Dow to engage in the business of merchandising in the Choctaw country. This partnership was limited to three years and expired on the 8th day of April, 1861, which was previous to the commencement of the rebellion; and the partnership was not renewed. By the terms of their partnership each of the partners agreed to put in \$4,000, making their whole capital in trade \$12,000. Heald sets up a claim against the Choctaws of \$90,000 for himself alone, saying nothing about his partners, Williams and Dow; presuming, doubtless, that his loyalty would not be questioned because he hails from Massachusetts. He may have entertained the idea that their joint interests, whatever claim they might set up, would be covered and protected under his name in this behalf.

We will next examine upon what the claims of Messrs. Heald and Wright are founded. The largest item in the accounts of Heald against the Choctaw nation is for the sum of \$40,000 for a draft drawn by Sampson Folsom in favor of L. S. Lawrence & Company, bankers of New York, on E. W. Lehman & Brother, of Philadelphia, and drawn in the summer of 1862, more than a year after the commencement of the rebellion, and drawn, too, in the Choctaw nation. The history of this transaction is, that one F. E. Williams, before that time a partner of Mr. Heald in the business in the Choctaw nation, finding that Sampson Folsom was agent and attorney for Samuel Garland, and others of the Choctaw nation to whom the gold, about \$33,000, belonged, proposed to purchase of him and pay him for it, in confederate *notes or money*, or lands of the Confederate States. After considerable negotiation Folsom gave Williams the draft or order for the gold, and he paid for it in the confederate currency. He had it drawn in favor of Lawrence & Co., as he said to keep the whole transaction under the control of "northern men;" his object being to prevent the United States from seizing it, as they had a right to do. He bought the chance of getting it. He could do nothing else. He was violating the law by trading within the lines of the enemy, and has no legal or equitable claim to relief. He failed to get the gold through Lawrence & Co., and some man named Johnson, sharper or more fortunate than himself, connected with the house of Lehman & Brother, got it and kept it to this day.

Mr. Heald assuming the whole transaction to have been for his benefit charges the Choctaw nation \$40,000 for the failure. The minority of your committee do not conceive that such a transaction entitles Mr. Heald to very favorable consideration at the hands of this Congress. The very moment he seeks to derive a benefit from such illegal "trafficking with the enemy," he makes himself liable as the guilty agent, and cannot say that Mr. Williams or Lawrence were the guilty parties and not he. If Heald had any interest whatever in this transaction it does not appear from the evidence. The minority of your committee are therefore forced to this conclusion:

1st. That this draft transaction was with individuals and not with the nation as such, and that no valuable consideration was paid for the draft.

2d. That such a transaction was in violation of the law of the land, and no benefit sought to be derived from it should be enforced by Congress.

The minority of your committee can find nothing in this transaction to sustain a claim for "money advanced to the nation," and look upon it

as entirely a private speculating transaction on the part of F. E. Williams. The "chances of war" prevented it from paying, and we cannot see that this Congress should make it pay Mr. Heald, by converting Confederate States' bonds and notes, furnished to rebels by his agents and emissaries in violation of law and morality, into current funds of the United States for his benefit. The act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontier, in the 4th section provides, "that any person other than an Indian, who shall attempt to reside in the Indian country as a trader or to introduce goods or to trade therein without license, shall forfeit all merchandise offered for sale to the Indians so found in his possession, and, moreover, forfeit and pay the sum of \$500."

The 24th section provides for the arrest, by the military force, of any person violating any of the provisions of the act. Section 26 provides that offenders of the provision of the act may be arrested in any of the States or Territories of the Union. Section 27 provides for actions and proceedings against the parties violating the provisions of the act, and section 28 provides for proceedings against the property of offenders.

How can violators of the law come here and ask Congress to pay them for their illicit, not to say disloyal traffic? Section seven of article seven of the Choctaw constitution contains these words: "No law shall ever be passed to raise a loan of money upon the credit of this nation for the payment or redemption of any loan or debt, unless such law be proposed in the senate or house of representatives, and be agreed to by a majority of each house and entered on their journals, with the yeas and nays taken thereon, and be referred to the next succeeding general council, and published throughout the nation for three months previous to the next general election," &c. Nothing of this kind was ever done in this case. No loan was ever authorized by the nation from Heald. A people so jealous of and so completely guarded by the provisions of their fundamental law in regard to borrowing money, never asked a loan from Heald as pretended. Another item in the account of Heald is for 62 bales of cotton, alleged to have been at Scullyville, in the Choctaw nation, in 1861 or 1862. How came Mr. Heald to be the owner of cotton there, and in those years? Did he raise it or did he buy it? He claims to have been a loyal citizen and resident of Massachusetts at the time. The minority of your committee are of the opinion that if there were any cotton at Scullyville in those years, it belonged to some person other than Mr. Heald, perhaps to his late rebel partner, Mr. Dow, or his blockade-running agent and also late partner, Mr. F. E. Williams, who may have expended his confederate bonds in its purchase. If Mr. Heald had his cotton there at the commencement of the rebellion in 1861, what prevented him from sending it to market? If it were the crop of 1860 he might have sent it to market before. If the crop of a later year, how came he to be the owner of it? All these questions present themselves to the minds of the minority of your committee, and force upon them the conviction that the claim is a fraud and an outrage upon the nation. It bears the stamp of fraud on its face.

The next largest item is for a mill and machinery, owned by Heald, at Scullyville, in the Choctaw nation. The proof shows that this machinery was removed by United States officers to Fort Smith, Arkansas, and set up in the government work-shops there, and that the Choctaws never injured it in any way whatever.

There is a strong presumption, however, that it has been since returned to Heald and by him sold to J. R. Kennedy. Be this as it may, if Heald is entitled to anything, the proof shows clearly that it is the United

States and not the Choctaws to whom he should look for compensation.

Other items in the accounts of Mr. Heald are for debts alleged to be due by individual Indians, on account of goods sold them on a credit and running through the various years in which Mr. Heald was a trader in the country.

The minority have seen no evidence to warrant the commissioners, Messrs. Rice and Jackson, in allowing such demands against the nation.

Those here representing the Choctaws assert that Heald and Wright favored the rebel cause; that Wright readily furnished the supplies to the rebel troops, and that if any connection still existed between Heald and Williams and Dow, the concern was actively engaged in transactions with the rebel authorities in the years 1861 and 1862.

The claimants, Heald and Wright, although they knew this was charged against them, during the pendency of this claim have produced nothing to controvert this assertion; but, on the contrary, all their associations, and the written evidence produced, pretty conclusively establish the fact.

There is no doubt but that Heald was well informed as to the gold deposited in Philadelphia; and as things then were, it is evident that all parties supposed it would be confiscated by the government, should its place of deposit be discovered.

Had Heald been the loyal man he claims to have been, why did he not give information to the government so that the gold could have been recovered? It was well known that the officers of the government were endeavoring to discover this deposit at the very time Williams was endeavoring to purchase it and Heald was engaged in covering it up. Wright has not denied the charge that he furnished supplies to the rebel troops, nor is it denied that Dow, one of the partners of Heald & Co., was in the rebel service. The Choctaws deny that their treasurer ever borrowed any money of Joseph G. Heald. He had no right to do so without an act of the council of the nation authorizing such a loan.

The Choctaws therefore object to the proposed sales of stocks or bonds held and assumed as trusts for their benefit by the United States, on the grounds, 1st. That the terms of the treaty and obligations assumed by the government do not authorize it; and 2d. That all or very nearly all of the claims set up by J. G. Heald and Reuben Wright are fraudulent and not covered by the terms of the 50th article of the treaty of April 28, 1866, and were in violation of the intercourse act of 1834.

In this view of the matter we concur, for we do not see how the United States can sell these funds without a violation of the trust assumed by them for the benefit of the Choctaws, and we are also satisfied that a great imposition has been practiced on the government and on the Choctaws by the parties setting up these claims, and that they were acting in violation of the intercourse law.

It is proper to call attention again to the fact that the Indian tribes sustain the relation of wards to the government, and they are therefore entitled to the benefit of all the moral as well as legal obligations which attach to that relation. One of the most obvious of these obligations, or duties, on the part of the guardian, which in this case is the government, is that of protecting against wrong if attempted to be perpetrated by others, and *a fortiori* to abstain itself from the commission of wrongs. In this particular case this double duty rests upon the government, in the first place to protect the Choctaws against claims set up against them which they have had no fair opportunity of contesting, and in the second place to preserve funds held in trust which have been solemnly devoted to the purposes of education or otherwise.

The grounds upon which the passage of the bill reported by the majority is urged is, that the "Choctaw nation agreed to pay the amount," and that the bill only provides for the manner and means of payment.

The only evidence of such facts as the minority understand the question is the statement of Messrs. Rice and Jackson in their report that Allen Wright, principal chief of the Choctaw nation, and John Page, a citizen of the nation, examined the claims of Heald and Wright and admitted they were just and should be paid. We understand the Choctaw nation to have a written constitution and laws, and a representative form of government; and upon an examination of the constitution and laws can find no authority in the principal chief or Mr. Page to confess judgment against the nation. We have been furnished with no law making them attorneys for that purpose. Besides it is the fact that Wright was only chief *elect* at the time.

It is also contended, that the delegates of the Choctaw nation, sent here to negotiate the treaty of April 28, 1866, allowed the claim of Heald and Wright, and hence it ought to be paid. The Choctaw nation by solemn enactment denied their authority to do so; and the 50th article of the treaty, under which the claims are set up, does not admit of such a construction. If such were the fact, why the necessity of a commission to ascertain the facts?

The only evidence of any allowance or admission of indebtedness on the part of the Choctaw delegation of 1866 is found in the following paper, on file in the office of the Commissioner of Indian Affairs. Here is the paper:

The Choctaws agree and stipulate to pay to Joseph G. Heald, of Massachusetts, who for many years traded among and befriended them, the sum of \$70,288 80 in full of all demands for spoiliations upon his property, and for other reclamations and debts due to him by the Choctaws, which sum shall be paid out of the 300,000 dollars, in the event the Choctaws receive the same, under the provisions of the third article of this treaty, and in the event they do not receive the same under said article then to be paid in two annual instalments with interest at the rate of five per cent.

The foregoing article, after full consideration, has been approved by us; and we request that it be inserted in the treaty April 28th, 1866.

ALLEN WRIGHT.
JOHN PAGE.
JAMES REILEY.
ALFRED WADE.

If Messrs. Heald and Wright rely on this paper, they should be governed by its terms. Under its provisions the amount allowed to be paid is not yet due. The \$300,000 is by the terms of the treaty held by the United States in trust, to be paid to the Choctaw nation, or appropriated otherwise as events might determine. Until the time within which such contingency is to be determined and made certain, according to the above agreement, if it be of any force, Mr. Heald has no claim or cause of action against the nation. He has none until after such contingency has become a certainty. See article 3d, treaty of 1866.

We find no such allowance in favor of Mr. Wright, and the only evidence upon which his claim is based, that has been brought to the knowledge of the minority of your committee, is the fact reported by Messrs. Rice and Jackson, that Allen Wright and John Page said the award in his favor was just and correct.

We do not find a scintilla of evidence taken by the commissioners to establish the facts that Heald and Wright were licensed traders in the Choctaw nation at the commencement of the rebellion; that they were and remained loyal during the war; or that no portion of the articles charged for were furnished the nation or individuals thereof in aid of the rebellion, without their consent.

It seems manifest to the minority that the bill should not pass; that simple justice demands that a new investigation be ordered, in accordance with the terms of the treaty, and that the Choctaw authorities have proper notice of the time and place of meeting of the commission; that it be held within the Choctaw country, wherever the Choctaw authorities and the commissioners may agree upon, and that the Choctaw authorities may be permitted to be present at the investigation. To this end we respectfully recommend the adoption of the following resolution as a substitute for the bill and Senate resolution:

Resolved, That the Secretary of the Interior be requested to withdraw his assent to the report of Messrs. Rice and Jackson, and suspend all further payment under said report, with a view of having a new commission appointed under the 49th and 50th articles of the treaty of April 28, 1868, which commission shall meet in the Choctaw country, and not outside thereof.

W. MUNGEN.

L. W. ROSS.

J. P. C. SHANKS.