42D CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { Ex. Doc. No. 69.

CHOCTAW CLAIMS.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

RELATIVE TO

The claim against the Government known as the Choctaw claim.

JANUARY 7, 1873.—Referred to the Committee on Indian Affairs and ordered to be printed.

TREASURY DEPARTMENT,
Office of the Secretary, January 6, 1873.

SIR: I have the honor to transmit herewith a report made by the Solicitor of the Treasury upon the claim against the Government known as the Choctaw claim. In this report the origin, nature, and history of the claim are fully presented. The Solicitor finds that the claim has not only been paid, but that it is barred by a receipt or acknowledgment of full satisfaction, given by the authorities of the Choctaw Nation in the year 1852. A photographic copy of the paper referred to is also transmitted.

After such an examination as I have been able to give to the subject, I concur in the conclusion reached by the Solicitor.

By the acts making appropriations for the current and contingent expenses of the Indian Department, of March 2, 1861, and March 3, 1871, the Secretary of the Treasury is authorized to issue to the Choctaw tribe of Indians bonds of the United States to the amount of $250,000.

The issue of these bonds has been delayed by the investigations that have taken place, chiefly with reference to the authority of certain persons claiming to be agents for the Choctaw Nation, but partly by proceedings in the supreme court of this District and in the Supreme Court of the United States, instituted for the purpose of compelling the Secretary of the Treasury to issue the bonds to one of the parties claimant.

These questions will be disposed of in the ordinary course of proceedings, and there will then remain no legal, and perhaps no valid, reason why the Secretary of the Treasury should not issue the bonds, unless Congress shall see fit to interpose by legislation.

Very respectfully,

GEO. S. BOUTWELL,
Secretary.

Hon. JAMES G. BLAINE,
Speaker House of Representatives, Washington, D. C.

Letter of the Solicitor of the Treasury to the Secretary of the Treasury in relation to the Choctaw claim.

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., November 14, 1872.

SIR: I have the honor to acknowledge the receipt of a letter addressed to you by P. P. Pitchlynn, who styles himself a delegate of the Choctaw Nation, in relation to the claim of the Choctaws against the United States, which you referred to me on the 22d of July last, with the request that the authorities named by him in support of the claim be consulted.

I have complied with your request.

By the treaty of 1783, there was allotted to the Choctaw Nation "to live and hunt in" lands within the United States, bounded substantially, west, by the Mississippi River; south, by 31° north latitude; east, by the Tombigbee River and the Oaktibby-haw to its source; north, by a line thence to a point on the Mississippi River, opposite Helena, Arkansas.*

The boundary above given describes substantially the territory occupied by the tribe under Great Britain.

In the treaty the Indians acknowledge their dependent character; admit that they hold the lands they occupy as an allotment of hunting grounds merely; and give to Congress the exclusive right of regulating trade and managing all their affairs as they may think proper.—(Art. VIII, treaty of January 3, 1786.)

Since this time, by six different treaties, as the necessities of civilization have increased, viz, that of 1801, 1803, 1805, 1816, 1820, and 1830, the Choctaws have ceded this entire country to the United States.

Up to the treaty of 1820, the consideration of the different cessions was a money one entirely. The United States bought the right of the Indians to the tract sold.

By the treaty of 1820, however, a new policy was adopted. Then began the attempt to remove west of the Mississippi River that part of the Choctaw Nation who desired to live by hunting, and to locate them there as a tribe, and to civilize those who remained.—(See treaty, 7 Stats., 210.)

The consideration for the cession of 1820 was, therefore, in accordance with this idea, a large tract of country of about 15,000,000 acres situated between the Arkansas and Red Rivers, upon which *the tribe* was to live.

Having thus liberally provided for the tribe, other articles of the treaty look to the civilization of those that desired to remain on this side of the Mississippi.

By article 7, portions of the land ceded were to be sold and the proceeds devoted to a fund for the support of Choctaw schools.

By article 9, separate settlements were allotted to those who remained, consisting of a tract of one mile square, to include improvements.

By article 12 provision is made to promote industry and sobriety.

The reservation clause and article 4, which provides that the boundaries established by the treaty should remain without alteration *until* the nation should become so civilized as to be made citizens, *at which time* a limited parcel of land was to be laid off for each individual, could have been put into the treaty for no other than the sole view of educating and making citizens of the individuals of the Choctaw Nation left behind.

In this view, both as regards the tribe who went west of the Mississippi and the individuals who remained east, the treaty was a very favorable one to the Choctaws.

For, *first*, they obtained 15,000,000 acres for less than half of the amount ceded by them; *second*, those who remained obtained reservations of a mile square, including improvements out of the land ceded; *third*, they could become citizens of the United

* The point on the Mississippi River given is that indicated by a survey made in October and November, 1836, by William Anderson, under the approval of John Bell, surveyor of lands in Mississippi, ceded by the Chickasaws.

But there is grave doubt whether it is, in point of fact, correct.

There was always a dispute as to the line between the two tribes—the Chickasaws claiming that this line touched the Mississippi River at a point known as Tunica-old-fields, about twenty-eight miles below where the Saint Francis River joins it.

As far as the evidence obtained from the chiefs of the Chickasaws, after the treaty with them in 1832, goes, it seems to be the true one.—(*See* 10 *Ind. Removals* 438.)

Congress, however, in that treaty, provided that if the Choctaws agreed that the line claimed by the Chickasaws was correct, that line should be taken; otherwise it should be determined by the best evidence to be had from both nations. I cannot discover that any evidence was obtained from the Choctaws. The point becomes material upon the question as to the number of acres ceded by the treaty of 1830.

By the report of the Interior Department of March 9, 1859, that number was 10,423,139. If, however, we take the line claimed by the Chickasaws as the true one, it will bring the amount ceded at nearly the number the Choctaws, Mr. Cooper, their agent, in his report to the Interior Department, and Mr. Spencer, the Secretary of War, asserted was ceded, viz, 7,796,000.—(*See Sen. Doc., 2d sess. 27th Cong., vol.* 3, 188; *Sen. Mis., 1st sess. 34th Cong.*, 1855–'56, *No.* 3, *p.* 35.) The difference between the two estimates, viz: 2,627,139 acres, at $1.25 per acre, the price for which it was sold, would more than cancel the entire net proceeds claim.

States; *fourth*, 54 square miles of the ceded country was set apart for a fund to educate Choctaw youth; and, *fifth*, $6,000, for 16 years, was given to remove some existing discontent.

One of the ideas of this treaty was not realized; the tribal relations of those who remained east continued. A large number of them continued a wandering life, wretched and degraded. As a result, the greater portion could not be made citizens, and were consequently denied the privileges of citizens. At the same time the nation itself was fast declining in wealth and comforts.—(Am. State Papers, vol. 2, Ind. Affairs, p. 559.)

In this condition of things, in 1826, a commission was appointed by Congress to make a new treaty for the entire cession of their lands and the removal of the tribe west of the river. The attempt failed *through the influence of half-breeds and whites.*—(See commissioners' letter to Secretary of War, Nov. 19, 1826; Am. St. Papers, Ind. Affairs, vol. 2, p. 709.)

At length, in 1830, an act was passed by the State of Mississippi taking away their immunities as Indians and subjecting them to the laws of the State. From the operation of this act the Executive Department of the Government of the United States, though appealed to, could not protect the Choctaws remaining within the limits of the State.—(See preamble to treaty of 1830.)

The result was great discontent and distress, and a strong appeal to the War Department setting forth that they could not live under the laws of the State, and begging that another treaty might be concluded with the United States.—(See 8 Senate Ind. Removals, 260; see 9 Senate Ind. Removals, 361.)

A commission was accordingiy appointed, which arrived on the grounds September 15, 1830. On the 20th following the commission was notified that the Indians desired to meet them in council, and to have submitted the terms intended to be offered, that the warriors might understand them fully. On the 22d they were accordingly submitted, and having been subsequently altered by the Choctaws, the negotiation resulted, on the 28th of September, in the treaty known as that of Dancing Rabbit Creek.

The business having been completed, the commission departed, leaving the Indians peaceable and quiet, and, to all appearances, well pleased and satisfied.—(See 8 Ind. Removals, 263.)

This treaty is based upon the same ideas as that of 1820—the removal of the Choctaws, as *a tribe*, west, and the education of the few that were expected to remain behind, with a view of making them citizens in a limited time.

It is evident from a perusal of the negotiation which preceded this treaty, that both the United States commissioners and the Indians expected that but few would remain. In the terms first offered by the commissioners as a basis of the treaty the number of persons who, it was supposed, would remain, and who were, in this event, to be provided with reservations in the tract ceded, was only one hundred and fifty.

After discussion on the proposals made, this number was increased to only two hundred by the Choctaws themselves.

Although nothing is said in the treaty about the number to remain, it is evident that the other provisions of the treaty were based upon the idea of but a small number remaining behind. For example, in the first draught submitted the Indians were to receive $500,000 in money as a part consideration for the cession; but when the number of reservations was increased from 150 to 200 by the Choctaws, the amount was reduced to $400,000.—(See 8 Ind. Removals, 259, 261.)

To carry out the two ideas, viz, of removing the *tribe* and making citizens of the few that remained, the treaty was framed.

In accordance with these ideas, and that they might live in peace under their own laws, the Choctaws ceded their entire country east of the Mississippi, and agreed to remove beyond the Mississippi as early as practicable, and to so arrange their removal that not exceeding one-half should depart during the fall of 1831, 1832, and that the residue should leave in the fall of 1833.—(See treaty, 7 Stats.)

For this cession it was provided that the United States, under a grant to be made by the President, should cause to be conveyed in fee-simple to them and their descendants, while they exist as a natian, a tract of country west of the Mississippi of the same dimensions as that ceded by the treaty of 1820, with the exception of that portion which had been previously retroceded to the United States by the treaty of 1825.

This grant was, in point of fact, signed in triplicate by President Jackson on May 26, 1831, under the provisions of the act of May 28, 1830, and delivered to the principal chief of each district on the 9th of June, 1831.

The grant recited the treaty, and then provided that, in pursuance thereof, and of the powers and duties vested in the President under the act of May 28, 1830, there is hereby granted and assigned to said Choctaw Nation of Indians, to the extent and after the condition of tenure therein declared, the country described in the second article of the treaty.*—(8 Ind. Removals, 305.)

* The grant amounted to about 15,000,000 acres. How valuable it was will appear from the fact that subsequently the Choctaws leased a portion to the Chickasaws for $530,000; and sold a portion to the United States for $600,000.

By this grant the Choctaws got no greater number of acres, it is true; but what they did get was held by a firm title in fee, never possessed by them before, and not given them by the treaty of 1820.—(Cherokee Case, 5 Peters, 48; Johnson *vs.* McIntosh, 8 Wheaton, 575; Worcester *vs.* State of Georgia, 6 Peters, 580.)

This fee was liable to be determined only in the event of their ceasing to exist as a nation. This estate could therefore continue forever, and may be considered in law as a fee-simple determinable.

I regard this feature of the treaty of 1830 one of the greatest importance, and hitherto overlooked in the consideration of these claims; for it did away with the vague title of occupancy (the only title the Choctaws had up to this time, either at common law or under the prior treaty) and substituted in its place a grant in perpetuity. So it was considered by the Attorney-General, soon after the ratification of the treaty.—(3 Opinion of Att'y-Gen'l, 322.)

The treaty then goes on to secure, in article 4, self-government, and provides that no part of the land ceded shall be embraced in any Territory or State.

It guarantees protection to the Choctaws from foreign enemies in article 5.

It can be seen at once that these provisions completely protect the Choctaws as an independent tribe, for, with the absolute title to the land, it secures self-government and protection from foreign enemies.

Up to the fourteenth article minor provisions were made for offenses against citizens of the United States; against Choctaws; for delivery of offenders against the United States; in relation to persons ordered from the nation; traders; intruders; and in regard to the appointment of an agent.

The fourteenth article was put in for the benefit of those Choctaws—heads of families ONLY—who desired to remain and become citizens of the United States, the number of whom, as I have before said, the Choctaws themselves never supposed would exceed two hundred.—(See 8 Ind. Removals.)

The fifteenth article provided for reservations, annuities, and pay to chiefs.

The sixteenth provided for the removal of the Indians at the expense of the United States, and made provision in regard to taking their cattle at an appraised valuation.

The seventeenth was a very important article, which has not been given the weight, in the consideration of the Choctaw claims, that it ought to have.

It provides, first, that *all* annuities and *sums* secured under former treaties shall continue. It was not the intent, at first, of the framers of the treaty to continue sums secured by former treaties, and this seventeenth article was not included in the first proposition. It was intended to make the treaty of 1830 a substitute for all former ones, but this article was agreed to and inserted at the earnest wish of the Choctaws themselves.—(See 8 Ind. Removals, 260.)

But what is of equal importance, this article gives the Choctaws, as an additional consideration for the cession of the lands, the sum of $400,000, in sums of $20,000 annually for twenty years.

The eighteenth article pledges the land ceded until payment of the several amounts secured by the treaty shall be provided for and arranged.

The nineteenth article provides for what is known as "*cultivation* reservations." It seems to have been intended as a reward to those Choctaws who had cultivated a specified number of acres.

These reservations were, therefore, not allotted to the Indians in the manner provided in the fourteenth article, upon condition of remaining and becoming citizens; but they could sell the lands and have the proceeds, or take in lieu fifty cents per acre.

By the twentieth article the United States agreed to educate forty Choctaw youth for twenty years; to build a certain number of public buildings and churches; to support three teachers for twenty years; to furnish three blacksmiths sixteen years; a qualified millwright for five years; to furnish 2,100 blankets; and to give each warrior who migrated a rifle and equipments; to provide for the nation 1,000 axes, plows, hoes, wheels, and cards; and to furnish 400 looms, a ton of iron, and 200 weight of steel, to each district annually for sixteen years.

Such, in brief, is the substance of this famous treaty—a treaty the object of which may be expressed in two sentences—*first*, the immediate removal of the *tribe* west of the river upon land to be held in fee-simple under a patent from the United States, and under its protection, but to be governed by their own laws; *second*, the civilization and citizenship of the few who, from their own representation, the United States supposed would remain behind and consent to be governed by the laws of the State.

It would seem that no trouble could have arisen from a treaty upon its face so plain and so well understood by the Choctaws.

But it had hardly been signed before there sprung up a claim now known as the "*Net proceeds claim.*"

It did not assume its present form in the outset, but arose principally out of the provisions of the fourteenth article.

As a condition of receiving a reservation under this article, the Choctaw head of a family must signify to the agent of the United States his intention of claiming the same within six months from the ratification of the treaty, February 24, 1831.

The treaty, though ratified, was not, in point of fact, promulgated to the Choctaws till May 26, 1831, (8 Ind. Rem., 294,) at which time Colonel Ward was appointed to register the reservees under it, with *specific instructions* from the War Department (I quote) "To be very particular in attending to these matters, as great reliance is placed in you for correct information" in regard to the register.

Owing, however, to the delay in promulgating the ratification of the treaty, there was left up to August 24, 1831, only three months, instead of six, to make claims to reservations.

During this time, according to one of Ward's returns, sixty-nine Choctaw heads of families made claim. He afterward made a second register with twenty-three names, and gave a certificate to eight other applicants, making in all just one hundred who had registered under the terms of the treaty.

Upon the *sole* ground that Ward had unfairly rejected, upon one pretext or another, those entitled to register, sprung up the Choctaw claims to reservations, which have not yet been settled.

These claims have ever since been persistently presented to Congress and the Departments, not only by the Choctaws, but by speculators and agents who have almost absorbed the rights of the Indians.—(See 10 Ind. Removals, 504–525.)

It is evident from what I have said that neither the framers of treaty nor the Choctaws themselves supposed, at the time of the ratification of the treaty, that many heads of families would or could claim reservations.

But even if every one left in the country in two years from its ratification had made claim, the number would have been very limited. It happens that there is the best evidence of this.

In September, 1831, Major Armstrong was directed to make, and did make, a census of the Choctaws. This census was very full, and is admitted by all to be as correct as the nature of the circumstances would admit. He found that the whole number of the Choctaws before the treaty was 19,554. Of these 15,000 emigrated, leaving 4,554 in the country ceded.

Allowing seven to be a family, which seems, from all the evidence furnished, to be a fair estimate, the number of *heads* of families who could by any possibility claim reservations, if they all claimed, and proved they came within the terms of the treaty, would be but 650.—(9 Sen. Ind. Removals, 512.)

Ward returned his registers of reservees in January, 1832.—(See 9 Ind. Removals, 26.)

On the 12th of August, 1833, the land ceded was directed by proclamation to be sold on the third Monday of October following.—(See 10 Ind. Removals, 559.)

In the meantime, G. W. Martin was instructed by the War Department to locate the reservations under the treaty before the sale.—(10 Sen. Ind. Removals, 521.)

By his instructions, and under the treaty, Martin was confined to Ward's registers, and could only locate reservations belonging to those registered in them, they being the only ones entitled.

Mr. Martin, however, in addition to this, under a misapprehension of his instructions, opened an office in each land district, and received and registered *applicants* for reservations up to the day of sale.—(See 10 Ind. Removals, 563.)

In the meantime, in consequence of a fear on the part of the Government that the location of reservations under the treaty might not be made known at the land-office, before the designated time of sale, the land-office was directed, September 10, 1833, to withhold from public sale all tracts which the locating agents shall indicate as necessary to carry into effect the intentions of the treaty.—(10 Ind. Removals, 521.)

Martin's register contained a large number of names of those claiming under the treaty in addition to those registered by Ward.

But on the 27th of May, 1834, President Jackson decided that he could recognize none as reservees whose names were not upon Ward's registers.—(3 Sen. Doc., 188.)

This decision was in exact accordance with the terms of the treaty.

When the decision was made public strong appeals were addressed to the President, charging negligence and carelessness on the part of Ward.

The appeals were made with so much persistence that, in October, the President directed the location and suspension from sale of the ceded lands whenever persons claiming reservations should exhibit to Martin probable evidence of their rights under said article, with the express understanding, however, that the location would be completed only on being sanctioned by Congress.

In accordance with these instructions, Martin again proceeded to make a list of reservees, with evidence of their claims, numbering, in all, 520.—(3 Sen. Doc., 188.)

In February, 1835, the President transmitted to Congress Martin's list of reservees, and the evidence of their claims to the reservations, which, in conformity with his instructions had been reserved from sale and which were estimated to amount to 615,686 acres.—(See 3 Rep. Com., No. 663; See 3 Sen. Doc., No. 188.)

The message was referred to the Committee on Indian Affairs, the chairman of which was John Bell, of Tennessee.

On its transmission numerous memorials and remonstrances from citizens of Mississippi were presented to the Senate committee, representing that the claims were fraudulent; that they were being pressed by sharp white men, who were acting as agents for the Indians, and were prosecuting them for the enormous compensation of half the land; that they had induced Indians who had emigrated west of the Mississippi, and therefore had no claims to reservations, to make claim therefor.—(See 3 Sen. Rep. Com., 1835–'36, 1st sess. 24th Cong.)

After an examination of the matter, in their report to Congress on the 11th of May, 1836, the committee say:

"If they were satisfied with the justice of these claims they would hesitate to recommend their confirmation without further investigation, under all the circumstances attending them.

"The great number of them has caused general surprise, and created a strong suspicion in the public mind that they cannot be well founded," &c.—(24th Cong., 1st sess., vol. 3, No. 663, page 5.)

The committee further say, that there are five objections to their allowance: *First*, the fact that the claimants were not registered in six months, as required by the treaty; *second*, the great numbers of them; *third*, the late period at which they have been brought forward; *fourth*, the circumstance that a few active and sagacious white men have been instrumental in causing these claims to be presented, and have acted as agents in nearly all of them, and are known to have existing contracts for half the lands; *fifth*, and lastly, the great number of Indians who, after having emigrated, have been prevailed upon to return and set up claims.

The first objection the committee do not regard.

Under the second they make this calculation: by Major Armstrong's report, which is considered by them in every respect most reliable, it appears that at the ratification of the treaty, the Choctaws consisted of 19,554 souls; that of this number about 15,000, soon after, in 1832, crossed the Mississippi, leaving a population of 4,554 in the country ceded, which would give 650 heads of families, allowing each family to consist of seven. The number of locations made by Ward, being 52, added to the number registered by Martin, 520, would make 572, which, the committee think, may not in this calculation be far from correct.

The third objection, viz, the late period of presenting the claims, the committee did not consider of much weight.

The fourth objection, growing out of the fact that speculators in public lands have been the agents of the Indians in this matter, who have stipulated for the enormous compensation of half the lands, while it increases the probability that frauds have been practiced, created no decisive presumption that a large proportion of these claims are not well founded.

As to the last objection, the only evidence that Indians have return ed from the West to set up claims, rests in the memorials and remonstrances of citizens of Mississippi.

The committee, therefore, reported a bill which in terms rejects Martin's register as having been made without legal authority, and provides for a commission which was authorized simply to ascertain the name of every Choctaw head of a family who had offered to comply with the fourteenth article of the treaty, and had not obtained a reservation. The commission had no power to determine the right to reservations.

No action being taken on the bill, on the 18th January, 1837, a memorial was presented to the Senate by sundry Choctaw Indians for reservations under the fourteenth article, in regard to which Mr. Bayard said, in a report to the Senate, that although it is true that some have been injured, "yet there is little doubt that a wide door has been opened for fraud and speculation."

He accompanied his report with a bill for the relief of the memorialists, which, however, never became a law.—(Sen. Doc., 2d sess. 24th Cong., vol. 2, No. 81.)

Congress, however, was reluctantly induced to pass the bill reported by Mr. Bell on the 3d of March, 1837, from the fact that they believed, on the estimates of the chairman, that the claim was limited at the furthest to *seven hundred and fifty families*, against the opinion of the Senators and Representatives of Mississippi, equally representing the two great political parties of the country, and also against the solemn expression of the legislature of the State that the claim was full of fraud and infamy.—(4 Ex. Doc., 1843–'44, No. 137, page 3.)

The act was limited in its operation to March 1, 1838, and afterward to August 1, 1838.

It seems to have opened wide the doors of fraud and speculation. Over 1,300 claims were presented, and it was understood that other claims were to be filed.

The commission, however, made a report upon 261 only.—(See Sen. Doc., 2d sess. 27th Cong., vol. 3, No. 188.)

Mr. Bell thought that 750 claims altogether, on calculations made by Major Armstrong, might be valid, although that number appeared surprisingly large; yet here we have upward of 1,300 claims in addition to those registered by Ward, of which 261 had been passed, requiring 226,720 acres of land to satisfy, and every one of which, it

was asserted by Mr. Claiborne, a commissioner under the subsequent act of 1842, *could be proved* to have been assigned to speculators for a grossly inadequate consideration, within five years after the ratification of the treaty, and therefore absolutely void.—(See 3 Sen. Doc., 1843-'44, page 220.)

A large number were fraudulent in another respect. By the terms of the treaty, five years' residence upon the lands reserved, with the intention of *becoming citizens*, was a condition precedent upon a treaty to a grant in fee of the lands. But a large number of Indians had gone west; they, therefore, could not claim. In spite of this, however, speculators bought up these claims, and filed them in open and palpable violation of the treaty.

So gross was this fraud that Congress was obliged to interfere by special legislation, and by the act of February 22, 1838, cut off all claims of any Indian who had removed west of the Mississippi.

In order to provide for possible location of land to reservees found entitled by the commission of 1837, a proviso to the act of June 22, 1838, directed sufficient land to be reserved from sale to satisfy all reservations of Choctaws whose land had been sold by the United States through neglect of any Government officer.

This legislation seems to have been in a great measure useless, for the provisions of this act were modified in June, 1840, before the action of the commission of 1837 was confirmed, by excepting from its operation any pre-emption claims, and on the 4th of September, 1840, was repealed, except as to any tract secured by said treaty.

The commission, under the act of 1837, was executed in part only before its expiration.

The number of new claims presented to the board, however, during its existence, was 1,349, including only 12 of the 100 claims registered by Ward. So that the whole number of claims under the fourteenth article is now 1,437, and other claims were behind.

Of the 1,349 cases only 256 were acted upon by the commission. Of these, 165 were reported in favor of the claimants, 65 were rejected, and 26 recommended to the favorable consideration of Congress, leaving 1,093 to be examined.—(Ex. Doc. 1st sess. 29th Cong., vol. 6, No. 189.)

Nothing further was done in the matter till the 3d session of the 25th Congress, when the subject was again considered. How many of these claims must have been fraudulent will appear from the report of the Committee on Indian Affairs, to whom the matter was again referred, made by Mr. Everett, February 22, 1839. He says the average number of persons to a head of a Choctaw family is $6\frac{7}{10}$. The whole number of Choctaws by the census taken by Armstrong in 1831 was 17,976. The number who had emigrated in 1832 was 15,177.

To the census taken by Armstrong is added the number of whites and slaves, as stated by the Indian Bureau, making a round number of 18,500. Deduct the number who had emigrated and 3,323 is the whole number left east of the Mississippi, which, divided by 6.7, gives 496 heads of families only. From this is to be deducted the 100 registered by Ward, who had obtained the reservations. There remained but 396 heads. Of these the committee estimate that at least one-fourth neither complied nor offered to comply with the treaty, (say 96,) leaving for indemnity 300.—(Vol. 2, 3d sess. 25th Cong., No. 294, page 3.)

The careful conclusions of the committee, based upon Armstrong's undisputed tables of the Choctaw population, confirm the resolution of the State of Mississippi, and the numerous remonstrances of the citizens of that State before referred to, to the point that a large proportion of these claims were absolutely fraudulent—that out of 1,349 claims only 300 had any foundation whatever.

To satisfy these 300 claims the committee recommended an indemnity to be made in land.

They say it appears from the location made under Ward's registers that each claim will average 1,330 acres. The whole value of the just claims, then, on these principles, is 1,330 multiplied by 300 = 399,000, or, in round numbers, 400,000 acres, equal in money to $500,000. They therefore report that 400,000 acres be given in satisfaction of the *whole* 1,349 claims, leaving it to the claimants to contest among themselves as to who shall be entitled to it; in this way taking the dispute from Congress, where it did not belong, and placing it in the courts.

Congress, however, took no definite action upon the report, and the matter rested till December 15, 1841, when there was presented to the Twenty-seventh Congress a memorial of the Choctaw citizens of Mississippi, very carefully written, protesting, *as citizens*, against the plan of Mr. Everett, and asking that *Congress* give to those that are entitled to land "other lands of equal value to those taken away or sold, or to pay back the money for which the lands were sold."—(Doc. No. 15, 2d sess. 27th Cong., 1841-'42.)

The memorial was referred to the Committee on Indian Affairs, and on the 17th of January, 1842, that committee requested to be informed by the Secretary of War what part of the treaty remained unexecuted, and the most effectual way of terminating the matter.

The Secretary, in his letter of March 9, 1842, in answer, says that he entertains great doubts whether it is practicable to provide equivalent lands in the ceded territory for those the Choctaws were entitled to select, as bills heretofore presented in Congress provided.

Though it is probable that a sufficient quantity of land yet remains for this purpose, yet "experience shows that a resident Indian population, surrounded by and intermixed with whites, cannot be maintained without injurious consequences to both.

"The races cannot mix; they will not meet on equal terms; dissensions and quarrels would be continued, in which the Indian would be the sufferer, until, wearied by a course of life to which he is unaccustomed, and exhausted by annoyance and conflicts, he would be compelled to relinquish his possessions for inadequate considerations. * *

"Believing that such would be the result, it seems to me that it would be the wisest policy to anticipate it at once, without passing through the stages of fraud, oppression, injustice, and conflict to which these Indians would be subjected."

He thinks, therefore, that as the claims are ascertained they should be extinguished by the payment of a sum of money, to be determined by the quantity of land to which each claimant is entitled, to be estimated at the minimum price of $1.25 per acre.—(Sen. Doc., 2d Sess. 27th Cong., No. 188, vol. 3, 1841-'42.)

The committee adopted neither the plan of Mr. Everett nor that of the Secretary of War.

With full knowledge of the frauds practiced on the old commission of 1837, they reported a bill which in terms revived and continued in force the acts of 1837, providing for the re-appointment of that commission, and for adjudicating the claims in the same way, a method which former experience had shown was open to the perpetration of the most enormous frauds on the part of speculators. After great opposition in Congress it became a law, August 23, 1842.

Going back to the treaty, the act required the commission to ascertain all Choctaws claiming reservations who had complied with the requisites of the fourteenth article, and defined those requisites to be—

First. That the Indian had signified, in person or by an agent, to the agent of the United States under the treaty, within six months after the ratification of the treaty, his intention to become a citizen, or had his name within the time enrolled on the register of the Indian agent, or signified his intention so to do within the time, and if omitted therefrom, that it was omitted by said agent.

Second. That at the date of the treaty the Indian had and owned an improvement on which he had resided five years, unless it is shown that the land was sold by the United States, and the claimant dispossessed by means of such sale.

Third. That the claimant has received no other land under the treaty.

Fourth. That he did not emigrate, but continued to live in the ceded country.

Fifth. No claim to be adjudicated presented by a white man with an Indian family.

Sixth. Or if it had been assigned within five years from the ratification of the treaty.

All claims were void if not presented within one year from the date of the act.

The third section provides, that when the commission shall have clearly ascertained that the claimant is entitled to a reservation under the fourteenth article of the treaty, the President shall issue a patent therefor, unless the United States has disposed of the land, in which case a certificate shall be issued, entitling him to an equal quantity of land to be taken out of the public lands in Mississippi, Louisiana, Alabama, and Arkansas—"not more than one-half to be delivered to said Indian until after his removal to the Choctaw territory, west of the Mississippi river."—(5th St., 513.)

Under the act of 1842 Messrs. Claiborne, Graves, and Barton were appointed commissioners. Mr. Barton does not seem to have ever acted, however, and Mr. Tyler was appointed in his place. They met December 20, and proceeded at once in the examination of claims to reservations, in accordance with detailed instructions from the War Department.

These instructions sharply define what is to be done. Martin's locations are to be excluded; close scrutiny is to be given to assigned claims; care must be taken that claims are not made under both the nineteenth and fourteenth articles, or a second time under the fourteenth. Finally, too much caution cannot be exercised in executing the law in relation to the requisites of a valid claim. The claimant ought to be present in person and make his statement without prompting; say where Ward was when he applied to be registered; and, generally, give such answer as will show the reason of the omission of his name from Ward's register.

The proceedings of the commission were for some reason kept from the public until March, 1844. At that time, by an order of the Senate, the injuction of secrecy was removed.

They reveal a curious state of facts. About 80 cases had been nearly completed, when, in January, 1843, a protest, known as the Poindexter protest, was filed against any judgment upon them, until a full investigation could be had. It was alleged in

the protest that not more than 100 heads of families were entitled under the treaty.—(Sen. Doc., 1st sess. 28th Cong., No. 168, page 18.)

The commission at once offered to examine all witnesses produced in support of the protest, but, after being compelled to fine the protesters and some of the witnesses for disobeying the process of the board, they decided against the protest.

In March, 1843, testimony had been taken in about 250 cases, which were to be adjudicated in May following.

A great many difficult questions present themselves. In numerous cases heads of families have gone west, after signifying their intention to become citizens before the expiration of five years, leaving children. Do the children get reservations? Again, do adopted children? One-third of the heads of families are now dead, leaving no wills. What becomes of their title? Five or six different heads of families claim the same section—these are some of the questions the board had to encounter under this article, fertile in difficulties. They were, however, all attempted to be answered by the War Department in a way to do justice, if possible, under the law.

On the 20th of March, 1843, the board got into a personal dispute. Claiborne wanted the 70 cases suspended by the protest decided at once. Graves objected because Tyler, the other member, was absent. This difference coming to the knowledge of the President through Claiborne, he directs a letter to be written, advising vigilance, concert, and harmony.—(Same, page 50.)

On June 12, 1843, Mr. Graves reports that they had rendered about 100 judgments, and that there had been filed about 715 cases, and about 300 more were to be filed.—(Same, page 83.)

He says, however, that it is a notorious fact that many persons were trading with the Indians in 1835, making contracts in reference to their reservations. In the cases examined, however, each claimant stated that he had made no contract which he considered binding. Is not this an admission that he had made a contract? Is the Indian to judge of the force of his legal obligation? He asks the views of the Department. The Department promptly replies that the *commission* must decide all questions of this nature.

Two distinct charges were now made—one by Robert J. Walker, to the President, (May 10, 1843,)—that great frauds were being perpetrated on the board, (page 41,) and one, (June 3, 1843,) more in detail, by R. H. Grant to the War Department. The latter alleges that the board have no testimony in relation to claims but that of the Indians themselves, and do not know where to obtain it. If an efficient person were appointed to collect evidence, two or three millions of dollars would be saved to the Government.

Grant's letter was referred to the board by the Secretary of War, who at the same time urges the greatest vigilance to guard against the frauds alleged to be attempted, and suggests the employment of an agent to protect the United States, "for it is only on the Government that frauds can be practiced at this stage of the business."

Grant complains very loudly of the action of the board in relation to his charges. They decided that he must testify forthwith, when it was clear to all, he alleges, that the paramount object was to hurry on his examination, bring Indians to rebut him, and hasten, without mature investigation, to a decision prejudicial to the interests of the Government.

In consequence of the suggestion of the Secretary of War, Mr. T. J. Ward was appointed the agent. Mr. Ward seems to have been successful in one respect. He found four separate contracts, signed by 218 heads of families, assigning parts of claims to lands, and some dozen other writings, signed by single individuals, conveying specific tracts.

The agent of the board was in doubt as to the legal effect to be placed on these instruments, but the rule he finally applied to determine whether they were within the meaning of the law, was, could the vendee by legal process prevent the vendor from complying with the treaty by remaining on the land five years? In his opinion they did not confer that power. He, however, submits the matter to the Department.

Before the production of this evidence the board had transmitted 198 cases fully acted upon; but on November 5, 1843, Mr. Claiborne, who had been most earnest in the prompt settlement of the claims, asks that action may be deferred on those transmitted.

His reasons are to the point. The Indians, to a man, swore positively that they had never assigned, or agreed to assign, either in whole or in part, their rights. Since the disclosures made by the agent of the board in flat contradiction of this, their testimony upon other points must be materially affected, especially when it conflicts with that of Colonel Ward in relation to registration.

Claiborne asserted that the board had been deceived by drilled witnesses and that investigation would disclose enormous frauds.

He writes again, two days after. He says all the Indians contracted within the five years with Gwin, Fisher & Co., representing themselves as agents of General Jackson; but that in order to evade the ninth section of the act of 1842, new instruments have since been executed.

On the 14th he grows still more earnest, and asserts that the Indians were made to indorse the scrip, already issued, to the speculators.

In consequence of the position taken by Claiborne, a protest was filed by the attorneys of the Choctaws to his sitting again on the board.

Claiborne, however, asserted that while the board remains in session he should exercise his rights and duties in their broadest latitude.—(Sen. Doc., 28th Cong., 1st sess., 1843-'44, 3d vol., page 158.)

Upon which the two other members determined that it was their duty, under the circumstances, to suspend action on all cases until the complaints against Claiborne were decided at Washington.—(Same, page 159.)

On the 1st of December, 1843, appears this extraordinary letter from Claiborne to the Secretary of War:

"This will show you the state of things existing here, and the necessity of making some alteration in the law adjusting these claims.

"No board can ever proceed with honor or elicit the truth if speculators are allowed to appear with their lawyers and interrupt and insult the board or any members of it. I was recently on two occasions grossly insulted by the attorney, himself a speculator, and my only alternative was to bear it in silence or retire from the court-room.

"These men are determined to get rid of me. My advice is *that the commission should be suspended.*"—(Same, page 182.)

In point of fact, he was challenged by Colonel Forester and S. S. Preston, attorneys for the Choctaws, and deeply interested and earnest in pressing their claims.

From all this it appears that the position taken by Mr. Claiborne was, that a double fraud was being perpetrated—first, in presenting claims which had no validity; second, in defrauding the Indians of these very claims when allowed.

In this position he is supported by, first, the Poindexter protest, the Walker letter, the letter of R. H. Grant, all of which I have already considered.

Second, by letter of J. B. Hancock, who directly charges fraud; and by what is of more weight, the resolution of the legislature of Mississippi, which asserts in the preamble, in the strongest terms, that the claims were being made to the richest and most valuable portion of the unsold Choctaw lands, on which no Choctaw does now or ever did reside, and are, on the most satisfactory evidence, attempted to be sustained on the testimony of Indians who are unacquainted with the nature of an oath, and utterly regardless of the obligation thus incurred, and on the testimony of other individuals wholly unworthy of the confidence of the community.

Third, by the local press of that State.

Fourth, by letters from Gwin, register of the land-office at Chocchuma, who says "that the delay in bringing the land into market is the hot-bed that will bring forth thousands of fraudulent claims." Again, "these claims are not just; they are held by speculators and not by Indians; have been purchased at reduced prices, and the assignees were, at the last session of Congress, lobby-members in Washington." Again, "I am satisfied that it is the settled purpose of a set of speculators to sweep the lands of the Choctaw country, under the pretended claims arising under the fourteenth article." "It is apparent that, under a very few good cases, one of the grandest schemes of fraud is now in progress, and near consummation, that has ever been started in this country."

Fifth, by the testimony taken before the select committee of the Mississippi house of representatives, to whom this matter was referred; of Colonel Ward, who swore that "he kept a register of names under the fourteenth article, and never refused to register any Indian claimant under that article when application was made according to the treaty. When one Indian applied for himself he registered him, but when one applied for many he refused, notifying him at the same time that each must apply for himself," (same, p. 163;) of General John Watts, who swore that "a company was formed, the agents of which, at ball plays, were surrounded by several hundred Indians, making their marks for them on blank sheets of paper, and apparently taking the number of their children, (163;) of James Ellis, member of the legislature, who swore that "he knew Indians who had gone west and either returned, or were brought back, and whose names were among those claiming reservations. He was told by the agents of this company that the Government had left the door open for fraud and there was no harm to make use of it," (163;) of Hon. S. J. Gholson, who swore that "he heard D. H. Morgan say that the company had an agent West buying Indian claims, and bringing the Indians back to the Choctaw Nation"—"it is," he said, "a first-rate business, and I have an interest in it," (163;) of G. W. Bonnell, editor of the Southern Argus, who swore that "great excitement existed against this company. To allay the opposition it was proposed to take in a hundred popular men. I was spoken of, but believing the claims fraudulent, I refused to have anything to do with it; that it was a stupendous fraud, and could be easily blown up," (163;) of Isaac Jones, member of the legislature, who swore that "he knew many Indians who had gone west with others at the expense of the Government; after twelve months they returned to the State with the

guns received from the Government. Fisher, who claimed to be locating agent for the Indians, was among these very Indians," (163;) of General Stephen Cooke, senator, who swore that "he knew several *Chickasaws* who were passed off as Choctaws, and had lands located."—(Same, p. 164.)

The commission under the act of 1842, however, was not suspended. There was no power, perhaps, in the Department to do this. But Mr. Claiborne refusing to again act, and Mr. Graves for some reason resigning, Mr. George S. Gaines and Mr. S. C. Rush were appointed in their places, and the board, thus constituted, continued to act until December 18, 1844, when it expired by its own limitation.

From the report which they made December 16, 1844, it appears that the *claimants themselves* in every case, with scarcely an exception, were the *only witnesses* examined in support of the claims. It also appears that the question of the assignments applied to a large number of claims, and that the evidence produced by the agent of the board November 27, 1844, upon this point was voluminous.

It point of fact, the weight and legal bearing of this testimony was a matter both vexatious and troublesome to the board, and in the end prevented the adjudication of a large amount of the claims. All the final judgments they did render were upon claims free from this question, which amounted to only 47, although testimony was taken in 884 other cases.—(See report filed December 16, 1844.)

There being so large a number of cases unadjudicated, Congress, June 17, 1844, upon recommendation of the War Department, extended the time of the commission one year further, and the board thereupon came to Washington.

From their final report, made June 16, 1845, it appears that they there rendered judgment in 803 additional cases. In passing upon the question of assignment the commission dispose of it summarily and unsatisfactorily. They say that "whenever the evidence proved an assignment, or an agreement for an assignment, and designated and identified the Choctaw claimant who made the same, they allowed the claim, so far as the Indian, within the five years from the treaty, was the owner thereof. In conclusion they say that all the Choctaw claims arising under the fourteenth article, presented in accordance with the act, *have been finally determined.*

They return, however, unadjudicated, 108 cases for the reason that the maps showing the location of the lands of claimants have not been furnished, though special efforts were made to procure them, and 67 cases of the "Bay Indians," on the ground that they left the ceded country within five years, although it was claimed that such departure was compulsory.—(See report filed June 16, 1845.)

It appears, therefore, that there were presented to both commissions, under the act of 1842, 1,200 cases, (Ex. Doc., 1st sess. 28th Cong., vol. 4, No. 137,) of which 1,058 were passed by them. Up to April 25, 1846, however, the Department had allowed but 1,009, and had rejected and suspended 275, among which suspensions were included those reported upon by the commission under the act of 1837.—(See 1st sess. 29th Cong., vol. 6, Doc. 189.)

A number of the suspended claims, however, were subsequently allowed by the Secretary of War, under the act of August 3, 1846, (9 Stat., 114,) giving him authority to decide the claims of the Indians, and issue scrip.

Thus, it will be seen that, prior to the year 1847, there had been allowed, under the acts of 1837, 1842, and 1846, besides those registered by Ward, 1,155 claims for reservations—a number exceeding by over 900 the number the Choctaws themselves, under the treaty, supposed would be claimed; by over 800, the number Mr. Everett, in his very careful calculation, supposed to be entitled; and by over 400 the number Mr. Bell, upon the most liberal estimate, judged had any shadow of a claim under the fourteenth article alone.

The two acts under which this unexpected number of claims were adjudicated were passed because the Choctaws asserted that they were not registered, through the negligence of Colonel Ward. But Colonel Ward, in his testimony taken before a select committee of the house of representatives of Mississippi, January 30, 1836, under oath, asserts, as we have seen, that he never refused to register any Indian claimant under the fourteenth article, when application was made according to the treaty; that when one Indian applied for himself, he registered him, but when one applied for many, he refused, notifying him at the same time that each must apply for himself.—(3 Sen. Doc., 1st sess. 28th Cong., page 162.)

To satisfy these claims under the fourteenth article, there were actually allowed and secured under the treaty, to 143 heads of families, reservations of land amounting to 334,101 acres, and under the acts of 1837 and 1842 to 1,155 heads of families, scrip in lieu of reservations amounting to 1,399,920 acres.—(Ex. Doc., 1st sess. 36th Cong., No. 82.)

The Indians were put into actual possession of the 334,101 acres. With regard to the scrip in lieu of reservations, the act of 1842 provides that "not more than one-half should be delivered to said Indian until after his removal west of the Mississippi."

But this is not all. The act of 1842 provided that none should receive scrip under it who had received land under any other article of the treaty. Now, under the nine-

teenth article—what is known as the "cultivation article"—731 heads of families had already obtained reservations, amounting to 123,680 acres.

Thus, under the fourteenth article, 143 heads of families had received reservations of land, and 1,155 had received scrip in lieu thereof, in addition to the 731 who had received cultivation reservations. That is to say, this number of 1,298 represented heads of families who honestly intended to remain upon the land and improvements which they had at the time of the treaty and become citizens, in addition to the 731 heads of families who, during the year of the treaty, had under cultivation a varying number of acres of ground.

To satisfy the half of the claim, there were accordingly issued 1,155 half pieces of scrip in favor of heads of families, representing an aggregate of 702,320 acres, which, at $1.25 per acre, would be $877,900.

Before the other half was issued, by the act of March 3, 1845, it was provided that it should not then be issued, but that the amount awarded, which it was impossible for the United States then to give, should carry an interest of 5 per cent., to be paid annually, estimating the land at $1.25 per acre.

Interest was accordingly paid under this act until 1852, when in that year it was provided that, after June 30, 1852, interest should cease, and the Secretary of the Interior was directed to pay the claimants the amount awarded, not exceeding $872,000, with the proviso, however, that this payment should be first accepted as a final release of all claims under the fourteenth article of the treaty, by the national authorities of the Choctaws, in the form to be prescribed by the Secretary of the Interior.

That release was made and is now on file with the account of William Wilson, in the Second Auditor's Office; a copy of the same I herewith transmit. It is in the form prescribed by the Secretary of the Interior, and regularly approved by the national council, and in terms ratifies the final payment of said awards, agreeably to the provisions of the act, "as a final release of all claims of such parties, under the fourteenth article of said treaty."

In other words, the Choctaw nation pledged the United States that no more claims should be made under the fourteenth article.

The scrip provided for by the act of 1842 was not, it is true, in accordance with the terms of the treaty, but in so far as it differed from the treaty it repealed and substituted a new law. If the Choctaws had not consented to the repeal they might have objected. It was optional with them to accept or not the scrip in lieu of reservations as a final release. But the fact is conclusive that they voluntarily did accept it, under the conditions of the proviso. The amount was thereupon paid—the Choctaw Nation giving the required release in a written form, which forever barred all claims to reservations.

Let us now sum up: In the first draught of the treaty it was supposed 150 heads of families altogether might claim under the fourteenth article. In the amended draught the Choctaws increased this number to 200.

Prior to the passage of the act of 1837, Mr. Bell, by very liberal allowances, thought that perhaps 750 families might be entitled. After the act of 1837 had expired, and judging from the evidence taken under that act, Mr. Everett, on a very careful calculation, judged that, in addition to Ward's registry of 100, there might be 300 more, making then about 400 altogether, entitled to reservations, reducing the number allowed by Mr. Bell. But allowing the larger estimate of Mr. Bell to have been correct, what has been the result of the action of the commission?

Instead of 750 claims, there have been allowed, in all, 1,288, and still it is claimed that hundreds have been deprived. To satisfy these 1,288 claims, the United States, in addition to the granting of 334,104 acres, has paid in money $1,749,900. The question unavoidably suggests itself, if they will ever end.

From what has been said, it is clear that a large majority of the claims finally allowed were fraudulent; but admitting that they were not, one would suppose that when the Choctaw claimants had received the amount finally paid them by Congress, and the Choctaw Nation had ratified the payment as a full and final release of all claims under the fourteenth article, that would have been an end of their claims.

Such, however, was not the case.

From the very date of the receipt of the $872,000, they commenced more vigorously than ever to demand of Congress and the Departments what they claimed was due them under the fourteenth article.

As early as November, 1853, delegates were appointed by the Choctaws to institute a claim against the United States for their lands east of the Mississippi, to protect and defend the interests of the Choctaws, and settle claims against the United States. (Sen. Mis., 1st and 2d sess. 34th Cong., 1855-'56, p. 14.)

In April, 1854, the delegates called the attention of the Commissioner of Indian Affairs to the claims. From their letter it appears that these claims were based on the fourteenth article of the treaty of 1830. Under this article they claim very generally that hundreds of Choctaws were not allowed anything; hundreds have claims for personal effects and cattle lost by their removal; some have claims for removing and sub-

sisting themselves. Many claims are also made under the nineteenth article, which still remain unadjusted and unpaid. That is as far as they go in the recital of individual claims.

There are claims, however, for arrearages in the payment of annuities. All these claims they propose to assume if they can obtain a fund from the United States.

On the following May they say to the agent to whom the matter had been referred by the Interior Department, that, though the individual claims can never be proved, they can be ascertained among themselves. Their extent, they are, therefore, not in a situation at present to state, and after a great deal of narration as to the different treaties, and the understanding with regard to them, they broach the great idea which they have persistently adhered to to this day, viz, that by the treaty of 1830 the proceeds of the land ceded were to remain a fund until the debts created by the treaty were provided for, and that this fund belonged to the Choctaws after the payment of the debts. They therefore urge the United States now to settle with them the net proceeds of the lands ceded.

The agent, in his letter of May 25, to the Commissioner, says that although the delegation has made a plausible case, he cannot find that, either by the language of the treaty or by any final understanding, the Choctaws were to have any balance remaining of the proceeds of the lands ceded; still he does not perceive how any satisfactory settlement can be made with the Choctaws, based on the principle of carrying out faithfully treaty stipulations, from the difficulty and uncertainty of ascertaining with any degree of precision the actual extent of the several obligations provided for in the treaty, which the United States have not made good, such as claims under the fourteenth and nineteenth articles.

He then says: "It is apparent, from the eighteenth article, that the proceeds of the lands sold were to be a fund pledged for the satisfaction of all claims arising under the treaty."

The eighteenth article, therefore, makes the United States a trustee for the adjustment of individual and national claims. If this is so, though there is no express understanding that the proceeds belonged to the Choctaws, yet upon the rule which applies to trusts, the balance which remains in the hands of the trustee, after discharging the debts secured by the grantee, results to the grantor.

This, then, is the claim—a large mass of claims, individual and national, under several articles of the treaty, principally the fourteenth and nineteenth, indefinable and incapable of proof, which the United States have funds in their hands as trustees to pay; and having paid them, either in whole or in part, the balance, on the principle of trusts, results to the grantor, viz, the Choctaws.

The precise claim, however, to the net proceeds on this ground was summarily rejected by the Secretary of the Interior in June, 1854. With regard to individual claims under the fourteenth and nineteenth articles of the treaty, they were disposed of upon the ground that, from the length of time that had elapsed since congressional and executive action with regard to them, it was deemed inexpedient to re-open the question.—(Sen. Mis., 1st and 2d sess. 34th Cong., 1855–'56, page 38.)

So the matter rested until April, 1855, when the question was re-opened by the United States in connection with other matters of importance to the Government.

By the treaty of 1837 the Chickasaws had formed a district in the Choctaw country on a footing with other districts, with a representative in the general council of the Choctaw Nation. They now wanted to be independent, and to have a distinct government as well as a distinct district. The United States also wanted to settle other tribes of Indians in the Indian Territory. These questions were serious ones, and, in view of the demand of the Choctaws, an occasion was taken to settle, if possible, all together.

On the 9th of April, therefore, the Commissioner of Indian Affairs instructed the Choctaw agent to ascertain what arrangement could be made to adjust "all the differences between their tribe and the Chickasaws, the Government of the United States, and the permanent settlement of the Wichita and other bands of Indians in the Choctaw country." (Same, page 50.)

The delegates were indisposed to consider these questions. They considered the great object of their mission to be a settlement of their claims alone; besides, they would not admit that there were differences between themselves and the Chickasaws, but desired the United States to state them if they existed, and would not consider the Wichita question, unless coupled with and made a part of a just settlement of their claims.

From the long correspondence which thereupon ensued between the Department and the delegates, the result was that the matter would not be considered by the latter if it involved the settlement of the claims of the Choctaws, as such settlement would admit demands to an extent that could not under any circumstances be acceded to.

After much controversy, however, a distinct proposition was made to the Choctaws, in substance, to lease all the land between the 98° and 100° west longitude, for the settlement of the Wichitas or such other bands of Indians as the Government may

desire to settle thereon, with the subsequent addition of a release of all lands west of the 100°. To a lease, alone, west of the 99° the Choctaw delegates agreed, in consideration of $400,000. After considerable difficulty and objection, however, on the 4th May, they agreed to a lease west of the 98°, and to the sale for the sum of $800,000, subsequently reduced to $600,000, half for the lease and half for the sale, the United States to be restricted in the number of bands of Indians to be located in the country leased, and with the added condition that their individual and national claims under the treaty of 1830 should, by a new treaty, be left to the United States Senate to decide whether, in satisfaction thereof, they are entitled to the net proceeds of the lands ceded, or shall be allowed a round sum.

The Government would not accept the lease with the restriction, and after a long controversy between the Department and the delegates—first, as to tribes of Indians that were to be settled in the territory to be leased, the Choctaws striving to restrict the number to those now actually residing there, and the Government endeavoring to get the right to locate all tribes there they saw fit; and, second, as to the form of the submission of the Choctaw claims to the Senate, the Government desiring two distinct questions, without condition, to be submitted, viz: Whether the Choctaws were entitled to the net proceeds; if not, whether they should be allowed a gross sum, in full satisfaction of all their claims; and the Choctaws striving to qualify the last question with the proviso that they should not be bound to pay individual claims unless they accepted the award, the details of which controversy it is perhaps immaterial to detail, and which threatened at one time to end the whole thing; and after a subsidiary question as to the right of the Choctaw and Chickasaw delegates to settle the question of the independence of the latter tribe, for their respective nations had been arranged, an understanding was arrived at which formed the basis of the treaty of 1855.

In this long controversy, it clearly appears that the Executive Department never for a moment admitted the claim of the Choctaws. They evidently could not: it was so confessedly shadowy and undefined, the delegates themselves saying that they could not prove it. All that was yielded to the Choctaws with regard to their claim was to submit it to the Senate as a board of referees.

By this treaty the Government solemnly assert that they are not prepared to assent to the claim set up under the treaty of September 27, 1830, and so earnestly contended for by the Choctaws, but stipulate to submit to the Senate for adjudication:

First. Whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them by the treaty of 1830, deducting therefrom the cost of sale and all just and proper expenditures and payments under its provisions; and, if so, what price shall be allowed for lands unsold? or,

Second, Whether the Choctaws shall be allowed a just sum in full satisfaction of all their claims, national and individual, against the United States?

In March following the ratification of the treaty the Choctaw delegates present their claim to the Senate, accompanied by the documents and correspondence from which I have quoted.

In their petition, the claims upon which they principally relied in support of their demand to the net proceeds are those arising under the fourteenth article of the treaty of 1830.

There are, however, they assert, many other valid claims of individuals, among which they enumerate those for money in lieu of reservations, under the nineteenth article; those for stock never paid for; those for personal property lost in consequence of the emigration not being conducted by the Government in accordance with the treaty; and those for sums expended by Choctaws who removed and subsisted themselves at their own cost: and some others.

They further say they have no means of determining with exactitude their extent. This could only be done in the Choctaw country at a heavy expense. They are known, however, to be numerous, and amount in the aggregate to a large sum.

I have looked through the voluminous documents filed by the delegates in support of their application with the Senate, and cannot find a more distinct basis for their claim than this, or that they produce any evidence whatever to substantiate it.

The matter was referred to the Committee on Indian Affairs, March 18, 1856, and about three years afterward, viz, on February 15, 1859, they recommended the adoption of two resolves as the award of the Senate, viz:

"That the Choctaws be allowed the proceeds of the sale of such lands by the United States on the —— day of ———, deducting therefrom the costs of survey and sale, and all proper expenditures and payments, under said treaty, estimating all the reservations allowed and secured, or scrip issued in lieu of reservations, at the rate of $1.25 per acre; and, further, that it is the judgment of the Senate that the lands remaining unsold after said period are worth nothing, after deducting expenses of sale."

"That the Secretary of the Interior cause an account to be stated with the Choctaws, showing what amount is due them, according to the above-prescribed principles of settlement, and report the same to Congress."

The committee, in presenting these resolves, as the award of the Senate, consider at length two questions:

First. Whether the Choctaws are, under the terms and intent of the treaty, *entitled* to the net proceeds.

Second. Whether, if not legally entitled, they shall be *allowed* the net proceeds.

In considering the first question, the committee simply state the facts and positions assumed by the Choctaws, and give the conclusions at which they themselves have arrived.

The positions taken by the Choctaws seem to be mainly two:

First. That they obtained no larger title to the land west of the Mississippi by the treaty of 1830 than by that of 1820. I have already disposed of this argument, and have shown that, while by the latter treaty they acquired only a title by occupancy to their lands west of the Mississippi, which might be taken away, as the necessities of forming new States arose; by the former, they acquired, in terms, a title in fee-simple, while they remained a nation, by reason of which the land could never be taken again for new States—an immense consideration, when we consider that it was just this necessity that required the taking away their lands in Mississippi. The second position is that, by the terms of the eighteenth article, whatever remained of the proceeds of those lands, after discharging the specific obligations created by the treaty, belonged in law to them.

As this point was made and urged by their agent before this, and as the committee say they have felt that there was much force in it, I will now consider it as a proposition of law. The language of the treaty is this precisely:

"And for the payment of the several amounts secured in this treaty, the lands hereby ceded are to remain a fund pledged to that purpose *until* the debt shall be provided for and arranged."

It is difficult to see how, under these words, any force can have been given to the position assumed, which, stated broadly, is that the land ceded is held by the United States in trust until the debts due the Choctaws are paid, and then is to be reconveyed to the tribe.

If it were not that it was a semi-civilized nation that was taking this position, it would seem too absurd to give it a moment's attention. No one can read the clause without seeing at once that the treaty simply mortgaged or pledged the land, or the proceeds, as a security for the debts created by it—a useless one, to be sure, for the payment of the debts was assured by the treaty itself, but still a security palpable to the class of minds that the framers of the treaty were dealing with. And will any one seriously assume that the mortgager must convey his land to the mortgagee after he has paid to him the mortgage debt?

Yet this proposition is what the Choctaws seriously claim, and what the committee say has much force.

The committee, however, on the first question say that the Choctaws are *not* entitled to the net proceeds, though the equity of such a construction cannot altogether be denied, but "to go behind the treaty itself, and to seek for its true interpretation, contrary to its letter and legal effect, in the declarations of the commissioners, not inserted in the instrument itself, would be to establish what would certainly be a very mischievous and dangerous precedent, and unsettle many treaties."

They *do*, however, agree that the Choctaws should be *allowed* the net proceeds.

This conclusion is reached upon statements which, in my judgment, have no foundation in fact, and upon reasons which have no legal force.

At the outset the committee start with the assertion that the most considerable item presented by the Choctaws, as a basis for their claim, has its origin in the *fourteenth article of the treaty*, giving heads of families desiring to become citizens a reservation of land.

Facts enough have already been given to show that a claim, the basis of which is of such character, has no proper foundation.

As the committee have, however, set out at length the reasons which governed them in allowing the Choctaws the proceeds upon this ground, I will examine still further the points specifically considered by them. They are confined to a consideration of the provisions of the act of 1842, authorizing the issue of 5 per cent. scrip in lieu of reservations.

The committee say that the nature of the scrip, the mode of its issue, and its delivery to those who received it, under the act of 1842, have a material bearing on the principal items constituting the sum claimed by the Choctaws.

There is, in my judgment, nothing ambiguous about this matter in the act.

The scrip under the act was to be issued to those Indians entitled to reservations, which it was now impossible to give, and was consequently for land subject to entry at private sale, either in Mississippi, Louisiana, Alabama, or Arkansas; not more than half of which was deliverable until after the removal of the Indians west of the Mississippi.

The complaint the committee make is, that it was not in accordance with the treaty

to issue scrip in lieu of reservations, and that the Secretary of War prohibited the delivery of any part of the scrip until after the arrival of the claimant west of the river. As to the last objection, I answer that the delivery was *by the act subject to the discretion of the Secretary*, and this discretion, the whole history of the times conclusively shows, was exercised for the benefit of the Indians, and for the purpose of preventing the scrip from falling at once into the hands of speculators.

It is true the act of 1842 was not in accordance with the treaty. No one ever pretended that it was. It was passed because it was impossible to carry out the treaty, and for the ostensible purpose of doing absolute justice to the Indians.

The material and conclusive facts, however, are lost sight of by the committee—that Congress could alter the treaty by legislation; that they did alter it; that the Indians assented to the alteration, and, what is more, willingly received the scrip, the nation giving, in their behalf, a release in full, upon its receipt, for all claims of such reservees under the treaty.

What stronger bar to a claim can arise? If these admitted facts do not bar it, it never can be barred, no matter how often it may be paid.

So far, therefore, as their claim depends upon the injustice of the act of 1842, it has no foundation.

Another ground set out by the committee as forming a basis for their award, is the demand of those heads of families who made claims under the fourteenth article, but who received neither land nor scrip, their claims having been rejected by the commissioners.

It is asserted by the committee that there were 292, but the commission report only 175 claims not allowed, and say, with this exception, that they have disposed of all claims under the fourteenth article of the treaty.

Of these 175, 108 were cases of the Saguah-natch-at Indians, whose claims could not be allowed by reason of want of maps to determine the location of their lands.

This being the only difficulty, Congress, on the 3d of August, 1846, authorized the Secretary of War to decide these claims and award scrip upon the evidence already taken. Every claim left by the commission must, therefore, have been paid, with the exception of the 67 cases of the "Bay Indians," who left the ceded territory within five years.

The committee, however, say that the claims not allowed were rejected "by reason of the peculiar provisions of the act of 1842, and not by the treaty itself, which is the paramount law."

Let us see: By the treaty, a head of a family desirous of remaining and becoming a citizen, and *signifying this intention within six months*, only was entitled to a reservation. If he *resides upon this land five years, intending to become a citizen, a grant in fee-simple* shall issue to him.

Does the act of 1842 contravene this, so far as the issuing of scrip was concerned? It is claimed that it does. I claim that it not only does not, but that it is more liberal. We must look at the intention of the act. It was *intended* to embrace those who, under the strict letter of the treaty, would not be entitled to reservation, as entitled to scrip, for it embraced those *who did not signify their intention of remaining and becoming citizens* within the six months, and who, in point of fact, did not become citizens if they remained in the ceded territory at the date of the act. In other respects it is in exact accordance with the treaty.

It is objected by the committee, first, however, that the exclusion of those who had then emigrated was a violation of the rights of the Indians under the treaty, inasmuch as a residence of five years only entitled the claimant to a grant in fee, and therefore to scrip.

The mere reading of Article XIV, however, shows that this is not true. The grant of the land in fee-simple depended in terms on two things: not only a residing on the land five years, but the becoming a citizen of the United States. An emigration west to the Choctaw country prevented the Indian from becoming a citizen.

It is objected by the committee that the treaty did not require the reservee to reside on the *same* land for five years. It does. The language is, "if they reside upon said land five years," &c.—(See also 4 Howe, (Miss.,) 522.)

It is objected that white men with Choctaw wives were held to be not Choctaw heads of families. They were not, evidently, and so it has been held repeatedly by the Attorney-General and the courts of the United States.—(4 Opin. Att'y-Gen'l, 344.)

It is objected that the treaty had not forbidden alienation of claims to reservations within five years. It does. It requires a continuous residence by the reservee of five years upon land to be granted, and a sale of the claim prevented a residence.

But whatever strength these objections may have had, they are of no force now.

When the Choctaw Nation in 1852 gave the receipt to which I have referred, it was their intention, and the intention of Congress, that all claims under the fourteenth article should be forever blotted out. In other words, the nation, on payment of the balance of the scrip due the individual claimants, guaranteed that no more claims should be made.

This class of demands must, therefore, fall to the ground.

Claims under the nineteenth article are also recognized by the committee as a basis for the award.

By this article five classes of reservees were entitled to a quantity of land, dependent upon the size of the fields then cultivated by them.

The first included not more than 40 persons, having 50 acres, who thus became entitled to 640 acres.

The second 460, having from 30 to 50 acres, who thus became entitled to 480 acres.

The third 400, having from 20 to 30 acres, who thus became entitled to 320 acres.

The fourth 350, having from 12 to 20 acres, who thus became entitled to 160 acres.

The fifth included 350, having from 2 to 12 acres, who thus became entitled to 80 acres.

There was a possibility, therefore, under this article, that 1,600 heads of families might obtain reservations, amounting to 458,400 acres.

It turned out that Choctaw cultivated fields were much smaller than was supposed.

For instance, 46 heads of families, instead of 460, in the second class, got reservations; while in the last there were 1,763 families who came within the conditions of that class and might claim.

The limit being 350, 1,413 were rejected.

The result was, instead of 1,600 families contemplated by the article, only 731 got reservations, amounting to 123,680 acres. There is no pretense but that every one of the 731 got the reservations.

The claim is for the difference between those who might have got reservations if they had come within the terms of the article, and those who, in point of fact, did get reservations under the conditions of the article—that is, the difference between 458,400 acres and 123,680, or 338,240 acres, which, at $1.25, would be $422,800.

The mere statement of this claim, in connection with the words of the article, shows its absurdity, for it provided for this very contingency:

"If a greater number shall be found to be entitled to reservations under the several classes of this article than is stipulated for under the limitation prescribed, then, and in that case, the chiefs, separately or together, shall determine the persons who shall be excluded in the respective districts."

In every class but the fifth there was a less number. Evidently there can be no claim in these classes. In the last class there were more coming within the conditions than the treaty allows.

This contingency is provided for by the words I have quoted, and the provision most manifestly bars the claim set up.

The item in the Choctaw demand, in relation to compensation for 960 persons who emigrated at their own expense at a cost of $45 each, and which forms another ground for the award, is not supported, so far as I can discover, by any evidence, either as to the number, or cost, or time of emigration; and could not have been, according to the repeated statements of the delegates themselves. Upon this ground alone it should be rejected.

It is alleged, however, in the report, that the Interior Department refused to allow it, because there was no obligation under the treaty to remove any Choctaw after the year 1833.

But that this was not the true reason is manifest from the statement of expenditures furnished by that Department under the sixteenth article, which shows that there were constantly paid expenses of emigration as late as the fourth quarter of 1838, although, by the treaty, they agreed to remove by the fall of 1833; and from the terms of the contracts made by the Government for their removal, which provided that the Indians might be removed as late as the last day of December, 1846, after which date the contract was to be closed.—(Ex. Doc., 2d sess. 28th Cong., No. 107.)

All that I have to say further with regard to this claim is—

First. That Congress having agreed by the treaty, at their own expense, to remove "in wagons and steamboats the Indians to their new homes," and to furnish them with food for a year after reaching there, it would be but reasonable to require the Indians to take advantage of the means provided by the treaty, if they would be carried at the expense of the Government. If they saw fit to emigrate themselves long after the contracts for their removal had expired, they cannot look to the Government to pay their expenses—the Government having already furnished the means.

Second. That from the report of the Secretary of War it appears that the emigration had cost the Government $847,124.17 up to 1836, an amount of money which it would seem ought to have been sufficient to have emigrated the entire tribe.

A claim is made for 4,988 head of cattle left behind, valued at $30,835. The committee in their report on this item made this statement:

"No evidence is adduced to show that this loss was in anywise owing to the neglect of the Government officers, though, from the facts stated by the Choctaw delegates as to the course pursued, there cannot be much doubt that the stipulation of the treaty, that the cattle should be valued and paid for, was not carried out."

As to the loss of 2,796 head of horses and 10,981 head of pigs, valued at $129,671.50, claimed under the head of "cattle," they decide that it does not come within the sixteenth article, or that the loss was through the fault of the Government, but was one of the necessary results of a great removal.

As, in the report of the committee, these two claims do not seem to have formed a ground for their award, I will not consider them further.

I am at a loss to understand the claim for $356,792, as set up and made one of the grounds for the award. Upon the report of the committee, it appears to be for Choctaws who emigrated prior to 1830, as their "specific share of the benefits secured to the tribe" under that treaty.

I know of no benefits secured *to the tribe as such* but the land west of the Mississippi. Any claim for a share of the benefits accruing to the tribe, therefore, would be against the Choctaw Nation, and must be satisfied by them, if a just one, and not by the United States. It is not for these benefits, however. These they have already got. It is for reservations under the fourteenth and nineteenth articles of the treaty.

How preposterous this claim is, becomes at once manifest when it is seen that Choctaws who emigrated and were with the tribe west of the Mississippi years before the treaty, could not, by any possibility, fulfill the conditions of the articles. It is, however, not more baseless than other items of the demand.

A claim is also made for $166,666.66, and reported by the committee as one ground for the award.

By the convention of March 4, 1837, the Chickasaws, in consideration of the privilege of forming a district in the Choctaw country, and holding it on the same terms as the Choctaws now hold it, agreed to pay the Choctaws $530,000; $500,000 of which, it was stipulated in the treaty, was "to be invested in some safe and secure stocks, under the direction of the Government of the United States."

It is alleged that the United States, on the 11th of February, 1841, transferred 500 Alabama bonds of $1,000 each, already held by them as trustees for the Chickasaws in compliance with this stipulation, whereas this sum of $500,000 would have purchased, at the time of the transfer, as appears from the report of the Commissioner of Indian Affairs of October 28, 1840, $750,000 worth of these bonds—that is to say, at the time of the transfer of the bonds to the Choctaws, it is claimed that the bonds were at a discount of 33⅓ *per cent.*

I can find no report of the Commissioner of Indian Affairs of the date alleged. I do find one, however, of *November* 28, 1840, in which nothing appears to warrant the statement made by the committee.

The real state of the case, however, is precisely this:

At the time of the treaty of 1837, the United States had already in their hands, as trustees for the Chickasaws, 815 Alabama State bonds, representing $815,000, which were purchased in January and April, 1836, and for which the Government paid about 4 per cent. above par, as appears by the reports of the Secretary of the Treasury of December 7, 1836, and September 9, 1841.—(Sen. Doc., 1st sess. 27th Cong., 116; Ex. Doc., 2d sess. 24th Cong., No. 11.)

Instead of selling these bonds for the Chickasaws, and re-investing the money, the Government, to carry out the stipulation referred to, simply transferred $500,000 of the Alabama bonds, already held by them, to the credit of the Choctaws, paying thenceforth the interest to them.

It is to be observed that, on the acceptance of this and similar trusts by the United States, the Government has always held itself responsible for interest to the Indians—Congress appropriating the money to pay it, no matter whether the States were in default or not; and has looked to the States for re-imbursement, taking coercive measures to collect it of States in default, thereby guaranteeing to the Indians that the bonds were good.—(See Act March 3, 1845, and joint resolution March 3, 1845.)

The bonds, therefore, while the United States held the trust, were always at par, and could never be below.

This of itself is a complete answer to this particular demand. But there are two other answers to the claim for this sum:

First. The Government actually paid for these bonds an advance of more than four per cent. on their face; and there is no evidence that, at the time of the transfer, they were worth anything less in the market, or that any of them were ever in the market.

Second. In the transfer, the Government, in good faith, exercised the discretion vested in it by the convention between the Choctaws and the Chickasaws, and cannot, consequently, be held liable for any depreciation, if any existed.

The next claim which forms one of the grounds for the award is for interest on scrip in lieu of reservations, amounting to $150,989.70. This claim, in my judgment, has no basis whatever.

By the act of 1842, that portion of the scrip deliverable west of the Mississippi was not to be delivered west at all, but was to carry interest at the rate of 5 per cent. on a value of $1.25 per acre.

Interest under this act, was computed by the Department on each piece of scrip from the time of the arrival of the Indian west.

The claim is, that it should commence to run on each piece of scrip from the date of the act.

This is seen to be wrong at once, when the act of 1842, awarding the scrip, is examined.

That act provided that not more than half should be delivered to the Indian claimant *until after his arrival west of the Mississippi;* or, in other words, the delivery of at least half of the scrip should be postponed until proof of the arrival of the Indian west is had.

This being so, in 1845, Congress again provided that half should not be delivered at all, but should bear interest.

If the latter act had not been passed, it is manifest the Indian would not have taken the principal of the scrip until his arrival west. Of course, he could not claim interest on the principal until the principal was his; or, in other words, he could not claim interest on money which at the time of the claim did not belong to him—which is exactly this claim.

The last item mentioned by the committee as one of the grounds of their award is $36,632.49 for annuities, "based upon a report of the Second Auditor, showing that amount to be due under treaties prior to 1830."

This on the facts is not an exact statement.

The Choctaw national delegates had, at various times, complained of the non-payment of balances of these annuities, and asked for an investigation of their account.

The Senate, by resolution of March 10, 1853, called for a statement of the amount paid as such annuities.

The matter was referred to the office of Indian Affairs, March 15, 1853, and on the same day to the Second Auditor.

From the report of the Second Auditor of February 1, 1855, the balance due the Choctaws up to the year 1852, for annuities unpaid, appears to be $128,890.99.

From the report of the Commissioner of Indian Affairs of February 26, 1855, however, this balance is reported to be only $92,258.51.

This difference of $36,632.49 arises in this way:

The Second Auditor allowed the Choctaws as a "permanent annuity," from 1837 to 1852, an item of $2,000, which was, in point of fact, but a "gratuity," and an item of $400, which was "known as rent of tavern stands."

To the allowance of these the Commissioner of Indian Affairs objected. He says: "Before and at the time of the negotiation of the treaty of 1801, the commission who negotiated the treaty were instructed to inform the Indians that this allowance ($2,000) was a gratuity. The instructions were fully carried out, and the Indians repeatedly informed of the nature of the grant."

He also says that sum has always been estimated by the Indian Bureau as a "gratuity."

In regard to the $400, "rent of tavern stands," allowed also by the Second Auditor as a permanent annuity, the Commissioner of Indian Affairs, while assuming that it was due at the furthest to 1835, does not see how it can be considered due after "the United States had purchased the lands in regard to which the leases had before existed."

Congress took the same view, for, after 1835, the appropriation for these purposes ceased.

The difference between the two officers on these items alone is $33,200.

The Commissioner of Indian Affairs also deducts, in his account, all payments made since January, 1853, to fulfill stipulations which expired before that date, "in order to give an exhibit of arrearages now due, 1855."

This the Second Auditor did not do.

These three items make the difference between the two officers, $36,632.49.

There can be no question but that the Commissioner of Indian Affairs was right.

Congress so thought, and on March 3, 1855, appropriated the sum found to be due the Choctaws by the report of the Indian Office, viz, $92,258.50.

This difference, however, the Choctaws now claim.

From this review I confidently assert that any unbiased mind will be satisfied that no one of the claims which are made a basis for the award has any legal foundation.

Setting aside those under the fourteenth and nineteenth articles, their whole amount does not exceed $1,000,000.

The committee were, therefore, obliged to assert, as they did, before making the enormous award, that individual claims for reservations under the fourteenth and nineteenth articles of the treaty of 1830 constituted nearly the whole of the Choctaw demand.

If, then, as the committee say, claims to reservations under the fourteenth and nineteenth articles form the chief ground for the resolutions which they report, must not their award fall utterly?

To say nothing of the apparent fact which I have endeavored to show, from the history of the fourteenth article, that the United States has already paid under it a far greater number than ever had just claims, through practices notoriously fraudulent, there is this great fact hitherto studiously kept in the back-ground by the claimants, that in 1852, in consideration of the payment at that time of outstanding scrip amounting to $872,000, *the nation guaranteed* that no more claims should ever be made under the fourteenth article. That receipt, signed by the nation, forever bars all claim under the article by anybody, and can therefore form no possible ground, in any view, of the recommendation to pay the enormous award of nearly $3,000,000 which the committee made.

The resolutions of Mr. Sebastian, the chairman of the committee, and accompanying report, were submitted to the Senate February 15, 1859, and ordered to be printed.

They remained unacted upon till March 9, 1859, the last day but one of the session, when, by unanimous consent, they were taken up.

Mr. Sebastain himself, without giving any reason, moved to amend his own resolution so as to give the Choctaws 12½ cents per acre for the residue of the land unsold on the 1st of June, 1859, which the resolution itself as first reported declared to be worth nothing.

The Senate, from the record, evidently understood but very little about the matter when they made the award.

Mr. King wanted to know what amount was to be paid and *under what treaty or arrangement.* He said it was a "very late period to take up these matters, and that is just the way the worst legislation is done."

Mr. Sebastian explained that the subject was a large one, and fully elaborated in the report. The award proceeds upon the ground *that the Indians obtained scarcely anything for the final cession of their lands in the State of Mississippi;* that the treaty of 1830 was flagrantly *violated, and scarcely one of its provisions carried out.*

Upon a question put by Mr. King, as to the amount of money to be taken from the Treasury by the award, Mr. Sebastian said: "I think when the account is stated it will be between $800,000 and $1,000,000. *We got a large amount of land for nothing.*"

This was all that was said by any one. Thus this award, involving so large an amount of money, based, as I have shown, upon claims without foundation, was adopted without debate, at the close of a session of Congress.

In accordance with the last clause of the award, the matter was thereupon referred to the Interior Department to cause an account to be stated showing the amount due the Choctaws.

It was not until May, 1860, that the Secretary of the Interior stated the account. On the 16th of that month the statement was transmitted by him to the Senate and House of Representatives. The House laid it upon the table, and ordered it to be printed, and that body seems to have done nothing further in the matter.

The Senate referred it to the Committee on Indian Affairs.

From the statement of the Secretary of the Interior it appears that the total amount of the net proceeds of the lands ceded by the treaty of 1830 is $2,981,247.30.

This amount is reached by deducting from the sum of the proceeds of lands actually sold, viz, $7,556,568.75, and the residue of lands not sold, valued at 12½ cents per acre, viz, $522,046.75, all actual expenditures.

He did not deduct, however, the proceeds of the lands disposed of by Congress under the swamp-land acts and grants for railroads and school purposes.

Two other items, possibly to be deducted, he submits to the Senate. In doing so the Secretary says:

"It is to be observed that under the second article of the treaty of 1830 a patent was issued to the Choctaws for the country west of the Arkansas, estimated to contain 15,000,000 acres; subsequently the Chickasaws, with the consent of the United States, purchased a portion of this tract at $530,000, which the United States paid out of the trust-fund belonging to the Chickasaws, with the exception of $30,000, paid in the manner directed by the third article of the articles of convention and agreement between the Choctaws and Chickasaws, concluded the 17th of January, 1837. Under the treaty of 1855 the Choctaws leased a portion of their country, for which the United States paid the sum of $600,000. If these sums are to be regarded as payments under the treaty of 1830 the amount due the Choctaws will be $1,851,247.30."—(See Ex. Doc., 1st sess. 36th Cong., vol. 12, No. 2.)

In June, 1860, Mr. Sebastian, chairman of the Senate Committee on Indian Affairs, made a report to the Senate to accompany bill No. 515, drawn by him.

From this report it appears that the committee recommended the payment to the Choctaws neither of the sums found by the Secretary of the Interior, but the sum of $2,232,560.85.

I will quote from his report to show that Mr. Sebastian *again* placed the right of the Choctaws to this vast amount upon the grounds which I have already demonstrated to have no validity.

"The magnitude of this sum, and the misconceptions that prevail in respect to the nature of the debt itself, make it proper for the committee to remark that in order to

arrive at the foregoing result, every charge against the Choctaws and every deduction has been made that any equity would warrant; and that certainly no less sum than $2,332,560.85 would ever be adjudged by a court of justice to be due and owing upon the award of the Senate, upon the most strict rules of construction against the Choctaws, and that the amount *actually* due them for actual loss and damage sustained by the non-performance of the stipulations of the treaty of 1830, if the *actual value at the time of all the reservations they lost was brought into account, would be found to be much larger than that sum, and probably three or four times as large.*

"It is also to be observed that, of the amount claimed by the Choctaws, near the whole was for *individual claims of persons entitled to reservations of land, and who were prevented from securing them.* By article 12 of the treaty of 1855, whether the Senate awards the Choctaws a gross sum or the net proceeds of their lands, and whether the sum it awards is large or small, in either case the nation is to and must receive and accept it in full satisfaction of all claims of itself and individuals against the United States arising under the treaty of 1830, and the Choctaw Nation becomes liable for and bound to pay *all* such individual claims; *and that these claims*, as appears by official evidence, *amount to more than the sum which the committee now reports as due the Choctaws under the award.* The claimants have waited many years to be paid for their losses, and many of them, the committee are informed, are poor; and the Choctaw authorities, constantly urged and entreated by them, anxiously desire to investigate and provide for paying their claims."

The committee accompany their report with bill No. 515, providing for the appropriation and disposition of the sum in accordance with the twelfth and thirteenth articles of the treaty of 1855.

These articles detail exactly what disposition is to be made of the money found due to the Choctaws by the award of the Senate.

1. The net proceeds shall be received in full satisfaction of all claims against the United States, national and individual; and the Choctaws shall thereupon become liable and bound to pay all individual claims as shall be adjudged by the tribe to be just; the settlement and payment to be made with advice and under the direction of the United States agent, and *so much* of the fund awarded by the Senate as *shall be necessary to pay the* just liabilities of the tribe shall, on their requisition, be paid.

2. The balance of the amount allowed to the Choctaws under the twelfth article of the treaty shall be held in trust by the United States, yielding an interest of not more than five per cent., &c.

The Senate, however, took no action on the report and bill, except to order them to be printed.

At the same session, however, Mr. Sebastian offered, as an amendment to the legislative appropriation bill, a clause appropriating $2,332,560.83 to carry into effect the award of the Senate.

This amendment met with the most decided opposition in the Senate, and, after a long debate, was voted down.

The strong objection to it was the argument that the award itself was the result of hasty action at the close of a session of Congress, and therefore believed to be wrong. For this reason it was contended it was not binding on the Senate, *but could be reviewed and set aside.*—(Cong. Globe, part 4, 1st sess. 36th Cong., pp. 2937 and 2963.)

At the next session of the same Congress, however, the Senate, after debate and against strong opposition, passed an amendment to the Indian bill, appropriating the sum of $1,202,560.85, being, in the language of the amendment, the undisputed balance due the Choctaws for carrying into effect the eleventh article of the treaty of 1855 and the award of the Senate made pursuant thereto, leaving the question whether the balance reported by the Committee on Indian Affairs not appropriated, to the future decision of the Senate.—(Cong. Globe, 2d sess. 36th Cong., pp. 704, 831.)

This sum, it will be seen, was not the one found due by Mr. Sebastian's committee, but that amount less the sum of $530,000 paid by the Chickasaws to the Choctaws for a lease of part of the land west of the Mississippi, and the sum of $600,000 paid by the United States to the Choctaws for the sale of the land west of the 100th degree west longitude.

The amendment was, however, voted down in the House, after a long debate, by a vote of 104 to 56.

The objection to the award seems to have been that it was ill-considered and not binding, and that the House should not, therefore, appropriate money to carry it out.—(Cong. Globe, part 2, 2d sess. 36th Cong., pp. 1287 and 1357.)

The matter thereupon went to a committee of conference, who reported, on the 2d of March, 1861, an amendment which finally passed both Houses without debate, and which is based on the idea so often expressed in the debate on this question, that neither House considered the previous action of the Senate in making the award in favor of the Choctaws, as a board of referees, as *binding.*

The amendment was as follows:

"For the payment of the Choctaw Nation or tribe of Indians, on account of their

claim under the eleventh and twelfth articles of the treaty with said nation or tribe made the twenty-second of June, eighteen hundred and fifty-five, the sum of five hundred thousand dollars; two hundred and fifty thousand dollars of which sum shall be paid in money; and for the residue, the Secretary of the Treasury shall cause to be issued to the proper authorities of the nation or tribe, on their requisition, bonds of the United States authorized by law at the present session of Congress: *Provided*, That in the *future adjustment* of the claim of the Choctaws, under the treaty aforesaid, the said sum shall be charged against the said Indians."

It is also evident that this section is against the provisions of the treaty of 1855, for by the terms of the treaty no part of the claim can be paid by Congress until the individual claims which, by the treaty, the Choctaws assumed to pay shall be adjudicated by the proper authorities of the tribe, and *then only to the amount of such adjudication*. And, second, the balance can, under the treaty, never be paid, but must be held in trust by the United States, the interest only being payable to the Indians.

I again refer to this because the Choctaw delegates, in their letter to you of June 20, in reply to mine of May 29, 1872, attempted to answer it by claiming that the act of 1861 was so far itself a repeal of the treaty.

While I admit that an act of Congress can repeal a treaty, it is evident that the section of the appropriation act referred to did not intend to repeal any part of it, for the amount appropriated by the terms of the section was expressly on account of their claims under the eleventh and twelfth articles of the treaty of 1855, being the very articles which provide for the disposition of the amount awarded.

Besides this, which perhaps is of more importance, and therefore I refer to it again, the language used by Congress in the last part of the section shows that it did not consider the act of the Senate in making the award, as a board of referees, as conclusive, for the amount appropriated would not, it seems to me, have been charged against the Choctaws in the *future adjustment* of the claim, if the claim by the award had, in its opinion, been absolutely adjusted as claimed by the Choctaws.—(See remarks of Mr. Fessenden, Cong. Globe, 2d sess. 36th Cong., page 831.)

Under this section, however, whatever may be its proper interpretation, the money was paid, but the bonds were not then issued.

Before they could be issued, in consequence of the attitude of the Indians in the southern rebellion, the act of July 5, 1862, provided that all appropriations made to carry into effect treaty stipulations in behalf of Indians in actual hostility to the United States, including in terms the Choctaws, should be suspended and postponed, wholly or in part, at the discretion and pleasure of the President.

This suspension continued until, by the act of March 3, 1865, the authority given to the Secretary of the Treasury to issue the bonds was taken away, for that act directed him, in *lieu* of the bonds for the sum of two hundred and fifty thousand dollars appropriated by the act of March 2, 1861, to pay to the Secretary of the Interior two hundred and fifty thousand dollars for the relief and support of individual members of several tribes, among which were the Choctaws, which money has been paid.

On the 20th of April, 1866, however, a new treaty was made with the Choctaws and Chickasaws, by the tenth article of which the United States re-affirmed all obligations arising out of treaty stipulations or acts of legislation with regard to these tribes, entered into prior to the late rebellion and in force at that time, and agreed to renew the payment of all annuities and moneys accruing under such treaty stipulations and acts of legislation from and after June 30, 1866, and by the forty-fifth article of which "all rights, privileges, and immunities heretofore possessed by said nations or individuals, or to which they were entitled under treaties and legislation heretofore made, are declared to be in full force, if not inconsistent with this treaty."

In September, 1870, the question arose whether, under the provisions of this treaty, the Secretary of the Treasury could issue the bonds in question to the Choctaws, which the Attorney-General answered in the affirmative, holding that although the act of 1865 withdrew from the Secretary of the Treasury the authority vested in him by the act of 1861 to issue the bonds, and that it repealed therefore the direction to him in the act of 1861, that authority was revived by the treaty of 1866. They were not issued, however.

The subsequent act of 1871, perhaps, settled the authority of the Secretary to issue the bonds, but he was restrained from doing so by a writ of error to the Supreme Court, taken by Lewis & Bro., of Philadelphia, (also claimants of the bonds,) from a judgment of the supreme court of the District of Columbia, on their petition for a writ of mandamus to the Secretary of the Treasury, requiring him to deliver the bonds to them. There the matter now stands.

I have thus, as carefully as my time would permit, set forth in detail the history of this celebrated claim.

From this history it appears, *beyond doubt*, that its basis is the alleged right to reservations under the fourteenth article of the treaty of 1830; that under this article a *large number* of reservations beyond what the Choctaws were legally entitled to were allowed by the Government, although, on the evidence, absolutely fraudulent. But

however this may be, Congress, before they finally paid them, determined that the Choctaw Nation should give a solemn acknowledgment that they should never thereafter make claim again to reservations under the article, as a *condition precedent* to its action in paying those which had already been allowed. This the nation having done, the claim, as it seems to me, should be regarded as completely barred by Congress.

I have the honor to be, very respectfully,

E. C. BANFIELD,
Solicitor of the Treasury.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury.

Copy of release referred to in the foregoing letter.

Whereas by an act of Congress entitled "An act to supply deficiencies in the appropriations for the service of the fiscal year ending the thirtieth of June, one thousand eight hundred and fifty-two," it is provided that after the thirtieth day of June, one thousand eight hundred and fifty-two, all payments of interest on the amounts awarded Choctaw claimants, under the fourteenth article of the treaty of Dancing Rabbit Creek, for lands on which they resided, but which it is impossible to give them, shall cease; and that the Secretary of the Interior be directed to pay said claimants the amount of principal awarded in each case respectively, and that amount necessary for this purpose be appropriated, not exceeding eight hundred and seventy-two thousand dollars; and that the final payment and satisfaction of said awards shall be first ratified and approved as a final release of all claims of such p rties under the fourteenth article of said treaty, by the proper national authority of the Choctaws, in such form as shall be prescribed by the Secretary of the Interior: Now, be it known that the said general council of the Choctaw Nation do hereby ratify and approve the final payment and satisfaction of said awards, agreeably to the provisions of the act aforesaid, as a final release of all claims of such parties under the fourteenth article of said treaty.

A. NAIL, *Speaker.*

NOVEMBER 6, 1852.

Passsed in the senate:

D. McCOY, *President.*

Approved:

GEORGE W. HARKINS.
GEORGE FOLSOM.