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P. P. PITCHLYNN.

MEMORIAL

OF

P. P. PITCHLYNN,

DELEGATE OF THE CHOCTAW NATION,

UPON

The subject of the claim of the Choctaw Nation to the net proceeds under the award of the Senate of the United States.

APRIL 2, 1872.—Referred to the Committee on Indian Affairs and ordered to be printed.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled:

Upon the subject of the claim of the Choctaw nation for the amount due them under the award of the Senate of the United States, made on the 9th day of March, 1859, the undersigned, delegate of said nation, respectfully asks to be permitted to call your attention to the following brief statement.

The award gave the Choctaws the net proceeds of the sales of their lands ceded in 1830, so far as sold up to January 1, 1859, deducting costs of survey and sale, and all just and proper expenditures and payments under that treaty, excluding reservations allowed and secured, and estimating all scrip received by them at $1 25 per acre; and it allowed them twelve and one-half cents per acre for the residue of the lands.

By reference to the account as stated in pursuance of the award, you will find (H. Ex. Doc. No. 82, 1st Session 36th Congress, p. 23,) that the whole quantity of land ceded was $10{,}423{,}139\frac{69}{100}$ acres.

For surveying and sale of the whole of this the Choctaws were charged ten cents an acre, $1,042,313 96.

Their reservations allowed and secured were deducted from the whole quantity to the amount of $334{,}101\frac{02}{100}$ acres, for which nothing was allowed the Choctaws, though they were made to pay the cost (ten cents an acre) of surveying and selling the same. This is an overcharge against them of $33,410 10.

The quantity of land sold was $5{,}912{,}664\frac{63}{100}$ acres; of that unsold, (reservations excluded) $4{,}176{,}374\frac{04}{100}$ acres. For this they were charged ten cents per acre for cost of surveying and selling, and credited twelve and one-half cents an acre; *i. e.*, they were really allowed two and one-

half cents an acre. The award directed the costs of surveying and selling to be deducted only as to the lands sold. The language is explicit—"The proceeds of the sale of such lands as have been sold;" deducting therefrom the costs of their survey and sale. Here is another overcharge of $417,637 40.

There are other charges for certain expenditures, not properly chargeable, which I do not now notice.

The balance due under the award, after straining everything to the utmost against the Choctaws, was $2,981,247 30.

On the 19th of June, 1860, the Committee on Indian Affairs of the Senate, in their report on this account stated—(Sen. Reps. Com. No. 283, 1st Session 36th Cong.)—thought that a further deduction ought to be made for the 5 per cent. on the net proceeds of the sale of the lands which had been paid to the State of Mississippi. The award had specified what deductions should be made from these net proceeds, and had not provided for making the Choctaws pay back moneys which the United States had given to Mississippi. The amount ($362,100 70) could not righteously be deducted.

But, if it could properly be deducted, it represented 295,633 acres, (one-fifth of all that were sold,) and the Choctaws were charged ten cents an acre for the costs of surveying and selling the very land which realized that money, $29,563 32. Suppose all, instead of part, of the net proceeds of lands sold had been given away by the United States, and the committee had advised that, therefore, nothing should be paid the Choctaws on account of them; and suppose, nevertheless, they stood charged with ten cents per acre for surveying and selling them?

The committee also thought that the phrase, "the residue of said lands," in the award, should not be construed to include such as the United States had given away as swamp-lands, and for railroads and school purposes. Why not, one fails to see. The quantity so disposed of was 2,292,766 acres. The award spoke of the lands ceded, allowed the net proceeds of those sold, and twelve and one-half cents an acre "for the residue of said lands." Nobody but an Indian would have to argue that this meant "all that had not been sold, and of which the proceeds were allowed."

Here was another deduction, utterly unjust, of $286,595 75, recommended by the committee. The two deductions left $2,332,560 85. But if anything could be deducted for swamp-lands and others given away, the Choctaws had been charged ten cents an acre for surveying and selling these very lands. Therefore, they were only to get two and one-half cents an acre. On any principle, only that could be deducted, being only $57,319 15 instead of $286,595 75; or if twelve and one-half cents were charged, the ten cents an acre should have been deducted from the charge for expenses of surveying and selling, which would be $229,276 60, and come to the same thing.

As soon as this report was seen, it was objected to by the delegates of the Choctaws, and these gross errors pointed out. They were such as, if insisted on, would have been dishonorable—such as would ruin a merchant or banker, and convict him of fraud and dishonest manipulation. The errors were too plain to be denied, and the report was never called up or acted on. It has not the sanction of the Senate; it is no part of the award, and no part of the account, and the deductions it proposed would have been simply fraudulent.

I earnestly urge upon Congress that these sums are too large for the Choctaws to lose; and most especially urge that they shall not, in consideration of a sum less than is due them, be required to receipt in full,

or to relinquish these amounts. No honorable man in Congress would, for all the wealth of the Indies, so deal with his creditor. Is not a nation's honor as dear to her sons as their own?

The award of the Senate was made on the ninth day of March, A. D. 1859. It was as final and conclusive as a decree in chancery, being strictly within, and in accordance with, the terms of the submission. Nothing remained but to take and state the account in conformity to it. This was a merely clerical process. The award itself neither could be changed, nor ever was changed afterwards. The report of the Secretary of the Interior (who was, in regard to it, precisely like a master in chancery) was not directed by the award to be made to the Senate, but to Congress; and it was made on the 8th of May, 1860, to the House of Representatives and Senate separately. Thus the Senate understood and intended its award to be final. It had performed the duty imposed on it, and its duties as arbitrator were ended. It was, as to them, *functus officio.*

Consequently, and because the chairman of its Committee on Indian Affairs at once saw and admitted his error, the report of the Committee on Indian Affairs, made on the 19th of June, 1860, (principally to expose the absurdity of a suggestion made by the Commissioner of Indian Affairs,) was never acted on; and the award remained inviolate, and the account taken under it unimpeached and without exception to it; or, if the committee's recommendations as to deductions further to be made were in the nature of exceptions, they were abandoned, and if brought before the Senate for its action, they would have been overruled.

The Choctaw Nation instructs its delegate to urge upon the Senate and House of Representatives its just claim to receive interest upon the sum of $2,981,247 30, less $250,000 paid in money in March, 1861, and $250,000 at that time appropriated to be paid in bonds not then issued, from the 9th day of March, 1859, the date of the award, until it shall be paid; and also interest during the same time upon said $250,000 in bonds.

The Choctaw Nation presents this claim to interest with entire confidence in its legal right to be paid interest, and also because it is required by the principles of the simplest and commonest justice and good faith.

The United States have, since the date of the said award, had the use of these moneys, belonging to the Choctaw people, which, if then paid, would have been paid in gold, and have used them, during part of the time, in purchasing their own bonds, and so relieving themselves of the payment of interest. And, if interest is not paid the Choctaws, the United States will, by having unjustly delayed payment, have had the use of the moneys of the Choctaws, and the benefit of interest thereon, for several years, for nothing, thus profiting pecuniarily by declining and delaying to pay an honest debt, absolutely in judgment as to this award and these moneys. The relation between the United States and the Choctaw Nation is that of debtor and creditor, not that of sovereign and subject, or guardian and ward; and moneys in judgment always bear interest.

The treaty of 1855 was a solemn engagement on the part of the United States that they would promptly pay to the Choctaw Nation whatever should be awarded to them by the Senate, whose decision and award were to be final.

The United States have never considered themselves bound to pay interest on moneys due by them to individuals; but this has been justified upon the legitimate presumption that the Government is always

ready to pay all just claims against the United States. That presumption no longer obtains, when the claim or debt is in judgment against it, by the award of a judge or arbitrator selected by itself, and the judgment is final. Then it cannot be presumed to be willing and ready to pay what it does not pay, and that the delay of payment whereof is procured by misstatements of facts by its own advocates, paid by it to legislate and do justice.

There is not a State in the Union, nor perhaps a country in the world, in which debts in judgment do not bear interest. As to such a debt the the Government has no superior privilege, exemption, or prerogative. It might as well refuse to pay the debt as to refuse to pay the interest. For it keeps from the party that which is his when it withholds the interest, equally as when it withholds the principal adjudged. For, if it had paid the principal punctually, the creditor would have had the use and profit of the money, and have been saved the losses caused by not having it to use, and the debtor would not have had the use of it, nor the profit accruing to them from that use. A great writer, Domat, thus states the law of reason and justice on this point: "It is a natural consequence of the general engagement to do wrong to no one, that they who cause any damages by failing in the performance of that engagement, are obliged to repair the damage which they have done. Of what nature soever the damage may be, and from what cause soever it may proceed, he who is answerable for it ought to repair it by an *amende* proportionable either to his fault, or to his offense or other cause on his part, and to the loss which has happened thereby." (Domat, Part I., Book III., Tit. V., 1,900, 1,903.)

Unless the United States are prepared to repudiate this principle, and to admit and proclaim that they are ready and willing "to do wrong" to their judgment creditor, the Choctaw Nation, they will pay the interest upon the moneys adjudged by the Senate, as well as the principal, and not rejoice at the saving of a sum of money at the expense of the nation's character for justice and integrity and honest dealing.

"Interest" is in reality, in justice, in reason, and in law, too, a part of the debt due. It includes, in Pothier's words, "la perte que quelq'un a faite, et le gain qu'il a manqué de faire,"—the loss which one has suffered, and the gain which he has failed to make. The Roman law defines it as 'quantum mea interfruit; id est, quantum mihi abest, quantumque lucraci potui. The two elements of it were termed 'lucrun cessans et damnum emergens.' The payment of both is necessary to a complete indemnity.

Interest, Domat says, is the reparation or satisfaction which he who owes a sum of money is bound to make to his creditor, for the damage which he does him, by not paying him the money he owes him.

It is because of the universal recognition of the justice of paying, for the retention of moneys indisputably due and payable immediately, a rate of interest considered to be a fair equivalent for the loss of its use, that judgments for money everywhere bear interest. The creditor is deprived of this profit, and the debtor has it. What greater wrong could the law permit, than that the debtor should be at liberty indefinitely to delay payment, and during the delay have the use of the creditor's moneys for nothing? They are none the less the creditor's moneys because the debtor wrongfully withholds them. He holds them, in reality and essentially, in trust; and when was a trustee not bound to pay interest on moneys so held?

On the question of allowing interest on amounts of damages proven and adjudicated, the Choctaw people respectfully refer to the exhaustive

consideration of that question in the cases of Letitia Humphreys and Robert Harrison, before the Court of Claims in 1856 and 1857, and to be found in the report of the Court of Claims, No. 127, to the House of Representatives, at the first session of the Thirty-fifth Congress; to the opinion and decision of the judge of the district court, at pp. 53 to 57; opinion of Mr. Webster, pp. 75 to 78; opinion of Judge Bibb, pp. 84 to 91; statement of cases of Encomium and Cowet, pp. 121 to 124; dissenting opinion of Judge Scarburgh, pp. 215 to 221.

It will be seen, by reference to these pages, that the United States have always claimed interest in behalf of their citizens having claims for damages and injury against foreign nations; and they insisted upon it under the treaty of 1794, and under that of Ghent, under the former of which interest was allowed as part of a just and adequate compensation by those great judges, Sir William Scott and Dr. Nicholl; that interest was allowed under the treaty of 1795 with Spain, and upon claims against Brazil, and under the treaties of 1839 and 1848 with Mexico.

It will also be seen that in Del. Col. *vs.* Cunoto, (3 Dallas, 333,) a case of capture, interest was allowed at the rate of 10 per cent. per annum, which was also sanctioned in the Apollon, (9 Wheat., 376,) as to cases where the property was sold under disadvantageous circumstances, or had not arrived at the country of its destination—the allowance of such interest being in lieu of the probable profits.

And in Eakins *vs.* East India Company, (P. Wms., 395,) on a bill to account for a ship and cargo wrongfully taken from the plaintiff in the East Indies by a company that had almost national powers, and maintained a civil government over a great country, and a standing army, and where the complainant demanding Indian interest, which was 12 per cent., had "rested on his bill" thirteen years, the chancellor said, "If a man takes my money by way of loan, he ought to answer interest; but if he takes my money from me wrongfully, he ought, *a fortiori*, to answer interest; and it is still stronger where one by wrong takes from me my goods which I am trading with." The interest was decreed at the Indian rate, and the decree was affirmed in the House of Lords. (2 Bro. P. C., 72; 2 Eq. Cas. Abr., ch. 1, 534.)

The Senate, in awarding to the Choctaws the net proceeds of the sales of their lands, included no interest in these net proceeds; nor did the committee, in estimating the damage sustained by the failure of the Choctaws (through the fault of the Government and officers of the United States) to secure their reservations of land, in 1830 and 1831, include any interest on the arbitrarily assumed value of those reservations. If the moneys had been awarded and paid in 1831, twenty-eight years before they were awarded, and more than forty years ago, they would, even then, have been a very inadequate compensation. Surely, after they were awarded and in judgment, they bear interest, as matter of law and right. Upon the claim of the State of Massachusetts, in 1869, for interest upon the principal sum before then paid her for advances made in the war of 1812, the committee of the Senate (Report No. 4, Forty-first Congress, first session, April 1, 1869) considered that the delay of payment of the principal, for twenty-two years after a report in favor of paying it, gave the State a right to ask Congress to look with favor on the claim and act generously.

In a proper case, the Choctaw people might appeal with confidence to the generosity of Congress. In this case they do not need to do so. They present a right, and ask simply for what is their just due—the amount of the judgment rendered in their favor, with such interest upon

it as in every civilized nation under heaven allowed by law to the creditor, upon delay of payment of moneys adjudged against his debtor. They will not deem it just or honest, at the end of more than forty years, to be paid part of the moneys that have all the time been justly owing to them, without interest even from the time when they were solemnly adjudged to them, and the United States placed in legal default. Since that day, as a man who, in possession of the lands of another, receives the fruits that are the property of the lawful owner, does not satisfy the demands of justice by restoring the lands alone, after long delay, he must, to be honest, account also for the fruits, for that they were not his own; since that day, the United States have not only deprived the Choctaw people of the fruits of the moneys adjudged to them, but have taken these fruits to themselves, and, upon the same eternal principles of justice, must account for them, or do a grievous wrong. "What," Lord Coke asked, "*is* the land but the *profits* thereof?" The same question may be, with the same perfect truth, asked in this day, as to moneys. If one will keep back the moneys of another, he must pay for their use; and when the amount has been ascertained and adjudged, there is nothing in the sovereignty of a State or nation that can exempt it from the obligation that justice and reason create.

P. P. PITCHLYNN,
Choctaw Delegate.

WASHINGTON, D. C., *April* 1, 1872.