CHOCTAW CLAIMS.

MEMORIAL

OF

THE CHOCTAW NATION,

IN ANSWER TO

The letter of the Honorable Secretary of the Treasury, transmitting a letter of the Solicitor of the Treasury in relation to the Choctaw Claims.

FEBRUARY 17, 1873.—Referred to the Committee on Indian Affairs and ordered to be printed.

MEMORIAL OF THE CHOCTAW NATION IN RELATION TO THE LETTER OF THE SOLICITOR OF THE TREASURY ON THE CHOCTAW CLAIMS.

Hon. J. G. BLAINE, *Speaker House of Representatives:*

SIR: The letter transmitted to you on the 6th January by the Secretary of the Treasury, from the Solicitor, Mr. Banfield, undertakes to present fully the origin, nature, and history of the Choctaw claim on the Government, which claim, he alleges, has not only been paid, but is barred by a receipt or acknowledgment of full satisfaction; which receipt, or rather release, copied at the end of his letter, relates *exclusively* to claims under the 14th article of the treaty of 1830. He therefore undertakes to show that the claim was founded upon that article alone; notwithstanding the fact that on page 19 of his letter he says that "setting aside those under the 14th *and* 19*th* articles," the whole amount of the *other claims* "does not exceed $1,000,000."

The report of the Senate Committee on Indian Affairs, of February 15, 1859, which is frequently referred to by Mr. Banfield, shows that the committee had under consideration, when making their award in favor of the Choctaws, claims under the 19th article of the same treaty amounting to..... $451,800 00

And under other heads, outside of either 14th or 19th articles, for..... 763,797 65

Making a total of..... 1,215,597 65

for claims having no connection with the 14th article of the treaty of 1830. Therefore, whatever may be said of their merits or demerits, they, at least, are not barred by the release he exhibits.

Proceeding, as above stated, on the assumption that the 14th article furnishes the only foundation, his next step is to show that not only has

every demand under it been paid, but that the demands themselves were not valid, and should never have been allowed. Moreover, that the treaty of 1830 abounded in benefits, outside of the money it promised to pay, and outside of the 14th article, which, if not exactly a full equivalent for the land ceded, ought not to be overlooked, as they have hitherto been, in considering Choctaw claims. For example, it granted them their country west of the Mississippi. True, "it did not give them a greater number of acres," as it merely described the tract secured by former treaties; but then it vastly improved the title, by making it a grant in fee-simple, different from, and of course better than, ordinary fee-simples, in being subject to two conditions,—national existence and occupancy; though this last feature Mr. Banfield neglects to mention. Furthermore, it protected them from the danger of foreign invasion, to which, without the Dancing-Rabbit treaty, they would have been so fearfully exposed; and if its 17th article had not been inserted, every promise made by the United States, under former treaties, to pay money, would probably have been set aside. (p. 4.)

I refer to these points, because Mr. Banfield says they are of the greatest importance in considering the claim which it is the object of his letter to defeat.

He proceeds next to the 14th article, from which sprang claims to reservations, "upon the *sole* ground" that those entitled to register were unfairly refused by the agent, Ward, who swore he never refused anybody.

Upon this slender basis, which, if Ward swore truly, was no basis at all, a vast superstructure of fraud was raised, the culminating point being the net-proceed claim.

The letter is chiefly a history of the manner in which this fraud has been denounced and exposed at various times, in communications addressed to the President, to Congress, to different boards of adjudicating commissioners, to successive heads of Departments and Commissioners of Indian Affairs, from General Jackson's time, in 1833, down to President Polk's, the last allowance of claims having been made by Governor Marcy, Secretary of War, in 1846.

During this period of thirteen years charges of fraud were constantly appearing. As they seem to have failed to be effective when first made, Mr. Banfield reproduces them for the benefit of the net-proceed claim, hoping that the time is at hand when their value will be appreciated.

Before looking into these charges, I wish to dispose of one or two preliminary points, beginning with—

THE CHICKASAW BOUNDARY.

Mr. Banfield alleges, in a note to the first page of his letter, that the Choctaw cession of 1830 was not so large as the Land-Office represents, by over two millions of acres, owing to an error in running the line between their country and the Chickasaws, the difference being more than enough, at $1.25 per acre, to cancel the entire net-proceed claim. In this matter he has fallen into several errors.

First of all, he says the line claimed by the Chickasaws touched the Mississippi River at a point "about twenty-eight miles below where the St. Francis River joins it." The Chickasaw claim, as stated in their treaty of 1832, (Stat. at Large, p. 286,) specifies a point "twenty-eight miles *by water*," below the St. Francis; the words "by water," which he leaves out, making a difference of over five miles in running twenty-eight, owing to the bends in the river.

The next error is in the intimation that no evidence on the subject was obtained from the Choctaws. The subjoined copy of a letter, dated October 15, 1835, from the Secretary of War, Governor Cass, to President Jackson, whose approval settled the question, will show that the evidence obtained from the Choctaw chiefs was "definite and precise" in identifying the point opposite the town of Helena, which had been, on a former occasion, mutually agreed upon by the two tribes:

WAR DEPARTMENT, *October* 15, 1835.

To the PRESIDENT OF THE UNITED STATES:

SIR: I have the honor to lay before you for your decision the several papers in relation to the boundary-line between the last Choctaw and Chickasaw cessions in the State of Mississippi.

The treaty with the Chickasaws of 20th October, 1832, confirmed by the treaty of May 24, 1834, provides that this line shall be run in such manner as the President shall direct, after procuring the statements of the principal chiefs of both Choctaws and Chickasaws, unless these chiefs should agree that the line claimed by the Chickasaws was the true one. This they have not done.

The only difficulty in this line consists in the point where it shall strike the Mississippi River. Both parties agree as to the name of the place, which is the Tunica Old Fields; but they differ as to the exact position of these fields, one party putting them lower down and the other higher up the Mississippi. Mr. Bell, the surveyor-general, to whom this matter was referred, has replied, that the line ought to commence about twenty or twenty-one miles by water, and fourteen and three-quarters by land, below the mouth of the St. Francis River, and from that point he has run a random line to a blazed tree on the old Natchez road, which seems to have been a well-known place.

In looking carefully at the various documents submitted, I am under the impression that Mr. Bell has begun his line too low down the river. How far these Tunica Old Fields extended it is difficult now to ascertain; nor does any of the Chickasaw testimony undertake to designate at what point in these fields the boundary struck the Mississippi. One principal reason given by Mr. Bell for fixing upon the spot selected by him as the place of beginning is, that he there found the only old fields, "that could be called such," within the district of thirty or forty miles by water below the mouth of the St. Francis. But he adds, "It is true, however, that both above and below, for a few miles, there are some faint signs of ancient settlements, but which appear to be merely an extension of the main old fields from which the line was commenced, and which fields, I have no doubt, are the Tunica Old Fields which have been so often alluded to by the Choctaws and Chickasaws."

It appears from the statements of the Choctaws that these Tunica Old Fields were a well-known spot. That they had been improved many years, perhaps ages before, and by a tribe of Indians called "Tunicas." They did not get their designation from their occupation by the Choctaws or Chickasaws. The error committed by Mr. Bell is, in supposing that this name designated an identical spot upon the river which had recently been in cultivation. I take it from the evidence, as well indeed from Mr. Bell's statements, that these fields extended for many miles along the Mississippi. He commenced his line at or near their lowest extremity, but why does not distinctly appear. The statements of two of the Choctaw chiefs are definite and precise, that the line struck the Tunica Old Fields nearly opposite to a house where a man by the name of Phillips resided, and which was situated upon the present site of the town of Helena. They state that they were present when an attempt was made to run the line, and that this point was mutually agreed upon.

I therefore recommend that a point opposite to Phillips's house be fixed upon as the place of beginning for the line between the Choctaw and Chickasaw cessions, and that it be run thence on a straight course to the marked tree, described in the treaty, on the old Natchez road, one mile southwestwardly from Wall's old place.

Very respectfully, &c., &c.,

LEWIS CASS.

Approved.
ANDREW JACKSON.

Mr. Banfield was, of course, not aware of the existence of Governor Cass's letter, which so effectually removes the grave doubt he speaks of. But he might have known that the territory in dispute could under no circumstances be equal to half the number of acres he indicates. There was no doubt about the starting-point—a marked tree on the Natchez road. The only question was, where a straight line from that tree ought to strike the river. And as any map of Mississippi would show that the line was not more than 106 miles long, (the actual measurement is

105 miles, 13 chains, 78 links,) from the Oktibbeha to the Mississippi, it is evident that a triangle with sides of that length, even with a base of twenty-eight miles, could not contain a million of acres.

But instead of being twenty-eight miles wide at the base, the distance from Helena to the line first run between the Choctaw and Chickasaw cession is exactly eight miles, and the contents of the tract between that line and the one subsequently run by order of President Jackson was less than 275,000 acres. So that, even if there were any doubt on the subject, which there is not, the amount in controversy could not possibly equal one-eighth of the sum he mentions.

TITLE TO THE CHOCTAW COUNTRY WEST.

I have already alluded to the value Mr. Banfield attaches to the title the treaty of 1830 gave the Choctaws to their country West. His statement (on p. 3) is calculated to make the impression that their present domain was acquired under that treaty, and paid for by the cession then made. Whereas, as he admits on the next page, it was acquired under a former treaty, being part of the price of the cession of 1820; and the treaty of 1830, instead of improving, as Mr. Banfield alleges, actually prejudiced the tenure by which they held it.

For the treaty made an absolute, unqualified cession, without any restriction or limitation. The United States commissioners "do hereby cede to said nation a tract of country west of the Mississippi River." (7 Stat. at Large, 211.)

This Mr. Banfield regards as a "vague title of occupancy;" and he says the treaty of 1830 "substituted in its place a grant in perpetuity," being, in the words of the treaty, "in fee simple to them and their descendants, to inure to them while they *shall exist as a nation, and live on it.*" (7 Stat., 333.)

The "*fee-simple*" grant was therefore subject to two conditions, neither of which occur in the grant or cession of 1820, namely: 1st, continued existence as a nation; 2d, occupation by actual residence.

While there is nothing to show that the treaty of 1820 created what Mr. Banfield calls a "vague title of occupancy," the words "live on it," which he leaves out in his quotation from the treaty of 1830, manifestly give that character to the title it conveys, which is not, as he says, "in perpetuity," but determinable whenever the contingency occurs, which is foreshadowed in the 4th article of the treaty of 1820, the dissolution of the national existence, by making each member of the tribe a citizen of the United States.

He quotes the Attorney-General as sustaining his view of the title thus acquired in 1830. But the opinion cited says nothing about the treaty of 1830, or any other treaty with the Choctaws, nor does it speak of any grant in perpetuity. It says the Choctaws had an absolute title; and therefore undoubtedly refers to the treaty of 1820, the only one from which any such title could be derived. (3 Opins. Att'y-Gen., 322.)

In the negotiations for repurchasing in 1825 part of this western cession, the Secretary of War, Mr. Calhoun, evidently regarded the Choctaws as the absolute owners; never intimates, in discussing the question of compensation, that they are to be regarded in any other light. (2 Ind. Affs., 552, 553.)

If they were the absolute owners in 1825, they are clearly entitled to compensation for the damage done to their title by the treaty of 1830.

THE NET-PROCEEDS CLAIM.

The net-proceeds claim, as a separate, independent proposition, was an attempt on the part of the Choctaws to induce the Government to fulfill the promises made by the commissioners who negotiated the treaty of 1830. The language of the commissioners, before it was signed, and, as the Choctaws thought, in the treaty itself, pledged them the proceeds arising from the sale of ceded lands, after deducting the necessary expenses of survey, &c., the cost of emigration, and the various other items required by the treaty to be paid. The commisioners, beyond a doubt, expressed themselves to that effect, as their record shows; but when the question was submitted, under the 11th article of the treaty of 1855, the Senate decided that the treaty of 1830 did not admit of any such construction. It decided, however, at the same time, that the Choctaws had presented valid claims against the Government, more than equal in amount to the sum which such a construction would give them, and therefore it awarded the net proceeds in satisfaction of such claims.

Mr. Banfield objects—

1. To the separate claim for the net proceeds, which he regards as unfounded, for reasons that need not be noticed, as the claim was rejected.

2. To the items constituting the sum in gross, which were considered by the Senate as more than equal to all the "net-proceeds" could possibly give. Mr. Banfield thinks that none of them represented valid claims.

The most considerable of these items, constituting the bulk of the Choctaw claim, grew out of damages sustained under the 14th article of the treaty of 1830, which is in the following words:

> Each Choctaw, head of a family, being desirous to remain, and become a citizen of the States, shall be permitted to do so, by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child, which is living with him, over ten years of age; and a quarter section to such child as may be under ten years of age—to adjoin the location of the parent. If they reside upon said lands, intending to become citizens of the States, for five years after the ratification of this treaty, in that case a grant in fee-simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but, if they ever remove, are not to be entitled to any portion of the Choctaw annuity.

Under this article, the Indian claiming as head of a family was entitled to a section of land—640 acres—which the Government sold for $800

Fifteen years after the treaty was ratified, he received in part pay for it 320 acres in land-scrip, for which he realized $54

And six years later received the value of the other 320 acres in money, or 400

—— 454

The Indian claims that the money paid into the Treasury for his land was his money.

That the scrip for which he realized $54 was no equivalent for the $400 paid ten or fifteen years previously to the Government.

That the $400 paid him in 1852 was no equivalent for the $400 paid before the year 1836 to the Government.

In other words, that the money received for his land was a trust-fund, to be accounted for, for his benefit.

A settlement on this principle would give him the proceeds of his

land, with interest from the date of sale, as an equivalent for the loss of his home and his improvement, deducting what he received in money and realized for his scrip.

To all this Mr. Banfield replies in effect:

1. That there was no such Indian.
2. That he was not entitled to land.
3. That he forfeited his land by selling half of it.
4. That he has been paid in full for his land.
5. That when paid, he gave a receipt in full, and promised never to ask for more.

The first objection, that there was no such Indian, refers to the extent of the

CHOCTAW POPULATION IN MISSISSIPPI.

Mr. Banfield produces certain calculations, based upon a census of the Choctaws, made in 1831 by Major F. W. Armstrong, a competent and efficient officer. Quoting this census, which may be found in Public Lands, vol. 7, pp. 39–126, and also in 9th volume Indian Removals, he calls—

The entire population, 19,554, and deducts for emigrants 15,000, leaving in Mississipi 4,554, which, divided by seven, "a fair estimate," as he says, of the average size of families, would give	650
as the largest number "who could, by any possibility, claim reservations, if they all claimed," under the 14th article.	
According to his statement, the number of claims presented was	1,473
Making an excess of	823
which in his view must have been fraudulent.	
He might have made a much stronger showing against the Choctaws, by proving from Armstrong's census that the actual aggregate East before emigration, was	17,963
From which deduct emigrants	15,177
Leaving in Mississippi	2,786
Which, divided by seven, would give	398
for the largest possible number of valid claims.	
The number of claims really presented was not 1,473, as Mr. Banfield's letter shows, but	1,585
Making the excess or aggregate of claims, which, if his reasoning is correct, must have been fraudulent	1,187

The basis of these different calculations, it will be seen, is the Armstrong census, coupled with the assumption that seven is the aggregate size of an Indian family. If that assumption is correct, and the census really included all the Choctaws east of the Mississippi before their emigration began in 1831, Mr. Banfield's figures, in support of this allegation of fraud, as I have above shown, fall short of the reality.

But it is pretty certain that the census did not include all the Choctaws then east of the Mississippi.

Mr. Banfield says that "it was considered by the House Committee on Indian Affairs as in every respect most reliable;" but in their report appears the following passage, which Mr. Banfield doubtless overlooked: "From the nature of the country, the character of the people, and the detached and wild districts and settlements in which the Indians resided, it cannot be supposed that this census was entirely full and accurate. The presumption is that there were several hundreds, to say the least,

that were not found by Major Armstrong." (Rep. No. 663, H. R., 24th Cong., 1st sess., vol. 3, p. 8.)

The census itself contains a material discrepancy—a fact which Mr. Banfield does not mention, though he evidently noticed it. This discrepancy amounts to a difference of 1,500, as the number of Choctaws may be shown to have been 17,963, 18,651, and 19,554, all from the same document; Major Armstrong himself signing three several certificates to the largest number, while the footings to the lists of families show the two smaller aggregates; the difference between the two latter being the number of whites, of slaves, and of free blacks in the nation.

Waiving this discrepancy, which shows that the census is not so indisputably correct, there is official evidence that there were not only "several hundreds" but several *thousands*, not found by Major Armstrong.

The number of Choctaws in Alabama and Mississippi was officially reported by the Indian Office, in 1825, five years before the treaty, to be 21,000. (2d Ind. Aff's, p. 546.)

The muster-rolls show that 15,000 were emigrated in 1831, 1832, and 1833. The annual report of the Commissioner of Indian Affairs for 1838, states that number officially, (p. 33.)

15,000 deducted from 21,000 would leave 6,000.

The number of emigrants being admitted on all sides, the fact that 6,000 is not far from the true number of those who did not emigrate is shown—

1st. By the statement of Captain Wm. Armstrong, who was one of the agents employed by his brother, Major F. W. Armstrong, to take the census, (Pub. Lands, vol. 7, p. 11,) was superintendent of Choctaw removal, in 1833, (*ibid.*.) and was afterwards agent for the Choctaws West, from 1835 until his death in 1847.

In his annual report, dated October 1, 1844, speaking of these identical 14th-article claims, and of the Choctaws "who chose to remain in Mississippi," he says that the "reservation obtained" "by the *five or six thousand who remained* was worth nearly ten times as much as all that was received by the fifteen thousand who emigrated."

No one had better means of estimating the number that remained than Captain Armstrong, for he took the census of one of the three districts—Mushulatubbee's; and, as emigrating agent, on the 11th of October, 1833, reports that in another district, "Nittockache's," to avoid emigration, 2,000 had left their homes and gone to picking cotton in Mississippi and elsewhere. (Doc.* 512, vol. 1, p. 415.)

2d. Messrs Murray and Vroom, United States commissioners to adjudicate the 14th-article claims, and who spent some time in Mississippi for that purpose, in their report of July 31, 1838, say that "not less than 5,000 have remained, notwithstanding the efforts of the removing-agent who has been constantly with them."

3d. John F. H. Claiborne, esq., another United States adjudicating commissioner, whose statements are extensively quoted and relied upon as evidence, by Mr. Banfield, in a paper dated May 20, 1843, and transmitted by him to the Commissioner of Indian Affairs, speaks of the Choctaws then in Mississippi as constituting "a population of 8,000 souls." (Sen. Doc., 168, 28th Cong., 1st sess., p. 63.)

4th. John J. McRae, esq., afterwards governor and United States Senator from Mississippi, appointed, in April, 1843, emigrating and subsisting agent for the removal of Choctaws, reported officially in the fall

* Senate Doc. 512, 1st sess. 23d Cong., forming part of the series called "Indian Removals."

of 1844, that there were 7,000 Choctaws east of the Mississippi, and that number appears in the annual report of the Commissioner of Indian Affairs, November 25, 1844, Appendix No. 2.

We have, then, to recapitulate:

On the one hand, Major F. W. Armstrong's census showing from 17,900 to 19,554.

On the other, the Indian Office report, in 1825, of 21,000, corroborated by the Choctaw agent, William Armstrong, who speaks of the 15,000 who emigrated and the five or six thousand who remained, say 21,000.

To show that as many as five or six thousand did remain, we have the statements—

1st. Of Captain William Armstrong, Choctaw agent.

2d. Of Murray and Vroom, commissioners, who say that "not less than 5,000 have remained."

3d. Of Commissioner Claiborne, who says there were 8,000 in Mississippi in 1843.

4th. Mr. McRae, who, as emigrating and subsisting agent, officially reports 7,000 in 1844.

This last number officially reported by the United States emigrating and subsisting agent, whose duty it was to ascertain the truth, accepted and adopted as it was by the Commissioner of Indian Affairs, Judge Crawford, must be presumed to be correct, certainly not exaggerated, as it is 1,000 less than the estimate of Commissioner Claiborne.

RETURNED EMIGRANTS.

Assuming, then, that there were 7,000 in Mississippi in the fall of 1844, as reported by the emigrating agent, is there any evidence to show, or any reason to believe, that any of those who were there then had previously emigrated to the Choctaw country west, and returned for any purpose whatever?

Not one particle beyond certain testimony taken before a committee of the Mississippi legislature, in February, 1836, more than a year before the judicial investigation of the claims had commenced, and nine years before their final adjudication, in July, 1845.

Mr. Banfield, indeed, says:

> 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 Indians who had removed west of the Mississippi.

But he does not say what particular fact or information induced Congress to interfere, and does not allude to any testimony in support of the allegation but that above referred to, which was taken by the committee of the Mississippi house of representatives, the testimony, namely, of three persons:

1st. Hon. S. J. Gholson, who "heard D. H. Morgan say he believed a great many Indians had gone west of the Mississippi in ignorance of their rights, and that the company had an agent west buying the claims and bringing the Indians back," which business Morgan said he had an interest in. (Doc. 168, p. 163.)

2d. James Ellis, member from Neshoba; and

3d. Isaac Jones, member from Winston, both say they "know Indians who went west and have returned." Ellis knows of such Indians claiming reservations. Jones knows of their bringing back the guns they received from the Government. (*Ibid.*)

Now it so happens that all the investigations of the 14th-article claims were conducted in or near the counties of Neshoba and Winston, which

Messrs. Ellis and Jones represented, and not very far from Columbus, the residence of Mr. Gholson.

Mr. Claiborne, one of the commissioners, was familiar with the proceedings of the Mississippi legislature at the time the foregoing testimony was taken, for he repeatedly alludes to them in his official papers.

Mr. R. H. Grant, who lived in the county adjoining Winston and cornering on Neshoba, was a trader among the Choctaws at the date of the treaty, and traveled constantly through their settlements during the five years next ensuing, (Doc. 168, p. 86,) and knew all about the same proceedings, for he speaks of them in a letter to the United States district attorney, urging the importance of defeating the claims.

Yet neither Claiborne nor Grant ever allege in their repeated charges of fraud, (referred to in Mr. Banfield's letter,) that any of the claimants were returned emigrants.

Grant, when asked "if he knew of any Indian or claimant who had removed to the Choctaw country west, and has since returned," answered that "he did not know one Indian who had returned from the west of the Mississippi." (Doc. 168, p. 95.)

In their report, dated May 11, 1836, cited at length by Mr. Banfield, though he does not allude to this passage, the House Committee on Indian Affairs, speaking of this identical charge, say that—

> The committee cannot find from any evidence that any such cases exist, except in the general assertion of the fact in some of the memorials and remonstrances of the citizens of the State of Mississippi which have been referred to them.

The letters of T. J. Word, former representative in Congress from Mississippi, "a lawyer of established reputation, a man of unimpeached character, admirably adapted to this responsible trust," (p. 104,) who was appointed "special agent to collect testimony in behalf of the United States," (*ibid.*,) show that he traversed the regions represented by Messrs. Ellis and Jones for that purpose, Mr. Banfield says successfully. But instead of reporting any cases of returned emigrants, he writes to the Commissioner of Indian Affairs that "he has not a doubt that it was always the *bona fide* intention of the Indians who are now here to remain and avail themselves of the benefit of the 14th article." (p. 117.)

This last very important fact, which Mr. Banfield does not mention, is of itself sufficient to settle the question. Taken in connection with the circumstance that not a single case had been finally adjudicated at the date of Mr. Word's appointment, and that not a single claim was rejected for the reason that the applicant was a returned emigrant, it proves conclusively that no such claims were presented.

Not only were no such claims presented, but there is absolutely no evidence beyond the *ex parte* statements made in 1836, and never afterwards repeated, to show that any of the seven thousand Mississippi Choctaws had ever gone west before the emigration of 1844–'45. There is no evidence of the fact, for the simple reason it was not true. No such cases ever occurred.

AVERAGE SIZE OF AN INDIAN FAMILY.

According to Mr. Banfield's estimate, these seven thousand Choctaws could not have constituted more than one thousand families, "allowing," as he says, "seven to be a family, which seems, from all the evidence, to be a fair estimate."

There is no evidence whatever to that effect.

Mr. Bell, in his report, (No. 663, 1st session 24th Congress, p. 8,) wish

ing to arrive at a minimum number of probable claimants, and taking Armstrong's census as a guide, says "six souls to a family would be a fair estimate among savages, and this would give 759 as the number of heads of families yet residing east of the Mississippi. Computing the number of families upon the supposition that each family, upon an average, consists of *seven* souls, *which would probably exceed the true proportion* among any uncivilized race, the number of heads of families yet in the ceded territory will be 650."

This number seven, which he finds in Mr. Bell's report, and nowhere else, and which is there mentioned as one "which would probably *exceed* the true proportion," Mr. Bandfield adopts as "a fair estimate" of the size of a Choctaw family.

He does not notice—perhaps did not see—the answer in the same report (p. 13) of George W. Martin, the United States locating agent, to the question, "what is the average number of Choctaws to the head of a family?" "Taking the families for whom locations have been made as the basis of a calculation, the number of Choctaws to each head would be about four. I think it a fair estimate to adopt that number."

The estimate, however, of Mr. Everett, quoted by Mr. Banfield, (p. 7,) of $6\frac{7}{10}$ to each head of family, is not without some apparent show of reason, based as it is upon the census of one of the districts, Nittockache, which shows an aggregate of 5,112 persons, which, on counting the lines, will be found to be divided into 758 families, giving an average of $6\frac{7}{10}$ to each family. (7 Pub. Lands, p. 60.) Mushulatubbee district shows, in like manner, an average of $6\frac{31}{100}$, and Le Flores an average of $6\frac{27}{100}$ to the family, the largest average being in Nittockache district, which Mr. Everett takes as an indication of the whole.

But the slightest examination of the census would have shown either Mr. Everett or Mr. Banfield that it does not furnish the data for correctly estimating the number of Choctaws in a family.

For example, in the district he selected for his calculation, Nittockachee, Charles Juzan is put down as having a family of twenty-six; but in the margin it is stated that twenty of them were slaves. So, too, with Zadock Brashears, twenty-one in family, fourteen being slaves; and so, too, in other like cases, where there are slaves, which certainly ought to be omitted in any calculation of the size of an Indian family.

This element, of course, might be eliminated, but there is another not so easily disposed of: for example, the case of Fittimatubbee, (page 43,) with 22 in family; Tushkabee, (page 45,) with 23; Hocha, (page 55,) 22; and various others, ranging from 10, an unusually large number, up to 20. In the absence of any information in the margin, we can only conjecture the truth, not only from a general knowledge of the subject, but from the light afforded by Captain William Armstrong's occasional notes in the margin of the census he made of Mushulattubbee district. For instance, opposite Captain Holatta's name, (on page 80,) with 22 in family, he says "his son and son-in-law lived with him." Again, opposite Kanjetubbee, (on the same page,) with 20 in family, he says "village of 3 houses." Again, of Opunbintubbee, 28 in family, he says "five women lived here who had children."

No similar marginal explanations appear on either of the other rolls; but the real truth, if it could be ascertained, would show that the families in none of the districts averaged five in number.

What the actual average is any one can find out by referring to the pay-rolls of Choctaw annuities on file in the Second Auditor's Office.

On consulting some of the rolls, taking at random, those for the years 1842 and 1844, as the investigations east were in progress during those

years, I find that in Nittockache district, (now called Pushmataha,) there were, in 1842, 755 families, numbering 2,971, average $3\frac{935}{1000}$; and in 1844, 784 families, numbering 3,177, average $4\frac{52}{1000}$: and that the average number of persons to each family in the nation was, in 1842, $4\frac{455}{1000}$, and in 1844, $4\frac{486}{1000}$; the largest average of any one district in either year being $4\frac{836}{1000}$.

Any other Choctaw pay-rolls will show pretty much the same result.

Now, if we take the official report of the Choctaws in Mississippi, in 1844—7,000—and divide that number by 1,585, the number of claims presented, we find the average to be $4\frac{416}{1000}$ to each head of a family, corresponding with the general average throughout the nation to a degree that precludes the idea of fraud in that feature of the case.

WARD'S REGISTER.

If the Indian remained in the ceded territory five years after the treaty, and had never emigrated, what other objection is there to his title?

A condition precedent to his obtaining land under the 14th article was, that he should signify his intention of remaining to the United States agent, who was required by the War Department, (but not by the treaty, as Mr. Banfield erroneously alleges, (p. 5,) to keep a register of all who thus signified. Out of the 1,585 families who remained, the agent only registered sixty-nine. The Choctaws alleged that it was his fault that the others were not registered. As a conclusive reply to this allegation, Mr. Banfield refers to Ward's testimony under oath before a committee of the Mississippi house of representatives in 1835, that he "never refused to register any Indian claimant when application was made according to the treaty," Mr. Banfield and Mr. Ward both forgetting the letter which Mr. Banfield must have seen in 8th Indian Removals, p. 493, written by Mr. Ward to the War Department, June 21, 1831, in which he says, "there are many more who wished to stay five years than were expected. There were upwards of *two hundred persons from one section of country* applied a few days since at a great council held near this place. I put them off, as I did believe they were advised to that course by designing men, who were always opposed to the treaty."

There is not only abundant evidence from other sources, outside of Ward's written statement, to establish the general fact of refusal, constant and oft-repeated, but there is also proof, as will be hereafter shown, that in some cases actually registered, he either lost or destroyed the record.

Messrs. Murray and Vroom, who were appointed commissioners to investigate claims under this article, say in their report, dated July 31, 1838, that, "By the treaty of 1830, it became the duty of the Government to appoint an agent, immediately after its ratification, to receive the proof of intention to remain in the country, and take the benefit of the treaty stipulations.

"It appears from documents furnished the board that the treaty was made on the 27th September, 1830, and ratified 24th February, 1831. Col. Wm. Ward, the United States agent, was instructed by the Department of War, on the 21st day of May, to receive the applications of the Indians to take the benefit of the 14th article of the treaty. This letter was probably a fortnight or three weeks on its way to the agency. From the proofs offered to the board, it appears that the office was open for business in the latter part of June. Thus the time allowed the Indian to signify his intention to remain in the country and take the ben-

efit of the treaty stipulations, instead of six months, as allowed by the treaty, was reduced to about two months.

"From the great mass of proof offered to the board, there can be no doubt of the entire unfitness of the agent for the station. His conduct on many occasions was marked by a degree of hostility to the claims calculated to deter the claimants from making application to him. His manner to the Indians coming before him for registration was often arbitrary, tyrannical, and insulting, and evidently intended to drive them west of the Mississippi against their will, and in violation of the letter and spirit of the treaty. * * It is in proof, also, that the agency house was very remote from the great body of the nation, and that it was inconvenient to the Indians, on that account, to make personal application to him at that place."

The Committee of Indian Affairs of the House of Representatives, in their very elaborate report upon these claims, presented to the House of Representatives by the Hon. John Bell, in May, 1836, say that "All the embarrassments which have arisen in the execution of this article of the treaty of Dancing Rabbit Creek, and the only question of any difficulty now presented for the decision of Congress, will appear, upon a full consideration of the subject; to have originated in the neglect of the agent, whose duty it was to receive and register all applications for reservations under that article, and in the policy pursued by the Government of bringing the lands in the Choctaw district into market before the number and location of the claims, under this article of the treaty, were ascertained and adjusted." (Rep. No. 633, H. R., 24th Cong., 1st sess., p. 1.)

After giving various instances of the omission of the agent to perform his duty in receiving applications, the committee add, that "there are many circumstances which show that all the agents in the employment of the Government, in carrying this treaty with the Choctaws into execution, discouraged all applications for reservations under the 14th article; and Col. Ward is stated to have advised the removing agents to threaten them with punishment if they did not emigrate."

THE CHARGE OF FRAUD.

The greater part of page 10 of Mr. Banfield's letter is devoted to the "support"—he does not call it evidence—of the general charge of fraud, which he introduces to sustain the position assumed by Mr. J. F. H. Claiborne, in November and December, 1843, respecting transactions then in progress, and claims then pending before the commission of which Mr. Claiborne was a member, for *scrip* to be issued in place of land for Indians whose reservations had been sold by the United States. Commissioner Claiborne's position was "that a double fraud was being perpetrated, first, in presenting claims which had no validity; second, in defrauding the Indians of those very claims when allowed." (P. 10.)

One would suppose that the "support" of this position was to be found on the spot where, and at the time when, this double fraud was being perpetrated, namely, in the fall of 1843, when the applicants for scrip were presenting their claims, and at or near the place where the adjudicating commissioners were receiving the testimony.

But instead of that kind of "support"—relating directly to the fraud, or any part of it, then and there "being perpetrated," the only kind of any value—nine-tenths of Mr. Banfield's citations, on page 10, are extracted from the evidence before alluded to, taken by the Mississippi house of representatives in 1836, and from the letters of Samuel Gwin,

register at the Chocchuma land-office, charging that there was *then, in the year* 1835, a plan on foot to locate Choctaw claimants on rich lands where they did not live, in place of the poor land where they did live—a charge not embraced in Mr. Claiborne's position. Although these letters have no bearing upon Mr. Claiborne's charges, they will be referred to hereafter in another connection.

Even Mr. Claiborne, who describes himself as risking his life in his determination to expose the frauds practiced before his eyes, instead of pointing out a single fraudulent case presented to the board of which he was a member, has nothing better to offer than the resolution of the Mississippi legislature, passed seven years before, and relating, not to the claims presented in 1843, which were almost exclusively for scrip, but to "claims for the richest and most valuable portions of the unsold Choctaw lands," which, if consummated, will be "oppressive" in "their operation on the freemen of Mississippi," and "will rob Mississippi of her just and inalienable right to her five per cent. on the amount which ought to accrue from the valuable land thus reserved." (Doc. 168, p. 156.)

Instead of specifying any particular case, or producing any evidence of the truth of what he says was going on before the board of which he was a member, Mr. Claiborne writes to the Commissioner of Indian Affairs, on the 20th November, 1843, that "in three months' riding through the State," if he had authority, he "could collect evidence to invalidate most of these claims." (*Ib.*, p. 166.)

Mr. Banfield does a little better. Though nine-tenths of the references on page 10, by which Mr. Claiborne is "supported," relate to a totally different state of affairs, and to allegations made before the first investigation was instituted by the Government, and seven or eight years before the time he speaks of, the remaining tenth relates to matter that was contemporaneous, to the point, and, most of it, from men on the spot, who professed to know what they were talking about, namely:

The Poindexter protest.

The letter of R. H. Grant.

The letter of J. B. Hancock.

The letter of Robert J. Walker.

The protest of Messrs. E. W. B. Kirksey and James Poindexter, and the letter of Mr. R. H. Grant, present curious coincidences.

The authors in each instance made wholesale charges of fraud, offered to prove their allegations, declined to appear voluntarily, though repeatedly urged by the examining board and by the claimants to do so; and, when finally put on the stand by compulsory process, did not know anything against the claims, and could not produce any one that did. (Doc., 168, p. 82.)

Grant, who had lived among the Choctaws before the treaty, and traveled through their country for years afterwards, and who offered to save millions for the Government if it would only give him $20,000 "to employ counsel," (*ib.*, p. 87,) when finally compelled, reluctantly, to testify, was asked the question, "Do you know of any fraud committed or attempted to be committed upon the Government of the United States by any Indian or class of Indians, or their agents?" He answered, "I do not." (*Ib.*, pp. 94, 95.)

Mr. J. B. Hancock was satisfied a stupendous fraud was on hand; could save ever so much, from half a million to a million and a half; but, like Mr. Grant, he wanted to be paid. (*Ib.*, p. 140.)

Mr. Hancock was one of the witnesses Messrs. Kirksey and Poindex-

ter referred to, (*ib.*, p. 19,) whose evidence was obtained with difficulty, and amounted to nothing. (*Ib.*, p. 82.)

One more of the documents, by which Mr. Claiborne's position is "supported," remains to be noticed: the letter of Hon. Robert J. Walker, at that time a Senator in Congress from Mississippi. As Mr. Banfield seems to consider it very important, referring to it twice, (on pp. 9 and 10,) I copy it in full, from page 41 of Document 168, taking the liberty of putting one sentence in italics. It speaks for itself:

JACKSON, *May* 10, 1843.

DEAR SIR: Since my arrival here reports have reached me that great frauds are now being perpetrated upon the Government and the commissioners under the act of Congress for the adjustment of the Choctaw claims. These reports are, that it will be attempted to prove that there are eight thousand Indians now in Mississippi entitled to claims; whereas it is alleged that the real number is not near so great. *I know nothing of the truth or falsehood of these reports, nor have I any means of ascertaining the facts.* Indeed, I do not know, except by rumor, who are the holders of these claims, or what is the nature of the contract between them and the Indians. It is due, however, in my opinion, as an act of justice, as well to the Government as to the individuals implicated in these reports, that they should be investigated immediately. Permit me, then, to suggest the appointment forthwith of some agent of undoubted firmness and integrity, with instructions to proceed immediately to this State, and take an accurate census of all the Indians, and identify them with those presenting claims, so as to prevent any fraud or imposition, if any should be attempted, and if not, to put an end to reports so injurious to the reputation of the holders of these claims.

Yours, with the highest respect,

R. J. WALKER.

His Excellency JOHN TYLER,
President of the United States.

CONTRACTS WITH ATTORNEYS.

In August, 1843, the commissioners, Claiborne and Graves, employed the Hon. T. J. Word, agent in behalf of the United States, to collect evidence of fraud. He had represented Mississippi in Congress; was recommended in the highest terms by the board, and as strongly indorsed by the Department. Six weeks after his appointment he sends certain contracts made by Choctaws for the conveyance of part of their 14th-article reservations before the end of the five years prescribed by the treaty, being contracts "by which the Choctaws employ attorneys to obtain for them the benefits of the 14th article of the treaty." He sends them because he is confident that if there is any fraud in "this business, it is to be found in these contracts," as he "has not a doubt that it was always the *bona-fide* intention of the Indians who are now here to remain and avail themselves of the provisions of the 14th article of the treaty." (Doc. 163, p. 117.)

From the report of Commissioners Murray and Vroom he learns that one of the attorneys, Colonel Fisher, had given them a copy of these contracts, and that they had decided that they had nothing to do with them. He also finds that, though the Department had copies, it had given no instructions in regard to them. He is therefore left to his own judgment, which is, that to bring them within the meaning of the law they should be such as would enable the vendee to dispossess the grantor, and thus prevent him from complying with the requirement of the treaty—to remain five years. Only two of the contracts, he says, confer that power. (*Ibid.*)

As the existence of these contracts was the reason assigned for Mr. Claiborne's subsequent denunciations, which Mr. Banfield condenses and supports, (pp. 9 and 10,) the fact should not be overlooked that some of the copies were obtained from the attorneys themselves.

"Through the politeness of Colonel John B. Forester, and his influ-

ence with Colonel Cobb," Mr. Word obtained one copy, (Doc. 168, p. 115;) another "by permission of Judge Wright," (p. 116,) also an attorney; and, as above stated, Colonel Fisher, an attorney, had furnished the commissioners Murray and Vroom with copies, (p. 117.)

In his letter to the Commissioner of Indian Affairs, of May 20, 1843, Mr. Claiborne thus speaks of some of the same attorneys he afterward denounced: "The Hon. S. S. Prentiss, the Hon. John B. Forester, and the Hon. John I. Guion, gentlemen of the highest personal and professional distinction in this State, the two former well known in Congress, and the last now a senator in our legislature, and equally distinguished as a judge and as a lawyer;" (p. 46.) Judge Guion was afterward Governor of Mississippi.

In the same letter he speaks of Colonel Forester's "characteristic modesty" and "high sense of honor."

Six months afterward, writing to the same Commissioner of Indian Affairs, he speaks of "one John B. Forester." This was two days before sending to the Vicksburg Sentinel the article published as editorial, in which he denounced the claims then pending before the board, of which he was a member, praised his own noble conduct, exhorted himself to be firm, and, in the grossest terms, abused the attorneys, especially Colonel Forester, who challenged him, as also did Mr. Prentiss—facts mentioned by Mr. Banfield, who says nothing about the abusive publication, or about Claiborne's notifying Colonel Forester that he held himself responsible, all of which is part of the same record, (pp. 149, 154,) but leaves it to be inferred that Mr. Claiborne was challenged for his judicial acts in the court-room, which was the reason he himself assigned for refusing to accept the challenge.

Mr. Claiborne's allegations respecting the immense profits accruing to Colonel Forester out of the 14th-article claims are notoriously the reverse of the truth. He spent large sums in prosecuting them, for which he had realized little or nothing when death put an end to his prospects of payment for either services or expenses.

The general effect which the existence of contracts with attorneys had upon the 14th-article claims is clearly set forth in Mr. Bell's report:

"The objection to these claims that has grown out of the fact that white men, and principally known speculators in the public lands, have been the agents of the Indians in arranging and bringing forward the proofs of their title to reservations, and that they are understood to have stipulated for the enormous compensation of one-half the lands which may be secured by their exertions, while it increases the probability that frauds have been practiced in the case of numerous individuals, where the temptation was so great and the cupidity of the agents so absorbing, yet it affords no decisive presumption that a large proportion of these claims are not well founded. Most of the Indians are grossly ignorant, and, having once despaired of their claims, it is very probable that but few of them possessed the intelligence and energy to have asserted them if they had not been prompted and assisted by the interested activity of white men. Nor ought the interference of these white men, or their lucrative expectations, to prejudice any claim which is otherwise well supported," &c., &c. (Rep. No. 663, H. R., 24th Cong., 1st Sess.)

It is quite evident that if the original applications had been properly received and registered, no attorneys would have been necessary. It is equally evident that without the aid of attorneys the Indians would never have got anything. The Government, after driving the Indian into a position in which he was forced either to abandon his

claims or employ attorneys to prosecute them, could not, in common honesty, evade their payment by taking shelter behind an evil of its own creation. It could not, with any show of justice, take advantage of its own wrongful act.

THE "RELEASE."

Mr. Banfield lays great stress on the "release" copied at the end of his letter; and on page 20 he says: "There is this great fact, hitherto studiously kept in the background 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 14th article." The words, "in consideration," which I have italicized, suggest the reply obvious to any one having the slightest knowledge of the facts. There was no consideration for that release. If there had been any of the elements of a contract or bargain about it; if it had not been what the lawyers call a *nudum pactum*, I should not be here to-day asking Congress to pay what I regard as a debt justly due to the 14th-article claimants. If Mr. Banfield had examined the debates in the House of Representatives when the appropriation requiring the release was made, he would have seen that the release cut no figure whatever in the matter. The objection to it was in part from a mistaken notion that the claimants themselves wanted the investment to stand, preferring interest to principal; and in part, because some of them were still in Mississippi, and that the money ought not to be paid them till after they had emigrated. The strongest argument in favor of the appropriation was from Mr. Geo. W. Jones, of Tennessee, who said that the money was due, and that it was sound policy to pay it and stop the interest. (Globe, July 8, 1852, p. 1689.)

It is a mistake to suppose that the release was studiously kept in the background. It made little or no impression at the time, and was soon forgotten. Many of the original "heads of families" had died. The division of interest among heirs was a constantly recurring and increasing source of trouble. The parties interested, all new-comers, asked the council, composed almost exclusively of old settlers, to get the principal for them. McKinney and Le Flore, both old settlers, were delegated for that purpose. They were told that the release clause, which was added to the appropriation by Mr. Sebastian at the request of Mr. Hunter, of Virginia, was practically a simple receipt for the money paid. The council knew nothing of the merits of the case, and executed the release as a matter of course, without consulting the claimants.

For my own part, not being in the council at the time, I never heard of it until long after the treaty of 1855 had been made.

But when I did hear of it, so far was I or any one of my co-delegates from desiring to have it "studiously kept in the background," that in a statement of our case, printed in 1857, for the use of any Senator who could be induced to read it, and exhibiting the particular items constituting the Choctaw claim, we caused the "release" to be set forth in the following words:

In July, 1852, Congress directed that the payment of interest, as directed by the act of 3d March, 1845, before referred to, should cease; and that, in place thereof, the principal should be paid over to the Indian claimants. At the same time a full discharge was required from the Choctaw council for all demands of the claimants in question, under the 14th article of the treaty of 1830. This discharge was executed by the council, although it was not authorized by the claimants, (who were private individuals,) to compromise their rights in any manner, nor was there any consideration of any sort, expressed or implied, either for requiring or executing the discharge.

It was reprinted last fall, and may be found on page 71 of a pamphlet entitled "The Choctaw Nation *vs.* The United States," prepared for distribution among members of Congress before the appearance of Mr. Banfield's letter.

Mr. Banfield says, that by this release "the nation guaranteed that no more claims should ever be made under the 14th article," as it "forever barred" all claims under that article by anybody. No such guarantee was ever required or thought of, much less executed. The release expressly refers to the amounts awarded certain claimants, and says that the final payment and satisfaction of said awards shall be "a final release of all claims of *such parties*." What parties? Manifestly, parties who have had awards. Very certainly, "such parties" do not mean parties who have never had any "amounts awarded" them.

That this release was not regarded at the time by the Congress which required it, or by the Indian Department, as affecting those 14th-article claimants to whom no awards had been made, is evident from other proceedings in the same and in the next ensuing session. The clause appropriating $872,000, and requiring the release, was passed by the Senate on the 24th May, 1852, and in the House on the 8th July. On the 10th August an amendment, offered by Mr. Sebastian, was added in the Senate to the Indian appropriation bill, extending the benefits of former acts, and authorizing the issue of scrip to the Choctaw reservation claimants under the 14th article, known as "Bay Indians." This amendment was discussed pretty fully in the House on the 26th August, and opposed by the chairman of the Committee of Ways and Means, Mr. Houston, who had applied to the Department for information on the subject, and evidently understood it. But he said nothing about the "release" proviso, although it was part of an amendment which he had himself advocated, after careful examination six weeks before. As Mr. Brown, of Mississippi, said, (p. 2362,) the Committee of Ways and Means opposed the proviso for the Bay Indians, simply because they ought to have made known their claims at an earlier day. The absurd idea that the claimants were barred by an appropriation for the benefit of other parties does not seem to have occurred to any one in the Senate or in the House, either on that occasion, or afterwards, on the 23d of February, 1853, when the House of Representatives amended the pending Indian appropriation bill by a further extension of the benefits of former acts to other 14th-article claimants. This amendment had been submitted by the House Committees of Indian Affairs to the head of the Indian Office, who recommended its passage on the ground of "impartial justice." (Globe, Feb. 23, 1853, p. 809.)

The addition of such a clause to an appropriation bill, at such a time and under such circumstances, being less than four months after the council had executed the release, less than eight after the passage of the act requiring it, in the form prescribed by the Commissioner of Indian Affairs, shows conclusively that neither Congress nor that officer regarded it as having any connection with claims previously rejected.

How the Choctaws regard the release, as affecting any subsequent demand of these claimants who received the $872,000, may be illustrated by the familiar case, frequently occurring in every-day life, of a receipt in full attached to a merchant's bill or account; good undoubtedly for the items it specifies, but not as against any that may happen to be accidentally omitted. An honest customer, conscious of having received the articles, would not for a moment dispute his obligation to pay, no matter what might be the wording of the receipt.

Their view of the 14th-article claims is best expressed by stating the case of a debtor to the Government, whose assets are in the hands of the Solicitor of the Treasury. Among them he finds a claim on an agent who had sold 1,200 acres of land for his principal, receiving $1,500 for the same on the 1st of January, 1836. On the 1st of July, 1848, he pays what is equal to $102, and shortly after, $750. The Solicitor, Mr. Banfield, calls for a settlement, and is met with a receipt in full of all demands, signed, not by the principal, but by an attorney sent to collect the $750. Mr. Banfield naturally inquires whether there had been any payment of interest on the $1,500 for the twelve years their agent held it before the first payment, or any settlement of or reference to the difference between the $852 he paid and the $1,500 he received? No; the agent had said the $750 closed up everything, requiring a receipt in full; which the attorney, supposing it was all right, had given. Would Mr. Banfield, in behalf of the United States, standing in the shoes of the principal, admit the validity of such a settlement? Certainly not. He would insist upon going behind the receipt, and enforcing the obligation of the agent to account fully to his principal, 1st, for legal interest from the day he received the $1,500 up to the day of payment; 2d, for the difference between $852 and $1,500, namely, $648; and, 3d, for the interest on $648 till paid.

Such a settlement would charge the agent with—

1836. Jan. 1. Cash received for 1,200 acres of land			$1,500 00
1848. July 1. Credit by cash	$102		
Credit by cash	750		
			852 00
Leaving a balance unpaid of			648 00
1848. July 1. For interest on $1,500 from January 1, 1836, to date, 12½ years, at 6 per cent	$1,125 00		
1859. Jan. 1. For 10½ years' interest on $648	408 24		
			1,533 24
1859. Jan. 1. Balance due			1,181 24

The difference betwen the case thus presented and the Choctaw case, as presented to the Senate in 1858, is this:

The Choctaw charged as above for his land		$1,500 00
Less payments as above in July, 1848*		852 00
Leaving as above an unpaid balance of		648 00
To which he added, for 12½ years' interest, from January 1, 1836, to July 1, 1848,* at 5 per cent., instead of 6		937 50
Making an aggregate charge of		1,585 50
The balance due on the case above stated is		2,181 24
The difference being		595 74
Being, 1st. difference between 5 and 6 per cent. on $1,500, 12½ years	$187 50	
And 2d, interest on unpaid balance not charged by Choctaws	408 24	
		595 74

That the Choctaws were entitled to a settlement, on the principle set forth in the above case of a debtor to the United States, was the opinion of the Hon. John C. Spencer, Secretary of War, who, on the 9th March, 1842, in a report to the Senate Committee on Indian Affairs, says:

* For convenience of illustration the $872,000 appropriation in 1852 is assumed to have been paid July 1 1848, as that day represents a fair average date of payment of both scrip and interest to the claimants.

As the 14th article guaranteed a reservation of so much from the quantity ceded as should be necessary to satisfy the claims arising under it, and stipulated that the land thus reserved should be applied accordingly, the Government became a trustee of the land for that purpose. The sale of the land by the United States cannot vary the nature of the trust; on the contrary, it attaches to the proceeds of such sale, which in truth belong to the Choctaws who were or might become entitled to the land which has been thus converted into money. It is submitted, therefore, that the Government has rightfully no other power or control over those proceeds than over other trust-funds, and that they ought not to be applied to any other purpose than the use and benefit of those to whom they belong. (Senate Doc. 188, 27th Cong., 2d sess., p. 3.)

This principle Mr. Sebastian regarded as correct, and evidently had it in view, when he said that "no less sum than $2,332,560.85 would ever be adjudged by a court of justice to be due and owing, under the award of the Senate, upon the most strict rules of construction, against the Choctaws."

In examining the subject, he learned officially, from the Secretary of the Interior, that 1,400,160 acres belonging to the 14th article claimants had been sold by the Government for $1,750,200.

The rate of interest the Government was then paying was six per cent., which, on $1,750,200, from 1st January, 1836, to 1st July, 1848, the average time of scrip payment, twelve years and six months, was		$1,312,650
Ascertaining also from the Department that $118,400 was all that the claimants realized for 700,080 acres of scrip, which at par would be $875,100, he charged the difference between par value and what the Indian realized		756,700
Upon which 10½ years' interest, at 6 per cent		476,721
Making an aggregate for scrip claims		2,546,071
He also learned that the rejected claims of 292 families were for 324,320 acres, sold for $1.25 per acre, or	$405,400	
Interest from 1st January, 1836, to 1st January, 1859, 23 years, at 6 per cent	559,452	
		964,852
Making aggregate due under 14th article		3,510,923

This sum, to say nothing of other items under other treaties and heads of account, Mr. Sebastian no doubt believed would be much nearer the amount that could be recovered in the courts than the sum of $2,332,560, reported as proper to be paid. When he spoke of the actual value of the reservations lost being much larger, "probably three or four times as large," he doubtless acted on information such as that given by the witness Mr. Banfield so extensively quotes, Mr. Claiborne, (Doc. 168, p. 54,) that the reservations would, in many instances, "have brought $20, and even $30 per acre." An average of $5 per acre would have brought the claimants $8,622,400, very nearly four times as much as the sum reported by the committee. The claim actually presented to the Senate by the Choctaws, under the 14th article, was for $2,658,994.70, being $326,433.85 more than the award of the Senate.

Mr. Banfield would probably object that the two cases I have stated are not parallel. True, they are not. The one case is that of an agent authorized to sell. The other is the case of a trustee selling in direct violation of a pledge to hold for the real owner, and selling in such manner as to damage him seriously.

THE SHUK-HA-NATÇHES.

In further illustration of the working of this breach of faith, I will give an outline of the facts respecting the Indians of one particular band, selected not because their case was any harder or more aggravated

than that of several other much larger bands, but because the evidence in their favor is more accessible, and also for the additional reason, that they happen to present one of the few instances in which Mr. Banfield's statements are accurate, and to a certain extent corroborative. I refer to the 108 cases of Shuk-ha-natche Indians, which he mentions, on page 16, as suspended for want of maps to identify their land, subsequently allowed by the Secretary of War, (Gov. Marcy,) under authority given by Congress, August 3, 1846. This much he states correctly.

Their chief, Little Leader, an active, restless, self-reliant character, wrote to the Secretary of War, long before it was known that the treaty was ratified, that he wanted to stay. (8 Indian Removals, 283.) He seems to have taken particular pains to make the impression that he and all his people meant to stay, for it is so noted opposite his name in Armstrong's census, being the only instance of the kind. He went in person to the agent, Ward, to be registered, and his people went with him. He assisted in giving their names and their children's, and saw the agent write them down. (7 Public Lands, 633.) Several other persons testify that they saw the Shuk-ha-natches there for that purpose, and supposed they were registered. (*Ib.*, 633, 634.) Yet their names could not be found. Other Shuk-ha-natche names, registered at another time and place, appear, and so does the Little Leader's. But the names of those who were with him, and which he helped to give in on that occasion, were not in the book.

Here was a case apparently free from difficulty. The Indian undoubtedly signified "his intention to the agent within six months from the ratification of the treaty," and by its terms was "*thereupon* entitled to a reservation."*

But the President decided that none were to be recognized as reservees whose names *were not upon Ward's Register*. The treaty says nothing of any record or register—imposes no such condition. Yet Mr. Banfield says "this decision was in exact accordance with the terms of the treaty," (p. 5.)

The effect of this decision, wholly unwarranted by the treaty, was to deprive, for the time being, nineteen-twentieths of the Choctaws remaining in Mississippi of the benefits of the 14th article. The Shuk-ha-natches lost their land and their homes, for which they obtained no indemnity whatever until the summer of 1846, fifteen years after their application to the agent, Ward, when for each section of land they received a half section of scrip, which yielded them an average of seventeen cents an acre.

The lands on which they lived were offered for sale in October, 1833. Having failed to secure their reservations, they were subjected to such treatment as is described in the following deposition, taken in December, 1834, and transmitted to Congress by President Jackson in February, 1835:

John Carter. Resides near the Shuk-ha-natches; being a remnant of the Shuk-ha natches settlement. In various instances white settlers have come in, driven them out of their houses and off their lands, and taken possession of both. In some cases, where these Indians have spoken up for their rights, these intruders have beaten and abused them very much. I have seen Indians with the marks of violence on their persons a good while after they were inflicted. In some cases the best lands of these people have been taken from them and covered with pre-emption claims. (23d Congress, 2d Sess., H. Doc. 138, p. 15.)

Another witness, John Walker, residing near the Shuk-ha-natches settlement, "knows from his own observation, and from general information, that these Indians have been very much intruded upon and ill-treated by certain white men, who want their lands. Some of these Indians have been forced off their lands and cruelly treated by these intruders. He

* See 14th art., Treaty 1830, *ante*, page 8.

says, as he was on his way to Columbus a few weeks ago, an old Indian woman came to him crying, and complaining that a man by the name of Yancy had driven her out of her house, and would not let her even dig her potatoes, besides much other ill-usage." (*Ib.*, p. 15.)

Now, the question is, would it have been a fair settlement—would it have atoned for this eviction and maltreatment, resulting from Government neglect, to have paid the Shuk-ha-natches $1.25 an acre in 1846, as an equivalent for the $1.25 an acre received in 1833, thirteen years before? Would any man that reads these lines have been satisfied with such a settlement in his own case? Would he not have insisted upon receiving, and would not any court have given him, as a matter of course, nor merely interest on the price of the land, but also exemplary damages for the injury sustained in the loss of his home and his improvement?

The Shuk-ha-natche considered himself entitled to damages, but instead of claiming them, as he might have done, *eo nomine*, all that he asked for was interest, not at the current legal rate of six per cent., but five; not from the land sale in 1833, but from 1836, when his fee-simple right under the treaty matured; not to the date of the award in 1859, nor even of his application in 1857, but only to be made good up to the final payment of the $872,000 appropriated in 1852. In making up the account, everything received from the Government was credited. The interest charged was only for the periods not included in former payments. None was claimed after 1852, and the claim presented rested upon the double basis of damages for the eviction, resulting from breach of contract, and of undeniable right to the interest accruing upon the trust-fund arising from the sale of the land. Under either head he could have recovered from any private citizen a larger sum than he asked for.

LOSSES ON SCRIP.

The claim of the Shuk-ha-natches for interest, presented on this moderate, reasonable ground, far within what any white man would consider his just due under like circumstances, constitutes a little less than two-thirds of what they ask for. The residue, something over a third, is for the difference between scrip and money—in other words the difference between the seventeen cents an acre they realized, and the $1.25 they were entitled to.

Mr. Banfield, alluding to this claim, and particularly to the order of the Secretary of War, prohibiting the delivery of scrip until after the claimant's arrival West, says that the delivery was by law subject to the discretion of the Secretary, and that discretion the whole history of the times proves was exercised for the benefit of the Indians. He has studied the history of the times to very little purpose if he has failed to discover that the great object of issuing scrip was from first to last to remove the Indian from the State of Mississippi, where the treaty had secured him permission to remain. The act of 23d August, 1842, which authorized it, provides that *not more than half* is to be delivered to the Indian "until after his removal to the Choctaw Territory west of the Mississippi." (Stat. at Large, vol. 5, p. 513.)

In the fall of 1845, the Secretary of War directed that none of it should be delivered until the Indian had departed, or was about to depart, on his journey west.*

In the spring of 1847 the payment of any part of it was prohibited until after the arrival of the claimant in the Choctaw country west.

* It is made obligatory on these people that they must remove, or signify their intention so to do, before any portion of the scrip due them can be issued. (Ann. Rep. Com. Ind. Aff., 1st sess. 29th Cong.)

These proceedings, Mr. Banfield says, were "for the benefit of the Indians, and for the purpose of preventing the scrip from falling at once into the hands of speculators."

They did *not* prevent the scrip from falling into the hands of speculators. How could they? The scrip consisted of certificates authorizing the entry of land in any one of the four States of Alabama, Mississippi, Louisiana, or Arkansas. Of what possible use could such certificates be in the Indian Territory west, if it was not to sell to speculators? If the Secretary had wanted the Indians to do that very thing, he could not have more effectually attained his object.

On the other hand, these orders—issued for the sole purpose, whatever Mr. Banfield may think—of insuring emigration, prevented the Indian from doing the one thing he had set his heart upon, and the only thing he could do to secure any benefit from the scrip.

The contracts, which Mr. Claiborne regarded as such strong proof of fraud—meaning those which secure the attorneys half of all they recover—all contain stipulations that the half retained for the Indian shall be located near his residence; or if that cannot be done directly, that the attorneys are to effect the object desired by exchanging other tracts for lands that are near their residences. (Doc. 168, pp. 119, 120, 122, 125, 126.) One of the points Mr. Claiborne makes in his letter of November 14, 1843, to the Commissioner of Indian Affairs, is that the attorneys promised to locate these Indians in a body, by securing lands for them in Mississippi. (*Ib.*, p. 142.) He incloses the declaration of Cobb, a leading Choctaw, (p. 145,) that Col. Forester had promised to secure for his people a large tract of land in Leake or some other county; and he claims the credit in that same letter, and in another of May 8, 1843, of defeating all such plans by persuading the Indians to emigrate.

To the same effect is his statement, that he "with difficulty dissuaded the Hon. Mr. Prentiss from withdrawing all his Hopahka cases, (some two hundred and seventy,) and commencing actions of ejectment in our courts against the citizens who purchased and occupied these Choctaw lands—a measure that would produce the most violent excitement against the commission and the administration by whose favor it exists and with which it is identified; and which, by recovering for the Indians land, and not scrip, would fix them here permanently, and thus defeat the cherished policy of Mississippi." (Doc. 168, p. 48.)

The Shuk-ha-natche cases were among the two hundred and seventy Mr. Prentiss represented, and here we have the statement of the United States commissioner that he used his influence to prevent the Indian from recovering through the courts the land to which he was entitled under the treaty, because it would "defeat the cherished policy of Mississippi."

Other instances occurred afterward, to my certain knowledge, of the interference of Government officers to prevent the Indians from locating land in Mississippi for their own use with their scrip. Plenty of proof can be had that large numbers of Choctaws then in Mississippi knew how to use land much more profitably than they could scrip in a territory where it was available to no one. The Leaf River Indians, of Toblee-Chubbee's party, referred to by Captain Armstrong in his report of October 10, 1846, as sober and industrious, living in comfortable homes, show clearly what might have been the condition of the Mississippi Choctaws generally if their rights had been respected. A few of the band referred to managed to secure their land, upon which they all lived until their emigration in 1846. No one who saw those Indians

then could, for a moment, have believed that scrip in the Choctaw country west was more desirable for them than land in their old homes.

In fact, a three-fold wrong was inflicted.

The 14th article guaranteed to those wishing to remain—

1st. Permission to do so.

2d. A reservation of land.

3d. A fee-simple grant at the end of five years.

The promise of a reservation was first broken.

Then, when the scrip was issued, it was done in such a manner as to break the other two promises, as it was only deliverable on condition that the claimant should *not* remain in Mississippi, and that he *should* go where a fee-simple grant was impossible; except, of course, such a fee-simple as Mr. Banfield describes—a right of occupancy for life.

The scrip, then, apart from its manifest inferiority to the gold and silver which the Government received for the land, was delivered in such a manner as to damage the Indian instead of benefiting him: 1st, by taking him away from a country where he could make it available; 2d, by taking him to a country where he did not want to go, where it was of no earthly use to him, and where it could, under no circumstances, command such a price as in the States where it was receivable. No reasonable man will deny that this constitutes a just claim for the difference between what the Shuk-ha-natches realized and what the Government received for the half section which the scrip represented.

To allege, however, that seventeen cents an acre was all that could have been obtained for the scrip in the Indian territory west would be a serious misrepresentation.

While the payment, or delivery, was in progress it was selling in the adjoining State of Arkansas at from eighty to ninety cents an acre.

Why the amount realized by the Indians fell so far short of that rate, will appear from the following extract from the paper referred to on page 28, which was laid before the Senate when the Choctaw case was first presented, after the ratification of the treaty of 1855:

> From time to time, between the 1st of January, 1845, and the 1st of January, 1852, they received from the Government certificates authorizing each claimant to locate one-half the quantity of land to which he was entitled, in any one of the four States of Alabama, Mississippi, Louisiana, or Arkansas. The emigration of the claimants to the Choctaw country west of Arkansas, where the certificates could not be used, was made, by order of the Indian Department, a condition precedent to their delivery.
>
> If the Indian desired to sell his certificate in that region, he was in no case able to realize for it the market value, which, under the most favorable circumstances, was always below par.
>
> But in nine cases out of ten the certificates were turned over to the attorneys who had prosecuted the claims of the Indians, and who had generally paid them a small sum, ranging from $50 to $200 per section. In such cases the difference between this sum and the market value of the certificates must be regarded as the amount paid by the Indians for securing their claims; though more than one-fourth of the whole quantity was paid to the attorneys without any compensation beyond the services they had already rendered.
>
> How it was that the Government forced the Indian either to relinquish his rights or employ some one to establish them will presently appear.

This whole difficulty might have been avoided, the trouble and expense of removal west obviated, and the $872,000 appropriation saved, by simply allowing the Choctaw claimants to locate their scrip on the unsold remainder of the cession of 1830, amply sufficient for the purpose, as it exceeded four millions of acres in 1859, while the scrip claims, both rejected and allowed, were less than 1,725,000 acres. Such a course would have satisfied the Indians, and those employed to aid them, without taking one dollar out of the Treasury. It would have complied with the treaty, by permitting them to remain in Mississippi,

if it did not secure their improvements. And the problem of Indian civilization would have been rendered more easy of solution by the experience of the Leaf River Choctaws of Smith County, and other individual instances in Leake County and elsewhere of full-blooded Choctaws, fortunate enough to secure a little land, who were becoming cotton planters, and rapidly changing their condition for the better under the influence of the white man's laws, until their progress was stopped by a removal that benefited no one, while it nearly destroyed the emigrants by the disease and mortality always attendant upon the process of acclimation.

OTHER SCRIP CLAIMANTS.

I have gone thus fully into the Shuk-ha-natche claims, by way of illustration, not only because the facts were indisputable, but because most of them could be easily verified by referring to official papers among the printed public documents. There were other Indians who, like the Shuk-ha-natches, had been registered, and whose names could not afterwards be found, how many I do not know; but that the number must have been considerable is shown by the following extract from a report made by the Hon. T. Hartley Crawford, Commissioner of Indian Affairs, to Mr. Secretary Spencer, on the 7th March, 1843:

> The agent of the Government, Colonel Ward, unfortunately so managed his business that it is left almost entirely to oral testimony to prove the names of those who applied for registration within the six months, and the signification of their intention to remain and become citizens of the States. That he kept a book about foolscap size, containing two or three quires of paper, and which was almost filled with names of persons registered, is proved; and it is also proved that this book was afterward partially torn up and used as shaving-paper, was left out in the weather, and finally was sent to one of the Folsoms, after which nothing more was heard of it. (Doc. 168, pp. 77, 78.)

Two quires of foolscap, allowing only 20 to the page, would easily hold 3,800 names, equal to 950 families. My impression is, that it was not alleged that anything like that number were actually registered. Of the 1,585 families claiming under the 14th article, by far the largest portion consisted either of those whom the agent refused to register, as in the instance he reported to the Secretary of War, in which he refused 200 at one time, (*ante*, p. 19,) or of those who were deterred from making application by such threats as are indicated in the following extract from the report of the House Committee of Indian Affairs. (No. 663, 1st session 24th Congress, p. 43.)

One of the witnesses examined by the locating agent, in 1835, in answer to the question, "Were the agent and his deputy opposed to the Indians taking the five years' stay to become citizens?" says, "Most certainly they were; and Colonel Ward was so much so, that he seriously advised the emigrating agents to whip such as did not wish to go, and force them off." (Rep. 663, p. 43.)

Other deterring influences on the part of the agent are specified in the extract on page 20, from the report of the commissioners, Murray and Vroom.

REJECTED CLAIMS.

Mr. Banfield's strictures on page 16, upon so much of Mr. Sebastian's report as relates to the rejected claims for land under the 14th article, show that he has not informed himself as to the number. He says every claim must have been paid except sixty-seven. Mr. Sebastian was officially informed by the Indian Department, in 1858, as their records will

doubtless show, that two hundred and ninety-two claims had not been allowed.

Of these, one hundred and ninety-one—nearly two-thirds—were rejected, in cases where the dispossession did not result from a previous sale by the United States, for the reason the claimants did not reside on their improvements "five years continuously next after the ratification of the treaty." They had signified their intention to remain, and had remained, five years, and three times five years, after the treaty, and they had improvements. So far as the treaty was concerned, their right to a grant in fee simple was complete, with the single exception of the failure to live "five years continuously" upon their improvements.

A witness examined by Commissioners Gaines and Rush, 13th September, 1844, states that claimant and each of those herein referred to in this case had a house, field, and family; and that about two years after the treaty, by reason of the entrance among them of Government emigrating agents, who threatened to take their women and children to the West by force, they were so alarmed as to induce them to escape with their families to the white settlements in Hancock county for protection, hoping to be restored to their homes when the Government learned of the conduct of its agents."

This claim was rejected, on the ground that the claimant had voluntarily abandoned his improvements; 94 others, who proved substantially the same facts, were rejected for the same cause. The 95 cases constitute the claims of the band known as the Biloxi Bay Indians, for whose relief a provision was made by act of August 30, 1852.*

The causes which led another large class of claimants to abandon their improvements are stated in the following extracts from the report of Messrs. Murray and Vroom:

"The Choctaws are shy and reserved in their intercourse with the whites, and do not readily mix with them. It is proved, in a great number of cases, that they have been most wantonly abused and ill-treated by them, and that they could not live in peace in the same neighborhood. The large stock of cattle and hogs introduced by the white settlers destroyed their crops, and their houses and cabins were torn down, burned, or taken possession of by them, when they left home on their necessary hunting expeditions, or to seek employment in picking cotton, &c. Under these circumstances, they were compelled in a great number of cases to remove. It is in proof, also, that many removed in consequence of reports circulated among them that the lands occupied by them had been sold by the Government, and when it was impossible for them to ascertain the truth or falsehood of such reports; they well knew, however, from bitter experience, that whether true or false, they were at the mercy of their white neighbors."

Commissioner Claiborne says, with reference to this objection, that the claimant could not "be required, by any invention of law, to jeopard his peace or safety at any time to retain possession of his premises. In every such case before us it is clearly in proof that the Indian was driven off either by violence or by threats, by men who said they wished to cultivate the field; that they intended to buy it at the land sales; that the Indians had already been paid too much for the country, and must clear out. It is in proof that their fences were torn down, their crops plowed up; that they were driven off without compensation; that

*See *ante*, p. 28. The number of rejected "Bay Indian" claims was 95 instead of 67, as Mr. Banfield asserts on p. 16 of his letter.

they offered no resistance, but left in deep distress, complaining of oppression and the bad faith of the whites." (Doc. 168, p. 52.)

Mr. Claiborne's view was, that "the Indian was only bound to keep possession so long as he could do so peaceably." (*Ibid.*)

But the act of Congress seemed to exclude all cases where the reservee was not dispossessed by means of a previous Government sale, and the claims of that class were therefore rejected.

It would be easy to reply to the objections urged against the remaining eighty-two of the rejected cases. To do so would be to exceed the proper limits of this letter. I content myself with resting upon the broad ground, admitted and stated by Mr. Banfield himself, (pp. 8, 9,) manifest to the most superficial reader of the treaty, that it was made with and for two classes of Choctaws—those who *would* and those who would *not* emigrate. Each family that remained in the East was promised its fair proportion of the common territory. The 292 families were Choctaws—were entitled, as matter of abstract right, to a share in the common property of the tribe. The treaty recognized the right, proceeded to carve out the share, and promised it to them if they chose to remain East. They did remain, but have never received anything. To this day they are cut off from all benefits of the treaty.

Before leaving this branch of the subject, it may be well to state, that not a single claim among those receipted or allowed, and constituting the aggregate of 1,585 presented, was the claim of a white man with a Choctaw family, as might be inferred from Mr. Banfield's remark on page 16.

WHERE THE CHARGES OF FRAUD COME FROM.

Any one who examines the documents Mr. Banfield refers to in connection with this case, with a desire to get at the truth, cannot fail to be struck with two prominent facts: First, the frequent reiteration of the charge that nearly all of the Choctaw claims were fraudulent; and second, the absence of any indication that the charges were substantiated; or, to speak more accurately, the utter failure of the accusers to make good their allegations.

Fifteen hundred and eighty-five claims were presented. Two hundred and ninety-two, nearly one-fifth of the whole, were rejected; only five of them on the ground that the testimony of the supporting witnesses was impeached, the impeachment being the result of the investigations of the examining boards, and not of any of the charges of fraud, which were invariably of a general character.

If the inquirer, thinking that where there is so much smoke there must be some fire, traces back the charges to their source, he will find that they spring in part from—

1. Those who deprecate the interference of Choctaw reservations with the public land sales, as in the case of the resolutions of the Mississippi legislature, and the letters of Mr. Gwin of the Chocchuma land-office; and in part from—

2. Those who profess to be influenced solely by a desire to save the Government from loss, as in the case of Messrs. Kirksey and Poindexter, Mr. R. H. Grant, and Mr. Jubal B. Hancock. To this latter class also belong the later effusions of Commissioner Claiborne.

The resolutions of the Mississippi legislature seem to have been founded on the testimony of the representatives from the counties within the ceded territory.* They and their constituents were directly

* Jasper, Neshoba, Lauderdale, Attala, and Wiston. (See Doc. 168, p. 163.)

interested in bringing as much of that territory as possible into market at the earliest practicable moment.

The sale of the lands ceded by the Choctaws, before their reservations were located, led to the sale of a great many improvements of Indians, who were subsequently ascertained to be claimants under the 14th article. The purchaser at the land sales was, of course, hostile to any class of claims likley to interfere with his proposed purchase, and was quite ready to unite with pre-emption claimants, who were everywhere on the lookout for the best Indian locations and improvements, in denouncing the whole affair as fraudulent. The fact that the Government agent, out of 1,585 claims subsequently presented, had recognized and reported only *sixty-nine*, was well calculated to support, if not confirm, the charge; "The great number of them," says Mr. Bell, "has caused general surprise, and created a strong suspicion in the public mind that they cannot be well founded. *But a deeper feeling has been aroused in the State of Mississippi by the interferences with the rights and expectations of the settlers, which a confirmation of these locations would produce.*" (Rep., 663, H. R., 24th Cong., 1st sess.)

The complaints of the register, Gwyn, on Mr. Banfield's 10th page, "that the delay in bringing the land into market is the hot-bed for thousands of fraudulent claims," held, "not by Indians," but "by a set of speculators," who mean to sweep the Choctaw lands under "pretended 14th-article claims;" "one of the grandest schemes of fraud," &c., &c., were quite natural, and, under the circumstances, to be expected.

The report of the Senate Committee on Public Lands, of March 3, 1835, on frauds in land sales, represents Mr. Gwyn as having been notoriously engaged, while register at the Mount Salus land-office, in extensive land speculations of an illegal character, involving the withholding from sale, for his own benefit, tracts which he marked as sold, when they were not. Also, that he was afterwards transferred to Chocchuma, where he was register when he wrote the letters Mr. Banfield quotes. At this latter office the committee say, "the evidence portrays greater enormities than are believed to have occurred at any time in any other land district in the United States," the "enormities" being the result of a combination for the purpose of "monopolizing all the good lands" and "driving all competition out of the market," the combination being "permitted by the officers superintending these sales, to dictate terms to bidders." (2d sess., 23d Cong., Sen. Rep. No. 151, p. 4.)

No wonder Mr. Gwyn deprecated the "competition" of the Choctaw reservations, which, if established his friends in the combination could not "drive out of market." The object of the claims, he seems to think, was to get rich land for the Indians, in place of the poor land on which they lived; and as the rich land was what his speculating friends wanted, he very naturally felt sure there were enough "poor pine lands east of the Yallabusha to satisfy all *just* claims." (Doc. 168, p. 161.)

The accusers of Mr. Gwyn's type wanted to keep the Choctaws from interfering with their speculations in public lands, but when scrip was substituted for land they gave way to another class, who wanted to protect the Government from loss—for a consideration.

To give some idea of the probable motives of this latter class, a retrospective view is essential.

The first contracts to prosecute these claims were made in 1834 and 1835, (Doc. 168, pp. 115, 118, *et seq.*,) by Charles Fisher and his associates. Six or eight years elapsing, with little or no show for their land, the principal attorney, Fisher, being at home in North Carolina, out of sight, the claimants very naturally thought that their contracts,

which were all contingent upon success, were not "binding," (see Doc. 168, p. 83,) and in many instances, I believe in all that Mr. Fisher claimed, made new arrangements with others, some of whom in their turn employed Mr. Fisher, some of them Colonel Forester, some Mr. John Johnson, senior. Other Indians made contracts direct with Colonel Forester, without the intervention of any third party, and others in like manner with Mr. Johnson.

The intermediate third party was generally some one exerting a controlling influence over the Indians near him, growing almost invariably out of the fact that he had befriended his Choctaw neighbors and protected them from injury and abuse. To him they naturally looked for advice; and men of that class were the parties with whom most of the claimants contracted, and by whom the attorneys of record were employed in cases where they did not possess that kind of influence themselves.

As the 7,000 Choctaws embraced in the claims were scattered over twenty-odd counties, in numerous small bands, there were a great many of these intermediate agents standing between the nominal attorneys and the Indians.

Their several agreements were made before the act of 1842 was passed, and therefore without reference to its provisions respecting contracts. Those which the Indians did not "consider binding" were virtually abandoned by the original attorneys, who made new ones usually, as above stated, with intermediate parties having the confidence of the Indians. This was generally done, but not always. Right at that point sprang up serious difficulties. Different persons claimed the same half which the Indian had agreed to pay. The question was, when his claim was secured, who was he to divide with? Scarcely a single attack was made upon the Choctaw claims that did not emanate from some disappointed party who had failed in his effort to secure a contract with the Indian or with his immediate agent. To the conflicts thus arising add the craving of outsiders for a share in the spoils, and you have the secret spring which prompted so many offers to save land or scrip for the Government, if it would only pay for the service.

Another ingredient, contributing to the prejudice against the claims, which should not be overlooked, was "the cherished policy of Mississippi" to get rid of the Indian, (and, of course, to give the white man his land,) of which Mr. Claiborne speaks, as we have seen in his letter to Commissioner Crawford, (*ante*, p. 39,) and which induced him, while staying at Colonel Forester's house, to acquire, by clandestine means, a secret influence over his clients, resulting in the same clients afterwards conveying to Mr. Claiborne their property—in trust. (See his letters of May 8, pp. 38, 39, and November 14, p. 143. See also p. 29 and pp. 46 and 47, Doc. 168.)

The charges of fraud springing from these various sources were:

1st. That the Indians had contracted to sell their lands within five years after the date of the treaty, and therefore were barred by the act of August 23, 1842.

2d. That they had sworn that they had made no contracts of sale during the five years "which they considered binding," thus showing themselves to be regardless of truth or ignorant of the nature of contracts; in either case not competent to testify.

In point of fact, as already shown, the Indians had not only told the truth, but, in speaking of their first contracts as not binding, had expressed the opinion of all who were conversant with the facts, and not interested in enforcing the original agreements. In this I speak with-

out reference to the records, which tell the whole story, but from personal knowledge derived from the statements of parties in interest attending the scrip payments made in the winter of 1845–'46 by Captain William Armstrong, for whom I acted as interpreter.

3d. A third allegation of fraud was that the Indians had not signified their intention of remaining within six months after the ratification of the treaty.

This charge was not proved. On the contrary, the burden of proof before the commissioners was the other way. I only specify it to show the nature of the opposition to the 14th-article claims.

What that opposition amounted to may be inferred from the significant silence of Commissioners Crawford and Medill, of the Indian Office, and Secretaries Spencer and Marcy, of the War Department.

Mr. Crawford mentions the 14th-article claims in his annual reports for 1838, 1840, and 1841, calling special attention in 1840 to the fact that there were 1,100 more of them than had been anticipated when the treaty was made. In March, 1843, he prepared an elaborate report (filling six pages of the Document No. 168, so often referred to in this letter) on the claims examined by Commissioners Murray and Vroom, upon whom Mr. Banfield says so many frauds were practiced. If they were, Mr. Crawford does not say so.

The words used by Mr. Spencer in approving this report, "being in the main the result of consultation with me," together with the exceptions he makes to some of Mr. Crawford's conclusions, show that he had examined the subject thoroughly. The "Poindexter protest," which Mr. Banfield thinks so important, had been sent direct to Mr. Spencer himself a month before. That protest charged that not more than 100 families were entitled to land under the 14th article. Murray and Vroom had acted on 261 claims, recommended 165, and reported 1,100 additional applications. Yet neither Mr. Spencer nor Mr. Crawford say one word about fraudulent claims. Mr. Crawford, on the contrary, speaking of the witnesses being necessarily in most cases Indians, says, "from a careful examination of the testimony it is evident that those witnesses generally were animated by a sincere desire to tell the truth." (Doc. 168, p. 77.)

Mr. Crawford's past experience had peculiarly fitted him for such investigations, as he had been employed as adjudicating commissioner among the Creek Indians in detecting and exposing swindling conveyances of Indian lands infinitely more atrocious than anything alleged against the Choctaw claims.

Any one that ever heard of Mr. Spencer's professional reputation knows that he was fully able to detect any flagrant wrong that might be spread before his face, with notice of the fact.

All this, however, was before Mr. Claiborne's denunciations of double frauds, which were not made until the following November.

In the fall of 1845, Mr. William Medill, afterwards First Comptroller of the Treasury and governor of Ohio, became Commissioner of Indian Affairs; Governor Marcy, of New York, being at the head of the War Office. In his annual reports Mr. Medill alludes frequently to the 14th-article claims. In the report for 1847 he gives a brief history of them, but says nothing of any doubts as to their validity. From his account it appears that the great body of them were allowed by Governor Marcy.

These facts must have escaped Mr. Banfield's notice. If he knows anything of the character of Governor Marcy, he cannot have intended to accuse him of any deficiency in either ability or integrity. Yet every charge Mr. Banfield produces had been sent to the War Department,

and had been printed by order of Congress, before Governor Marcy had decided a single claim.

A bare reference to the decisions of Secretaries Spencer and Marcy might, perhaps, have been a sufficient answer to all that has been said against the 14th-article claims. But I have thought that the true character of Mr. Banfield's letter could not be made known without showing exactly what sort of weapons he has found it necessary to use.

I cannot leave the 14th article without expressing my thanks to Mr. Banfield for the service he has rendered the Choctaws in enabling me to ascertain how utterly unfounded were the charges so persistently urged in former days against those claiming under it. Ignorant of the very existence of some of the documents he has referred to until it became necessary to test his quotations, I did not know that the most active among the enemies of the claimants had been placed upon the stand and compelled to admit that they could not point out a single fraudulent case; nor was I aware their calumnies had been fully understood and properly appreciated by the distinguished men who in those days controlled the Indian Department.

It would be easy to point out Mr. Banfield's errors in stating other items of the Choctaw claim. But his charge of fraud is confined to those arising under the 14th article. It is not likely that any one but himself will seriously propose, in cases where no such charge is made, to go behind an award having all the binding force of a treaty. I content myself, therefore, with the foregoing exhibit of the grounds upon which a law-officer of the Government attempts to invalidate and discredit the concurrent action of Congress and of the Executive during three successive administrations, for the purpose of annulling the action of the Senate in its efforts to do justice to an Indian tribe.

Mr. Sebastian's statement, that the award of the Senate would involve from $800,000 to $1,000,000, is easilyexplained.

The net proceeds of the Choctaw cession were estimated by the Indian Office, in May, 1858, at $2,993,720.18. (See House Ex. Doc. 82, 1st sess. 36th Cong.)

Of that amount, $1,857,941.31 is for unsold land, at 75 cents an acre, which Mr Sebastian reduced in the resolution offered by him and passed by the Senate to 12½ cents an acre, thereby reducing the amount to $1,445,435 75

From this last sum take the two items he proposed to deduct in his report of June 19th, 1860, (No. 283, 1st session 36th Congress) 648,696 45

Will leave 796,739 30

That Mr. Sebastian arrived at his conclusions in this manner I do not know, but it is only reasonable and fair to presume that he did.

When, in compliance with the resolution of the Senate, the Secretary of the Interior, on the 8th May, 1860, fourteen months afterwards, transmitted a carefully-prepared statement of the amount that would be due the Choctaws under the award of the net proceeds, it appeared that the gross receipts were $1,000,000 more than was stated in the estimate of 1858; the amount of unsold land was also larger, while the charges were not so large; these variations together making a difference equal to the deduction above referred to in the price of the unsold land.

In attacking Mr. Sebastian and the proceedings of his committee, Mr. Banfield passes over seven different reports from committees of the

Senate and of the House, including one from the Hon. Thaddeus Stevens, one from the Judiciary Committee of the Senate, and one joint report from the Indian Committees of both houses, all made since the war, and all recommending the payment of the Senate award. Paying no attention to these indications of the justice of their demands, he has gone back through the whole history of the Government, and, still further, into colonial times, hunting in treaties made by the King of Great Britain for material to use against the Choctaws. For that purpose any floating gossip, any vague rumor, any idle report, is available in his estimation; while, on the other hand, no adjudication, no treaty stipulation, no act of Congress, is of any binding force in their favor.

P. P. PITCHLYNN,
Delegate from the Choctaw Nation.

FEBRUARY 13, 1873.

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