42D CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { Ex. DOC. No. 141.

PROTEST OF CHICKASAW NATION.

LETTER

FROM THE

ACTING SECRETARY OF THE INTERIOR,

INCLOSING

A protest of the governor of the Chickasaw Nation against certain measures providing for the opening of the Indian Territory to white settlement.

JANUARY 25, 1873.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 20, 1873.

SIR: I have the honor to transmit herewith a copy of a letter, dated the 16th instant, from the Acting Commissioner of Indian Affairs, inclosing a communication addressed to the President of the United States by G. D. James, "commissioner on the part of the Chickasaw Nation," together with a protest of the governor of said Chickasaw Nation against certain measures now before Congress providing for the opening of the Indian Territory to white settlement.

These papers are furnished for the information of Congress at the request of Governor Harris.

Very respectfully, your obedient servant,

B. R. COWEN,
Acting Secretary.

The Honorable the SPEAKER
of the House of Representatives.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., January 16, 1873.

SIR: I have the honor to acknowledge the receipt, by reference from the Department, of a communication addressed to the President, under date of the 19th of December last, by G. D. James, "commissioner on the part of the Chickasaw Nation," inclosing a protest of the governor of said nation against certain measures now before Congress providing for the opening of the Indian Territory to white settlement.

I respectfully return the same herewith that it may be laid before Congress in accordance with the request of Governor Harris.

Very respectfully, your obedient servant,

H. R. CLUM,
Acting Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

WASHINGTON CITY, *December* 19, 1872.

SIR: The undersigned commissioner, on the part of the Chickasaw Nation, most respectfully presents the inclosed "protest," made by Cyrus Harris, governor of the Chickasaw Nation, in conformity to instructions by the legislature of said nation, against all measures now before Congress intended or having the effect to destroy the nationality of the Chickasaws and to open their country to white settlement, and request that you will cause the same to be transmitted to the President of the Senate and Speaker of the House of Representatives of the United States now in Congress assembled, and ask the same may be laid before the respective Houses of Congress.

The undersigned avails of this occasion to express the gratification he finds in the fact that the protest he now has the honor to present does not seem to be in opposition to the policy in relation to Indian affairs, set forth in your recent message to Congress, but is directed against a class of measures which, in contravention of that humane policy, would destroy the Indian race.

I am, sir, your most obedient servant,

G. D. JAMES,
Commissioner on the part of the Chickasaw Nation.

His Excellency U. S. GRANT,
President of the United States.

To the Senate and House of Representatives of the Congress of the United States: The undersigned, in obedience to resolutions of the legislature of the Chickasaw Nation (copy of which is marked "A" and hereto appended) would most respectfully call the attention of the Senate and House of Representatives of the United States in Congress assembled to the various treaties of peace and amity which were concluded between said States and the Chickasaw Nation of Indians, to wit: The treaty of Hopewell, concluded January 10, 1786; at Chickasaw Bluffs, October 24, 1801; articles of arrangement of September 20, 1816; at Old Town, October 19, 1818; at Pontotoc Creek, October 20, 1832; at Washington, May 24, 1834; at Doaksville, January 17, 1837, (ratified, March 24, 1837;) at Washington, June 22, 1852, (ratified February 24, 1853;) at Washington, June 22, 1855, (ratified March 4, 1856;) and the treaty of Washington, April 28, 1866, (proclaimed July 10, 1866.)

Under most of these treaties large grants of land were made by the Chickasaw Nation to the United States; and, under all of them, perpetual peace and friendship were established between the contracting powers—the Chickasaws voluntarily placing themselves under the guardianship of the United States, and they solemnly promising on their part, and in behalf of their people, protection to the Chickasaws against all enemies, foreign or domestic.

The treaties of 1837, 1855, and 1866, above mentioned, to which the Choctaw Nation was also a party, are the most important; and to these your attention is specially invited.

The first was made under peculiar circumstances. The Chickasaws had, by the treaties of 1832 and 1834, disposed of all their lands in the State of Mississippi, and were about to abandon their homes, which they had long cherished and loved, and seek a country adequate to their wants and the support of their people somewhere west of the Mississippi River, within the territorial limits of the United States. Should they succeed in doing so the Government of the United States consented and promised "to protect and defend them against the inroads of any other tribe of Indians and from the whites," and agreed to "keep them without the limits of any State or Territory." (See article 2d of the convention, and agreement between the United States and the Chickasaws, concluded May 24, 1834; ratified July 1, 1834.)

The Chickasaws finally found a home within the Choctaw country, and, under the convention of 1837, above mentioned, they agreed that the United States should pay the Choctaws, for the Chickasaws, the sum of $530,000, which was paid for them by the transfer of a sufficient amount of stocks then held in trust by the United States for Chickasaws, arising from the proceeds of their lands ceded as aforesaid to the said

States by the treaty of 1832. Under this convention a district was set aside, by metes and bounds, to the Chickasaws, to be held on the same terms that the Choctaws then held it, to wit, as a nation and in common; but no sale thereof could be made without the consent of the Choctaws. The Chickasaws, under said convention, were to have an *equal* representation in the Choctaw general council. Choctaws and Chickasaws were also to have the right to settle indiscriminately in either the Choctaw or Chickasaw districts. Finding this arrangement to be construed differently by the two nations, and being denied *equal* representation as a nation in the Choctaw council, but only allowed representation in proportion to numbers, the Chickasaws, being the weaker, found this *union* oppressive. Fortunately provision had been made in the convention of 1837 (and still exists) for the adjustment of all complaints or dissatisfaction which might arise to interrupt the peace and harmony which existed between the Choctaws and Chickasaws, by reference of such questions, first to the Choctaw agent, and with the right of appeal to the President of the United States, whose decision it was declared should be final. The result was an appeal to the President, and, finally, the treaty of June 22, 1855, between the United States, the Choctaw Nation, and the Chickasaw Nation, under which the Chickasaws, in consideration of the sum of $150,000 paid the Choctaws, obtained a political separation from them, and the right of self-government, and full jurisdiction over the Chickasaw district, for which they had previously paid, as above stated, $530,000. Thus it appears that the status of the Chickasaws, under the treaty of 1855, (whatever it might have been under the convention of 1837,) was that of an Indian tribe or nation.

In article 7 of said treaty of 1855 it is declared that, "so far as compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Chickasaws and Choctaws shall be secured in the unrestricted right of self-government, and full jurisdiction over persons and property within their respective limits; *excepting, however*, all persons with their property who are not, by birth, adoption, or otherwise, citizens or members of either the Choctaw or Chickasaw tribe; and all persons, not being citizens or members of either tribe, found within their limits shall be considered intruders, and be removed from and kept out of the same by the United States agent, assisted, if necessary, by the military, with the following exceptions, to wit: such individuals as are now or may be in the employment of the Government, and their families; those peacefully traveling or temporarily sojourning in the country or trading therein under license from the proper authority of the United States, and such as may be permitted by the Choctaws or Chickasaws, with the assent of the United States agent, to reside within their limits without becoming citizens or members of either of said tribes."

And by article 10 of the treaty concluded at Washington, April 28, 1866, between the United States, the Choctaw and Chickasaw Nations, "the United States re-affirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations prior to the late rebellion, and in force at that time, not inconsistent herewith, and further agrees to renew the payment of all annuities, and other moneys accruing under said treaty stipulations and acts of legislation, from and after the 30th of June, 1866."

And again, by article 45 of said treaty, it is declared that "all the rights, privileges and immunities heretofore possessed by said nations, or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and are hereby declared to be, in full force so far as they are consistent with the provisions of this treaty."

It is believed that the only rights given up by the treaty of 1866 are the right to hold slaves, the right to the leased district, so called, between the 98th and 100th meridians of west longitude, upon certain conditions therein set forth, and the unrestricted right of self-government and full jurisdiction over persons and property, so far as the same may have been limited by articles 7 and 8 and 43 of said treaty. Under the 7th article "the Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of persons and property within the Indian Territory; provided, however, such legislation shall not in any wise interfere with or annul their present tribal organization or their respective legislatures or judiciaries, or the rights, laws, privileges, or the customs of the Choctaw and Chickasaw Nations, respectively." This article was designed to aid and protect rights of persons and property, not to destroy them, or interfere with the domestic affairs of the two nations.

Article 8 provides for a general council of delegates from the several Indian tribes or nations within the Indian Territory, and not for a territorial government of the United States, and its powers are expressly limited to subjects of common interest to said tribes; and it is forbidden to "legislate upon matters pertaining to the legislative, judicial, or other organization, laws, or customs of the several tribes or nations," except as therein provided for. The 43d article enlarges the class of persons who are entitled to permits to temporarily reside in the Choctaw and Chickasaw country, by

giving the right to employés of "internal improvement companies;" and declares that this article is not to be construed to affect parties already adopted, or to prevent the employment temporarily of teachers, mechanics, and persons skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community; or, to be taken to interfere with or invalidate any action had previously in this connection by either of the said nations.

Thus it would seem that in addition to such persons as the treaty of 1866 permits to be employed in the country, such other class of persons may obtain permits as were authorized to do so, under the then existing laws of the Choctaw and Chickasaw Nations; all other persons except those above described are declared to be *intruders*, and shall be removed by the United States agent, assisted if necessary by the military.

Your attention to these and other provisions of the treaties between the United States and the Chickasaw Nation, and a comparison with them of the various bills which have been introduced into Congress for the purpose of establishing a territorial government of the United States over the Indian Territory, (south of Kansas, west of Missouri and Arkansas, north of Texas, and east of a part of Texas and New Mexico,) is respectfully invited.

Before proceeding, however, to compare these measures with the treaties, permit me to call your attention particularly to the nature of the title held by the Choctaws and Chickasaws to the country embraced within their exterior limits.

Article 1 of the treaty of 1855, between the United States and the Choctaw and Chickasaw Indians, defines the exterior boundaries of their common country, and declares that "pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the *members* of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, *so that each and every member of either tribe shall have an equal undivided interest in the whole; provided, that no part thereof shall ever be sold without the consent of both tribes;* and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

Under the treaty of 1866, some important modifications and regulations were agreed to in this connection. Instead of holding in common of this undivided interest, the Choctaws and Chickasaws, native and adopted, may have each 160 acres thereof, set apart to be held in severalty; and certain Kansas Indians and freedmen were also to be provided for, and the residue of said lands to be held by the Choctaw and Chickasaw Nations in their *corporate capacities*, and to be the common property of the Choctaw and Chickasaw Nations, subject to the joint control of the two legislative councils. (See article 33 of said treaty.)

Passing by the question whether it was competent for the United States and the Choctaw Nation and the Chickasaw Nation to enter into treaty stipulations, whereby the undivided interest which had vested in each and every Choctaw, and each and every Chickasaw, to an equal share in the whole body of lands embraced within the exterior limits of the country described in article 1, of the treaty of 1855, it is sufficient for the present purpose to say that, under the treaty of 1866, the title to said lands vested in the Choctaws and Chickasaws individually in part, and as constituent portions of the Choctaw and Chickasaw Nations, with reversion to the United States in case all of them and all of their heirs become extinct or abandon the same.

Having as briefly as possible called your attention to the most important stipulations in the treaties made by the United States with the Chickasaw Nation, you are now most respectfully asked to compare them with the provisions of the various bills which have been introduced into Congress during the last six years, for the purpose of establishing a territorial government over the Indian tribes inhabiting the Indian Territory, so called, south of Kansas, west of Missouri and Arkansas, north of Texas, and east of a part of Texas and New Mexico.

Taking the bill (H. R. 2635) reported last session, and passed through two readings and made the order of the day for the second Tuesday of December next, to be entitled "An act for the better protection of the Indian tribes, and for their consolidation under a civil government, to be called the Territory of Oklahoma," as the exponent of the others, it will be seen that it is inconsistent with the idea of protection to the Indian tribes in the rights secured to them by treaties, some of the provisions of which have been quoted herein.

It will be observed that the most important of those rights are the right of self-government as separate tribes under their own laws, customs, and usages, and the right to lands as separate communities. The title of the bill above quoted shows that the idea upon which it is based is the better protection of the Indian tribes by *consolidating them under one government*, thus destroying their separate political existence, and with the destruction of their nationalities destroying the tenure by which they hold lands; in other words, "extinguishing the Indian title," so called. Destroy the right of self-government as separate political communities and the power to claim money now in the hands of the United States, or due from them to Indian nations as such, would also be

destroyed; and all, like the lands, in consequence of this political death, without heirs or representatives of the tribes, would escheat to the United States.

Looking, now, at the provisions contained in this specious bill, and it will be seen how faithfully this idea of consolidation is followed out. The first section provides "that there be created and established within the Indian Territory, (the boundaries of which are described, and embrace the reservations occupied and owned by the Choctaws and Chickasaws, as well as other tribes,) a temporary government by the name of the Territory of Oklahoma." Section 2 provides for the appointment by the President of the United States of a governor; section 3 for a secretary; section 4 declares "that the legislative authority of said Territory shall be vested in the governor and a legislative assembly," the members of which "to reside in and be inhabitants of the district or county, or counties, for which they may be elected respectively."

Section 5, "That every male Indian of the age of twenty-one, who is a male member of one of the tribes in the Territory of Oklahoma, which have adopted the customs of civilized life, and *all citizens of the United States*, of the age of twenty-one and upward, who shall have lawfully resided in the Indian Territory one year prior to the passage of this act, may vote at the first election for all officers to be elected by the people. The qualification of voters, and the time, place, and manner of voting at all subsequent elections, shall be prescribed by the legislative assembly of the Territory: *Provided*, That no person shall be deprived of the right to vote or hold office in said Territory on account of race, or color, or previous condition of servitude." This, of course, will render it impossible to exclude any white man or negro from voting.

Section 6 declares, "That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and this act; but no law shall be passed interfering with the primary disposal of the soil. No tax shall be imposed on the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents." And such legislative assembly shall not have the power to create private corporations, or grant special rights, privileges, or franchises by such acts; *but*, it shall be lawful for such assembly to enact *general* laws, under which, on equal terms, *any of the citizens* may, by compliance with their requirements, organize themselves into such corporations for mining, manufacturing, and other industrial pursuits; for the establishment of religious, benevolent, charitable, or literary societies. These are the only restrictions upon the legislative power of the assembly.

Section 7 declares, "That *all local*, *district*, and *county* officers, not herein otherwise provided for, shall be appointed or elected as the case may be, in such manner as shall be provided by the governor and legislative assembly of the Territory of Oklahoma. The governor shall nominate, and by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for, and in the first instance the governor alone may appoint all such officers, who shall hold their offices until the end of the first legislative assembly."

Section 8 provides for the judiciary.

Section 9, for an attorney and marshal of the Territory.

Section 10, for the transfer of all causes in the United States court for the western district of Arkansas district court provided for in section 9.

Section 11 requires all officers of the Territory to take the oath to support the Constitution of the United States.

Section 12 prescribes the manner in which the time and place of holding the sessions of the legislative assembly are to be fixed.

Section 13 declares that a delegate to the House of Representatives of the United States, *who shall be* a citizen of the United States, and reside in said Territory, to serve for the term of two years, shall be elected in the same manner and by the same persons who vote for members of the legislative assembly, and said delegate shall be entitled to the same rights and privileges as are exercised and enjoyed by delegates from "*other Territories of the United States*," &c.

Section 14 provides for the assignment of judges to districts.

Section 15 requires certain officers to give security for moneys, &c., and declares that in all *appointments* herein provided for, preference (qualifications being equal) shall be given to the competent members of the Indian nations or tribes lawfully within the said Territory, the object being to encourage them to acquire the experience necessary for the duties of office and civil government in said Territory.

Section 8, and this last, seem to be the only sections in the whole bill which do not palpably violate the treaty of 1866, and other treaties not inconsistent therewith, between the United States and the Chickasaws, as well as other tribes. It is only necessary to turn to the treaties to see that this is so.

By the 8th section of the treaty of 1866, the Choctaws and Chickasaws agreed "that a council, consisting of delegates elected *by each nation* or *tribe* (not by districts or counties) lawfully within the Indian Territory, may be annually convened in said Territory."

This recognizes "Indian nationalities," and their right to act as separate political communities in their corporate capacities, not as consolidated under one territorial

government; that "the council shall consist of one member from each tribe or nation whose population shall exceed five hundred, and an additional one for each one thousand *Indians*, native or adopted, or each fraction of a thousand greater than five hundred, *being members of any tribe lawfully resident in said Territory*, and shall be selected by the *tribes or nations* respectively who may assent to the establishment of said general assembly; and if none should be thus formally selected by any nation or tribe, it shall be represented in said assembly by the chief, or chiefs, and head-men of such tribes, to be taken in the order of their rank as recognized by tribal usage in the number and proportions above indicated." Here again, "Indian nationalities" are distinctly recognized and respected. And so on, at every step, you will see the idea upon which the *treaties* were based is totally inconsistent with that upon which this bill is framed.

The treaties were made to protect "Indian nationalities," the "Indian title" to lands and moneys, and the right of local self-government, according to their own laws, customs, and usages. This bill, whether so intended or not, if enacted into a law or Congress, will effectually destroy all the rights and all the protection guaranteed to the Indians by the United States.

The Chickasaws have evinced a disposition to yield to the wishes of the United States Government in all things, so far as they could do so without self-destruction of their rights of person and rights of property; and in the case of their slaves even gave up property without compensation, and made ample provision for their freedmen. They have ceded to the United States all their lands east of the Mississippi River; they have consented that the United States shall have the use of reservations in their country west of the Mississippi River for military posts, Indian agencies, and stations for missionary purposes; they have granted right of way for railroads and lines of telegraph, and for military and post roads; they have agreed that the United States should regulate their trade and intercourse with the white people; and that Congress may legislate for the better administration of justice, and the protection of the rights of person and property within the Indian Territory, and establish courts therein; but it cannot be expected that the Indian nations will voluntarily make concessions which destroy their nationalities, their government, the laws and customs, their title to their lands, their power or capacity to claim and receive the moneys, bonds, or other securities now in your hands belonging to them; or to prosecute their claims against the United States Government arising under treaty stipulations.

The Chickasaws desire to go forward and upward in all that constitutes true civilization, and to keep step with the progress of the age; and they cannot believe that the United States, after voluntarily assuming a protectorate over them, will require such heavy sacrifices as are demanded under the various measures to which your attention has been called.

Surely, before asking us to destroy our present nationalities and governments, and with them our corporate capacities to hold our lands and to claim our moneys and dues, the United States will secure to each one of us our rights of person and property, in such manner that the radical changes in our political status, which seem to be demanded, shall not work a forfeiture of any of them.

The Chickasaws desire a better government and better laws than they now have; but they must forego both until their rights of property are made sure to them beyond all peradventure.

I have designed, in the foregoing review of what has been done, and what it is proposed to do in connection with my people, to furnish the grounds of the protest and remonstrance which I am required to make, under the instructions of the Chickasaw legislature, against all measures now before the Congress of the United States intended, or whether intended or not, having the effect to restrict or impair the rights of the Chickasaw people to self-government, and the control of their lands and property in general. And against all such measures I do now, in the name of the Chickasaw people, MOST SOLEMNLY PROTEST and remonstrate.

We are weak and powerless; the people of the United States are rich, prosperous, and powerful. A part of their vast territory was once the hunting-grounds of the Chickasaws. Our ancestors ceded it to them, and sought new homes under the guarantees that I have referred to. It was desired that they should become a Christian and a civilized people. They are both; and they have confidence in their ability as a nation to keep pace with other nations in all material progress. Year after year testifies to their advancement. All that they ask is not to be interfered with in their efforts to work a destiny honorable to the red man, and reflecting credit upon treaties now threatened with abrogation. To a great and magnanimous people our very weakness should be our strength; and I earnestly and prayerfully trust that the Great Ruler of the Universe may incline the hearts I now appeal to not to destroy the nationality of my people, or impair or prejudice their rights.

C. HARRIS,
Governor of the Chickasaw Nation.

APPENDIX A.

Resolution of the legislature of the Chickasaw Nation, instructing the governor to present to the Congress of the United States a protest and remonstrance against the territorial bill (H. R. 2635) introduced last session, and against all attempts to restrict or destroy the right of self-government, and the right of disposing of their lands as they please, secured to the Choctaws and Chickasaws by treaty stipulations.

Resolved by the legislature of the Chickasaw Nation, That the governor be, and he is hereby, requested and directed to present a protest and remonstrance to the Congress of the United States against all attempts, by organizing the Indian Territory (so called) into a Territory of the United States, under a government to be instituted by the Congress thereof, and against all other attempts to restrict or destroy the right of self-government, and the right to hold and dispose of their lands, as secured to the Choctaws and Chickasaws under treaty stipulations with the United States; and that he forward with said protest and remonstrance a copy of this resolution to the President of the United States, with a request that he will cause the said resolution, protest, and remonstrance to be laid before Congress at the earliest time practicable.

Passed and approved September 20, 1872.

C. HARRIS, *Governor.*

I hereby certify that the above is a true and correct copy of the original now on file, this September 23, 1872.

[SEAL.]

W. H. BOURLAND,
National Secretary Chickasaw Nation.