

CHOCTAW AWARD.

MAY 20, 1874.—Referred to the Committee on Appropriations and ordered to be printed.

Mr. COMINGO, from the Committee on Indian Affairs, submitted the following

REPORT:

The Committee on Indian Affairs, to whom was referred the memorial of P. P. Pitchlynn, the authorized delegate and agent of the Choctaw Nation of Indians, relating to the award made by the Senate of the United States in favor of the said nation on the 9th day of March, 1859, having had the same under consideration, respectfully submit the following report :

The subject to which the memorial relates has, in one or another of its various forms, been pressed upon the attention of Congress, and been a matter of discussion and consideration there for many years; the Delegate who now represents that nation here having been appointed for the express purpose of bringing the claims of the Choctaw Nation against the United States to the attention of Congress, *more than twenty years ago*. A brief review of the origin of the claim to which the memorial invites attention, and a statement of its history are both necessary and interesting.

The Choctaws were, for many years, under the protection of the Government of Great Britain. On the 3d day of January, 1786, however, they renounced that protection, and by a treaty, concluded on the 10th day of that month, they were, by "the commissioners plenipotentiary of the United States of America," received "into the favor and protection of the United States of America." (7 Stat. at Large, page 21.)

To what extent and with what fidelity that favor and protection have since been given, is not pertinent to our present inquiry; nor would a consideration of those questions increase our national pride, or afford us additional causes for national congratulation.

At that time the Choctaws were a numerous and powerful nation, and were respected, if not feared, by our ancestors. They were treated with as a nation, and were not unworthy of such consideration. Subsequently, and on the 17th day of December, 1801, by a treaty concluded at Fort Adams, on the Mississippi River, this nation ceded to the United States a part of the large domain allotted to them by the terms of the treaty of 1786. (7 Stat. at Large, page 66.)

Still another part of their territory was ceded to the United States by the treaty concluded at Fort Confederation, on the Tombigbee River, on the 17th of October, 1802. (7 Stat. at Large, page 73.)

Three additional treaties were entered into between the United States and this nation, as follows : One on the 16th of November, 1805; one on

the 24th of October, 1816; and one on the 18th of October, 1820. (7 Stat. at Large, pp. 98, 152, 210.)

By each of these treaties the said nation, for what was deemed an adequate consideration, ceded other parts of their territory to the United States.

The treaty from which the claim under consideration originated was concluded between the United States and the said nation on the 27th of September, 1830. By the third article the Choctaws ceded to the United States all their remaining possessions east of the Mississippi River. That article of this treaty is as follows:

In consideration of the provisions contained in the several articles of this treaty, the Choctaw Nation of Indians consent and hereby cede to the United States the entire country they own and possess east of the Mississippi River; and they agree to remove beyond the Mississippi River as early as practicable, and will so arrange their removal that as many as possible of their people, not exceeding one-half of the whole number, shall depart during the fall of 1831 and 1832; the residue to follow during the succeeding fall of 1833. A better opportunity in this manner will be afforded the Government to extend to them the facilities and comforts which it is desirable should be extended in conveying them to their new homes. (7 Stat. at Large, page 333.)

By this treaty they ceded to the United States 10,423,139.69 acres of land. The recitals in the preamble show certain inducements for the cession; among them is the following:

Now, therefore, that the Choctaws may live under their own laws in peace with the United States, they have determined to sell their lands east of the Mississippi.

It does not clearly appear from the treaty what was the true consideration for the cession of this large and valuable property. At all events, it does not seem that any sufficient or adequate consideration was paid; nor does it appear what was expected by the Choctaws. The lands described in the second article of the treaty of 1830 are the same described in the second article of the treaty of October 18, 1820. Hence the lands described in the second article of the treaty of 1830 constitute no part of the consideration for the cession made by the third article; and hence there is an apparent absence of any consideration, or, at least, of such as may be regarded as sufficient for the cession last mentioned. It is also manifest, from what follows, that the Choctaws expected to be paid for their lands lying east of the Mississippi River, with the possession of which they had stipulated to part.

Your committee are of the opinion that the Government of the United States is, by reason of the treaty made with the Choctaws on the 22d of June, 1855, and the subsequent action in pursuance thereof, estopped from inquiring into the intention and effect of the treaty of September 27, 1830. But we nevertheless invite the attention of the House to the question of the consideration for the cession made by that treaty, inasmuch as we have stated there is no adequate consideration therefor, except on the hypothesis that the lands ceded were to be paid for. A glance at the provisions of the said treaty will verify this proposition. The first article merely pledges mutual peace and friendship, and repeals inconsistent provisions of antecedent treaties; the second re-describes the lands west of the Mississippi River that had been ceded by the treaty of October 18, 1820; the third cedes the 10,423,139.69 acres to the United States; the fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, and thirteenth relate chiefly to the mutual obligations that exist, and were thereafter to exist, between the contracting parties; and the remaining nine articles of the treaty contain the sole consideration our Government was to pay for the cession of a valuable territory, provided the Choctaws shall be denied the net proceeds they seek to recover.

The fourteenth article provides for certain reservations out of the ceded territory, dependent on stated conditions and contingencies. It has been ascertained that the reservations made in pursuance of this provision covered an area of $334,101\frac{92}{100}$ acres, which, deducted from the total area of the ceded territory, leaves $10,089,038\frac{67}{100}$ acres actually acquired by the United States under said treaty, and we may with safety assume that the total value thereof was at least \$10,000,000.

The Secretary of the Interior, in an account stated between the Choctaws and the United States, by order of the Senate of the United States, as we shall presently see, stated the total expenditures under the fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, and twenty-first articles of the treaty, at \$1,055,053.54.

It is insisted, however, that the Secretary included in that estimate various large sums that cannot, by any provision of the treaty nor by any principle of justice, be charged against these Indians. But even according to this extraordinary account stated, it appears we paid for the ceded territory \$5,944,946.49 less than its actual value. This, of course, was an act of "friendship" to the Choctaws, and was doubtless performed in pursuance of the first article of the treaty of 1830. But your committee invite your attention to the fact that in the account stated by the Secretary of the Interior are included various sums that ought to have been excluded. Under the sixteenth article the Secretary charged the Indians with \$1,229,766.52 on account of removal, subsistence, and amount paid for cattle. It is extremely doubtful whether a single dollar of this amount is justly chargeable to them; and it is expressly provided in the next article of the treaty that all "well-founded" doubts as to its construction shall be resolved in favor of the Choctaws.

Your committee are also at a loss to find a sufficient reason for charging said Indians with several of the items specified in the Secretary's statement as coming under the twenty-first article of the treaty. None of these items are properly chargeable against the Choctaws, except the item for scrip, allowed in lieu of reservations, amounting to \$1,749,900.

It appears that the chiefs, captains, and head-men of the Choctaw Nation were willing to reward the Wayne warriors by allowing them to receive a small amount out of the proceeds of their lands east of the Mississippi River, and that it was paid them by the United States, and charged against the nation in pursuance of article twenty-first of the treaty; but we repeat that we can find no warrant for the other charges under said article. If these erroneous charges were deducted, it would appear that our Government, in performing its covenant of friendship with the Choctaws, purchased from them $10,089,038\frac{67}{100}$ acres of land for the sum of about \$2,000,000; for if those who maintain that they are not entitled to the net proceeds are right in their construction of the treaty of September, 1830, the nation could not have received more than that sum for their said lands under the provisions of said treaty, as will, we think, fully appear from an examination of the treaty, in connection with the statement of the account prepared and reported to Congress by the Secretary of the Interior in pursuance of the Senate resolution of March 9, 1859.

Your committee respectfully report, however, that it is now too late to question the liability of the United States to pay said net proceeds to the Choctaw Nation, and it is also too late for the latter to inquire whether they were awarded the full amount due them, as hereinafter shown, even if they desired to disturb said award.

The question as to their rights under the treaty of September, 1830,

had been agitated and urged until our Government, on the 22d of June, 1855, for this and other reasons, concluded a treaty with the Choctaws and Chickasaws; the 11th and 12th articles of which are as follows:

ARTICLE XI. The Government of the United States not being prepared to assent to the claim set up under the treaty of September 27, 1830, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

"First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the land ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or,

"Second. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much."

ARTICLE XII. In case the Senate shall award to the Choctaws the net proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just; the settlement and payment to be made with the advice and under the direction of the United States agent for the tribe; and so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe shall, on their requisition, be paid over to them by the United States. But should the Senate allow a gross sum in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for and bound to pay all the individual claims as aforesaid; it being expressly understood that the adjudication and decision of the Senate shall be final.

(11 Stat. at Large, page 611.)

The Senate was thus constituted an umpire or arbitrator, and, in pursuance of the authority thus delegated, that body assumed the functions of an umpire, and on the 9th of March, 1859, made an award, which is as follows:

Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians, provides that the following questions be submitted for decision to the Senate of the United States:

"First. Whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that a final settlement with them may be promptly effected; or,

"Secondly. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much?"

Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the 1st of day January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of \$1.25 per acre; and, further, that they be also allowed twelve and a half cents per acre for the residue of said lands.

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

(Senate Journal, 2d session 35th Congress, page 493.)

But two things then remained to be done in order to finally settle the matter in controversy. The first was for the Secretary of the Interior to state the account as required by the second resolution, and the next was for our Government to pay the balance, if any, that might be found

against it, on a fair adjustment. The former has been done, the latter has not.

Let it be borne in mind that almost nineteen years have elapsed since the terms of submission, as agreed upon in said treaty, were adopted; and that on the 28th of May, 1860, the Secretary of the Interior reported the result of his findings to Congress. This report having been referred to the Committee on Indian Affairs of the Senate, that committee, on the 19th of June following, reported fully and favorably on the claim. It has been almost fourteen years since said report was made, and yet the powerless Choctaws stand entreating our Government for the payment of the award made by an umpire of its own selection. It is doubtless withheld in pursuance of that covenant and pledge of friendship given almost half a century ago; but such uniform and persistent kindness must have become a little irksome to a nation as *proud and powerful as the Choctaws were in former days*.

Your committee invite attention to the following extracts from the Senate committee's report of June 19, 1860. They are the accounts stated by the Secretary, and the observations made thereon by the Senate Committee on Indian Affairs:

Statement of account with the Choctaw Indians, in conformity with the resolutions and decisions of the Senate of the United States of March 9, 1859.

	Acres.
Total area of lands ceded by the Choctaws by the treaty of September 27, 1830	10,423,139.69
Area of reservations "allowed and secured," which are to be deducted and excluded from computation in the account.....	334,101.02
Leaving.....	10,089,038.67
Quantity sold up to January 1, 1859.....	5,912,664.63
Residue of said lands.....	4,176,374.04

Of this residue 2,292,766 acres have been disposed of under the swamp-land act, and grants for railroads and school purposes, up to January 1, 1859.

The proceeds of the sales of the lands sold up to January 1, 1859, viz, 5,912,664.63 acres, amounted to.....	\$7,556,578.05
The residue of said lands, viz, 4,176,374.04 acres, at 12½ cents per acre, amounted to	522,046.75
	<hr/> 8,078,614.80

From which sum the following deductions are to be made:

- 1st. The cost of the survey and sale of the lands, viz, 10,423,139.96 acres, at 10 cents per acre..... \$1,042,313.96
- 2d. Payments and expenditures under the treaty, which are as follows:

FIFTEENTH ARTICLE.

Salaries of chiefs for twenty years.....	\$12,921.25	
Pay of speaker of three districts for four years	354.66	
Pay of secretary for same period.....	550.00	
Outfit and swords to captains, ninety-nine in number.....	4,930.50	
Pay to the same, at \$50 per year, for four years	19,604.65	
	<hr/>	38,361.12

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SIXTEENTH ARTICLE.

Removal and subsistence, per statement of Second Auditor.....	\$813, 927 07	
On same account, per additional statement made in this office for expenditures from 1838 to date.....	401, 556 17	
Amount paid for cattle.....	14, 253 28	
		<u>\$1, 229, 666 52</u>

SEVENTEENTH ARTICLE.

Annuity for twenty years.....	400, 000 00
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NINETEENTH ARTICLE.

Fifty cents per acre for reservations relinquished.....	\$24, 840 00	
Amount to orphan reservations.....	120, 826 76	
		<u>145, 666 73</u>

TWENTIETH ARTICLE.

Education of forty youths for twenty years.....	\$217, 260 76	
Council-house, house for each chief, and church for each district.....	9, 446 75	
Two thousand five hundred dollars annually for the support of three teachers for twenty years.....	50, 000 00	
Three blacksmiths for sixteen years.....	38, 988 86	
Millwright for five years.....	3, 050 00	
2,100 blankets.....	7, 496 70	
Rifles, molds, &c., to each emigrating warrior.....	43, 969 31	
1,000 axes, plows, hoes, wheels, and cards..	11, 490 20	
400 looms.....	7, 193 53	
One ton iron, and two hundred-weight of steel, annuity to each district for sixteen years.....	8, 051 15	
		<u>396, 947 23</u>

TWENTY-FIRST ARTICLE.

Annuity to Wayne warriors.....	1, 818 76	
Third scrip allowed in lieu of reservations, viz, 1,399,920 acres, at \$1.25 per acre.....	1, 749, 900 00	
Payments made to meet the contingent expenses of the commissioners appointed to adjust claims under the 14th article of the Choctaw treaty of 27th September, 1830..	51, 320 70	
For various expenses growing out of the location and sale of Choctaw reservations, and perfecting titles to the same, including contingent expenses, such as pay of witnesses, interpreters, &c., incurred in executing the act of 3d March, 1837, and subsequent acts relative to adjusting claims under the 4th article of the treaty of 1830.	21, 408 36	
For payments made for Choctaw account, being for expenses incurred in locating reservations under the treaty with said tribe of 27th September, 1830.....	19, 864 00	
Total amount of charges.....	5, 097, 367 50	\$8, 078, 614 80
When deducted from the proceeds of the land sold, and the "residue of said lands," at 12½ cents per acre.....		<u>5, 097, 367 50</u>
Leaves a balance due to Choctaws of.....		2, 981, 247 30

OFFICE INDIAN AFFAIRS, *March 22, 1860.*

APPENDIX B.

DEPARTMENT OF THE INTERIOR, *May 28, 1860.*

SIR: I have the honor to acknowledge the receipt of your letter of the 22d instant, asking for a statement of the amounts paid and to be paid to the State of Mississippi, under the compact by which she was to receive 5 per cent. of the net proceeds of the

sale of the land within her limits, and to inclose, for your information, a copy of the report of the Commissioner of the General Land-Office, to whom it was referred.

It is proper to add, that the apparent discrepancy (as to the amount of net proceeds of lands sold up to January 1, 1859) between the report of the Commissioner and the report submitted by me to Congress on the 8th instant, grows out of the fact that, in the latter, the cost of surveying, &c., was estimated at ten cents per acre, while the Commissioner has deducted merely the actual cost of *selling* the land. Should the amount due the State of Mississippi be calculated according to the principles adopted in the report of May 8, the account would stand thus:

Gross proceeds of 5,912,664.63 acres	\$7,556,586 05
Deduct cost of survey, &c., at ten cents.....	755,556 80
Net proceeds.....	6,800,911 25
Five per cent. on same	340,045 56

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

HON. W. K. SEBASTIAN,
Chairman, &c., United States Senate.

DEPARTMENT OF THE INTERIOR, GENERAL LAND-OFFICE,
May 25, 1860.

SIR: I have the honor to return herewith the letter, dated 22d instant, from the Hon. W. K. Sebastian, chairman of the Committee on Indian Affairs of the United States Senate, by you referred to this Office on the 24th of the same. In answer thereto, I have to state that from the books of this Office, it appears—

1st. That there has been paid to the State of Mississippi, at the rate of 5 per centum on \$7,242,014.29, the net proceeds of the sales up to the 1st of January, 1859, of 5,912,664.13 acres in the Choctaw cession of 1830, the sum of \$362,100.70. The inquiry in Senator Sebastian's letter is so comprehensive that it may be proper to add—

2d. That there are 282,954.88 acres embraced as *permanent Indian reserves* in said cession, upon which a percentage required by the act of 3d March, 1857, rating the lands at \$1.25 per acre, has been paid to the State, amounting to \$10,610.80.

3d. And likewise upon *Choctaw scrip* that has been issued, equal to 169,402 acres, valued in like manner, there has been paid \$10,588.62.

The foregoing is not strictly the result of an adjusted account, but is based upon such an investigation as to render it substantially correct.

I am, sir, very respectfully, your obedient servant,

JOSEPH S. WILSON,
Commissioner.

HON. JACOB THOMPSON,
Secretary of the Interior

On the 19th of June, 1860, the Senate Committee on Indian Affairs, referring to this account stated, and to these documents, used the following language:

By the account the balance due the Choctaws is shown to be \$2,981,247.30.

This balance is arrived at by crediting the Choctaws with the proceeds of the sales of their lands up to 1st of January, 1859, \$7,556,568.05, and with 12½ cents an acre for the whole residue of the same, except such portions as were covered by reservations allowed and secured, making \$522,046.75; or, together, \$8,087,614.85; and deducting therefrom—

1st. Ten cents per acre, as the estimated cost of surveying and selling, on *all* the lands ceded, including all the reservations.

2d. All expenditures and payments under the treaty of 1830, including \$401,556.17, expenses incurred in removing and subsisting the Choctaws between the years 1838 and 1859; and all the expenses incurred in adjusting claims of the Choctaws, under acts of Congress subsequent to the treaty.

The net proceeds of the ceded lands having been by the Senate awarded to the Choctaws, not as a matter of legal right upon the letter of the treaty of 1830, but under the power given by the submission in the treaty of 1855, not alone to decide whether the Choctaws were *entitled* to those net proceeds, but also whether they should be *allowed* them; in fulfillment of the duty created by that treaty, to give the rights and claims of the Choctaw people “a just, fair, and liberal consideration;” because of the impossibility of ascertaining the real amount to which, upon a fair settlement, the Choctaw Nation and individuals were entitled; but which amount, it was evident, was of startling magnitude; as the only mode by which equal justice could by any possibility be done between them and the United States; and because, under the treaty of 1830, taken in connection with the discussions and propositions that preceded the

treaty, their *equities* to have the net proceeds were very strong indeed; therefore it seemed to the committee to be an equitable construction of the award and its true intention that the United States should return to the Choctaws only so much as remained in their hands as profits from the lands ceded by the treaty of 1830, after payment of all expenses and disbursements of all kinds; and twelve and a half cents per acre for such lands only as still remain in the possession of the United States unsold.

The committee have therefore thought that there should be charged against the Choctaws, as a further deduction not made by the Secretary of the Interior, the 5 per cent. on the net proceeds of the actual sales of said lands, [5,912,664 13-100,] which the United States have paid to the State of Mississippi, amounting to \$362,100.70.

And also that the phrase "*the residue of said lands*" in the award [used instead of the words "*the lands remaining unsold*" in the submission] should not be construed to include such of the lands as have been given the State of Mississippi under the swamp-land act, nor the grants for railroad and school purposes; but that so much as in the account is allowed for such lands, at twelve and a half cents an acre, [or \$286,595.75,] should also be deducted.

These two amounts, deducted from the balance as found by the account, leave the sum of \$2,332,560.85 due and owing to the Choctaws, according to the award of the Senate, by virtue of articles eleven and twelve of the treaty of 1855.

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

The Committee on Indian Affairs of the House of Representatives, in its report made upon this subject at the last session of Congress, speaking of the account stated by the Secretary of the Interior, and of the injustice done to the Choctaws by that account, used the following language:

Everything of value that the Choctaws received for the 10,423,139 ⁴⁰/₁₀₀ acres of land lying in Mississippi, ceded by the third article of that treaty of September 27, 1830, may properly be classed under the following headings, namely: First, moneys; secondly, reserved lands; thirdly, certificates (called scrip) of entry, compulsorily given by the Government in lieu of the lands that large numbers of the Choctaws were entitled to, but which the United States sold from them in violation of the treaty of 1830. All of which is declared in the laws providing for the scrip.

And of these in their order. Under the fifteenth article, the following payments are provided for, showing, also, amounts paid thereon:

Salary of three chiefs, \$250 each annually, for twenty years	\$15,000 00
Amount paid	12,921 25
Salary of principal chief, \$500 per year for twenty years	10,000 00
Amount paid	None.
Salary of three speakers, at \$25 each per year, \$75 for four years	300 00
Amount paid	354 66
Salary of three secretaries, \$50 each per year, \$150 for four years	600 00
Amount paid	550 00
Cloths and swords for ninety-nine captains	5,000 00
Amount paid	4,930 50
Ninety-nine captains' services in settling Choctaws west, \$50 each, \$4,950 for four years	19,800 00
Amount paid	16,604 65

The sixteenth article provides for the removal of the Choctaws to the West, and their subsistence for one year *at the expense of the United States*. It will be seen, however, by reference to the account rendered to the Senate by the Secretary of the Interior under date of March 9, 1859, that this item, amounting to \$1,229,766.52, is charged against the Choctaws in considering their claim to the *net proceeds* of their lands sold to the United States by the treaty of 1830.

The sixteenth article also provides that the United States shall take the Choctaws' "cattle at the valuation of some discreet person, to be appointed by the President, and the same shall be paid for in money after their arrival at their new homes." Yet it will be found that in the statement of account of March 9, 1859, as above referred to, the *Choctaws are charged with the sum of \$14,283.28, amount paid for their cattle.* And instead of being allowed by the payment for them, as provided in the treaty, this sum is actually charged against them in the accounting for the net proceeds of their lands. *Thus we pay them for their land with their own cattle.*

The Choctaws were, in the Secretary's account for 1859, also charged with the expense of the commissions, appointed by the United States under the laws of Congress of 1837, 1838, and 1842, to determine how much the United States had wronged them—with the scrip we compelled them to take in lieu of their homes that we had sold, and with the expense of delivering the scrip to them, and with attorneys' fees and other expenses allowed to our officers in the matter. These items, and others, that will become patent to any one on reading the treaties and Secretary's accounting, are without equity and without justice.

The twenty-first article provides for the payment to "a few Choctaw warriors" who "yet survive, who marched and fought with General Wayne," (the whole number stated not to exceed twenty,) of \$25 a year each, while they should live, after the date of said treaty. This was in the nature of a pension of one-fourth what was allowed white soldiers. And yet, by the wording of the treaty, it is held, to the full amount thus paid, as a payment on the lands we purchased of the Choctaws by this treaty, as will be seen by the Secretary's report to the Senate, March 9, 1859. That this is an unjust thing needs no proof. Its recital is its own condemnation, and yet the Choctaws submitted to it in order to secure a settlement of their claim for the lands they sold and conveyed by the treaty of 1830.

In order that the injustice done to these people, by this account stated, may be more clearly understood, your committee invite attention to those items of the account for which neither the treaty nor the *award* of the Senate furnish the slightest authority or justification. Your committee do this not for the purpose or with the view of disturbing in any manner whatever the award made by the Senate, but for the purpose of showing the renewed injustice we would impose on the Choctaws by any longer delay in the payment of an award that cannot be justly questioned. The erroneous items are as follows:

The Choctaws are charged with the expenses of their subsistence and removal; and these, by article sixteen of the treaty, were to be assumed and paid by the United States. The charge on this account is \$1,229,766.52. They are charged, also, *two cents* per acre for the expense of surveying and selling the lands which remained unsold on the 1st day of January, 1859. Under the award, this expense was to be charged *only upon the lands which had been sold.* Clearly here is an overcharge against the Choctaws of \$417,637.40. The reservations allowed and secured by the Choctaws amounted to 334,101.02 acres, and this was deducted from the whole quantity ceded, and the Choctaws were required to pay the expense of surveying and settling these reservations. This is another erroneous charge of \$33,410.10.

The erroneous charges made against the Choctaws as payments made under Article 21 of the treaty amount to \$94,411.91. Under the fifteenth article of the treaty the United States agreed to expend for the Choctaws \$50,700, but the account stated shows that the United States paid under this article only \$38,361.12, thus leaving a balance due from the United States under that article amounting to \$12,338.12. The sum of all these amounts is ONE MILLION SEVEN HUNDRED AND EIGHTY-SEVEN THOUSAND FIVE HUNDRED AND SIXTY-FIVE DOLLARS AND FIVE CENTS, (\$1,787,565.05.) There is not in all these items a single one which an honest chancellor would have held properly chargeable against the Choctaw Nation. These facts further illustrate with what degree of fidelity the United States has fulfilled its often-repeated pledges of friendship to the Choctaw Nation. Equally inadmissible and unauthorized, as well as unjust, are the further deductions *suggested, but not made,*

by the Senate Committee on Indian Affairs in the report made by that committee on the 19th day of June, 1860. The amount of the deductions there suggested were as follows: \$362,100.70, "for the five per cent. on the net proceeds of the sale of the lands, which had been paid to the State of Mississippi;" and the committee also suggested that the phrase in the award, "*the residue of said lands*," should not be construed to include such as the United States had given away as swamp-lands, and for railroads and school purposes. The quantity so disposed of was 2,292,766 acres, and the amount proposed to be deducted on this account is \$286,595.75. It needs no argument to demonstrate that these items could not be deducted from the account as stated by the Secretary of the Interior.

The award had specified what deductions should be made from these net proceeds, and had not provided for making the Choctaws pay back moneys which the United States had given to Mississippi. The awards spoke of the lands ceded, allowed the net proceeds of *those sold*, and twelve and one-half cents an acre "for the residue of said lands." Nobody but an Indian nation, to whom we had given a solemn covenant of "friendship," and a pledge of "favor and protection," would be compelled to argue that this meant "all that had not been sold, and of which the proceeds were allowed."

Your committee are forced to the conclusion that the AWARD of the Senate, being strictly within and in accordance with the terms of the submission, was conclusive and binding both upon the United States and the Choctaw Nation. After it had been made, and the amount due under it ascertained and had been declared, the Senate, the tribunal of arbitration, had no power to change it. It could only be impeached and called in question for the fraud or misconduct of the arbitrators. It is not pretended or claimed that either of these exist. If the Senate had awarded *three* millions of dollars to the Choctaws as the "*gross sum*" which should be paid by the United States in full satisfaction of their claims, will it be claimed that the Senate could, more than a year afterward, rightfully change their award and reduce the "*gross sum*" to be paid to *two* millions of dollars? It seems very clear to your committee, that when the Senate had decided the questions submitted to them, their duties as arbitrators under the treaty were at an end. If their decision involved the statement of an account, and they directed by whom the account should be stated and the principles upon which it should be stated, they were bound by that statement, unless it was erroneous and in violation of the *award*. It is not pretended that the account stated by the Secretary of the Interior can be *now* objected to for either of these reasons; nor is it shown that the Choctaw Nation has ever assented to any change or modification of the award or to any reduction of the amount due under it, as shown by the account stated. Your committee must, therefore, in the interest of honesty and fair dealing, and to preserve the honor and good faith of the United States, declare that the amount it is bound to pay to the Choctaw Nation is the amount found due by the account stated by the Secretary of the Interior, less such sums as the United States may have paid in satisfaction of that account since it was rendered. The only amount paid by the United States upon or in satisfaction of that account is the sum of \$250,000, paid to the said nation under the provisions of the act of Congress approved March 2, 1861.

The balance remaining due to the Choctaw Nation under the said award, therefore, is the sum of *two millions seven hundred and thirty-one thousand two hundred and forty-seven dollars and thirty cents*, (\$2,731,247.30.)

The Committee on Indian Affairs of the House of Representatives, in its report (No. 80) made at the last session of Congress, used the following language in regard to the obligations of the United States under this award and the account stated in pursuance thereof by the Secretary of the Interior.

The language of that committee was as follows :

By every principle of law, equity, and business transaction the United States is bound by the accounting of the Secretary of the Interior, showing \$2,981,247.30 due to the Choctaws at the date of the Secretary's report.

First. The Senate was the umpire, and, in the language of the treaty of 1855, which made it such, its decision was to be final.

Secondly. The Senate, in the exercise of its power under the treaty of 1855, chose to allow the net proceeds of the land as the better of the two modes of settlement proposed by that treaty, and not to allow a sum in gross.

Thirdly. The Senate directed the Secretary of the Interior to make the accounting, which he did, May 28, 1860, as shown above.

Fourthly. The Senate did not, as umpire, or otherwise, reject this accounting; but, on March 2, 1861, Congress made an appropriation of \$500,000 on it, and the Senate has not, since the Secretary's report, rejected any part of it, though near fourteen years have elapsed.

(House Report No. 80, Forty-second Congress, third session.)

Your committee, for the purpose of showing that the conclusions at which they have arrived are not new, invite attention to the fact that the subject-matter of this memorial has many times received the favorable consideration of both the Senate and House of Representatives. In addition to the report of the Senate Committee on Indian Affairs of the 19th of June, 1860, attention is directed to the report by the Committee on Indian Affairs of the House of Representatives, made through its chairman, Hon. J. P. C. Shanks, on the day of February, 1873; also to Report No. 318, made by the Senate Committee on Indian Affairs on the 22d of January, 1873; and especially to the report from the Committee on Appropriations, made by the Hon. I. C. Parker on the 9th day of April, 1874, being House Report No. 391. These reports are all in perfect accord, so far as they relate to and discuss the perfect justice of this claim, and the legal obligation of the United States to pay it, according to the award of the Senate. In each of these reports, too, the opinion is expressed that the grossest injustice was done to the Choctaws in the adjustment and statement of the account, and that

If the case were re-opened and adjudicated as an original question, by an impartial umpire, a much larger sum would be found due to the said Indians, which they would undoubtedly recover were they in a condition to compel justice.

Your committee concur in these conclusions, and express the conviction that any person who now for the first time examines this claim will be amazed at the persistent and long-continued injustice with which we have treated them, and by which we have deprived them of that which is legally and justly due them. We by solemn treaty stipulations promised them the "favor and protection of the United States." To what extent we have performed our high covenant in this behalf, let the history of the nation, whose delegate appeals to us in behalf of his people, furnish an answer. They were virtually driven from their homes in Mississippi, and compelled to seek others in an untrodden wilderness of the West, remote from the beneficent influences of our advancing Christian civilization. We promised to pay the expenses of their removal, and to subsist them in their new homes for one year after their arrival there; yet we charged them all these expenses, and deducted them from the proceeds arising from the sale of the lands they had reluctantly ceded that they might live "under their own laws in peace with the

United States." But the story of the wrongs inflicted upon these people is too long to be fully embraced in a mere report.

Your committee are called upon to devise some means by which the injustice so long practiced upon the Choctaws shall be brought to an end, and their rights fully secured and protected, and to that end your committee recommend as follows :

1st. That the balance due the Choctaw Nation under the award of the United States Senate, to wit, the sum of \$2,731,247.30, be paid to the said nation without further delay.

2d. That interest be allowed on the said sum from the 2d day of March, 1861, at the rate of 5 per cent. per annum; and that the balance of the said award, with interest thereon, be satisfied by the issue and delivery to the Choctaw Nation, or to its authorized delegates, of bonds of the United States, as provided in the bill (H. R. 2189) now pending before the Committee on Appropriations of the House of Representatives.

Your committee does not submit for the consideration of the House a bill to carry into effect these recommendations, for the reason that the Committee on Appropriations are now considering such a bill as will meet the recommendations of your committee.

Your committee, therefore, ask to be discharged from the further consideration of the said memorial, and recommend that the same, together with this report, be referred to the Committee on Appropriations. Your committee also recommend that said sum of \$2,731,247.30 be paid said nation, with interest thereon, at 5 per cent. per annum, from the 2d of March, 1861.

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