

CLAIMS OF THE CHOCTAW NATION.

MEMORIAL

OF

THE CHOCTAW NATION,

ASKING

*For the settlement of their claims.*

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JANUARY 13, 1876.—Referred to the Committee on Indian Affairs and ordered to be printed.

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*To the Senate and House of Representatives of the United States:*

The memorial of the Choctaw Nation respectfully sheweth—

That on the 9th March, 1859, the Senate of the United States decided certain questions submitted in the eleventh article of the treaty of 1855 with the Choctaws and Chickasaws, by awarding the Choctaws the net proceeds of the lands ceded by them in 1830.

That by the terms of the treaty the decision of the Senate was final.

That \$250,000 was appropriated by Congress in part payment of said award on the 2d March, 1861.

That no part thereof has been paid since.

That propositions have been made from time to time in both Houses of Congress to provide in the regular appropriation bills for the payment of the balance due the Choctaws under the award of the Senate. But such propositions, though repeatedly recommended by different committees of each House, have invariably been defeated, mainly, as shown by the debates, for two reasons:

1st. Because the Choctaw claim did not properly belong to any one of the regular appropriation bills, but should be presented as a separate measure.

2d. Because it had not been sufficiently investigated by the great body of either House to warrant an appropriation of so large an amount.

Therefore, your memorialist especially asks that an act may be passed giving the Court of Claims jurisdiction over the subject, with instructions to ascertain what amount is due the Choctaws under the provisions of the eleventh and twelfth articles of the treaty of 1855, and authorizing the Secretary of the Treasury to pay such amount to the proper authorities of the nation in manner and form as provided by said treaty.

Your memorialist respectfully calls attention to the fact that various committees of both Houses of Congress have had under consideration the claim above referred to, and that while no committee of either House has even reported against it, *twelve* reports have been made recognizing its validity and recommending favorable action, namely, by—

1st. Senate Committee on Indian Affairs, February 15, 1859.

2d. Senate Committee on Indian Affairs, June 19, 1860.

3d. Appropriation Committee of House of Representatives in bill No. 1227, reported by Hon. Thaddens Stevens, February 27, 1867.

4th. The same committee, by Hon. B. F. Butler, May 30, 1868.

5th. House Committee on Indian Affairs, by the Hon. William Windon, July 6, 1868.

6th. Senate Committee on the Judiciary, by the Hon. B. F. Rice, June 22, 1870.

7th. Senate Committee on Indian Affairs, by the Hon. Garret Davis, January 5, 1871.

8th. House Committee on the Judiciary, by the Hon. M. C. Kerr, February 27, 1871.

Also, four other reports herewith submitted as exhibits forming part of this memorial, namely:

EXHIBIT I. Report of Hon. James Harlan from Senate Committee on Indian Affairs, January 22, 1873.

EXHIBIT II. Report of Hon. J. P. C. Shanks from House Committee on Indian Affairs, February 22, 1873.

EXHIBIT III. Report of Hon. I. C. Parker from House Committee on Appropriations, April 9, 1874.

EXHIBIT IV. Report of Hon. A. Comingo from House Committee on Indian Affairs, May 20, 1874; which several reports, being exhaustive in their character, will enable any one desiring to understand the case to ascertain the leading facts connected with its history.

Your memorialist also invites your attention to the letter of the Secretary of the Treasury, Hon. B. H. Bristow, hereunto annexed as Exhibit V, transmitting by order of Congress certain information concerning the liabilities of the Choctaw Nation to individuals for which the eleventh and twelfth articles of the treaty herein before referred to were intended to provide.

And your memorialist, as in duty bound, will ever pray, &c.

THE CHOCTAW NATION.

By its delegate,  
P. P. PITCHLYNN.

### EXHIBIT I.

Senate Report No. 318. Forty-second Congress, third session.

Mr. Harlan, from the Committee on Indian Affairs, submitted the following report:

*The Committee on Indian Affairs, having had under consideration the letter of the Secretary of the Treasury of January 6, 1873, in relation to the payment of \$250,000, in bonds of the United States, to the Choctaw Indians, respectfully submit the following report:*

That the treaty of June 22, 1855, between the United States and the said Indian tribe, contains the following provisions:

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,

"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."

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; if being expressly understood that the adjudication and decision of the Senate shall be final."

That in pursuance of this agreement between the two contracting parties, the Senate proceeded to the adjudication of the questions submitted, and referred the subject to the Committee on Indian Affairs for examination. On the 15th day of February, 1859, the committee submitted an elaborate report, and introduced the following resolutions, viz:

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 lands remaining unsold, in order that a final settlement with them may be properly 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 had been sold by the United States, on the day of \_\_\_\_\_, deducting therefrom the cost of survey and sale, and all proper expenditures and payments under said treaty, estimating all the reservations allowed and secured, or the scrip issued in lieu of reservations, at the rate of \$1.25 per acre; and, further, that it is the judgment of the Senate that the lands remaining unsold after said period are worth nothing, after deducting expenses of sale.

*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 committee's report, No. 374, second session Thirty-fifth Congress.)

That, on the 29th of March following, the Senate considered these resolutions, and, after amendment, they were adopted 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:

"1st. 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 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."

*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 day of 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 one dollar and twenty-five cents 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 amount 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, second session Thirty-fifth Congress, page 493.)

That, in pursuance of this award, the Secretary of the Interior, as directed by the closing resolution, proceeded to state an account between the United States and the Choctaw Indians, upon the principles decided by the Senate in the first resolution, and reported the same to the Senate, May 8, 1860. (Ex. Doc. No. 82, first session Thirty-fifth Congress.)

That this authorized and official statement, made in pursuance of the Senate award, shows a balance of \$2,981,247.30 to be due said Indians. But that the Commissioner of Indian Affairs (A. B. Greenwood) suggested, in his report accompanying the Secretary's communication to the Senate, a doubt whether certain moneys paid the Choctaws by the United States, for a lease of that part of their western lands lying west of the 98th meridian, and moneys paid the Choctaws by the Chickasaws for the use of a part of said lands lying east of said meridian, amounting to \$1,130,000, should not be deducted from the foregoing sum, leaving only \$1,851,247.30 due the Choctaws. It will be found, however, that the Committee on Indian Affairs examined this question, and made an exhaustive report to the Senate, June 19, 1869, in which the committee deny the equity and justice of this deduction. But after going over the account as stated, and making certain corrections, which were deemed proper, and deducting the \$600,000 paid by the United States for the use of the leased lands, the justice of which they denied, the committee recommended the payment of \$2,332,560.85. (Senate Reports of Com., No. 283, first session Thirty-sixth Congress.)

That, in part payment of this award, Congress put the following item into the Indian appropriation bill of March 2, 1861, viz:

For payment to the Choctaw nation or tribe of Indians, on account of their claim under the eleventh and twelfth articles of the treaty with said nation or tribe, made the twenty-second of June, eighteen hundred and fifty-five, the sum of five hundred thousand dollars; two hundred and fifty thousand dollars of which sum shall be paid in money, and for the residue, the Secretary of the Treasury shall cause to be issued to the proper authorities of the nation or tribe, on their requisition, bonds of the United States, authorized by law at the present session of Congress: *Provided*, That in the future adjustment of the claim of the Choctaws, under the treaty aforesaid, the said sum shall be charged against the said Indians. (Statutes at Large, vol. 12, p. 238.)

That, in pursuance of this act, the \$250,000 in money was paid to the Choctaws, but that the bonds were not delivered, on account of the interruption of intercourse with said Indians, occasioned by the war of the rebellion.

That, after the close of the war, intercourse was restored, and the treaty of April 28, 1866, was agreed to between the United States and said Indians, which contains the following provision, viz:

ARTICLE X. The United States re-affirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into 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 such treaty stipulations and acts of legislation, from and after the close of the fiscal year ending on the 30th of June, in the year (1866) eighteen hundred and sixty-six. (Statutes at Large, vol. 14, p. 774.)

That said Indians applied for these bonds, claiming that they were due under the before-mentioned act and said treaty.

That the Secretary of the Treasury referred the question to the Attorney-General for his opinion on the question of his authority to deliver them.

That the Attorney-General wrote an opinion on the subject, dated December 15, 1870, hereto appended, (marked A,) in the closing paragraph of which he says:

Waiving all discussions of the desirableness, on grounds of expediency, of immediate authority from Congress, and responding to your question according to my judgment of the law of the case, I am of the opinion that you may lawfully issue the bonds to the Choctaws.

That the Secretary of the Treasury communicated this decision of the Attorney-General to Congress for such action as might be deemed proper in a letter dated December 20, 1870.

That this letter and said decision of the Attorney-General were referred by the Senate to the Committee on Indian Affairs, which, after careful examination on the part of the late Senator Davis and a full committee, on the 5th of January, 1871, made the following report, viz:

*The Committee on Indian Affairs, to whom was referred the communication of the Secretary of the Treasury to Congress, transmitting a copy of the opinion of the Attorney-General of the United States upon the claim of the Choctaw Nation of Indians for \$250,000 of United States bonds, have had the same under consideration, and report:*

They have examined the opinion of the Attorney-General, and concur with him in his reasonings and conclusions. There is a subsisting treaty between the United States and the Choctaw Nation of Indians which entitles said nation to two hundred and fifty thousand dollars of bonds of the United States of America, and which requires the President to make and deliver that amount of said bonds to said Indian Nation. This treaty is the supreme law of the land, and the President is charged with its execution as a ministerial function. He has full authority to execute that law by the making and delivery of those bonds, in compliance with the treaty, to the proper authorities of the Choctaw Nation: Wherefore they report this resolution:

*Resolved*, That the President having full authority under existing law to issue and deliver to the Choctaw Nation of Indians two hundred and fifty thousand dollars of United States bonds, no other legislation by Congress is necessary to that end. (Senate Committee Reports, third session Forty-first Congress.)

That on the same day this resolution was adopted by the Senate, and the Secretary was ordered to communicate a copy of the said report and resolution to the President of the United States. (Senate Journal, third session Forty-first Congress, page 95.)

That, the Secretary of the Treasury having declined to deliver the bonds, Congress put the following provision in the Indian appropriation bill of March 3, 1871:

For contingent expenses of trust-funds, heretofore and to be hereafter incurred, three thousand dollars; and the Secretary of the Treasury is hereby authorized to issue to the Choctaw tribe of Indians bonds of the United States to the amount of two hundred and fifty thousand dollars, as directed by the act of March 2, 1861, entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes."

That after a delay of nearly two years to carry into effect this law, the Secretary of the Treasury has sent to Congress his letter of January 6, 1873, accompanied by a report from the Solicitor of the Treasury, dated November 14, 1872, which was referred to this committee, and is the subject of this report, assigning his reasons for non-compliance.

Your committee have carefully considered the reasons as stated, in his letter and report of the Solicitor, and find them to be substantially as follows, viz:

1st. That in the opinion of the Solicitor of the Treasury; in which the Secretary partially concurs, the President and the Senate erred in making the treaty of June 22, 1855, admitting that anything might be

due the Choctaws as claimed by them, and providing a tribunal for its adjudication.

2d. That the Senate erred in making the award of March 29, 1859, and in directing the Secretary of the Interior to state an account in pursuance thereof.

3d. That the Senate Committee on Indian Affairs erred in recommending the payment of \$2,332,560.85 in their report of June 19, 1860, or any sum whatever, as due these Indians.

4th. That Congress erred in the enactment of the law of March 3, 1871, directing the delivery of \$250,000 of bonds, not previously delivered under the act of March 2, 1861.

And as evidence in support of these conclusions produces a copy of an act of the Choctaw legislature, dated November 6, 1852, which the Secretary thinks is conclusive that this Choctaw claim has not only been paid, but is barred by a receipt in full given by the authorities of the Choctaw Nation of Indians, and also a long list of payments made by the United States to these Indians, and advantages conferred on them by the Government under the treaty of 1830, which he seems to think bars the equity and justice of any additional payments.

Your committee have carefully examined and weighed these considerations, and find—

1st. That the act of the Choctaw Nation of November 6, 1852, which is claimed to be a receipt in full, is dated several years prior to the treaty of June 22, 1855, and could not be considered in law as barring claims arising under said treaty and subsequent acts of Congress. That said "receipt in full," given in pursuance of a prior act of Congress, requiring it as a condition precedent to the payment covered by said receipt, (Statutes at Large, vol. 10, p. 19,) might have been treated by the United States as a final conclusion of the controversy over the subject-matter. But it was not so treated. By agreement of both parties this settlement was again opened under the stipulations of the treaty of June 22, 1855. The right of the contracting parties to re-open a question previously settled is too clear to need argument. That this question was so re-opened is a fact that will not admit of dispute. And having been thus re-opened and re-adjudicated by the tribunal agreed on by the parties, and an award having been made by it of a large sum as still due the Choctaws, and Congress having by two several acts directed the payment, in part, of this award, it is, in the opinion of your committee, too late to plead a prior settlement in bar.

2d. Your committee also find that the "receipt in full" covered only a comparatively small part of the subject-matter of the Choctaw claims submitted to the Senate for adjustment by the treaty of June 22, 1855, and that it was fully considered by the Secretary of the Interior and deducted from the total sum, which otherwise would have been found to be due the Choctaws in the Secretary's statement of account. The "receipt in full" is for money paid the Choctaws in the redemption of scrip issued to them under the treaty of September 27, 1830, in lieu of lands to which they were entitled and never received. The total amount of scrip issued was divided into two equal parts. One-half was delivered to the Indians. The other half was held by the Government as a trust-fund, on which interest was paid by the Government to said Indians at the rate of 5 per cent. per annum. The half thus held in trust, with accrued interest, amounted to \$872,000, and is the sum covered by said receipt of November 6, 1852. But it will be seen, on examination of the account as stated by the Secretary of the Interior, that the Indians are charged with the value of this trust-fund scrip, and also with the

value of the other scrip previously delivered to the Choctaws at \$1.25 per acre, both together amounting to \$1,749,900.

Your committee also find many matters mentioned in Solicitor Banfield's report as benefits conferred on said Indians, under the treaty of 1830, erroneously stated; and on a careful comparison of said Solicitor's report, so far as comparison is possible, with the account stated by the Secretary of the Interior, that each and all the items *correctly* stated by the Solicitor are charged against the Indians in the said statement of account by the Secretary of the Interior.

From a careful examination of the whole subject, your committee entertain no doubt that the whole subject was fully understood by the Committee on Indian Affairs when, on June 19, 1860, they recommended the payment of \$2,332,560.85, and by Congress when, by the act of March 2, 1861, they directed the payment of \$500,000 on account, in pursuance of the Senate award. And this committee find nothing in the history of the case to justify the conclusion that the Secretary of the Interior in his statement of account, or the committee of that date in their recommendation, or Congress in ordering a payment on account, committed any substantial error against the interests of the United States, but are of the opinion that, if the case were re-opened and adjudicated as an original question by any impartial umpire, a much larger sum would be found due said Indians, which they would undoubtedly recover were they in a condition to compel justice.

This conclusion will be clearly established by a reference to a few facts bearing on the alleged grievances of the Choctaw Indians.

Their grievances, which the United States agreed to redress under the provisions of the treaty of 1855, were threefold:

1st. That the treaty of 1830 was not made by them of their own unrestrained will and choice.

This allegation should be admitted, as it is admitted in the preamble to the treaty itself, which is in these words, viz:

Whereas the general assembly of the State of Mississippi has extended the laws of said State to persons and property within the chartered limits of the same, and the President of the United States has said that he cannot protect the Choctaw people from the operation of these laws: Now, therefore, that the Choctaws may live under their own laws in peace with the United States and the State of Mississippi, they have determined to sell their lands east of the Mississippi, and have accordingly agreed to the following articles of treaty. (Statutes at Large, vol. 7, p. 333.)

It is therefore clear that they consented to this treaty and consequent removal to avoid their subjugation and extinction as an independent people. The history of the transaction also proves that they utterly refused to sign the treaty until brought to do so by threats and intimidation. Consequently, by the most obvious principles of law and justice, they were not morally bound by its provisions.

2d. They complained that the terms of the treaty did not award them adequate consideration for the value of the land, the losses of property, and the personal sacrifices and hardships required by the removal to the western country, had these several provisions been fairly carried into effect.

This will be abundantly proved by an examination of the treaty itself. The chief amount of money promised as a consideration for these lands, amounting to 10,432,139  $\frac{62}{100}$  acres under the treaty of 1830, was an annuity of \$20,000 per year for twenty years. The other considerations of pecuniary value requiring payments of money were chiefly for losses of property, expenses of removal, and subsistence at their new homes, which they would not have incurred had they remained on their eastern lands.

And, contrary to the general impression, the Choctaws did not receive any western lands under the provisions of this treaty of 1830. Ten years before, under the treaty of October 13, 1820, they ceded to the United States 4,150,000 acres of land in Mississippi, covering more than half the river-front, and took in part payment their western lands, being a large tract embracing a considerable district falling in the western part of Arkansas, and extending westward to the western boundary of the United States. And, on the other hand, the Choctaws, in the treaty of 1830, ceded to the United States all that part of their western lands lying in Arkansas, and west of the one hundredth meridian. The only lands they were promised under the provisions of the treaty of 1830 were homesteads of 640 acres to each head of a family; 320 acres to each child over ten years of age; and 160 to each child under ten years, of such Choctaws as might consent, within six months, to remain in Mississippi and become citizens of the United States, to be selected in the tract ceded by this treaty; which provision it was expected would not include a considerable number. Hence it will be seen that about all the money consideration promised these Indians as a consideration for the value of this vast tract of over 10,000,000 acres of the best cotton and sugar lands in the State of Mississippi, was the annuity of \$20,000 a year for twenty years; probably not equal to the value of that part of their western lands ceded to the United States by the Choctaws under this treaty; which lands they acquired in exchange for Mississippi lands in 1820; and your committee conclude that to insist that the Indians were promised adequate compensation for their Mississippi lands would be the most naked mockery.

3d. The Choctaws insist that the provisions of this treaty of 1830, although providing such adequate compensation for lands, losses, and suffering, were not carried into effect in good faith by the United States, according to their plain intendment.

That they had abundant grounds for this complaint, your committee find ample proof in the history of these transactions.

They were not furnished with an adequate opportunity within the stipulated period of six months to register their desire to become citizens of the United States and select their homesteads; to remove their stock, of which they owned immense herds, to the western country; or to prove the value of that necessarily lost on account of a forced removal; or the value of improvements abandoned; or adequate means of transportation of their families and household effects; or proper subsistence on the journey and after their arrival; or a fair equivalent for the head-rights to which many were entitled, which they were forced to abandon.

Your committee are therefore of opinion that the payment of the net proceeds of the sales of their reserve in Mississippi, under the circumstances, as awarded by the Senate, deducting therefrom all payments actually made to them under the provisions of the treaty of 1830, being chiefly expenses incurred on account of removal, would be far below what justice required.

The total net proceeds of their lands, deducting therefrom all payments made under the provisions of the treaty of 1830, were, as we have seen, \$2,981,247.30; as corrected by the committee in their report of June 19, 1860, it was reduced to \$2,932,560.85.

To charge these Indians with, and to deduct from said amount, the further sum of \$600,000, paid the Choctaws under this treaty for the lease of lands in the western country for the use of other Indians, would be clearly unjust; for, as before stated, these western lands were acquired by the Choctaws in part payment for land ceded to the United



States in the treaty of 1820, and were the property of the Choctaws ten years before the treaty of 1830 was made.

But as the Committee of the Senate on Indian Affairs state in their report of June 19, 1860, that the Choctaws expressed a willingness to admit this charge and to accept the residue, being \$2,332,560.85, in stocks of the United States, your committee are of opinion that this sum should be paid them with accrued interest from the date of said award, deducting therefrom \$250,000 paid to them in money, as directed by the act of March 2, 1861; and therefore find no sufficient reason for further delay in carrying into effect that provision of the aforesaid act and the act of March 3, 1871, by the delivery of the bonds therein described with accrued interest from the date of the act of March 2, 1861.

. A.

DEPARTMENT OF JUSTICE, December 15, 1870.

SIR: In answering the question propounded in your letter of the 29th of September, 1870, it is necessary that I should consider a series of treaties and statutes.

In the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians, (11 United States Stat., p. 611,) it was provided that certain claims of the Choctaws against the United States set up under a prior treaty should be submitted for adjudication to the Senate of the United States. The Senate does not appear to have ever adjudicated the claim by any separate action; but in the Indian appropriation act of March 2, 1861, it was provided that there should be paid "to the Choctaw Nation or tribe of Indians, on account of their claim under the eleventh and twelfth articles of the treaty with said nation or tribe made the 22d of June, 1855, the sum of \$500,000; \$250,000 of which sum shall be paid in money; and for the residue, the Secretary of the Treasury shall cause to be issued to the proper authorities of the nation or tribe, on their requisition, bonds of the United States, authorized by law at the present session of Congress; provided that in the future adjustment of the claim of the Choctaws, under the treaty aforesaid, the said sum shall be charged against the said Indians." (12 United States Stat., p. 238.)

In the Indian appropriation bill of July 5, 1862, (12 United States Stat., p. 528,) it was provided "that all appropriations heretofore or hereafter made to carry into effect treaty stipulations, or otherwise, in behalf of any tribe or tribes of Indians, all or any portion of whom shall be in a state of actual hostility to the Government of the United States, including the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, Wichitas, and other affiliated tribes, may and shall be suspended and postponed wholly or in part at and during the discretion and pleasure of the President," and the President was further authorized to expend any unexpended part of previous appropriations for the benefit of said tribes, for the relief of such individual members of the tribes as had been driven from their homes and reduced to want on account of their friendship to the Government.

In the Indian appropriation act of March 3, 1865, (13 United States Stat., p. 562,) the Secretary of the Treasury is authorized and directed, in lieu of the bonds for the sum of \$250,000 appropriated for the use of the Choctaws in the act of March 2, 1861, "to pay to the Secretary of the Interior \$250,000 for the relief and support of individual members of the Cherokee, Creek, Choctaw, Chickasaw, Seminole, Wichita, and other affiliated tribes of Indians who have been driven from their homes and reduced to want on account of their friendship to the Government."

On the 28th of April, 1866, a treaty was made with the Choctaw and Chickasaw Indians, (14 United States Stat., p. 769,) the tenth article of which is in the following words: "The United States re-affirms all obligations arising out of treaty stipulations, or acts of legislation, with regard to the Choctaw and Chickasaw Nations, entered into 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 such treaty stipulations and acts of legislation from and after the close of the fiscal year ending on the 30th of June, in the year 1866." The forty-fifth article is in these words: "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."

The Choctaw Indians have made requisition on the Secretary of the Treasury for bonds of the United States to the amount of \$250,000 under the act of March 2, 1861;

and the question upon which you desire my opinion is, whether such bonds may lawfully be issued to them.

Without considering the effect of other legislation on the subject, I am of the opinion that the act of March 3, 1865, withdrew from the Secretary of the Treasury the authority vested in him by the act of 1861 to issue the bonds; and unless that authority is revived in the treaty of July, 1866, it does not now exist. But I am further of opinion that such authority is revived by that treaty, if a treaty can have such effect.

By the treaty the United States re-affirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion and in force at that time. In every reasonable sense of the word obligations, as used in that treaty, the provision in the act of 1861, for issuing the bonds, was an obligation. Liberal rules of construction are adopted in reference to Indian treaties, (5 Wall., p. 760.) It was an obligation which grew out of a treaty stipulation and an act of legislation in part execution of a treaty stipulation. It was entered into prior to the late rebellion. It was in force when the rebellion began. Thus it answers every part of the description in the treaty.

The sections of the treaty above quoted, together with others of its provisions, place these Indians, as to all dues from the Government, just as they stood at the outbreak of the rebellion, in April, 1861. To re-affirm obligations arising out of a repealed act of legislation must signify the restriction of the parties to the positions in which they stood when the act of legislation was in force.

The serious question, however, does not relate to the meaning, but to the authority of the treaty of 1866. The statute of March 3, 1865, repeals the direction of the Secretary of the Treasury in the act of March 2, 1861. The treaty undertakes to revive that direction. Is such an act within its competency?

By the sixth article of the Constitution, treaties as well as statutes are the laws of the land. There is nothing in the Constitution which assigns different ranks to treaties and to statutes. The Constitution itself is of higher rank than either by the very structure of the Government. A statute not inconsistent with it, and a treaty not inconsistent with it, relating to subjects within the scope of the treaty-making power, seem to stand upon the same level and to be of equal validity; and, as in the case of all laws emanating from an equal authority, the earlier in date yields to the later.

In 1791, Mr. Madison wrote as follows: "Treaties, as I understand the Constitution, are made supreme over the constitutions and laws of the particular States, and, like a subsequent law of the United States, over pre-existing laws of the United States; provided, however, that the treaty be within the prerogative of making treaties, which no doubt has certain limits." (Writings of Madison, vol. i, p. 524.)

In the *United States vs. The Schooner Peggy*, (1 Cranch, p. 37), the Supreme Court of the United States, in an opinion delivered by Chief-Justice Marshall, held, in effect, that a treaty changed the pre-existing law, "and is as much to be regarded by the court as an act of Congress."

In *Foster and Elam vs. Neilson*, (2 Peters, p. 253,) the Supreme Court says: "Our Constitution declares a treaty to be a law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provisions;" and, in applying this principle to the case before them, say that if the treaty then under consideration had acted directly upon the subject, it "would have repealed those acts of Congress which were repugnant to it."

In *Taylor vs. Morton*, (2 Curtis, C. C. R., p. 454,) it was held that Congress may repeal a treaty so far as it is a municipal law, provided its subject-matter is within the legislative power of Congress.

The just correlative of this proposition would seem to be that the treaty-making power may repeal a statute, provided its subject-matter is within the province of the treaty-making power.

Attorney-General Cushing, in 1854, after a full examination of the subject, came to the conclusion that a treaty, assuming it to be made conformably to the Constitution, has the effect of repealing all pre-existing Federal law in conflict with it. (Opinions, vol. vi, p. 291.)

Hamilton says: "The treaty power binding the will of the nation must, within its constitutional limits, be paramount to the legislative power, which is that will; or, at least, the last law being a treaty, must repeal an antecedent contrary law." (Works of Hamilton, vol. vi, p. 95.)

Again: It is a question among some theoretical writers whether a treaty can repeal pre-existing laws.

This question must always be answered by the particular form of government of each nation. In our Constitution, which gives, *ipso facto*, the force of law to treaties, making them equal to the acts of Congress, the supreme law of the land, a treaty must necessarily repeal an antecedent law contrary to it, according to the legal maxim that "*leges posteriores priores contrarias abrogant.*" (*Ibid.*, vol. vii, p. 512.)

An engagement to pay money is certainly within the province of the treaty-making

power, and I cannot perceive that such an engagement is carried beyond that province by the circumstance that it provides for issuing through the agency of a particular officer an obligation to pay money at a particular time; for such, in effect, is a bond.

Can the Secretary of the Treasury issue the bonds without a new direction from Congress? In other words, is the treaty a law for him, or can he know no laws except such as are passed by Congress?

The Secretary is an officer of the executive department of the Government. It is established by a long course of authoritative opinions and conforming practices that, in many cases, the Executive of the United States can execute the stipulations of a treaty without provision by act of Congress. In some instances this has been done as a general executive duty, when the treaty itself pointed out no particular mode of execution. This was the course taken in the case of Thomas Nash, otherwise called Jonathan Robbins, who was delivered up by the direction of President Adams to the British authorities, in execution of the treaty with Great Britain of 1794. An attempt to bring the censure of Congress upon the President for this act was encountered by an argument from Chief-Justice Marshall, then a Representative from Virginia, which conclusively established the power. In other cases the President has acted when the mode of action was pointed out in the treaty.

In the treaty of Washington, of 1842, there was a provision for extradition of criminals. Prior to any legislation for carrying out this provision of the treaty, it was executed by officers of the United States. In 1845, James Buchanan, Secretary of State, issued a warrant for the arrest of certain persons, subjects of Great Britain, who were charged with a crime committed under British jurisdiction and against British laws, and it was decided by Mr. Justice Woodbury, upon the return to a writ of *habeas corpus*, that the warrant and the arrest were legal. (1 Woodbury & Minot's Rep., p. 66.) The learned justice remarks: "It is here only on the ground that the act to be done is chiefly ministerial, and the details full in the treaty, that no act of Congress seems to me necessary." (*Ibid.*, p. 74.)

Attorney-General Nelson, in discussing this treaty, remarks: "It has been made under the authority of the United States, and is the supreme law of the land. It has prescribed by its own terms the manner, mode, and authority in and by which it shall be executed. It has left nothing to be supplied by legislative authority, but has indicated means suitable and efficient for the accomplishment of its object. It needs no sanctions other or different than those inherent in its own stipulations, and requires no aid from Congress. Surely it cannot be necessary to invoke the legislative authority to give it validity by its re-enactment." (4 Opinions, p. 209.) This language may be fitly applied to the treaty with the Choctaws.

I am aware of the distinction which has been taken between such treaties as do and such as do not import a contract, and of the current notion that, in the former case, Congress must act before the treaty can be executed. But the practice of the Government in extradition treaties and in other sorts of international covenants has been at variance with this notion.

If the Executive may constitutionally execute a treaty for delivering persons to a foreign jurisdiction, it may well feel authorized by the Constitution to execute a treaty that stipulates for the less important matter of issuing bonds.

According to Article I, section 9, of the Constitution, as construed by the practice of the Government, an act of Congress is necessary to appropriate money to pay the public debt, however created. The change of the form of the debt, from a general stipulation in treaty to bonds with particular provisions, does not take away that necessity. The time for the exercise of whatever power Congress has over the subject will come when provision for the payment of the bonds is to be made.

Waiving all discussion of the desirableness, on grounds of expediency, of immediate authority from Congress, and responding to your question according to my judgment of the law in the case, I am of opinion that you may lawfully issue the bonds to the Choctaws.

Very respectfully, your obedient servant,

A. T. AKERMAN,  
*Attorney-General.*

HON. GEORGE S. BOUTWELL,  
*Secretary of the Treasury.*

## EXHIBIT II.

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

Mr. Shanks, from the Committee on Indian Affairs, made the following report, (to accompany bill H. R. 306 :)

*The Committee on Indian Affairs, having had under consideration the bill (H. R. No. 306) making provision for the payment to the Choctaw Indians of the remainder of the net-proceeds claim, and also the letter of the Secretary of the Treasury, of January 6, 1873, (Ex. Doc. No. 69, 42d Congress, 3d session,) in relation to the payment of \$250,000 in bonds of the United States, being part of said net-proceeds claim, respectfully submit the following report :*

1. Before entering upon the consideration of the subject of the *financial* relations of the Government of the United States with the Choctaws, the committee call attention to the *practical* relations between the two contracting parties at the dates of the several treaties of 1820, 1825, and 1830, which will be especially referred to in this report, and the last of which treaties is that on which the *net-proceeds claim* of the Choctaws (of which the \$250,000 bonds in question constitute a part) is based.

2. That the United States was an organized, powerful, and well-established government, with competent officials, executive, legislative, and judicial, to manage its business in making and executing its treaties and other laws.

3. While, on the other hand, the Choctaws were, at those dates, a people less than 22,000 population, then decreasing in numbers, located within the organized State of Mississippi, without treaties providing against the extension of State authority over them, and thus placed under conflicting State and national jurisdiction, without learning, or printed or written laws, keeping no records, without a knowledge of business other than the ordinary barter or exchange of one commodity in kind for another in present, embarrassed by the pressure of white settlements upon them, fearing State or other local authority, confiding solely in the integrity and good wishes of the United States Government, and relying upon it for protection under the second article of the treaty of Hopewell, of January 3, 1786, and subsequent treaties.

4. Treaties, laws, titles, records, written or printed evidence, accounts, and accounting, touching the transactions between the Choctaws and the United States, were in possession of the United States Government, and not with the Choctaws, and have so remained to this time.

5. The United States is, both by treaty stipulations and by local and political necessity, the protector and guardian of the persons and property of the Choctaws, (and of all other Indians within our national boundaries,) and, in matters of dealing, the *trustee and custodian* of their funds and other properties, and, in every sense of law and equity, bound to the utmost good faith in the administration of justice to the Indians, through the evidence of the Government's own records, to these its own wards.

6. The *explanations and references* of the committee touching the subject-matter of this report, namely, "*the Choctaw net-proceeds claim,*" cover in part the several treaties between the United States and the Choctaws—

Of Doak's Stand, October 18, 1820, proclaimed January 8, 1821. (See 7th vol. Statutes at Large, page 210.)

That of January 20, 1825, proclaimed February 19, 1825. (See 7th vol. Statutes at Large, page 234.)

That of Dancing Rabbit Creek, September 27, 1830, proclaimed February 24, 1831. (See 7th vol. Statutes at Large, page 333.)

That between Choctaws and Chickasaws, of January 17, 1837, proclaimed March 24, 1837.

That of June 22, 1855, proclaimed March 4, 1856, including lease of lands west of 98 degrees. (See vol. 11, Statutes at Large, page 611, sections 9 and 10.)

And that of April 28, 1866, proclaimed July 10, 1866. (See vol. 14, Statutes at Large, page 769.)

Together with the acts of Congress of March 3, 1837, (see vol. 5, page 180;) February 22, 1838, (vol. 5, page 211;) August 23, 1842, (vol. 5, page 515;) March 3, 1845, (vol. 5, page 777;) July 21, 1852, appropriation bill, (vol. 10, page 19;) August 30, 1852, appropriation bill, (vol. 10, page 42;) March 3, 1853, appropriation bill, (vol. 10, page 227;) March 3, 1855, appropriation bill, (vol. 10, page 675.)

Action of Senate under treaty of June 22, 1855, of March 29, 1859. (See Senate Journal Thirty-fifth Congress, page 493.)

March 2, 1861, appropriation bill, (vol. 12, page 238.)

Act of July 5, 1862, appropriation bill, (vol. 12, page 528.)

Act of February 22, 1862, (vol. 12, page 614.)

July 27, 1868, appropriation bill, (vol. 15, section 5, page 223.)

March 3, 1871, appropriation bill, (vol. 16, page 570.)

And to the favorable action and report of Committee on Indian Affairs of the House; and of same committee July 6, 1868, (report No. 77, 40th Congress, 2d session.)

To favorable report of the Committee on Indian Affairs of the Senate, of June 19, 1860, (report No. 283, 36th Congress, 2d session; of January 5, 1871, (3d session, 40th Congress,) and of January 22, 1873, (report No. 318, 42d Congress, 2d session.)

To favorable report of the Judiciary Committee of the Senate, June 22, 1870, on bill No. 973.

Report of the Attorney-General, December 15, 1870, (attached to Senate report No. 318, 42d Congress, 3d session)

To favorable report of the Judiciary Committee of the House, February 27, 1871, (No. 41, 41st Congress, 3d session.)

To favorable report of Committee on Appropriations of the House, (vol. 67, folio 2708.)

Report of the Secretary of the Interior, of 1859, March 9, made to both Houses of Congress, stating in detail the accounting with the Choctaws, with balance due to them, and statement of the Commissioner of Indian Affairs of February 2, 1872, on House bill No. 306.

#### HISTORY OF THE CHOCTAW NET-PROCEEDS CLAIM, (TREATY OF OCTOBER 18, 1820.)

7. That the treaty between the United States and the Choctaw Nation of Indians, made on the 18th day of October, 1820, at Doak's Stand, Mississippi, was, as set forth in the preamble to that treaty, "freely and voluntarily made" by both parties thereto, and in this respect was unlike that made at Dancing Rabbit Creek, nearly ten years afterward, on September 27, 1830. (For treaty of October 18, 1820, see 7th vol. Statutes at Large, page 210.)

8. The treaty of October 18, 1820, (as appears by its preamble,) was made by both parties thereto, "to promote the civilization of the Choctaw Indians."

The commissioners who entered into this treaty upon the part of the United States were Generals Andrew Jackson and Thomas Hinds.

9. That the mode proposed and adopted by the United States and Choctaws to effect this desired civilization was (as set forth in the preamble to said treaty of 1820) twofold:

First. "By the establishment of schools among them." And to do this, it was provided by article 7 of said treaty that "out of the lands ceded by the Choctaw Nation to the United States, the commissioners aforesaid, in behalf of said States, further covenant and agree that fifty-four sections, of one mile square, shall be laid out in good land by the President of the United States, and sold for the purpose of raising a fund to be applied to the support of the Choctaw schools on both sides of the Mississippi River." It will be seen by this article that "fifty-four sections of one mile square" each, of "good land," being 34,560 acres, were to be set apart and sold for these Choctaw schools. "Three-fourths" of the fund thus to be raised was to be expended east of the Mississippi River, and the remainder "for one or more" schools west of the same.

Second. The second proposition adopted in said treaty of 1820, in support of this desired "civilization of the Choctaw Indians," as stated in the preamble to the treaty, was "to perpetuate them as a nation by exchanging for a small part of their land here [meaning Choctaw lands in Mississippi] a country beyond the Mississippi River, where all who live by hunting, and will not work, may be collected and settled together," (meaning the lands the Choctaws purchased west of the Mississippi.)

10. That for these two purposes, namely, "to establish schools among them" and to perpetuate them as a nation by exchanging, for a small part of their lands "in Mississippi," "a country beyond the Mississippi River," the Choctaws, by the first article of the treaty of October 18, 1820, ceded to the United States a tract of land in Mississippi amounting to 4,150,000 acres in one body, being a small part of their lands then owned by them in that State, and comprising more than half of the river-front of that State, and very valuable for farming purposes, and the richest cotton-lands in the State. These lands, conveyed to the United States by the Choctaw treaty of 1820, were in the organized and rapidly-improving State of Mississippi, of great value to the State and to those who purchased them for settlement. (This cession of 4,150,000 acres by the Choctaws to the United States was the consideration in full for all the provisions of the treaty of 1820, including schools and lands west.)

11. In part consideration for the 4,150,000 acres ceded to the United States by the treaty of October 18, 1820, the United States, by the second article of that treaty, ceded to the Choctaw Nation a tract of country west of the Mississippi River, in the following words:

ARTICLE II. For and in consideration of the foregoing cession on the part of the Choctaw Nation, and in part satisfaction for the same, the commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River, situated between the Arkansas and Red Rivers, and bounded as follows: Beginning on the Arkansas River where the lower boundary-line of the Cherokee strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River three miles below the mouth of Little River, which empties itself into Red River on the north side; thence in a direct line to the beginning.

This cession included all the lands the Choctaws have ever owned or held by cession from the United States west of the Mississippi River, and are the same lands a part of which the Choctaws still own and

reside upon, and are situated in the southern part of the Indian Territory.

This is all the committee need to say touching the treaty of October 18, 1820.

#### TREATY OF JANUARY 20, 1825.

12. That on the 20th day of January, 1825, the United States and the Choctaws made another treaty, by the first article of which the Choctaws re-ceded to the United States "that portion of their lands ceded to them by the second article of the treaty of Doak's Stand, [meaning the treaty of October 18, 1820,] lying east of a line beginning on the Arkansas one hundred paces east of Fort Smith, and running thence due south to Red River," (being that portion of the lands the United States had, by the second article of the treaty of October 18, 1820, ceded to the Choctaws, but which was found to be within the then Territory, now State, of Arkansas,) for which recession the United States agreed, by the second article of the said treaty of January 20, 1825, "to pay to the said Choctaw Nation the sum of \$6,000 annually forever," thus showing that the United States recognized by this treaty of 1825 two important facts in the progress of this investigation:

First. That the title to the country west of the Mississippi River passed from the United States to the Choctaws by the provisions of the second article of the treaty of 1820; and,

Secondly. That full payment was made therefor in the transfer of the lands ceded by the Choctaws to the United States, by the first article of said treaty of October 18, 1820. Otherwise the amount of \$6,000 per annum forever would not have been allowed, but would have been balanced against any former liability that might have existed. But of the fact that the lands ceded to the Choctaws lying west of the Mississippi River were fully paid for by the Choctaw cession of 1820, there is no controversy, and no room for one.

#### TREATY OF SEPTEMBER 27, 1830.

13. The committee now come to the consideration of the treaty of September 27, 1830, out of which has grown the *Choctaw net-proceeds claim*, and no part of which claim antedates that treaty.

14. Any cession by the Choctaws to the United States of lands east of the Mississippi River subsequent to the 18th day of October, 1820, must be accounted for by the United States in some mode other than the lands west of that river, as there has been no addition to that tract since 1820. And it was fully paid for by the cession of the 4,150,000 acres made by the treaty of October 18, 1820, as above stated, and as will fully appear by referring to the treaty.

15. There was not only no additional cession of lands to the Choctaws from the United States by the treaty of 1830, but there was no additional title given or granted. The title directed by article second to be given to the Choctaws for their country west was "in fee-simple to them and their descendants, to inure to them while they shall exist as a nation and live on it." This adds nothing to the title they held under the treaty of October 18, 1820, to these lands. The title is not limited by the treaty of 1820 in its cession, and must be presumed to be a good and perfect one. The United States cannot claim that it is less.

16. The second article of the treaty of September 27, 1830, in terms, limits, rather than extends, the title to the lands lying west of the

Mississippi River, and only grants a conveyance of lands then long since sold to, and paid for by, the Choctaws.

17. The law of Congress passed May 28, 1830, some months prior to the date of the treaty of September 27, 1830, provides "that it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States west of the river Mississippi, not included in any State or organized Territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there."

And the third section of said law empowered the President "solemnly to assure the tribe or nation with which the exchange is made that the United States will forever secure and guarantee to them, and their heirs or successors, the country so exchanged with them, and, if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands revert to the United States if the Indians become extinct or abandon the same."

18. The treaty of September 27, 1830, was made in the spirit of the law of May 28 of the same year, above quoted, in these particulars:

First. The Choctaws resided, in part, east of the Mississippi River.

Secondly. The Choctaws resided in the organized State of Mississippi.

Thirdly. The Choctaws owned at that time 10,425,139.69 acres of land, in one body, in said State of Mississippi.

Fourthly. The State of Mississippi had, by act of its legislature, dated in 1829, extended, or attempted to extend, the local or State laws over the Choctaw people, thus complicating the Government in its treaty-relations with the Indians.

Fifthly. By the second article of our treaty of Hopewell, of January 3, 1786, with the Choctaws, it is provided that "the commissioners plenipotentiary of all the Choctaw Nation do hereby acknowledge the tribes and towns of the said nation, and the lands within the boundary allotted to the said Indians to live and to hunt on, as mentioned in the third article, to be under the protection of the United States of America, and of no other sovereign whatsoever."

Sixthly. The course adopted by the State of Mississippi was necessarily compelling a conflict of authority between the United States and the State of Mississippi, or else an abandonment by the United States of its former treaty-stipulations with the Choctaws, and a gross violation of its agreements with them, by which it had received of the Choctaws vast tracts of country in said States of Mississippi and Alabama.

Seventhly. The people of Mississippi were pressing the Government and the Indians for those Indian lands, demanding them for settlement.

Eighthly. It was under this condition of things that the treaty of September 27, 1830, was impelled, forced upon, but not desired by, the Choctaws.

The Secretary of War informed them, by letter dated the 1st of June, 1830, that they could not remain where they were and be a happy and prosperous people; that Congress would not, because they could not, interfere to prevent the States extending their laws over them; and that, of course, it was now for the Choctaws to decide whether they would submit to those laws upon their people or go beyond the Mississippi, where they could be under their own laws and upon their own



land, with none to interrupt them. (Sen. Doc. 512, Indian Removal, vol. 2, 1st sess. 23d Cong., p. 4.)

The Secretary of War (Maj. John H. Eaton) and Gen. John Coffee, sent as commissioners to treat with them, with positive instructions to procure a cession of all their lands on any terms, said to them: "Are you willing to remain here and live as white men? Are you willing to be sued in courts; there to be tried and punished for any offense you may commit; to be subject to taxes; to work upon roads, and attend in musters? For all these you must do. If you are satisfied that under such a condition of things you cannot be happy, consent to remove beyond the Mississippi. Neither he [the President] nor Congress possesses authority to prevent the States from extending their jurisdiction over you and throughout their limits. After the present time we shall no more offer to treat with you. You have commissioners in your country for the last time. Hereafter you will be left to yourselves and to the laws of the States within which you reside; and, when weary of them, your nation must remove as it can, and at its own expense." (*Ibid.*, 256-258.)

They also told them that the country west of the Mississippi was not *sold*, but *given*, to their people, because that ceded by them by the treaty of Doak's Stand was fully paid for otherwise. That was positively untrue, because the preamble of that treaty expressly declares that part of the land east of the Mississippi was *exchanged* for the country beyond that river; and article 2 expressly cedes to the Choctaws the land west "*in consideration* of the foregoing cession [in Article 1] on the part of the Choctaw Nation, and *in part satisfaction* for the same."

But the commissioners made the statement, nevertheless; and they imperatively told the Choctaws, thereupon, that they must give up either one country or the other; that it was the understanding, in 1820, that all the Choctaws would remove, [which was also wholly untrue,] and that, if they did not, the land west of the Mississippi would be given to other tribes. (*Ibid.*, 258.)

In the West, the commissioners said, the United States would protect them, preserve them at peace with themselves and all mankind, perpetuate them as a nation, and render them a happy and prosperous people. "Here," they added, "you cannot be so. It is idle to indulge such dreams of your fancy—dreams which are entirely deceptive, and from which nothing of pleasing reality will ever come. Every day's observation shows wretchedness and distress will be yours to remain where you are. The kind and friendly feelings of your Great Father will be insufficient to preserve you from these inevitable results." (*Ibid.*, 257.)

"If you prefer to live under our laws and customs," they said, "remain and do so, and surrender the lands assigned to you west of the Mississippi, or otherwise remove to them." (*Ibid.*, 258.)

As they still declined to sell, the Secretary again told them that the President could not possibly prevent the extension of the State laws over them; that the Government intended this to be the last treaty ever held with them, and that it was certainly the last time that commissioners would appear in their nation to talk with them on this subject. (*Ibid.*, 260.)

The treaty was not read at the time when it was signed. It had been read over the day before, when the Indians were engaged in conversation and did not listen. The Secretary's final address was intended to alarm them, in which he portrayed the evils that would be entailed upon them by the entire destruction of their nationality and their subjugation under the State laws, and threatened them with the immediate

withdrawal of the protection of the United States. He then placed the treaty on a table in front of him, and urged them to come forward at once and sign it. The speech produced a general panic among them, and in the midst of great confusion and excitement the treaty was immediately signed, without being read again or understood by the Indians. The supplement was afterward signed under the same state of feeling.—*Letter of General Grant, Choc. Corr., p. 47.*

So great an excitement was caused that those who signed the treaty were afraid to remain on the ground, and the commissioners, apprehensive of serious consequences, left without furnishing the Indians with a copy of the treaty. When copies were afterward furnished, the nation would with one voice have protested against the ratification of the treaty had not the United States agent, by intimidation, prevented it. They understood it to contain all the beneficial provisions promised by the commissioners, and yet were only brought to sign it "under the controlling influence of fear, coercion, and duress."—*Same Letter of General Grant.*

19. The committee are of the opinion that the Choctaws did not either make or sign the treaty of September 27, 1830, of *their own free will and accord*. This is evident from its preamble, which reads as follows:

Whereas the general assembly of the State of Mississippi has extended the laws of said State to persons and property within the chartered limits of the same, and the President of the United States has said that he cannot protect the Choctaw people from the operation of these laws: Now, therefore, that the Choctaws may live under their own laws in peace with the United States and the State of Mississippi, they have determined to sell their lands east of the Mississippi, and have, accordingly, agreed to the following articles of treaty.

But, upon the contrary, the committee believe that it was the desire of the Choctaw people to remain on the lands owned and occupied by them in the State of Mississippi at the date of that treaty, and that they were induced to sign the treaty of that date (having little to do with making it) through fear and compulsion; that they believed the United States would abandon them to the State authority of the State of Mississippi, which had already given an indication of its purposes, too plain to be misunderstood, of its intention to compel the Choctaws to submit to local State authority, which they dreaded and feared, and from which they were induced to remove.

#### INDUCEMENTS AND PROMISES HELD OUT AND MADE TO THE CHOCTAWS TO PROCURE THEM TO MAKE THE TREATY OF 1830.

Major Eaton (Secretary of War) and General Coffee said in their first talk to them: "*It is not your lands, but your happiness, that we seek to obtain. We seek no advantages; we will take none. Your Great Father would not approve such a course. He has sent us, not as traders, but as friends and brothers, and to act as such.*" (Doc. 512, above cited, pp. 256, 257.)

When they declined to treat, the Secretary again told them that "their object, he well knew, was to claim the best bargain they could, and the commissioners were prepared to give them one, in all respects liberal, to the extent that they could hope the Senate of the United States would ratify. They had come as friends, and at their own request, to protect them from injury, *not to cavil with them about prices.* Their object was merely the possession of the country, *without regard to anything of value or profit to be obtained from the sale of the lands.*"—*Do., 260.*

He told them, he says himself in his concluding address, that the United States *did not want their land for any purpose of profit*, but only to have jurisdiction over their country, and save them from the encroachments of the whites. And these declarations, he says, with those that if a treaty were not made the President would withdraw the agent and leave them under the State laws, had great influence with them, and *thereupon they hastily came forward and signed the treaty.*—*Letter of Major J. H. Eaton, Choct. Corr., 45.*

“The idea that the United States sought any pecuniary profits from their lands, or desired anything beyond a mere jurisdiction over the country, was emphatically disclaimed in the address I made to them. Added to this was a stipulation that the lands should remain a trust for the fulfillment of the engagements of the treaty. These two circumstances might well have induced the Indians to believe, as they now state, that the net proceeds of the sale of their country was to inure to them.”—*Same letter of General Eaton, above cited.*

Mary protestations and promises were resorted to, all intended to impress the Choctaws with the belief that they would get the full value of their land. “The idea that the Government desired nothing but the right of jurisdiction, and that all else was to be for the benefit of the Indians, was repeatedly presented, and with special emphasis.”—*Letter of General R. H. Grant, Choct. Corr., 46.*

Thus urged by fear and terror, and at the same time assured that the United States did not desire to make any profit out of their lands, but were willing to give them the whole benefit of their value, they made the treaty.

20. The Choctaws, having, by the treaty of 1830, been induced to sell their homes east of the Mississippi River against their desire, and that, too, in the interest of the United States, to relieve it of the impending conflict of authority with the State of Mississippi, and from the treaty stipulations with which the United States was incumbered for the protection of the Choctaws in their homes in Mississippi, as above shown, and in the interest of the State of Mississippi in the free advancement of its settlements and commercial interests, and of the people of said State and United States, while it was to the great detriment and mortification of the Choctaw people and great pecuniary loss to them, justice demands that the equities of the case should be granted to the Choctaws, as set forth in words in the last lines of the eighteenth article of the treaty of 1830, in these words: “*And further, it is agreed that in the construction of this treaty, (treaty of September 27, 1830, 7th vol. Statutes at Large, p. 236,) wherever well-founded doubts arise, it shall be construed most favorably toward the Choctaws.*”

21. Though the treaty of September 27, 1830, is in spirit and initiative like the law of May 28 of the same year, yet it is wholly unlike it in its results; for while the law of May 28 anticipated an exchange of lands of the United States west for lands held by the Indians east of the Mississippi River, and in the case of other tribes the law was complied with in spirit and in fact, yet in the case of the Choctaws, not one acre of land west of the Mississippi, or elsewhere, (except part of the reservations under it,) was exchanged, given, or granted for the tract of 10,423,130.69 acres ceded by the Choctaws to the United States by the third article of said treaty of September 27, 1830.

As evidence showing the amount of land ceded by the Choctaws by the treaty of 1830, the committee insert the following:

DEPARTMENT OF THE INTERIOR,  
General Land-Office, March 21, 1860.

SIR: A tedious and laborious investigation was necessary to obtain the information requested in the letter addressed to this Office by the Acting Commissioner of Indian Affairs on the 26th of March, 1859, and which I have now the honor to communicate, as follows:

1st. According to the plats of survey on file in this Office, the whole number of acres of land embraced in the cession made by the Choctaws in the treaty of September 27, 1830, was 10,423,139 acres.

2d. The portion thereof which had been sold by the United States on the 1st day of January, 1859, is 5,912,664.63 acres.

3d. The cost of "surveying" and "selling" merely, not including annuities, &c., of these particular lands, as stated in a report made to your Office on the 1st of May, 1858, is ten cents per acre.

4th. "The aggregate amount received for this portion so sold," \$7,556,568.05.

5th. The quantity of land contained in all the "reservations allowed and secured" under the provisions of said treaty is 334,101.02 acres.

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

JOSEPH S. WILSON,  
Commissioner.

Hon. ALFRED B. GREENWOOD,  
Commissioner of Indian Affairs.

22. Everything of value that the Choctaws received for the 10,423,139.69 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.

23. 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   |

24. 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 \$1,314,483.94, 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.

25. 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.

26. The seventeenth article provides for the payment by the United States of an annuity of \$20,000 for twenty years, aggregating in the twenty years \$400,000. Upon this, however, there was no interest.

27. The twentieth article provides that the United States shall make the following expenditures for the Choctaws :

|  |               |
|--|---------------|
| First. The education, under the care of the President, of forty youths, continuing the succession for twenty years. This expense aggregated..... | \$217, 260 73 |
| Secondly. The erection of a Choctaw council-house, which cost the United States .....  | 9, 446 75     |
| Thirdly. The support of three teachers, at \$2,500 per year, for twenty years..  | 50, 000 00    |
| Fourthly. Three blacksmiths, for sixteen years .....   | 38, 988 86    |
| Fifthly. One millwright, for five years .....  | 3, 050 00     |
| Sixthly. Two thousand one hundred blankets .....   | 7, 496 70     |
| Seventhly. To warriors who emigrated, a rifle, mold, wipers, and ammunition, in all .....  | 43, 969 31    |
| Eighthly. One thousand axes, plows, hoes, wheels, and cards, each .....  | 11, 420 20    |
| Ninthly. And four hundred looms .....  | 7, 193 53     |
| Tenthly. Iron and steel to each district, for sixteen years, making in the aggregate.....  | 8, 051 15     |
| Total .....  | 396, 947 25   |

28. 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 by the treaty of 1830.

29. The fourteenth article is here inserted, as it opens the door widely for any Choctaw head of a family to reserve his homestead, amounting to 640 acres, and 320 for each child over ten years of age, and 150 acres for each child under ten years, and to be adjacent to the homestead of the parent. It is in these words:

ARTICLE 14. 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 quan-

tity for each unmarried child who 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 section 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 privileges of a Choctaw citizen, but, if they ever remove, are not to be entitled to any portion of the Choctaw annuity.

This article evidently applies to any Choctaw head of a family, a widow as well as a warrior, and could extend to any other person who was the head of a family.

30. The great latitude given in this article to "each Choctaw, head of a family," together with the amount of land that could be by each family reserved, made this the most valuable article in the treaty to the Choctaws, and, if it had been faithfully carried out, would have done much to save them from the great waste of property that fell upon them as the result of its violation. The more civilized Choctaws could have had the benefit of their labors; and prospered in the civilization and citizenship that they were willing to adopt. But that the Choctaws were deprived of treaty-rights under this fourteenth article almost entirely is proven by the small amount of land secured by them under it, and by the laws of Congress passed to make amends for it, and especially the act of 1842, directly confirming the fact, and in part making restitution, by the issue of certificates of entry, (afterward, by the law of 1845, called "scrip,") in lieu of their homestead reservations under the treaty of 1830, to those Choctaw heads of families and their children whom the Government, by its own commissioners, showed had been wronged.

31. While the fourteenth article of the treaty of September 27, 1830, provided that "each Choctaw, head of a family, who applied in six months," &c., could hold a reservation, it will be seen that it was entirely indefinite as to the amount of lands it would cover, because indefinite as to the number who would apply for such reservations, and therefore proof of the number of claimants under the fourteenth article of the treaty was not only admissible, but absolutely necessary to an intelligent settlement of these claims; and this view was officially recognized and re-affirmed by the action of Congress in the passage of the acts of 1837, 1838, and 1842, appointing commissioners to investigate the facts, and partially settling them by the issue of scrip, and by the treaty of 1855, providing especially for the mode and fact of their final settlement, and the settlement of other claims, under the treaty of 1830, by the Senate, the providing especially for the mode and fact of their final settlement, the consummation of which the Choctaws now ask. But the land-reservations provided for in the fifteenth and nineteenth articles, and in the supplement to the treaty, (see 7th vol. Statutes at Large, page 340,) are fixed and definite, either as to the persons and amounts or to the class of persons and amount, with such limitations as render it certain as to the amount of lands to be claimed. But still these articles and the supplement to the treaty of 1830, though more definite in terms, would avail little to the Indians if the parties entitled were by force or fraud prevented from taking under these treaty provisions. They were, under the fourteenth article, as the Government records prove, and the law of 1842 with the proceedings under it establish the fact that four-fifths of the Choctaw heads of families entitled, under the fourteenth article, were deprived of their homes and reservations for the reason that their homes were sold by the Government years ago, in direct violation of the treaty.

32. The landed provisions of the fifteenth article are to the three

chiefs in the Choctaw Nation, namely, Greenwood Laflore, Nutackachie, and Mushulatubbe, four sections each, or 7,680 acres in all.

33. The nineteenth article reserves to a David Folsom four sections, or 2,560 acres; to I. Garland, Colonel Robert Cole, Tuppanahomer, John Pychlynn, Charles Juzan, Johoketotubbe, Eazchachia, Ofehoma, two sections each, or 10,240 acres in all. And further—

|  |         |
|--|---------|
| To not more than 40 persons, 640 acres each.....   | 25,600  |
| To not more than 460 persons, 480 acres each.....  | 220,800 |
| To not more than 400 persons, 320 acres each.....  | 128,000 |
| To not more than 350 persons, 160 acres each.....  | 56,000  |
| To not more than 350 persons, 80 acres each.....   | 28,800  |
| To 90 captains, 320 acres each, additional.....  | 28,800  |
| To 134 orphans, 160 acres each.....  | 21,440  |
| Whole amount of reservation in supplementary treaty, being.....  | 59,040  |
| Number of acres which the Choctaws are entitled to reserve, under nineteenth article treaty of 1830..... | 571,280 |

34. The whole amount of special reservations, being all of those provided for in articles fifteen and nineteen, and the supplement, aggregate 578,960 acres. The whole amount of lands "allowed and secured," under all the provisions of the treaty of 1830, was only 334,101.69, so that there was a deficiency of 244,859 acres to cover the fifteenth and nineteenth articles, and supplement, and not an acre to cover the fourteenth article. But if the 334,101.69 acres were allowed to heads of families under the fourteenth article, and are to be applied on that article, then the fifteenth and nineteenth, and supplement, are deficient to the whole amount of the 578,960 acres.

35. The Choctaw estimate of the number of families who desired to avail themselves of the benefits of the reservations provided for in the fourteenth article, was 1,600, taking the estimate of seven persons to a family, as is claimed by the Solicitor's report is the proper estimate. It gives one head to the family, and at least five children, and, if one of the parents be dead, then six children; but count one head and five children, and the account will stand thus:

|  |           |
|--|-----------|
| 1,600 heads of families, at 640 acres.....         | 1,024,000 |
| 4,300 children, over ten years, at 320 acres.....  | 1,536,000 |
| 3,200 children, under ten years, at 160 acres..... | 512,000   |

Making the total number of acres to which those who desire to take under the fourteenth article to be..... 3,072,000

But the committee believe that this estimate is too high, as seven is more than an average of numbers of white families. And it is a fact well known that persons living nomadic or exposed lives do not increase in population so rapidly as those who have the protection and care of civilized and quiet life. The committee think that five would be a high number, allowing one head of family and three children. In proof of this, the certificates or scrip allowed by the law of 1842 in lieu of lands that the United States had sold from the Indians, the number stands thus: Heads of families, 1,155; children over ten years, 1,470; children under ten years, 1,219; *about two children to a family. This scrip issue is conclusive on that point and needs no further proof.* The statement of Solicitor Banfield that seven (7) was an average Choctaw family grates harshly on the action of the Government in the issue of scrip for only two children to a family, or four persons at most. Mr. Banfield's report is unfortunately based upon the gleanings of the records of attorneys, who labored, under a prospective fee of \$30,000, to defeat the Choctaws in their demands for redress under the treaties of 1830 and 1855.

It is not just to the House or to the public service.

## INDORSEMENTS OF THE NET-PROCEEDS CLAIM.

36. The committee call attention to the following indorsement of this *Choctaw net-proceeds claim* made by the Government and by different officers thereof. *It is founded on the treaty of September 27, 1830.*

37. Under the several provisions of that treaty the United States entered upon, surveyed, and sold all the lands granted under the treaty to the United States, excepting the 334,101 reservation acres, the United States receiving and disposing of 10,089,038.67 acres for its own use.

38. March 3, 1837, Congress passed "An act for the appointment of commissioners to adjust the claims to reservations of land under the fourteenth article of the treaty of 1830 with the Choctaw Indians," thus recognizing the violation of the treaty by the United States. (See vol. 5, Statutes at Large, page 180.)

39. February 22, 1838, (see Statutes at Large, vol. 5, page 211,) Congress passed an act amending the act of March 3, 1837, above referred to, relative to commissioners, enlarging their powers and directing their action. This act recognizes the fact that the treaty of 1830 had been violated by the United States.

40. August 23, 1842, (see Statutes at Large, vol. 5, page 515,) Congress passed an act "providing for the satisfaction of claims arising under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit Creek, concluded in September, 1830;" in the third section of which it is enacted as follows: "But if the United States shall have disposed of any tract of land to which any Indian was entitled under the provision of said fourteenth article of said treaty, so that it is now impossible to give said Indian the quantity to which he was entitled, including his improvements, as aforesaid, or any part of it, or to his children, or the adjoining lands, the said commission shall thereupon estimate the quantity to which each Indian is entitled, and allow him, or her, for the same, a quantity of land equal to that allowed to be taken out of any of the public lands in the States of Mississippi, Louisiana, Alabama, and Arkansas, subject to entry at private sale, and certificates to that effect shall be delivered under the direction of the Secretary of War, through such agents as he may select, not more than one-half of which shall be delivered to said Indian until after his removal to the Choctaw territory west of the Mississippi River. This is full acknowledgment of the fact that the United States had violated the former nineteenth and fourteenth articles of the treaty of 1830.

41. Extract from a report of the Commissioner of Indian Affairs to the Secretary of the Interior, dated May 15, 1858, showing the amount of scrip allowed to Choctaw Indians, in lieu of lands to which they were entitled under the provisions of 1830. The following table shows when this scrip was issued and paid. This is the half of the scrip that was delivered to the Choctaws before they went west of the Mississippi River:

| Names of agents, and when they paid it.   | Heads of families. | Children. |           |
|---|--------------------|-----------|-----------|
|   |                    | Over 10.  | Under 10. |
| John J. McRae, from June, 1843, to March, 1845.....                             | 95                 | 120       | 125       |
| Maj. William Armstrong, from February, 1845, to June, 1847.....                 | 406                | 535       | 460       |
| Col. S. M. Rutherford, from April, 1848, to June, 1849.....                     | 229                | 276       | 169       |
| Col. John Drennen, from August, 1849, to May, 1851.....                         | 143                | 171       | 127       |
| Col. John Drennen, by William Wilson, clerk, from May, 1850, to July, 1851..... | 24                 | 31        | 25        |
| Col. J. H. Bowman, from August to November, 1851.....                           | 253                | 335       | 309       |
| Whole amount paid out.....  | 1,150              | 1,468     | 1,215     |
| Eleven pieces of scrip returned by Colonel Bowman.....                          | 5                  | 2         | 4         |
| Whole amount allowed and issued.....  | 1,155              | 1,470     | 1,219     |



42. But if the United States shall have disposed of any tract of land to which *any Indian* was entitled, "and so that it is now impossible to give *said Indian* the quantity to which he was entitled," &c., together with the law and issue of the (scrip) certificates, leaves no question of the aggression upon the Indians and the violation of the treaty rights, the only question now being the extent of the aggressions.

43. That the United States should by law compel the Choctaws to take scrip or certificates of equal acres of wild land for their improved homes from which they had been driven and the land sold in violation of the solemn treaty provisions, seems to be hardship enough; but when only half of those certificates were allowed to them while they were where they could lay them, and the other half only allowed to be paid when they should have gone outside of either of the States in which they were authorized to lay them, adds to the wrong, and leaves no doubt on any fair mind that the Choctaws were harshly dealt with by the United States.<sup>4</sup> The following is the same referred to in the above table, being that first half of the scrip which was issued under the law of August 23, 1842, to the Choctaw claimants who had lost their land before they went west; 1,155 pieces were issued in favor of heads of families, being for one-half section each; 1,470 pieces of a quarter-section each, for children over ten; and 1,219 pieces of eighty acres each, for children under ten at the date of the treaty; making an aggregate of 702,320 acres, which is only half of the land these claimants were entitled to under the fourteenth article of the treaty of 1830. The other half was not deliverable until claimants had gone west, which became the item of \$872,000, receipted for by the Choctaw council, which has been so unjustly quoted against all claimants.

44. March 3, 1845, (see Statutes at Large, vol. 5, page 777,) Congress, in an appropriation act, provided that of the scrip which has been awarded or which shall be awarded to the Choctaw Indians under the provisions of the law of the 23d of August, 1842, that portion thereof not deliverable east, by the third section of said law, "shall carry an interest of five per cent., which the United States will pay annually to the reservees, under the treaty of 1830, respectively, or to their heirs or legal representatives forever, estimating the land to which they may be entitled at one dollar and twenty-five cents per acre." The amount of scrip funded for the benefit of fourteenth-article claimants, by the act of March 3, 1845, was \$872,000, counting it at \$1.25 per acre; representing 702,320 acres, (being last half of scrip,) and should have been \$877,900, less \$2,875, being for eleven pieces of scrip returned, equaling in the aggregate 2,300 acres, so that the exact amount funded for the scrip-claimants should have been \$875,025, showing a loss in the item to the Indians of \$3,025, and the act then repeals conflicting statutes.

By this law the United States, of its own will, dictates that it will fund this part of the scrip debt, and pay interest, and not deliver the last half of the certificates of entry to those persons entitled to them by the law of 1842, and it confirms all former actions in the premises, and provides for interest on those certificates "which shall be awarded" by the commissioners under the law of 1843. (For act of March 3, 1842, see Statutes at Large, vol. 5, page 777, confirming the unsettled condition of this matter in 1845, and the Government's liability in prospective.)

45. July 21, 1852, (see Statutes at Large, vol. 10, page 19,) Congress enacted, in a deficiency bill, as follows: "For interest on the amounts awarded Choctaw claimants, under the fourteenth article of the treaty of Dancing Rabbit Creek, of September 27, 1830, for lands on which

they resided, but which it is impossible to give them, and in lieu of the scrip that has been awarded under the act of August 23, 1842, not deliverable east by the third section of said law, per act of March 3, 1845, for the half year ending June 30, 1852, twenty-one thousand eight hundred dollars: *Provided*, That after the 30th day of June, 1852, all payments of interest on said awards shall cease, and that the Secretary of the Interior be, and he is hereby, directed to pay *said claimants* the amount of principal awarded in *each case respectively*, and that the amount necessary for this purpose be, and the same is hereby, appropriated, not exceeding eight hundred and seventy-two thousand dollars: *Provided further*, That the final payment and satisfaction of *said awards* shall be first ratified and approved as a *final release of all claims of such parties* under the fourteenth article of said treaty, by the proper national authorities of the Choctaws, *in such form as shall be prescribed by the Secretary of the Interior.*"

46. By this act of July 21, 1852, the United States again peremptorily orders payment of a fund that it had as peremptorily funded on the 30th of March, 1845, at five per cent. interest forever. It is in connection with the receipting by the Choctaw Nation for these awards, due; as they were, to individuals, arises the error of supposing that the receipts of the Choctaw claims of November 6, 1852, covered the entire claims of the Choctaws under the fourteenth article of the treaty of 1830; when in truth and in fact the receipts only covered one-half of the scrip, namely, that which was not payable east (meaning: while claimants remained east of the Mississippi River) under the law of August 23, 1842, and on which interest at five per cent. was allowed by the law of March 3, 1845, and which was ordered paid by the law of July 21, 1852, and had no wider significance than the individual claimants to whom the scrip had been awarded, leaving all claimants under the fourteenth article to whom no scrip or certificates of entry, in lieu of the homesteads, had been issued, still entitled to satisfaction.

47. The treaty of September 27, 1830, and the laws of Congress of March 3, 1837, February 22, 1838, August 23, 1842, March 3, 1845, and July 21, 1852, all treat these claims as individual *claims*, in words and in fact, and also the receipt itself refers to the fourteenth article as its basis, and recites the United States failure to comply with its treaty stipulations. And, referring to the appropriation act of July 21, 1852, then says: "Now, be it known that the said general council of the Choctaw Nation do hereby ratify and approve the final payment and satisfaction of said awards, [meaning the awards by the commissioners, under act of 1842, to the claimants named, and to whom scrip was issued,] agreeably to the provisions of the act aforesaid, [meaning act of July 21, 1852,] as a final release of all claims of *such parties*, under the fourteenth article of said treaty," [meaning treaty of 1830.] The words "said awards," and "such parties," render the meaning of the receipt plain, and clearly limit it to the one-half scrip certificates to individual claimants.

48. The committee here append the receipt or release given by the Choctaw council for the amount of \$872,000, being the half of the scrip that was by the act of Congress of August 23, 1842, not to be paid the individual claimants, under the fourteenth article of the treaty of 1839, until they had gone west of the Mississippi River, and which scrip was funded by act of March 3, 1845, at 5 per cent., forever, and which was ordered paid in the above amount by proviso in an appropriation act of July 21, 1852, (see vol. 10, page 19, United States Statutes at Large,) and upon the receipt of which many of the Choctaw council gave the

following release, which is for individual claims only, as fully shown above, and by the scrip itself.

*Copy of release of Choctaw council.*

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

A. NAIL, *Speaker.*

NOVEMBER 6, 1852.

Passed in the senate.

D. MCCOY, *President.*

Approved:

GEORGE W. HARKINS.  
GEORGE FOLSOM.

49. The law of July 21, 1852, appropriating \$872,000 to pay for this funded scrip, and ordering that the above receipt be given thereon, directed the Secretary of the Interior to pay said claimants the amount of principal awarded in each case *respectively*. The form of the receipt or release was ordered to be "prescribed by the Secretary of the Interior," so the entire records are in the Secretary's hands, and could have been found there by the Solicitor of the Treasury, and were well known to the committee of the House and Senate, and are fully covered in the account rendered by the Secretary of the Interior to Congress, made under order of the Senate, March 9, 1859. (See scrip account.)

50. This release can have no further significance than to prevent recovery by any Choctaw head of a family, or child of such, to whom scrip had been issued by the proceedings under the law of August 23, 1842, the half of which lay in the Treasury until 1852, and was, by the law of July 21, 1852, directed paid and receipted for as above.

51. The United States cannot afford to become a trickster and pettifogger in the management of its business, and nothing short of that intention could account for pleading a special receipt for payment to certain parties whose names are on our own records, to whom this scrip issued as a payment to other claimants whose names are not, and never have been, on that record as holding scrip. That receipt of the Choctaws is for a balance of individual scrip, and for nothing else. There is no fraud in it, for it complies with the law of 1852 directing it. The Choctaws claim nothing that is covered by it, but claim what they have not had, and what they believe they are entitled to—claims for which no scrip ever issued, but which has merged now in the mode adopted by the Senate under treaty of 1855.

52. The law of July 21, 1852, (see p. 19, vol. 10, United States Statutes at Large,) directing the payment of the Choctaws, awards to the several 'claimants the amount of principal awarded in each case respectively,'"

provided that the *Secretary of the Interior should pay the claimants*, and also that the *Secretary of the Interior should prescribe a form of release to be executed* by the Choctaw council for the *principal of said awards* when paid.

53. The law itself directs where the receipts or release *should be found*. As the *Secretary makes the payment and prescribes the form of release*, it is perfectly plain that he would hold the release when executed by the Choctaw council, and it is hardly probable that at that time the officers of the Government did not know what it was or where it was. An officer who, with the statute of 1852 before him, could not find this receipt, would not be good legal authority upon this case. The receipt was a condition precedent to the payment.

54. With the treaty of September 27, 1830, ceding the 10,423,139.69 acres of land to the United States, the Indian appropriation bills coming annually before the President, the Secretaries of the Interior and Treasury and War, and Congress, in which the Choctaw matters were before them and appropriation made for them annually. And in connection with the provisions of this treaty of 1830, and for expenditures of commissioners sent to investigate these Choctaw claims under the fourteenth and nineteenth articles. Reports of these three several commissions with the report of the Indian agents for the Choctaws; the complaints of the State and people of Mississippi; the reports of the surveyors of these Choctaw lands; the public and private sales of these lands, as known to the public, and recorded in the Land-Office; the act of Congress of March 3, 1837, (vol. 5, page 180, Statutes at Large,) for the appointment of commissioners to examine the Choctaw matters touching the fourteenth article of the treaty of 1830; the act of February 22, 1838, (vol. 5, Statutes at Large, page 211,) amending the act of 1837; the act of August 23, 1842, (see Statutes at Large, vol. 5, page 515,) authorizing the issue of (scrip) "certificates" of entry in lieu of part of these Choctaw claims,

55. The issue under this law by the Secretary of the Interior of 3,844 pieces of scrip, which was delivered, and as many pieces that were to be delivered when the claimants moved west of the Mississippi River, covering in the aggregate 1,399,920 acres of land.

#### WAS THERE FRAUD OR DECEPTION IN PROCURING THE TREATY OF 1858?

The committee think not; and refer to the Government records, official action, and current history, as evidence in support of this view, in addition to the reasonable presumption that there was not.

The act of March 3, 1845, (see vol. 5, page 777, Statutes at Large,) funding the half of the scrip that was to be paid west of the Mississippi River, under third section of the act of August 23, 1842.

The act of July 21, 1852, (Statutes at Large, vol. 10, page 19,) appropriating the \$872,000 to pay this scrip, (funded by the act of March 3, 1845,) and ordering a release of these individual scrip-claims of the parties holding the same under the fourteenth article; the preparation by the Secretary of this release with the payments made under it; the return and filing of this release with the Secretary of the Interior; the removals of Choctaws West from Mississippi, with the notoriety and trouble attending the same, that extended through several years.

56. The reports of the commissioners who removed the Choctaws west of the Mississippi River; the act of Congress of August 30, 1852, (10 vol., page 42, Statutes at Large,) relative to scrip for Choctaws,

known as Bay Indians; the act of Congress, March 3, 1853, (10 vol., page 227, Statutes at Large,) relative to Choctaw scrip; the current history of the times of all these varied acts and circumstances, all of which occurred within the space of time from the confirmation of the treaty of 1830, that is, on the 24th day of February, 1831, to the treaty of June 22, 1855, before them in these numerous records. The President, Secretary of the Interior, Secretary of the Treasury, Secretary of War, Commissioner of Indian Affairs, Committees on Indian Affairs of the Senate and the House of Congress, and the Senate and Congress itself, would not all be so careless of duty, or not so disposed against the Government, as to negligently, wrongfully, or fraudulently make, or permit to be made unchallenged, the treaty of June 22, 1855, with direct reference, as set forth in the eleventh and twelfth articles thereof, to a settlement of these Choctaw claims, directing the mode of their settlement, if they did not understand its equities and intend to do justice to Government and Choctaws. With all this information before the President and Senate, and before the Indian Department, Interior Department, and Treasury Department, with all the records of all these facts in our possession as fully as we have now, the President, without opposition or objection from any citizen or official, made the treaty of June 22, 1855, with the Choctaws, and the Senate confirmed it, for the proper adjustment of the case provided for by the eleventh and twelfth articles of that treaty. (See Statutes at Large, page 611, vol. 11.)

57. The eleventh article of the treaty of June 22, 1855, makes the Senate of the United States the umpire to determine the mode of settlement between the Choctaws and United States; and by the twelfth article of the same treaty, the whole subject of the Choctaw unsettled claims arising under the treaty of 1830 are submitted to it for adjustment.

The committee here insert the eleventh and twelfth articles of the treaty of 1855 entire:

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 lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the cost 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."

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.

58. The Senate of the United States having been, by the eleventh article of the treaty of June 22, 1855, made the umpire to settle the Choctaw

law claims, and the only record-accounts of the transactions with the Choctaws and between the officers and agents of the United States and the head-men and warriors of that people being in the ownership and possession of the United States Government, the power and the opportunity to do justice to the Government lay fully in the hands of his executive officers and in the Senate, and, through them, in Congress.

59. While the Choctaws, without records of the many facts connected with these matters, with only a knowledge of what justice demanded for them, but without ability to represent or power to enforce their rights, were humbly asking its administration by our Government, under the treaty of September 27, 1830, by the rules laid down in the treaty of June 22, 1855, and in accordance therewith, the Senate of the United States, with full knowledge of all the facts, and in pursuance of the provisions of eleventh and twelfth articles of that treaty, on the 18th day of March, 1856, referred the subject of the Choctaw claims, and the Senate's responsibility thereunder, to the Committee on Indian Affairs of the Senate, for its action and report.

60. On the 15th day of February, 1859, the Committee on Indian Affairs of the Senate submitted to that body an elaborate report, introducing therewith the following resolutions:

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

*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 committee's report, No. 374, 2d session 35th Congress.)

61. And on the 9th of March, 1859, the Senate adopted the following resolutions:

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 lands 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 day of 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 Choc-

taws, 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.)

62. The action of the Secretary of the Interior is the act of the Senate, as that body was the *umpire*, and directed the accounting to be made in that capacity, under the treaty of 1855. And as the Senate, acting as such umpire, ordered the Secretary of the Interior to report his accounting to CONGRESS, not to the *Senate* only, it waived the further action, and confirmed the Secretary's accounting, and had no further power in the premises as an umpire.

63. In pursuance of this award, the Secretary of the Interior, as directed by the closing resolution, proceeded to state an account between the United States and the Choctaw Indians, upon the principles decided by the Senate in the first resolution, and reported the same to the Senate, May 28, 1860, (Ex. Doc. No. 82, 1st session 36th Congress,) as follows:

64. This subject and the report of the Secretary of the Interior were referred to the Committee on Indian Affairs of the Senate, which made to the Senate on June 19, 1860, a labored report, going fully into this whole case, from which the committee make the following extracts:

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

|   | Acres.         |
|---|----------------|
| Total area of lands ceded by the Choctaws by the treaty of 27th September, 1830.....  | 10,423,139.96  |
| 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     |
|   | 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 to 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   |           |
|   |             | 33,361 12 |

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.....   | 14,283 28    |              |
|   |              | 1,229,766 52 |

## CLAIMS OF THE CHOCTAW NATION.

## SEVENTEENTH ARTICLE.

Annuity for twenty years ..... \$400,000 00

## NINETEENTH ARTICLE.

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

## TWENTIETH ARTICLE.

Education of forty youths for 20 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 20 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  
 396,947 26

## TWENTY-FIRST ARTICLE.

Annuity to Wayne warriors ..... \$1,818 76  
 3d. 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 19  
 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 fourth article of the treaty of  
 1830 ..... 21,408 36  
 For payments made for Choctaw account, being for ex-  
 penses 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 ..... 5,097,367 50  
 Leaves a balance due to Choctaws of ..... 2,981,247 30  
 OFFICE OF 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 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 proceed 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.*

JUNE 19, 1860.—Ordered to be printed.

Mr. SEBASTIAN made the following report:

*The Committee on Indian Affairs, having had under consideration the report of the Secretary of the Interior, and the account stated under his direction, showing the amount due the Choctaw tribe of Indians, according to the principles of settlement prescribed by the award of the Senate, made by the resolution of March 9, 1859, report:*

That the award in question was made upon the submission contained in the eleventh article of the treaty of 1855, by the twelfth article whereof it is provided that the adjudication and decision of the Senate shall be final.

That in conformity to the terms of the submission, the award of the Senate adjudged and decided that the Choctaws should be allowed the net proceeds of the sales of such of the lands ceded by them to the United States by the treaty of 27th September, 1830, as had been sold up to the 1st day of January, 1859, deducting therefrom the cost of their survey and sale, and all proper expenditures and payments under said treaty, excluding such reservations as had been allowed and secured, and estimating the scrip issued in lieu of reservations at one dollar and twenty-five cents an acre; and also, that for the residue of said ceded lands they should be allowed twelve and a half cents an acre.

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

On the 19th of March, 1859, the Secretary of the Interior referred the resolution to the Office of Indian Affairs, and on the 8th of May, 1860, after a thorough and searching investigation of nearly fourteen months, the account, finally stated, was reported to Congress, and on the 10th of May was ordered to be printed by the House of Representatives. In the Senate it was referred to this committee, and is appended to this report.

By the account the balance due the Choctaws is shown to be \$2,931,247.30.

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,] 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.

65. 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.

The deductions of internal-improvement fund paid to Mississippi and for lands donated for railroad and swamp land, as shown in Senate committee report. (See Senate Report 283, 36th Congress, 1st session.) These deductions are no part of the Senate award, as they were not included in the Secretary's accounting to Congress; but even this draught on their claim was acquiesced in by the Choctaws in order to secure a settlement of their claims, and have confirmed this acquiescence by receiving the \$250,000 in money, appropriated by act of March 2, 1861.

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, March 9, 1859, as shown above.

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

66. As above stated, Congress, in the appropriation bill of March 2, 1861, made a partial appropriation on this award of the Senate, on the showing of the Secretary, made by him under the Senate resolutions passed in pursuance of its power or duty as umpire, under the eleventh and twelfth articles of the treaty of 1855, as follows :

For payment to the Choctaw Nation or tribe of Indians, on account of their claim under the eleventh and twelfth articles of the treaty with said nation or tribe, made the 22d of June, 1855, the sum of \$500,000; \$250,000 of which sum shall be paid in money, and for the residue the Secretary of the Treasury shall cause to be issued to the proper authorities of the nation or tribe, on their requisition, bonds of the United States, authorized by law at the present session of Congress: *Provided*, That in the future adjustment of the claim of the Choctaws, under the treaty aforesaid, the said sum shall be charged against the said Indians. (Statutes at Large, vol. 12, page 238.)

Under this act the \$250,000 in *money* was paid in the year 1861. But the bonds were not delivered, on account of the interruption occasioned by the war of 1861.

By our treaties continually, including that of Hopewell, on the Keowee, of January 10, 1786, we had promised to protect the Choctaws, and they promised to be under our protection. Yet the circumstances surrounding the Government in 1861 left the United States unable to protect or defend the Choctaws, and they unable to defend themselves against the confederate forces.

A few days since the House passed a law giving to Black Beaver, an Indian, \$5,000, for valuable services in piloting Colonel Emery out of the Indian country in 1861, by which act we abandoned the Choctaws to their rebellious white neighbors. Our Indian agent, D. H. Cooper, then with the Choctaws, betrayed the United States and joined the rebellion, and urged the Indians under his charge to do the same, and took command of them in the rebel service. This is the first time the Choctaws ever opposed the United States. Intercourse between the Choctaws and the United States was interrupted. The bonds were not delivered, and for no other reason.

67. By the treaty of April 28, 1866, between the United States and the Choctaws, it is provided that—

The United States re-affirms all obligations arising out of treaty-stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into 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 such treaty stipulations and acts of legislation, from and after the close of the fiscal year ending on the 30th of June, 1866. (Statutes at Large, vol. 14, page 774.)

68. The Secretary of the Treasury, on the 29th day of September, 1870, referred to the Attorney-General the question of his authority to deliver the \$250,000 bonds to the Choctaws, under appropriation of March, 1861, and March 3, 1871.

69. On the 15th of December, 1870, the Attorney-General gave his written opinion, which was referred to the House and Senate by the Secretary of the Treasury, December 20, 1870.

The Attorney-General closes his opinion as follows :

Waiving all discussion of the desirableness, on grounds of expediency, of immediate authority from Congress, and responding to your question, according to my judgment of the law of the case, I am of the opinion that you may lawfully issue bonds to the Choctaws. (See Ex. Doc. No. 25, 41st Congress, 3d session.)

70. This matter was referred to the Committee on Indian Affairs of the Senate, which, by Mr. Garrett Davis, on the 5th of January, 1871, made the following report :

*The Committee on Indian Affairs, to whom was referred the communication of the Secretary of the Treasury to Congress, transmitting a copy of the opinion of the Attorney-General of the United States upon the claim of the Choctaw Nation of Indians for \$250,000 of United States bonds, have had the same under consideration, and report :*

They have examined the opinion of the Attorney-General and concur with him in his reasonings and conclusions. There is a subsisting treaty between the United States and the Choctaw Nation of Indians which entitles said nation to two hundred and fifty thousand dollars of bonds of the United States, of America, and which requires the President to make and deliver that amount of said bonds to said Indian nation. This treaty is the supreme law of the land, and the President is charged with its execution as a ministerial function. He has full authority to execute that law by the making and delivering of those bonds, in compliance with the treaty, to the proper authorities of the Choctaw Nation ; wherefore they report this resolution :

*Resolved*, That the President having full authority under existing law to issue and deliver to the Choctaw Nation of Indians two hundred and fifty thousand dollars of United States bonds, no other legislation by Congress is necessary to that end. (Senate Committee Reports, 3d session 41st Congress.)

71. On May 10, 1860, the Committee on Indian Affairs of the House reported on the net-proceeds claim, and the Secretary's accounting of March 9, 1859. (See House Ex. Doc. 82, 1st session 36th Congress.)

72. On the 20th day of February, 1871, the Judiciary Committee of the House, by Mr. Kerr, reported in favor of the delivery of the \$250,000 bonds, being part of the net-proceeds claim. The committee indorsed the opinion of the Attorney-General, and quoted his opinion made to the Secretary of the Treasury December 15, 1870, in full.

The committee presented to the House, as the conclusion of its report, the following resolution :

*"Resolved*, That the President having full authority, under existing laws and the treaty of April 28, 1866, between the United States and the Choctaw Nation of Indians, to issue and deliver to said nation \$250,000 of United States bonds, no further legislation of Congress is necessary to that end." (Report No. 41, 41st Congress, 3d session.)

73. On May 30, 1868, the Committee on Appropriations of the House, by Mr. Butler, reported in favor of appropriating the balance of the Choctaw net-proceeds claim, being \$1,832,560.85.

This is the amount of balance of the \$2,332,560.85, Senate's award, after deducting the \$500,000 appropriated by act of March 2, 1861. (See Globe, vol. 67, folio 2708.)

74. On the 22d day of June, 1870, the Judiciary Committee of the Senate, by Mr. Rice, reported an amendment to Senate bill No. 979, (see 41st Congress, 2d session,) providing for funding the balance of this Choctaw net-proceeds claim in five per cent. bonds of the United States, in the sum of \$1,832,460.85.

75. On the 6th day of July, 1868, the Committee on Indian Affairs of the House, by Mr. Windom, reported in favor of House bill No. 1195, for the payment of the sum of \$1,832,560.85, being balance of the Choctaw net-proceeds claim, after taking out the \$500,000 appropriated by the act of 1861. (See report No. 77, 40th Congress, 2d session.)

76. On the 3d day of March, 1871, Congress, in the Indian appropriation bill, passed the following act touching this issue of these \$250,000 bonds, part of the net-proceeds claim, viz :

"And the Secretary of the Treasury is hereby authorized to issue to the Choctaw tribe of Indians bonds of the United States to the amount of \$250,000, as directed by the act of March 2, 1861, entitled 'An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes,' thus reviving the act of March 2, 1861, and re-affirming the validity of the claim of the Choctaws to the bonds and to the award of the Senate under the treaty of 1855.

77. And on the 22d day of January, 1873, the Committee on Indian Affairs reported to the Senate in favor of the issue of these \$250,000 in bonds, part of the net-proceeds claim appropriated as stated by the law of March 2, 1861, and re-appropriated by the law of March 3, 1871. (See Senate Report No. 317, 42d Congress, 3d session.)

Said committee also reported in favor of the payment of the remainder of \$1,832,560.85 balance of Choctaw net-proceeds claim, after deducting the \$250,000 cash paid under the appropriation of March 2, 1861, and the \$250,000 bonds appropriated by same act March 2, 1861, and which was re-appropriated by act of March 3, 1871.

There has been the most perfect unanimity in the action of the executive and legislative branches of the Government down to Mr. Banfield's report, and in that there is nothing new, of record or of fact.

#### CONCLUSIONS.

1. The committee is of the opinion that the Choctaw people were not disposed of their own free will to make the treaty of 1830, disposing of their homes in Mississippi.

2. That the eighteenth article of the treaty of September 27, 1830, makes the United States a trustee, and puts it in possession of the property of the Choctaws ceded by that treaty, and, as such, bound to a faithful accounting with them, and that this fact is recognized and provided for by the treaty of 1855 in the mode of settlement provided for by that treaty.

3. That the Choctaws were deprived of many of the valuable privileges to which they were entitled under the said treaty of 1830.

4. That the United States fully recognized the fact that the Choctaws were deprived of their just rights by the action and permission of the Government.

5. That the United States made partial satisfaction to a portion of the disappointed claimants under the fourteenth article of that treaty by the issue of scrip, in pursuance of the third section of the law of Congress of August 23, 1842.

6. That one-half of this scrip was delivered to the claimants entitled thereto, and the other half was retained by the United States until 1852, when the sum of \$872,000 was appropriated and paid in full for the said last half of scrip, which was a full and final payment to those claimants under the fourteenth article of the treaty of 1830 who had received scrip, but to none other.

7. That the receipt of November 6, 1852, given by the Choctaw council, was for this balance of scrip only, and had no wider significance—was a special receipt for a special thing.

8. That the treaty of 1855 was made by the President through the Interior and Indian Departments with full knowledge of all the facts; the records being as ample on all points connected with the case to that date as they are now.

9. That with these records before the country this treaty was made and confirmed.

10. That the eleventh article of the treaty of 1855 especially refers the subject-matter of this report, by the most explicit reference, to the Senate for final settlement.

11. That the twelfth article of the treaty of 1855 clearly points out two modes of settlements, and directs the Senate to choose one of these modes.

12. That the Senate did choose one of the modes thus named, which was to allow the Choctaws the net proceeds of the lands ceded to the United States by the treaty of 1830.

13. That for that portion of said cession which we had sold up to January 1, 1859, (having deducted the reservations secured,) being 5,912,664.63 acres, they should be allowed \$1.25 per acre, amounting to \$7,556,578.05.

14. That for the residue, being 4,176,374.4 acres, they should be allowed 12½ cents per acre, amounting to \$522,046.75.

15. That the Choctaws should be charged with all proper charges against the net proceeds of their lands.

16. That the Senate, acting under the power conferred in the treaty of 1855, ordered the Secretary of the Interior to render an account with the Choctaws on this basis.

17. That the Secretary was by the Senate ordered to render the account to Congress, (not specially to the Senate.)

18. That the Secretary of the Interior did, on the 9th day of March, 1859, render that account to Congress, showing the balance due the Choctaws, after deducting, all proper—and, the committee think, some improper—charges, to be, at that date, \$2,981,247.30, which must be considered as the Senate's award.

19. That the Committee on Indian Affairs of the Senate recommended to the Senate the further deduction of \$362,100.70, being the amount of internal-improvement fund which the United States had paid the State of Mississippi on the basis of the Choctaw lands ceded by the treaty of 1830, but paid long after the treaty and our possession of the lands.

20. That the Committee on Indian Affairs of the Senate further recommended to the Senate that there should be a further reduction of \$286,595, being the price, at 12½ cents per acre, of 2,292,766 acres of these Choctaw lands that Congress had given to railroad companies and ceded to Mississippi as swamp-lands and for school purposes.

21. That after these recommendations, for which, however, there seems to be but little reason, there would still be, as shown, a balance of \$2,332,560.85 due the Choctaws, and no further balance found to charge with them.

22. That in reducing the net-proceeds claim to this amount, it was necessary to charge the Choctaws with pensions that had been paid to Choctaw warriors who served under Wayne.

23. That they were charged the moneys we had paid them for cattle purchased and received of them in Mississippi, on which we fed them while removing them, and for which removal we charged them heavily also.

24. That we charged them the expense of committees appointed under our laws to ascertain how far we had wronged them by depriving them of their rights under the fourteenth article of the treaty of 1830.

25. That we charged them with attorneys' fees and the expense of paying to them the scrip which we forced them to take in lieu of the land that we had forced them off and sold from them.

26. That on the 2d day of March, 1861, Congress appropriated \$500,000 in part payment of the net-proceeds claim, one-half of this amount payable in money and the other in bonds of the United States.

27. That the \$250,000 payable in money was paid, but that the bonds were not delivered because of the interruption between the Choctaws and the United States caused by the rebellion.

28. That on the 5th day of July, 1862, Congress, by law, prevented the payment of any moneys to any tribe or nation of Indians that were in whole or in part at war with the United States.

29. That on the 22d day of February, 1862, Congress, by law, directed the amount of the \$250,000 bonds to be expended by the Secretary of the Interior for refugee Indians of various tribes therein named.

30. That by the treaty of April 28, 1866, the Choctaws were restored to all their rights and privileges under law and former treaties that they held when the war commenced.

31. That with these facts before Congress by the letter of the Secretary of the Treasury, the opinion of the Attorney-General, the report of the Committee on Indian Affairs of the Senate, and the Judiciary Committee of the House, Congress, on the 3d day of March, 1871, re-appropriated the \$250,000 bonds, and ordered them delivered.

32. That the balance due on the Senate award was \$2,981,247.30.

33. That the amount further reported for deduction by Senate Committee on Indian Affairs, being swamp-lands, railroad-lands, school-lands, and internal-improvement fund, was \$648,686.45, after deducting this.

34. That the balance, as shown, June 19, 1860, by Senate Committee on Indian Affairs, was \$2,332,560.85, and that the amount appropriated out of this amount by act of March 2, 1861, was \$500,000.

35. That the balance not yet appropriated, and to which the Choctaws are entitled, as well as to the bonds referred to, is \$1,832,560.85.

36. That these \$250,000 bonds, with their interest since March 2, 1861, to the date, should be funded for the benefit of the Choctaw people.

37. That the remaining \$1,832,560.85 should be appropriated and funded.

38. That these two amounts should be funded at fair interest for the Choctaws, for the benefit of schools among them, as a mode of securing it from claim-agents and extortioners.

39. And that it should be strictly provided by law that no person other than the Choctaws should receive any part of said claims on any account whatsoever.

### EXHIBIT III.

House Report No. 391, Forty-third Congress, first session.

Mr. I. C. Parker, from the Committee on Appropriations, submitted the following report, (to accompany bill H. R. 2189):

*The Committee on Appropriations, to whom was referred the bill (H. R. 2189) to provide for the payment of the award made by the Senate of the United States in favor of the Choctaw Nation of Indians, on the 9th day of March, 1859, respectfully submit the following report:*

The object and purpose of this bill is to provide for the satisfaction of an award made by the Senate of the United States in favor of the Choctaw Nation of Indians, on the 9th day of March, 1859. This award

was made in pursuance of treaty stipulations, and was to carry into effect obligations assumed by the United States to the Choctaw Nation, under the treaty with the said nation concluded June 22, 1855. So much of the said treaty as relates to the manner in which the indebtedness of the United States to the said nation should be ascertained and determined is 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.)

In pursuance of this agreement between the two contracting parties, the Senate of the United States, acting in the character of arbitrator, or as commissioners under a treaty, proceeded to an adjudication of the questions submitted to it under the eleventh article of said treaty; and on the 9th day of March, 1859, the matter having been previously considered and investigated by the Senate, the following award was made and declared in favor of the Choctaw Nation:

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 lands remaining unsold, in order that a final settlement with them may be properly 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 day of 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-described principles of settlement, and report the same to Congress.

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



In pursuance of this award the Secretary of the Interior, as directed by the second of the above resolutions, proceeded to state an account between the United States and the Choctaw Nation, upon the principles decided by the Senate as the basis of such account, as declared in the first resolution; and the result of such accounting, as shown in the report of the Secretary of the Interior, was an indebtedness on the part of the United States to the Choctaw Nation, amounting to *two million nine hundred and eighty-one thousand two hundred and forty-seven dollars and thirty cents.*

The Committee on Indian Affairs of the House of Representatives, in its report made at the last session of Congress, speaking of this award, used the following language:

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.)

The Senate Committee on Indian Affairs having had this subject under consideration, at the last session of Congress, speaking of this award and of the obligation of the United States to pay it, said:

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, from a most careful examination of the whole subject, concur in these conclusions, and refer to them only for the purpose of showing that the honesty, the fairness, or the integrity of the award thus made in favor of the Choctaw Nation cannot successfully be called in question or denied: It was a final settlement and award, conclusive alike upon the Choctaw Nation and the United States. Neither party to the treaty could rightfully disavow it, or refuse to be bound by it.

The United States has recognized the conclusiveness of this award by legislative enactment; for in the Indian appropriation bill, approved March 2, 1861, it was provided that the sum of \$500,000 should be paid to the said nation *on account of this award.* (12 Stats. at Large, p. 238.)

In pursuance of this act the sum of \$250,000 in money was paid to the said nation, but the bonds for a like amount, which the Secretary of the Treasury was directed to issue, were not delivered on account of the interruption of intercourse with the said nation caused by the war of the rebellion. These bonds have never been issued or delivered to the said nation, and all that has ever been paid to the said nation on account of the said award, therefore, is the sum of \$250,000, paid (under the said act of March 2, 1861) on the 12th day of April, 1861. The balance remaining unpaid on the said award since the 12th day of April, 1861, therefore, is \$2,731,247.30.

THE OBLIGATION TO PAY INTEREST ON THE AMOUNT AWARDED THE CHOCTAW NATION.

Your committee have given this question a most careful examination,

and are obliged to admit and declare that the United States cannot, in equity and justice, nor without national dishonor, refuse to pay interest upon the moneys so long withheld from the Choctaw Nation. Some of the reasons which force us to this conclusion are as follows:

1. The United States acquired the lands of the Choctaw Nation, on account of which the said award was made, on the 27th day of September, 1830, and it has held them for the benefit of its citizens ever since.

2. The United States had in its Treasury, many years prior to the 1st day of January, 1859, the proceeds resulting from the sale of the said lands, and have enjoyed the use of such moneys from that time until now.

3. The award in favor of the Choctaw Nation was an award under a treaty, and made by a tribunal whose adjudication was final and conclusive. (*Comegys vs. Vasse*, 1 Peters, 193.)

4. The obligations of the United States, under its treaties with Indian nations, have been declared to be equally sacred with those made by treaties with foreign nations. (*Worcester vs. The State of Georgia*, 6 Peters, 582.) And such treaties, Mr. Justice Miller declares, are to be construed liberally. (*The Kansas Indians*, 5 Wall., 737-760.)

5. The engagements and obligations of a treaty are to be interpreted in accordance with the principles of the public law, and not in accordance with any municipal code or executive regulation. No statement of this proposition can equal the clearness or force with which Mr. Webster declares it in his opinion on the Florida claims, attached to the report in the case of *Letitia Humphreys*, (Senate report No. 93, first session Thirty-sixth Congress, page 16.) Speaking of the obligation of a treaty, he said:

A treaty is the supreme law of the land. It can neither be limited, nor restrained, nor modified, nor altered. *It stands on the ground of national contract, and is declared by the Constitution to be the supreme law of the land*, and this gives it a character higher than any act of ordinary legislation. It enjoys an immunity from the operation and effect of all such legislation.

A second general proposition, equally certain and well established, is that the terms and the language used in a treaty are *always* to be interpreted according to the law of nations, and not according to any municipal code. This rule is of universal application. When two nations speak to each other, they use the language of nations. Their intercourse is regulated, and their *mutual agreements and obligations* are to be interpreted by that code only which we usually denominate the public law of the world. This public law is not one thing at Rome, another at London, and a third at Washington. It is the same in all civilized states; everywhere speaking with the same voice and the same authority.

Again, in the same opinion, Mr. Webster used the following language:

We are construing a treaty, a solemn compact between nations. This compact between nations, this treaty, is to be construed and interpreted throughout its whole length and breadth—in its general provisions, and in all its details; in every phrase, sentence, word, and syllable in it—by the settled rules of the law of nations. No municipal code can touch it, no local municipal law affect it, no practice of an administrative department come near it. Over all its terms, over all its doubts, over all its ambiguities, if it have any, the law of nations "sits arbitress."

6. By the principles of the public law, interest is always allowed as indemnity for the delay of payment of an ascertained and fixed demand. There is no conflict of authority upon this question among the writers on public law.

This rule is laid down by Rutherford in these terms:

In estimating the damages which any one has sustained, when such things as he has a perfect right to are unjustly taken from him, or WITHHOLDEN, or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of the thing is likewise the owner of the fruits or profits. So that it is as properly a damage to be deprived of them as it is to be deprived of the thing itself. (*Rutherford's Institutes*, Book I, chap. 17, sec. 5.)

In laying down the rule for the satisfaction of injuries in the case of reprisals, in making which the strictest caution is enjoined not to transcend the clearest rules of justice, Mr. Wheaton, in his work on the law of nations, says:

If a nation has taken possession of that which belongs to another, IF IT REFUSES TO PAY A DEBT, to repair an injury, or to give adequate satisfaction for it, the latter may seize something of the former and apply it to [his] its advantage, till it obtains payment of what is due, together with INTEREST and damages. (Wheaton on International Law, p. 341.)

A great writer, Domat, thus states the law of reason and justice on this point:

It is a natural consequence of the general engagement to do wrong to no one, that they who cause any damages, by failing in the performance of that engagement, are obliged to repair the damage which they have done. Of what nature soever the damage may be, and from what cause soever it may proceed, he who is answerable for it ought to repair it by an *amende* proportionable either to his fault or to his offense, or other cause on his part, and to the loss which has happened thereby. (Domat, Part I, Book III, Tit. V, 1900, 1903.)

"Interest" is, in reality, in justice, in reason, and in law, too, a part of the debt due. It includes, in Pothier's words, the loss which one has suffered, and the gain which he has failed to make. The Roman law defines it as "*quantum mea interfuit; id est, quantum mihi abest, quantumque lucræ potui.*" The two elements of it were termed "*lucum cessans et damnum emergens.*" The payment of both is necessary to a complete indemnity.

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

It is because of the universal recognition of the justice of paying, for the retention of moneys indisputably due and payable immediately, a rate of interest considered to be a fair equivalent for the loss of its use, that judgments for money everywhere bear interest. The creditor is deprived of this profit, and the debtor has it. What greater wrong could the law permit than that the debtor should be at liberty indefinitely to delay payment, and, during the delay, have the use of the creditor's moneys for nothing? They are none the less the creditor's moneys because the debtor wrongfully withholds them. *He holds them, in reality and essentially, in trust; and a trustee is always bound to pay interest upon moneys so held.*

In closing these citations from the public law, the language of Chancellor Kent seems eminently appropriate. He says: "In cases where the principal jurists agree, the presumption will be very great in favor of the solidity of their maxims, and no civilized nation that does not arrogantly set all ordinary law and justice at defiance will venture to disregard the uniform sense of established writers on international law."

7. The *practice* of the United States in discharging obligations resulting from treaty-stipulations has always been in accord with these well-established principles. It has exacted the payment of *interest* from other nations in all cases where the obligation to make payment resulted from treaty-stipulations, and it has acknowledged that obligation in all cases where a like liability was imposed upon it.

The most important and leading cases which have occurred are those which arose between this country and Great Britain; the first under the treaty of 1794, and the other under the first article of the treaty of Ghent. In the latter case the United States, under the first article of the treaty, claimed compensation for slaves and other property taken away from the country by the British forces at the close of the war in 1815. A difference arose between the two governments, which was submitted to the arbitrament of the Emperor of Russia, who decided that

"the United States of America are entitled to a just indemnification from Great Britain for all private property carried away by the British forces." A joint commission was appointed for the purpose of hearing the claims of individuals under this decision. At an early stage of the proceedings, the question arose as to whether *interest* was a part of that "*just indemnification*" which the decision of the Emperor of Russia contemplated. The British commissioner denied the obligation to pay interest. The American commissioner, Langdon Cheves, insisted upon its allowance, and, in the course of his argument upon this question, said :

Indemnification means a re-imbusement of a loss sustained. If the property taken away on the 17th of February, 1815, were returned now uninjured it would not re-imburse the loss sustained by the taking away and consequent detention; it would not be an indemnification. The claimant would still be unindemnified for the loss of the use of his property for ten years, which, considered as money, is nearly equivalent to the original value of the principal thing.

Again he says :

If interest be an incident usually attendant on the delay of payment of debts, damages are equally an incident attendant on the withholding an article of property.

In consequence of this disagreement, the commission was broken up, but the claims were subsequently compromised by the payment of \$1,204,960, instead of \$1,250,000, as claimed by Mr. Cheves; and of the sum paid by Great Britain, \$418,000 was expressly for interest.

An earlier case, in which this principle of interest was involved, arose under the treaty of 1794 between the United States and Great Britain, in which there was a stipulation on the part of the British government in relation to certain losses and damages sustained by American merchants and other citizens, by reason of the illegal or irregular capture of their vessels, or other property, by British cruisers; and the seventh article provided in substance that "full and complete compensation for the same will be made by the British government to the said claimants."

A joint commission was instituted under this treaty, which sat in London, and by which these claims were adjudicated. Mr. Pinckney and Mr. Gore were commissioners on the part of the United States, and Dr. Nicholl and Dr. Swabey on the part of Great Britain; and it is believed that in all instances this commission allowed interest as a part of the damage. In the case of "The Betsey," one of the cases which came before the board, Dr. Nicholl stated the rule of compensation as follows :

To re-imburse the claimants, the original cost of their property, and all the expenses they have actually incurred, together with interest on the whole amount, would, I think, be a just and adequate compensation. This, I believe, is the measure of compensation usually made by all belligerent nations, and accepted by all neutral nations, for losses, costs, and damages occasioned by illegal captures. (*Vide* Wheaton's Life of Pinckney, p. 198; also p. 265, note; and p. 371.)

By a reference to the American State Papers, Foreign Relations, vol. 2, pages 119, 120, it will be seen by a report of the Secretary of State of the 16th February, 1798, laid before the House of Representatives, that interest was awarded and paid on such of these claims as had been submitted to the award of Sir William Scott and Sir John Nicholl, as it was in all cases by the board of commissioners. In consequence of some difference of opinion between the members of this commission, their proceedings were suspended until 1802, when a convention was concluded between the two governments, and the commission re-assembled, and then a question arose as to the allowance of interest on the claims during the suspension. This the American commissioner claimed,

and though it was at first resisted by the British commissioners, yet it was finally yielded, and interest was allowed and paid. (See Mr. King's three letters to the Secretary of State, of 25th March, 1803, 23d April, 1803, and 30th April, 1803, American State Papers, Foreign Relations, vol. 2, pp. 387,388.)

Another case in which this principle was involved arose under the treaty of the 27th October, 1795, with Spain; by the twenty-first article of which, "in order to terminate all differences on account of the losses sustained by citizens of the United States in consequence of their vessels and cargoes having been taken by the subjects of His Catholic Majesty during the late war between Spain and France, it is agreed that all such cases shall be referred to the final decision of commissioners, to be appointed in the following manner," &c.; the commissioners were to be chosen, one by the United States, one by Spain, and the two were to choose a third, and the award of the commissioners, or any two of them, was to be final, and the Spanish government to pay the amount in specie. This commission awarded interest as part of the damages. (See American State Papers, vol. 2, Foreign Relations, p. 283.) So in the case of claims of American citizens against Brazil, settled by Mr. Tudor, United States minister, interest was claimed and allowed. (See Ex. Doc. No. 32, first session Twenty-fifth Congress, House of Representatives, p. 249.)

Again, in the convention with Mexico of the 11th April, 1839, by which provision was made by Mexico for the payment of claims of American citizens for injuries to persons and property by the Mexican authorities, a mixed commission was provided for, and this commission allowed interest in all cases. (House Ex. Doc. No. 291, 27th Congress, 2d session.)

So also under the treaty with Mexico of February 2, 1848, the board of commissioners for the adjustment of claims under that treaty allowed interest in all cases from the origin of the claim until the day when the commission expired.

So also under the convention with Colombia, concluded February 10, 1864, the commission for the adjudication of claims under that treaty allowed interest in all cases as a part of the indemnity.

So under the recent convention with Venezuela, the United States exacted interest upon the awards of the commission, from the date of the adjournment of the commission until the payment of the awards.

The Mixed American and Mexican Commission, now in session here, allows interest in all cases from the origin of the claim, and the awards are payable with interest.

Other cases might be shown, in which the United States, or their authorized diplomatic agents, have claimed interest in such cases, or where it has been paid in whole or in part. (See Mr. Russell's letters to the Count de Engstein of October 5, 1818, American State Papers, vol. 4, p. 639, and proceedings under the Convention with the Two Sicilies of October, 1832, Elliot's Diplomatic Code, p. 625.)

It can hardly be necessary to pursue these precedents further. They sufficiently and clearly show the practice of this Government with foreign nations, or with claimant under treaties.

8. The practice of the United States in its dealings with the various Indian tribes or nations has been in harmony with these principles.

In all cases where money belonging to Indian nations has been retained by the United States, it has been so invested as to produce *interest*, for the benefit of the nation to which it belongs; and such interest is *annually* paid to the nation who may be entitled to receive it.

9. The United States, in adjusting the claim of the Cherokee Nation for a balance due as purchase-money upon lands ceded by that nation to the United States, in 1835, allowed interest upon the balance due them, being \$189,422.76, until the same was paid.

The question was submitted to the Senate of the United States as to whether interest should be allowed them. The Senate Committee on Indian Affairs, in their report upon this subject, used the following language:

By the treaty of August, 1846, it was referred to the Senate to decide, and that decision to be final, whether the Cherokees shall receive interest on the sums found due them from a misapplication of their funds to purposes with which they were not chargeable, and on account of which improper charges the money has been withheld from them. It has been the uniform practice of this Government to pay and demand interest in all transactions with foreign governments, which the Indian tribes have always been said to be both by the Supreme Court and all other branches of our Government, in all manners of treaty or contract. The Indians, relying upon the prompt payment of their dues, have, in many cases, contracted debts upon the faith of it, upon which they have paid, or are liable to pay, interest. If, therefore, they do not now receive interest on their money so long withheld from them, they will, in effect, have received nothing. (Senate Report No. 176, first session Thirty-first Congress, p. 78.)

10. That upon an examination of the precedents where Congress has passed acts for the relief of private citizens, it will be found that, in almost every case, Congress has directed the payment of interest, where the United States had withheld a sum of money which had been decided by competent authority to be due, or where the amount due was ascertained, fixed, and certain.

The following precedents illustrate and enforce the correctness of this assertion, and sustain this proposition:

1. An act approved January 14, 1793, provided that lawful interest from the 16th of May, 1776, shall be allowed on the sum of \$200 ordered to be paid to Return J. Meigs, and the legal representatives of Christopher Greene, deceased, by a resolve of the United States in Congress assembled, on the 28th of September, 1785. (6 Stat. at L., p. 11.)

2. An act approved May 31, 1794, provided for a settlement with Arthur St. Clair, for expenses while going from New York to Fort Pitt and till his return, and for services in the business of Indian treaties, and "allowed interest on the balance found to be due him." (6 Stats. at L., p. 16.)

3. An act approved February 27, 1795, authorized the officers of the Treasury to issue and deliver to Angus McLean, or his duly-authorized attorney, certificates for the amount of \$254.43, bearing interest at six per cent. from the 1st of July, 1783, being for his services in the Corps of Sappers and Miners during the late war. (6 Stat. at L., p. 20.)

4. An act approved January 23, 1798, directed the Secretary of the Treasury to pay to General Kosciusko an interest at the rate of 6 per cent. per annum on the sum of \$11,289.54, the amount of a certificate due to him from the United States from the 1st of January, 1793, to the 31st of December, 1797. (6 Stat. at L., p. 32.)

5. An act approved May 3, 1802, provided that there be paid Fulwar Skipwith the sum of \$4,550, advanced by him for the use of the United States, with interest at the rate of 6 per cent. per annum from the 1st of November, 1795, at which time the advance was made. (6 Stat. at L., p. 48.)

6. An act for the relief of John Coles, approved January 14, 1804, authorized the proper accounting officers of the Treasury to liquidate the claim of John Coles, owner of the ship Grand Turk, heretofore employed in the service of the United States, for the detention of said ship at Gibraltar from the 10th of May to the 4th of July, 1801, inclu-

sive, and that he be allowed demurrage at the rate stipulated in the charter-party, together with the interest thereon. (6 Stat. at L., p. 50.)

7. An act approved March 3, 1807, provided for a settlement of the accounts of Oliver Pollock, formerly commercial agent for the United States at New Orleans, allowing him certain sums and commissions, with interest until paid. (6 Stat. at L., p. 65.)

8. An act for the relief of Stephen Sayre, approved March 3, 1807, provided that the accounting officers of the Treasury be authorized to settle the account of Stephen Sayre, as secretary of legation at the court of Berlin, in the year 1777, with interest on the whole sum until paid. (6 Stat. at L., p. 65.)

9. An act approved April 25, 1810, directed the accounting officers of the Treasury to settle the account of Moses Young, as secretary of legation to Holland in 1780, and providing that after the deduction of certain moneys paid him, the balance, with interest thereon, should be paid. (6 Stat. at L., p. 89.)

10. An act approved May 1, 1810, for the relief of P. C. L'Enfant, directed the Secretary of the Treasury to pay to him the sum of \$666, with legal interest thereon from March 1, 1792, as a compensation for his services in laying out the plan of the city of Washington. (6 Stat. at L., p. 92.)

11. An act approved January 10, 1812, provided that there be paid to John Burnham the sum of \$126.72, and the interest on the same since the 30th of May, 1796, which, in addition to the sum allowed him by the act of that date, is to be considered a re-imbusement of the money advanced by him for his ransom from captivity in Algiers. (6 Stat. at L., p. 101.)

12. An act approved July 1, 1812, for the relief of Anna Young, required the War Department to settle the account of Col. John Durkee, deceased, and to allow said Anna Young, his sole heiress and representative, said seven years' half pay, and interest thereon. (6 Stat. at L., p. 110.)

13. An act approved February 25, 1813, provided that there be paid to John Dixon the sum of \$329.84, with 6 per cent. per annum interest thereon from the 1st of January, 1785, "being the amount of a final-settlement certificate, No. 596, issued by Andrew Dunscomb, late commissioner of accounts for the State of Virginia, on the 23d of December, 1786, to Lucy Dixon, who transferred the same to John Dixon." (6 Stat. at L., p. 117.)

14. An act approved February 25, 1813, required the accounting officers of the Treasury to settle the account of John Murray, representative of Dr. Henry Murray, and that he be allowed the amount of three loan-certificates for \$1,000, with interest from the 29th of March, 1782, issued in the name of said Murray, signed Francis Hopkinson, treasurer of loans. (6 Stat. at L., p. 117.)

15. An act approved March 3, 1813, directed the accounting officers of the Treasury to settle the accounts of Samuel Lapsley, deceased, and that they be allowed the amount of two final-settlement certificates, No. 78,446, for \$1,000, and No. 78,447, for \$1,300, and interest from the 23d day of March, 1783, issued in the name of Samuel Lapsley, by the commissioner of Army accounts for the United States on the 1st day of July, 1784. (6 Stat. at L., p. 119.)

16. An act approved April 13, 1814, directed the officers of the Treasury to settle the account of Joseph Brevard, and that he be allowed the amount of a final-settlement certificate for \$183.23, dated February 1, 1785, and bearing interest from the 1st of January, 1783,

issued to said Brevard by John Pierce, commissioner for settling Army accounts. (6 Stat. at L., p. 134.)

17. An act approved April 18, 1814, directed the receiver of public moneys at Cincinnati to pay the full amount of moneys, with interest, paid by Dennis Clark, in discharge of the purchase-money for a certain fractional section of land purchased by said Clark. (6 Stat. at L., 141.)

18. An act for the relief of William Arnold, approved February 2, 1815, allowed interest on the sum of \$600 due him from January 1, 1873. (6 Stat. at L., p. 146.)

19. An act approved April 26, 1816, directed the accounting officers of the Treasury to pay to Joseph Wheaton the sum of \$836.42, on account of interest due him from the United States upon \$1,600.84, from April 1, 1807, to December 21, 1815, pursuant to the award of George Youngs and Elias B. Caldwell, in a controversy between the United States and the said Joseph Wheaton. (6 Stat. at L., p. 166.)

20. An act approved April 26, 1816, authorized the liquidation and settlement of the claim of the heirs of Alexander Roxburgh, arising on a final-settlement certificate issued on the 18th of August, 1784, for \$480.87, by John Pierce, commissioner for settling Army accounts, bearing interest from the first of January, 1782. (6 Stat. at L., p. 167.)

21. An act approved April 14, 1818, authorized the accounting officers of the Treasury Department "to review the settlement of the account of John Thompson," made under the authority of an act approved the 11th of May, 1812, and "to allow the said John Thompson interest at 6 per cent. per annum from the 4th of March, 1787, to the 20th of May, 1812, on the sum which was found due to him, and paid under the act aforesaid." (6 Stat. at L., p. 208.)

22. An act approved May 11, 1820, directed the proper officers of the Treasury to pay to Samuel B. Beall the amount of two final-settlement certificates issued to him on the 1st of February, 1785, for his services as a lieutenant in the Army of the United States during the revolutionary war, together with interest on the said certificates, at the rate of 6 per cent. per annum, from the time they bore interest, respectively, which said certificates were lost by the said Beall, and remain yet outstanding and unpaid. (6 Laws of U. S., 510; 6 Stat. at L., p. 249.)

23. An act approved May 15, 1820, required that there be paid to Thomas Leiper the specie-value of four loan-office certificates, issued to him by the commissioner of loans for the State of Pennsylvania, on the 27th of February, 1779, for \$1,000 each; and also the specie-value of two loan-certificates, issued to him by the said commissioner on the 2d day of March, 1779, for \$1,000 each, with interest at 6 per cent. annually. (6 Stat. at L., p. 252.)

24. An act approved May 7, 1822, provided that there be paid to the legal representatives of John Guthry, deceased, the sum of \$123.30, being the amount of a final-settlement certificate, with interest at the rate of 6 per cent. per annum, from the first day of January, 1788. (6 Stat. at L., p. 269.)

25. An act for the relief of the legal representatives of James McClung, approved March 3, 1823, allowed interest on the amount due at the rate of 6 per cent. per annum from January 1, 1788. (6 Stat. at L., 284.)

26. An act approved March 3, 1823, for the relief of Daniel Seward, allowed interest to him for money paid to the United States for land to which the title failed, at the rate of 6 per cent. per annum from January 29, 1814. (6 Stat. at L., p. 286.)

27. An act approved May 5, 1824, directed the Secretary of the Treasury to pay to Amasa Stetson the sum of \$6,215, "being for in-



terest on moneys advanced by him for the use of the United States, and on warrants issued in his favor, in the years 1814 and 1815, for his services in the Ordnance and Quartermaster's Department, for superintending the making of Army clothing and for issuing the public supplies." (6 Stat. at L., p. 298.)

28. An act approved March 3, 1824, directed the proper accounting officers of the Treasury to settle and adjust the claim of Stephen Arnold, David and George Jenks, for the manufacture of three thousand nine hundred and twenty-five muskets, with interest thereon from the 26th day of October, 1813. (6 Stat. at L., p. 331.)

29. An act approved May 20, 1826, directed the proper accounting officers of the Treasury to settle and adjust the claim of John Stemman and others for the manufacture of four thousand one hundred stand of arms, and to allow interest on the amount due from October 26, 1813. (6 Stat. at L., p. 345.)

30. An act approved May 20, 1826, for the relief of Ann D. Taylor, directed the payment to her of the sum of \$354.15, with interest thereon at the rate of 6 per cent. per annum from December 30, 1876, until paid. (6 Stat. at L., p. 351.)

31. An act approved March 3, 1827, provided that the proper accounting officers of the Treasury were authorized to pay to B. J. V. Valkenburg the sum of \$597.24, "being the amount of fourteen indents of interest, with interest thereon from the 1st of January, 1791, to the 31st of December, 1826." (6 Stat. at L., p. 365.)

In this case the United States paid interest on interest.

32. An act approved May 19, 1828, provided that there be paid to the legal representatives of Patience Gordon the specie value of a certificate issued in the name of Patience Gordon by the commissioner of loans for the State of Pennsylvania, on the 7th of April, 1778, with interest at the rate of 6 per cent. per annum from the 1st day of January, 1788. (7 Stat. at L., p. 378.)

33. An act approved May 29, 1830, required the Treasury Department "to settle the accounts of Benjamin Wells, as deputy commissary of issues at the magazine at Monster Mills, in Pennsylvania, under John Irvin, deputy commissary-general of the Army of the United States, in said State, in the revolutionary war;" and that "they credit him with the sum of \$574.04, as payable February 9, 1779, and \$326.67, payable July 20, 1780, in the same manner, and with such interest, as if these sums, with their interest from the times respectively as aforesaid, had been subscribed to the loan of the United States." (6 Stat. at L., p. 447.)

34. An act approved May 19, 1832, for the relief of Richard G. Morris, provided for the payment to him of two certificates issued to him by Timothy Pickering, Quartermaster-General, with interest thereon from the 1st of September, 1781. (6 Stat. at L., p. 486.)

35. An act approved July 4, 1832, for the relief of Aaron Snow, a revolutionary soldier, provided for the payment to him of two certificates issued by John Pierce, late commissioner of Army accounts, and dated in 1784, with interest thereon. (6 Stat. at L., p. 503.)

36. An act approved July 4, 1832, provided for the payment to W. P. Gibbs of a final settlement certificate dated January 30, 1784, with interest at 6 per cent. from the 1st of January 1783, up to the passage of the act. This act went behind the final certificate and provided for the payment of interest anterior to its date. (6 Stat. at L., p. 504.)

37. An act approved July 14, 1832, directed the payment to the heirs of Ebenezer L. Warren of certain sums of money illegally demanded

and received by the United States from the said Warren as one of the sureties of Daniel Evans, formerly collector of direct taxes, with interest thereon at the rate of 6 per cent. per annum from September 9, 1820. (6 Stat. at L., p. 373.)

38. An act for the relief of Hartwell Vick, approved July 14, 1832, directed the accounting officers of the Treasury to refund to the said Vick the money paid by him to the United States for a certain tract of land which was found not to be the property of the United States, with interest thereon at the rate of 6 per centum per annum, from the 23d day of May, 1818. (6 Stat. at L., 523.)

39. An act approved June 18, 1834, for the relief of Martha Bailey and others, directed the Secretary of the Treasury to pay to the parties therein named the sum of \$4,837.61, being the amount of interest upon the sum of \$200,000, part of a balance due from the United States to Elbert Anderson on the 26th day of October, 1814; also the further sum of \$9,595.36, being the amount of interest accruing from the deferred payment of warrants issued for balances due from the United States to the said Anderson from the date of such warrants until the payment thereof; also the further sum of \$2,018.50 admitted to be due from the United States to the said Anderson by a decision of the Second Comptroller, with interest on the sum last mentioned from the period of such decision until paid. (6 Stat. at L., p. 562.)

40. An act approved June 30, 1834, directed the Secretary of the Treasury to pay balance of damages recovered against William C. H. Waddell, United States marshal for the southern district of New York, for the illegal seizure of a certain importation of brandy, on behalf of the United States, with legal interest on the amount of said judgment from the time the same was paid by the said Waddell. (6 Stat. at L., p. 594.)

41. An act approved February 17, 1836, directed the payment of the sum therein named to Marinus W. Gilbert, being the interest on money advanced by him to pay off troops in the service of the United States, and not repaid when demanded. (6 Stat. at L., p. 622.)

42. An act approved February 17, 1836, for the relief of the executor of Charles Wilkins, directed the Secretary of the Treasury to settle the claim of the said executor for interest on a liquidated demand in favor of Jonathan Taylor, James Morrison, and Charles Wilkins, who were lessees of the United States of the salt-works in the State of Illinois. (6 Stat. at L., p. 626.)

43. An act approved July 2, 1836, for the relief of the legal representatives of David Caldwell, directed the proper accounting-officers of the Treasury to settle the claim of the said David Caldwell for fees and allowances certified by the circuit court of the United States for the eastern district of Pennsylvania, for official services to the United States, and to pay on that account the sum of \$496.38, with interest thereon at the rate of 6 per cent. from the 25th day of November, 1830, till paid. (6 Stat. at L., p. 664.)

44. An act approved July 2, 1836, provided that there be paid Don Carlos Delossus interest at the rate of 6 per cent. per annum on \$333, being the amount allowed him under the act of July 14, 1832, for his relief on account of moneys taken from him at the capture of Baton Rouge, La., on the 23d day of September, 1810, being the interest to be allowed from the said 23d day of September, 1810, to the 14th day of July, 1832. (6 Stat. at L., p. 672.)

In this case the interest was directed to be paid four years after the principal had been satisfied and discharged.

45. An act approved July 7, 1838, provided that the proper officers of the Treasury be directed to settle the accounts of Richard Harrison formerly consular agent of the United States at Cadiz, in Spain, and to allow him, among other items, the interest on the money advanced, under agreement with the minister of the United States in Spain for the relief of destitute and distressed seamen, and for their passages to the United States, from the time the advances respectively were made to the time at which the said advances were re-imbursed. (6 Stat. at L., p. 734.)

46. An act approved August 11, 1842, directed the Secretary of the Treasury to pay to John Johnson the sum of \$756.82, being the amount received from the said Johnson upon a judgment against him in favor of the United States, together with the interest thereon from the time of such payment. (6 Stat. at L., p. 856.)

47. An act approved August 3, 1846, authorized the Secretary of the Treasury to pay to Abraham Horbach the sum of \$5,000, with lawful interest from the 1st of January, 1836, being the amount of a draft drawn by James Reeside on the Post-Office Department, dated April 18, 1835, payable on the 1st of January, 1836, and accepted by the treasurer of the Post-Office Department, which said draft was indorsed by said Abraham Horbach at the instance of the said Reeside, and the amount drawn from the Bank of Philadelphia, and, at maturity, said draft was protested for non payment, and said Horbach became liable to pay, and, in consequence of his indorsement, did pay the full amount of said draft. (9 Stat. at L., p. 677.)

48. An act approved February 5, 1859, authorized the Secretary of War to pay to Thomas Laurent, as surviving partner, the sum of \$15,000, with interest at the rate of 6 per cent. yearly, from the 11th of November, 1847, it being the amount paid by the firm on that day to Major-General Winfield Scott, in the city of Mexico, for the purchase of a house in said city, out of the possession of which they were since ousted by the Mexican authorities. (11 Stat. at L., p. 558.)

49. An act approved March 2, 1847, directed the Secretary of the Treasury to pay the balance due to the Bank of Metropolis for moneys due upon the settlement of the account of the bank with the United States, with interest thereon from the 6th day of March, 1838. (9 Stat. at L., p. 689.)

50. An act approved July 20, 1852, directed the payment to the legal representatives of James C. Watson, late of the State of Georgia, the sum of \$14,600, with interest at the rate of 6 per cent. per annum, from the 8th day of May, 1838, till paid, being the amount paid by him, under the sanction of the Indian agent, to certain Creek warriors, for slaves captured by said warriors while they were in the service of the United States against the Seminole Indians in Florida. (10 Stat. at L., p. 734.)

51. An act approved July 29, 1854, directed the Secretary of the Treasury to pay to John C. Frémont \$183,825, with interest thereon from the 1st day of June, 1851, at the rate of 10 per cent. per annum, in full for his account for beef delivered to Commissioner Barbour, for the use of the Indians in California, in 1851 and 1852. (10 Stat. at L., p. 804.)

52. An act approved July 8, 1870, directed the Secretary of the Treasury to make proper payments to carry into effect the decree of the district court of the United States for the district of Louisiana, bearing date the *fourth* of June, 1867, in the case of the British brig Volant, and her cargo; and also another decree of the same court, bearing date the *eleventh* of June, in the same year, in the case of the British bark Science, and cargo, vessels illegally seized by a cruiser of the United

States; such payments to be made as follows, viz: To the several persons named in such decrees, or their legal representatives, the several sums awarded to them respectively, *with interest to each person from the date of the decree under which he receives payment.* (16 Stat. at L., p. 650.)

53. An act approved July 8, 1870, directed the Secretary to make the proper payments to carry into effect the decree of the district court of the United States for the district of Louisiana, bearing date July 13, 1867, in the case of the British brig *Dashing Wave*, and her cargo, illegally seized by a cruiser of the United States, which decree was made in pursuance of the decision of the Supreme Court, *such payments to be made with interest from the date of the decree.* (16 Stat. at L., p. 651.)

An examination of these cases will show that, subsequent to the seizure of these several vessels, they were each sold by the United States marshal for the district of Louisiana as prize, and the proceeds of such sales deposited by him in the First National Bank of New Orleans. The bank, while the proceeds of these sales were on deposit there, became insolvent. The seizures were held illegal, and the vessels not subject to capture as prize. But the proceeds of the sales of these vessels and their cargoes could not be restored to the owners in accordance with the decrees of the district court, because the funds had been lost by the insolvency of the bank. In these cases, therefore, Congress provided indemnity for losses resulting from the acts of its agents, and made the indemnity complete by providing for the payment of interest.

Your committee have directed attention to these numerous precedents for the purpose of exposing the utter want of foundation of the often-repeated assumption that, "the Government never pays interest." It will readily be admitted that there is no statute-law to sustain this position. The idea has grown up from the custom and usage of the accounting-officers and departments refusing to allow interest generally in their accounts with disbursing-officers and in the settlement of unliquidated domestic claims arising out of dealings with the Government. It will hardly be pretended, however, that this custom or usage is so "reasonable," well known, and "certain" as to give it the force and effect of law, and to override and trample under foot the law of nations and also the well-settled practice of the Government itself in its intercourse with other nations.

11th. Interest was allowed and paid to the State of Massachusetts, because the United States delayed the payment of the principal for twenty-two years after the amount due had been ascertained and determined. The amount appropriated to pay this interest was \$678,362.41, more than the original principal. (16 Stat. at L., p. 198.)

Mr. Sumner, in his report upon the memorial introduced for that purpose, discussing this question of interest, said :

It is urged that the payment of this interest would establish a bad precedent. If the claim is just, the precedent of paying it is one of which our Government should wish to establish. Honesty and justice are not precedents of which either government or individuals should be afraid. (Senate Report 4, 41st Cong., 1st sess., p. 10.)

12th. Interest has always been allowed to the several States for advances made to the United States for military purposes.

The claims of the several States for advances during the revolutionary war were adjusted and settled under the provision of the acts of Congress of August 5, 1790, and of May 31, 1794. By these acts interest was allowed to the States, whether they had advanced money on hand in their treasuries or obtained by loans.

In respect to the advances of States during the war of 1812-'15, a more restricted rule was adopted, viz: That States should be allowed

interest only so far as they had themselves paid it by borrowing, or had lost it by the sale of interest-bearing funds.

Interest, according to this rule, has been paid to all the States which made advances during the war of 1812-'15, with the exception of Massachusetts. Here are the cases :

Virginia, Stat. at L., vol 4, p. 161.

Delaware, Stat. at L., vol. 4, p. 175.

New York, Stat. at L., vol. 4, p. 192.

Pennsylvania, Stat. at L., vol. 4, p. 241.

South Carolina, Stat. at L., vol. 4, p. 499.

In Indian and other wars the same rule has been observed as in the following cases :

Alabama, Stat. at L., vol. 9, p. 344.

Georgia, Stat. at L., vol. 9, p. 626.

Washington Territory, Stat. at L., vol. 11, p. 429.

New Hampshire, Stat. at L., vol. 10, p. 1.

13th. The Senate Committee on Indian Affairs, in the report to which reference has heretofore been made, speaking of this award and of the obligation of the United States to pay interest upon the balance remain- ing due and unpaid thereon, used the following language :

Your committee are of opinion that this sum should be paid them with accrued interest from the date of said award, deducting therefrom \$250,000, paid to them in money, as directed by the act of March 2, 1861 ; and, therefore, find no sufficient reason for further delay in carrying into effect that provision of the aforementioned act, and the act of March 3, 1871, by the delivery of the bonds therein described, with accrued interest from the date of the act of March 8, 1861.

Your committee have discussed this question with an anxious desire to come to such a conclusion in regard to it as would do no injustice to that Indian nation whose rights are involved here, nor establish such a precedent as would be inconsistent with the practice or duty of the United States in such cases. Therefore, your committee have considered it not only by the light of those principles of the public law—always in harmony with the highest demands of the most perfect justice—but also in the light of those numerous precedents which this Government in its action in like cases has furnished for our guidance. Your committee cannot believe that the payment of interest on the moneys awarded by the Senate to the Choctaw Nation would either violate any principle of law or establish any precedent which the United States would not wish to follow in any similar case, and your committee cannot believe that the United States are prepared to repudiate these principles, or to admit that because their obligation is held by a weak and powerless Indian nation, it is any the less sacred or binding than if held by a nation able to enforce its payment and secure complete indemnity under it. Could the United States escape the payment of *interest* to Great Britain if it should refuse or neglect, after the same became due, to pay the amount awarded in favor of British subjects by the recent joint commission which sat here ? Could we delay payment of the amount awarded by that commission for fifteen years, and then escape by merely paying the principal ? The Choctaw Nation asks the same measure of justice which we *must* accord to Great Britain ; and your committee cannot deny that demand unless they shall ignore and set aside those principles of the public law which it is of the utmost importance to the United States to always maintain inviolate.

Your committee are not unmindful that the amount due the Choctaw Nation under the award of the Senate is large. They are not un- mind

ul, either, that the discredit of refusing payment is increased in proportion to the amount withheld and the time during which such refusal has been continued. That the amount to be paid is large is no fault of the Choctaw Nation. The whole amount was due when, on the 2d day of March, 1861, Congress authorized the payment, on account of the award, of the sum of two hundred and fifty thousand dollars; and if, at that time, the bonds of the United States had been issued in satisfaction of the award, the Choctaw Nation would have received interest on them from that time, and thus derived such advantage as would have resulted, from time to time, from the payment of semi-annual interest and the sale of the gold which they would have received in the payment of interest. The bill under consideration provides that the amount due upon the award of the Senate shall be satisfied and paid, (both principal and interest,) in the bonds of the United States of like character and description as those authorized to be issued under the act of Congress entitled "An act authorizing a loan," approved February 8, 1861. They were bonds of this issue that the Secretary of the Treasury was required to deliver in part payment of the amount authorized to be paid on account of the said award, under the provisions of the act of March 2, 1861. If this award had then been wholly satisfied and discharged, it would have been in bonds of this description. The act of February 8, 1861, authorized the issue of bonds to the amount of \$25,000,000, of which there have been issued \$18,485,000. There is therefore to the credit of this act, bonds to the amount of \$6,515,000, which may be issued for any purpose which Congress shall direct. Your committee, bearing in mind that the moneys so long withheld from the Choctaw Nation are in the nature of trust-funds, and that the United States had the use of these moneys for so many years before the making of the award in favor of the Choctaw Nation by the United States Senate, and that the Choctaw Nation is in a certain sense a ward of the United States, cannot recommend any other payment to them except such as will do them perfect justice and provide for them complete indemnity. This result will be most nearly accomplished by the issue and delivery to the Choctaw Nation of those bonds which would have been issued to them had the whole award been paid at the time provision was made for its part payment, as provided in the act of March 26, 1861; and interest on the said award should be added from the time the same was made by the United States Senate; and that for these, both principal and interest, bonds of the United States, of the character and description of other bonds issued under the act of February 8, 1861, should be issued for the use and benefit of the Choctaw Nation.

Your committee believe that this course, and nothing less, will satisfy the demands of justice, and relieve the United States from the imputation of bad faith and an inexcusable disregard of treaty obligations.

#### AUTHORITY TO RECEIVE THE BONDS.

The bill under consideration provides that the bonds for which it makes provision shall be delivered to Peter P. Pitchlynn and Peter Folsom, or to either of them who may demand the same on behalf of the Choctaw Nation. The reason for directing these bonds to be delivered to these persons, as the delegates of the Choctaw Nation, results from the fact that for more than twenty years one of these delegates, Governor Pitchlynn, many years principal chief of the Choctaw Nation, has been here pressing the just claims of his nation upon the attention of Congress. He has been the accredited agent and trusted servant of his

nation before the Government of the United States, and he has been so recognized by the different Departments of the Government.

The evidence of the authority of the said delegates, submitted to your committee, shows that—

The Choctaw national council, by several legislative enactments, passed, respectively, November 9, 1853, November 10, 1854, November 17, 1855, November 4, 1857, November 25, 1867, and March 18, 1872, constituted and appointed Peter P. Pitchlynn, Israel Folsom, Samuel Garland, and Dixon W. Lewis their special agents for the purpose of securing the payment from the United States of certain claims or demands which the Choctaw Nation and individual members thereof had and asserted against the United States, under the treaty between the United States and the Choctaw Nation, concluded September 27, 1830. The claims are known and styled "The Choctaw Net Proceeds Claims." The first of these acts declared the powers and authority of these delegates in the following language :

That the said delegates are hereby clothed with full power to settle and dispose of, by treaty or otherwise, all and every claim and interest of the Choctaw people against the Government of the United States, and to adjust and bring to a final close all unsettled business, of the Choctaw people with the said Government of the United States. (Laws of the Choctaw Nation, pp. 123, 124, 125.)

By the act of 1854 these agents were further authorized and instructed as follows :

To remain at Washington and continue to press to final settlement all claims and unsettled business of the Choctaws with said Government, with full powers to take all measures and enter into all contracts which, in their judgment, may become necessary and proper, in the name of the Choctaw people, and to bring to a final and satisfactory adjustment and settlement all claims or demands whatever, which the Choctaw tribe, or any member thereof, have against the Government of the United States, by treaty or otherwise. (Laws of Choctaw Nation, pp. 133, 134.)

The act of November 4, 1857, authorized either of the delegates who might be present in Washington to act for and on behalf of the nation ; and the act of November 25, 1867, declared that the terms of service of the said delegates should continue until the whole business of their agency was adjusted and settled.

The delegates or agents named and appointed in and by the first of these acts have all died except Peter P. Pitchlynn, and, in the place of Dixon W. Lewis, Peter Folsom has been appointed a delegate and agent of the nation, so that the delegates or agents of the said nation, under the said legislative enactments, are Peter P. Pitchlynn and Peter Folsom. By the fifth section of the act approved March 18, 1872, it was declared and provided as follows :

And all powers and authorities heretofore conferred upon said delegates by several acts and resolutions of the general council, are hereby re-affirmed and declared in full force.

The money paid to the said nation under the act of March 2, 1861, was paid directly to the said delegates and received for by them, and afterward duly accounted for to that nation.

Your committee have been furnished with no evidence of any purpose on the part of the Choctaw Nation to withdraw from the said delegates any of the authority conferred upon them, and they are still, as they have been for so many years, the authorized and trusted delegates of the said nation. Your committee are of the opinion, therefore, that all the rights and interests of the Choctaw Nation may safely be intrusted to the said delegates, and that the bonds for which the bill under consideration makes provision, may with propriety and safety to the said nation be delivered to the said delegates as provided in the bill which is the subject of this report.

## EXHIBIT IV.

House Report No. 599. Forty-third Congress, first session.

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 L., p. 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 L., p. 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 L., p. 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 L., 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 L., p. 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 redesignates 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 334,101.02 acres, which, deducted from the total area of the ceded territory, leaves 10,089,038.67 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 \$4,055,053.54.

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 headmen 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 21 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 10,089,038.67 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 eleventh and twelfth 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, p. 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 day of 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 kind-

ness 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 .....  | 10,089,028.67 |
| 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     |
|  | 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..... | \$1,042,313.99 |
| 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   |  |
|   | 38,361.12   |  |

SIXTEENTH ARTICLE.

|  |              |  |
|--|--------------|--|
| Removal and subsistence, per statement of Second Auditor.....  | \$513,927.07 |  |
| On same account, per additional statement made in his office for expenditures from 1838 to date..... | 401,556.17   |  |
| Amount paid for cattle.....  | 14,283.28    |  |
|  | 1,229,766.52 |  |

SEVENTEENTH ARTICLE.

|                               |            |
|-------------------------------|------------|
| Annuity for twenty years..... | 400,000.00 |
|-------------------------------|------------|

NINETEENTH ARTICLE.

|   |             |  |
|---|-------------|--|
| Fifty cents per acre for reservations relinquished..... | \$24,840.00 |  |
| Amount to orphan reservations.....                      | 120,826.76  |  |
|   | 145,666.73  |  |

## 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     |              |
|  |              | \$396,947 23 |

## 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 of September, 1830..  | 51,320 79    |                |
| 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 the said tribe of 27th September, 1830.....  | 19,864 00    |                |
| Total amount of charges.....   | 5,097,367 50 | \$3,078,614 80 |
| When deducted from the proceeds of the land sold, and the "residue of said lands," at 12½ cents per acre.....  |              | 5,097,367 50   |
| 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.....                             | 6,801,029 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 285,954.88 acres embraced as *permanent Indian reserves* in said cession, upon which a percentage required by the act of 3d of 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 \$522,046.65; or, together, \$8,037,614.85; 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<sup>69</sup>/<sub>100</sub> 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      |
| Clothes 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." No-



body 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 million 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 do 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.

### EXHIBIT V.

House Ex. Doc. No. 47, 43d Congress, 2d session.

#### LIABILITIES OF CHOCTAW INDIANS TO INDIVIDUALS.

*Letter from the Secretary of the Treasury, transmitting certain information relative to the amounts of liabilities due from the Choctaw tribe of Indians to individuals.*

SIR: By the third section of the sundry civil appropriation act of June 23, 1874, the Secretary of the Treasury is "directed to inquire into the amounts of liabilities due from the Choctaw tribe of Indians to individuals, as referred to in articles 12 and 13 of the treaty of June 22, 1855, between the United States and the Choctaw and Chickasaw tribes of Indians, and to report the same to the next session of Congress, with a view of ascertaining what amounts, if any, should be deducted from the sum due from the United States to said Choctaw tribe, for the purpose of enabling the said tribe to pay its liabilities, and thereby to enable Congress to provide a fund to be held for educational and other purposes, for said tribe, as provided for in article 13 of the treaty aforesaid."

For the purpose of obtaining the most authentic and complete information on the subject involved in such inquiry as was presumed to be officially accessible, I addressed a letter to the Second Comptroller, asking him to collect and report to me such information as he might be able to obtain in any of the Bureaus of this Department, and of the Interior Department, or elsewhere, which in his judgment might assist me in complying with the request of Congress.

Application was accordingly made to the Department of the Interior, and copies of the correspondence and reports connected therewith are herewith submitted as follows:

1. Letter from Acting Second Comptroller to the Secretary of the Interior, dated September 10, 1874.
2. Letter from same to Secretary of the Treasury, dated September 25, 1874.
3. Letter from the Secretary of the Interior, dated September 24, 1874.
4. Letter from Commissioner of Indian Affairs, dated September 21, 1874.
5. Reports from the Indian Bureau, dated respectively May 15, 1858, and March 22, 1860.

These reports were found, upon examination, to relate mainly to the proceedings originally had for the purpose of ascertaining the sum due the Choctaws under the treaty of 1855, and were insufficient to enable

me to furnish the desired information respecting the liabilities in question. Recourse has therefore been had to such other sources of information as were available, including the printed reports of committees of the respective houses of Congress on the general subject of the Choctaw claims, and a formal statement of the said liabilities, addressed to the Secretary of the Treasury by P. P. Pitchlynn, Choctaw delegate, under date of July 10, 1874, for the express purpose, as he states, of facilitating the inquiry contemplated by Congress. This statement has since been formally sanctioned by the general council of the Choctaw Nation, as appears by their memorial dated October 29, 1874, a copy of which, and of the statement referred to, accompanies this report.

From this statement it appears that the liabilities to individuals, by which are intended the claims of individual Choctaws assumed by the Choctaw Nation in consideration of the award made by the Senate under the treaty of 1855, are divided into four classes, viz :

*First.* Those arising under the fourteenth article of the treaty of 1830, which gave to each head of a Choctaw family, desiring to remain in the States, a section of land, together with a half-section for each child over, and a quarter-section for each child under ten years of age at the date of the treaty, on condition that, within six months after the ratification thereof, the intention to remain was signified to the agent of the United States. It is alleged in said statement that the records of the Indian Office show that 1,585 families claimed the benefit of this article, but that only 143 secured the land to which they were entitled; that 1,442 families lost their homes, of which number 1,150, after struggling fifteen years, succeeded in obtaining partial indemnity, and that the remaining 292 families have never received any compensation whatever for their losses.

|   |                  |
|---|------------------|
| The original claims of the 1,150 families appear, by the statement, to amount to .....  | \$1,798,400.     |
| Of the 292 families, to .....   | 405,400          |
| <b>Total under article 14 .....</b>   | <b>2,203,800</b> |
| <i>Second.</i> Claims of families who failed to obtain allowances to which they were entitled under article 19 of the treaty of 1830.....   | 451,800          |
| <i>Third.</i> Claims for expenses of 960 "self-emigrants," and for 18,669 head of cattle, horses, &c., lost by compulsory emigration.....   | 203,706          |
| <i>Fourth.</i> Claims of 2,000 Choctaws, who emigrated before the year 1830, being for their interest in the ceded territory .....  | 356,792          |
| <b>Aggregate amount of claims without interest .....</b>  | <b>3,216,098</b> |
| According to the statement, interest will have to be allowed by the Choctaw authorities on claims of the first and third classes for periods varying from 23 to 40 years, and which, calculated at 5 per cent. per annum, amount to ..... | 2,223,453        |
| <b>Making an aggregate, principal and interest, of .....</b>  | <b>5,439,551</b> |

The number of claimants of the first class is stated as follows :

|   |              |
|---|--------------|
| Heads of families who received partial compensation ..... | 1,150        |
| Children over ten years of age .....                      | 1,468        |
| Children under ten years of age .....                     | 1,215        |
|   | <hr/>        |
|   | 3,833        |
| Heads of families who received no compensation.....       | 292          |
| Children over ten years of age .....                      | 291          |
| Children under ten years of age.....                      | 277          |
|   | <hr/>        |
|   | 860          |
| <b>Total number of claimants of the first class .....</b> | <b>4,693</b> |

The claims of the second and third classes are also said to be on file in the Indian Office, but the number is not given. Of the fourth class, it is said, no claims have ever been filed.

It is further alleged that "full accounts of the 14th-article claims," (which constitute more than two-thirds of the entire amount,) "of the evidence by which they are supported, and of what the claimants have heretofore received, may be found in the Department of the Interior."

For further details of the said claims and for the evidence of their validity, I respectfully refer to the aforesaid memorial and statement, to the records and files of the Indian Bureau, and to a supplementary statement signed by Mr. Pitchlynn, dated November 27, 1874, a copy of which also accompanies this report.

It is obviously impracticable for the Secretary of the Treasury to ascertain, with any degree of precision, the actual amount of the liabilities in question, as assumed and to be paid by the Choctaw Nation to individual claimants, involving, as it would, a separate examination of each claim and of the evidence supporting it. Nor could such action, if practicable, take the place of a final adjudication of each claim; a power vested, by the express terms of the treaty of 1855, in the proper authorities of the Choctaw tribe as a concomitant to the transfer of liability from the United States to the tribe. A tribunal for this purpose, it appears, was established in the year 1859, under an act passed by the general council of the Choctaws, a copy of which accompanies this report. It further appears that, by a resolution of the council, passed in the same year, the governor of the Choctaws was "requested to forthwith address the Commissioner of Indian Affairs, at Washington City, asking him to transmit to the United States agent, for this nation, copies of all the names of individual claimants, under any former treaty, with the accompanying evidences of such claims, in order to enable the proper authorities of this nation to carry out the provisions of the 12th article of the treaty of June 22, 1855." (Laws of the Choctaw Nation, as published in 1869, pp. 204, 210.)

The application thus authorized was, it is said, accordingly made, but without success, and although frequently repeated has never been complied with. I deem it proper here to refer to the fact that, as appears by the supplementary statement before mentioned, this information was sought for the purpose of identifying claimants, and thus enable the Choctaw authorities to make a proper distribution of the proceeds of the amount of the Senate award. The validity and justice of the several classes of claims was, it would seem, conceded by said authorities to an amount far exceeding the sum to be realized under that award, but they necessarily awaited its receipt before proceeding to the payment in whole or in part of individual claims.

It being, as I have shown, impracticable for the Secretary of the Treasury to ascertain the amount of existing "liabilities," the payment of which is to be provided for, I cannot, of course, state how much, if any, of the sum due under the award will remain for an educational fund.

It is alleged on the part of the Choctaws not only that there will be no such balance, but that, unless Congress shall, as recommended by two several committees at the last session, allow interest on the award, the balance due them will be inadequate to satisfy valid and subsisting individual claims.

In this connection, I deem it proper to remark that while the act of June 23, 1874, by which this inquiry was directed, is apparently intended to provide a trust-fund for educational and other purposes, for the ben-

eft of the Choctaw people, such fund, as a matter of fact, is already in existence, under the provisions of existing treaties, and the balance of the award, if any should remain, would go as an addition to such existing fund, not to create one.

The results of the inquiry directed by Congress may be briefly summarized as follows:

|  |                |
|--|----------------|
| Amount of liabilities from the nation to individuals, without interest.....              | \$3,216,098 00 |
| Amount of liabilities from the nation to individuals, with interest.....                 | 5,439,551 00   |
| <hr/>  |                |
| Amount of "net proceeds": or "sum due" as ascertained under the award of the Senate..... | 2,981,247 30   |
| Less payment on account.....   | 250,000 00     |
| <hr/>  |                |
| Balance of award, exclusive of interest.....   | 2,731,247 30   |

As the question of the sum due from the United States to the nation has been the subject of long and careful consideration on the part of Congress, extending over many years, and as the act directing inquiry does not require it, I do not feel called upon to make more than a passing allusion to the matter in this connection, and I express no opinion as to the amount or any amount as liquidated or justly due from the United States.

The amount above named as due is that sum fixed upon in the report of the Secretary of the Interior, May 8, 1860, under the resolution of the Senate, March 9, 1859, based on the 11th article of the treaty.

It is referred to in several reports of committees of the respective houses of Congress as follows:

Report of Senate Committee on Indian Affairs, No. 318, 42d Congress, 3d session.

Report of House Committee on Indian Affairs, No. 80, same session.

Report of House Committee on Appropriations, No. 391, 43d Congress, 1st session.

Report of House Committee on Indian Affairs, No. 599, same session.

The credit of \$250,000 is a cash payment to the accredited agents of the Choctaw Nation under an act entitled "An act making appropriations \* \* \* \* for fulfilling treaty stipulations with various Indian tribes," approved March 2, 1861.

The sum of \$500,000 was appropriated on account of the claim of the Choctaws under the treaty of 1855, but, for reasons growing out of the rebellion affecting the peaceful relations theretofore existing between the Choctaws and the National Government, the payment of the other half of the appropriation was suspended by the Secretary of the Treasury.

Although friendly relations were restored by the treaty of April 28, 1866, the United States re-assuming its former obligations in the premises, doubts had in the mean time arisen as to the power of the Secretary of the Treasury to complete the payment authorized by the act of 1861 by delivering bonds for the remainder. And notwithstanding the opinion of the Attorney-General, 15th of December, 1870, 13 Op., 354, in favor of such delivery, it was not made, and appears subsequently to have been postponed for an indefinite period.

On the 6th of June, 1872, the Secretary of the Treasury transmitted to the President of the Senate a report made by the Solicitor of the Treasury, under date of May 29, 1872, adverse to the issue of said bonds, or to any further appropriation on the basis of the account stated under the award of the Senate. In a second report, dated November 14, 1872, and transmitted by the Secretary to Congress Janu-

ary 6, 1873, the Solicitor reiterated his former opinion, elaborately setting forth his reasons therefor.

The Senate Committee on Indian Affairs subsequently examined the Solicitor's objections in detail, but, according to their report before referred to, (No. 318,) did not regard them as conclusive. The same opinion was also substantially entertained by the House Committee on Indian Affairs, according to their report before referred to, (No. 80.) The Solicitor's views were, however, so far accepted by the Secretary of the Treasury as to induce him to recommend Congress to delay action on the award for the purpose of further investigation.

I am, very respectfully,

B. H. BRISTOW,  
*Secretary of the Treasury.*

Hon. JAMES G. BLAINE,  
*Speaker of the House of Representatives.*

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TREASURY DEPARTMENT,  
SECOND COMPTROLLER'S OFFICE,  
*September 10, 1874.*

SIR: I herewith transmit a copy of a letter received from the Secretary of the Treasury, relative to certain liabilities due from the Choctaw tribe of Indians to individuals, as referred to in articles twelve and thirteen, treaty of June, 1855, (11 Stat., p. 614,) with the Choctaw and Chickasaw Indians, and requesting the Comptroller to collect and report to him such information as he, the Comptroller, may be able to obtain in the Bureaus of the Treasury Department and the Interior Department, or elsewhere, which in his judgment may assist the Secretary of the Treasury in complying with the requirements of the act referred to in the Secretary's letter.

I have therefore respectfully to ask the Secretary of the Interior, at his earliest convenience, to forward to this Office, for the use of the Secretary, such information as can be obtained from the records of the Interior Department.

E. B. CURTIS,  
*Acting Comptroller.*

Hon. C. DELANO,  
*Secretary of the Interior.*

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TREASURY DEPARTMENT,  
SECOND COMPTROLLER'S OFFICE,  
*September 25, 1874.*

SIR: Referring to your letter of the 8th instant to the Second Comptroller, relative to the third section of the act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1875, which directs the Secretary of the Treasury to inquire into the amounts of liabilities due from the Choctaw tribe of Indians to individuals, as referred to in articles twelve and thirteen of the treaty of June 22, 1855, &c., I have the honor to reply that the records of the Treasury Department afforded no information relative to this subject. I therefore referred your letter to the Secretary of the Interior, with re-

quest that he would give the desired information at his earliest convenience.

I received this morning a letter from the Secretary of the Interior, transmitting to this Office a copy of the letter of the Commissioner of Indian Affairs upon the subject, also copies of reports purporting to give the information asked for in your letter.

I herewith inclose all the papers received, with the Secretary's letter, a copy of which is also inclosed.

Very respectfully,

E. B. CURTIS,  
*Acting Comptroller.*

Hon. B. H. BRISTOW,  
*Secretary of the Treasury.*

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DEPARTMENT OF THE INTERIOR,  
*Washington, D. C., September 24, 1874.*

SIR: I acknowledge the receipt of your letter of the 10th instant, with a copy of letter inclosed from the Secretary of the Treasury, addressed to your Office on the 8th instant, relative to certain liabilities due from the Choctaw tribe of Indians to individuals, referred to in articles twelve and thirteen of treaty of June, 1855. (Stat. 11, p. 614.)

This matter having been referred to the Commissioner of Indian Affairs, I inclose herewith copy of his letter upon the subject, also copies of reports giving the information asked for in your letter.

Very respectfully,

C. DELANO,  
*Secretary.*

Hon. J. M. BRODHEAD,  
*Second Comptroller.*

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DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, D. C., September 21, 1874.*

SIR: I have the honor to acknowledge the receipt, by reference from the Department, of a letter dated the 10th instant, from the Acting Second Comptroller of the Treasury Department, and copy of a letter dated the 8th instant, inclosed by him, from the honorable Secretary of the Treasury, making inquiry as to the amount of liabilities due from the Choctaw tribe of Indians to individuals, as referred to in articles twelve and thirteen of the treaty of June 22, 1855, with the Choctaw and Chickasaw tribes of Indians. (U. S. Stats., vol. 11, p. 614.)

In compliance with the directions contained in said reference, I respectfully submit, as embodying such information as is in the possession of this Office upon the subject, copies of reports to the Department, dated May 15, 1858, and March 22, 1860, respectively.

The schedules accompanying the report of March 22, 1860, were transmitted to both houses of Congress by the Department on the 8th day of May, 1860.

The communications inclosed by you are herewith returned.

Very respectfully, your obedient servant,

EDWD. P. SMITH,  
*Commissioner.*

Hon. SECRETARY OF THE INTERIOR.



DEPARTMENT OF THE INTERIOR,  
OFFICE INDIAN AFFAIRS,  
May, 15, 1858.

SIR: The communication of the 31st March last, from the chairman of the Committee on Indian Affairs of the Senate, containing a series of queries in relation to the case of the Choctaw Indians, arising under the 11th article of the treaty of June 22, 1855, was received at this Office on the 2d ultimo, by reference from you for a report thereon.

Immediate measures were adopted for collecting the required information, as far as practicable, and I have now the honor to report the result as follows:

Query 2. What were the instructions given to the commissioners who negotiated the treaty with the Choctaws, of September 27, 1830, as to the inducements to be held out to those Indians to influence them to consent to a relinquishment of their lands in Mississippi?

Answer. No written instructions were given to those commissioners.

Query 2. What was the nature of the tenure by which they held those lands—whether the mere Indian title or otherwise?

Answer. The Indian title.

Query 3. Did they also, at and before the treaty of 1830, own their present country west of Arkansas, and how did they acquire it?

Answer. Said country was ceded to them by the United States, in the 2d article of the treaty of 1820, in part consideration for the cession made by them to the United States by the first article of that treaty of a portion of the country east of the Mississippi; the object of that cession to them in the West being, as stated in the preamble to the treaty, to provide them "with a country beyond the Mississippi River, where all who live by hunting and will not work may be collected and settled together."

Query 4. Was it the policy of the Government, at or about the date of said treaty, to cede to the Indians treated with the proceeds of the sale of the lands relinquished by them to the Government, and in what cases, other than the Choctaws, were treaties made on that basis?

Answer. There was no settled policy at the time referred to. No treaties were made on that basis where annuities were granted for a term of years, and the Choctaw treaty was of that character.

By the treaty of 1831, with the Senecas of Sandusky, they were allowed the proceeds of the sale of the lands thereby ceded by them; deducting therefrom the cost of their survey, the minimum price of the public lands, a sum advanced them for their improvements, and the cost for erecting for them a saw and a grist mill and a blacksmith-shop at their new home in the West; the United States stipulating to give them a country there in fee-simple, to defray the expense of their removal to it, of subsisting them for a year thereafter, and of maintaining the mills and blacksmith-shop for such term as the President might think proper.

The treaties made the same year with the Senecas and Shawnees of Lewiston, the Shawnees of Wapaghkonetta, and the Ottawas, were of a precisely similar character, except that instead of a minimum price of the public lands, seventy-five cents per acre was to be deducted from the proceeds of the sale of their lands.

For the cession made by the Chickasaws in 1832 the United States agreed to pay them the entire proceeds of the sale of their lands, after deducting the cost and expenses of their survey and sale. These were the only treaties of this kind about the period named.

Query 5. What were the principal inducements held out to the Choctaws by the commissioners who negotiated the treaty of 1830 to influence them to relinquish their lands?

Answer. As properly the treaty is to be considered as containing the principal inducements which led the Choctaws to join in it, it is presumed that the committee desire to know what were the reasons and arguments made use of by the commissioners to influence the Choctaws to take that step. The only official information on this point in the possession of this Office is contained in the journal of the commissioners, extracts from which, consisting of the material portions of their "talks" or speeches to the Choctaws, are hereto appended, marked A.

Query 6. What evidence is there on file or within the knowledge of the Department that the Choctaws were promised or led to expect by the commissioners that they should receive the full actual value of their lands if they would enter into the treaty?

Answer. No evidence that the Choctaws were to receive the proceeds of the sales of the lands ceded is within the knowledge of the Department.

Query 7. Whether there is any report or statement from the commissioners, or either of them, to the effect that the 18th article of the treaty was inserted for the purpose of securing to the Choctaws the full actual value of their lands, in conformity with any promises or inducements made or held out to them to that effect?

Answer. No such report or statement is known to this Office.

Query 8. Whether there was or has been any contemporaneous or subsequent construction given to the treaty by the Secretary of War or the commissioners, or either of them, as to the Choctaws being entitled to the proceeds of the sales of the lands relinquished thereby, and, if so, what was such construction?

Answer. This Office is not aware of any such construction having been given by either of the parties mentioned. In a report of Hon. John C. Spencer, Secretary of War, to the Senate Committee on Indian Affairs, in relation to unsatisfied claims of individuals to reserva-

tions under the 14th article of the treaty, he stated that "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 thus been 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 Document 188, 27th Congress, 2d session, p. 3.)

This decision had reference to individual claims, and Congress, in legislating upon the subject, had authorized the granting of other land or scrip in satisfaction of such claim.

Query 9. What evidence is there, if any, that the Choctaws expected the treaty of 1830 to secure to them the proceeds or full actual value of their lands?

Answer. There is no other evidence known to this Office than their own statements, never made till after the expiration of their annuities under the treaty, that such was their understanding and expectation, based upon the promises of the commissioner and the phraseology of the 18th article of the treaty.

Query 10. What would be the probable or estimated amount or balance coming to the Choctaws by conceding to them, as an equitable rule or basis of settlement of all their claims and demands, whether national or individual, against the United States, the proceeds of the sale of their lands relinquished by the treaty of 1830 so far as sold, and the present graduated rates for the public lands for those remaining unsold, deducting therefrom the average cost of the survey and sale of the lands of the Government, and all payments and expenditures that have been made under and in carrying out said treaty?

|  |                |                |
|--|----------------|----------------|
| Answer. From a statement obtained from the General Land-Office, it appears that the amount realized for the lands thus far disposed of is.....                                 | \$5,576,483 87 |                |
| Deduct cost of surveying and selling the same, viz, 10 cents per acre, (which the Land-Office states is the average cost of surveying and selling the Government lands).....   | 827,640 53     | \$5,748,843 34 |
| The Land-Office reports 2,477,255.09 acres remaining unsold, which, at the present graduation price therefor, as given by said Office, viz, 75 cents per acre, amounts to..... | 1,857,941 31   |                |
| Deduct 10 cents per acre for surveying and selling the same, viz.....  | 247,725 50     | 1,610,214 81   |
| Total.....   |                | 7,359,059 15   |
| Aggregate of payments and expenditures under the treaty..  | 2,162,538 97   |                |
| Reservations, and scrip in lien of reservations, obtained by Choctaws under 14th article of the treaty, embracing 1,586,080 acres, at \$1.25 per acre.....                     | 1,932,600 00   |                |
| Reservations obtained under the 19th article embracing 89,280 acres, at \$1.25 .....   | 111,600 00     |                |
| Reservations obtained under the 15th article, embracing 7,680 acres, at \$1.25.....  | 9,600 00       |                |
| 21,140 acres reserved for orphans, under 19th article, at \$1.25   | 26,800 00      |                |
| Reservations secured under supplement to the treaty, embracing 75,760 acres at \$1.25 per acre .....   | 72,200 00      |                |
|  |                | \$4,365,338 97 |
| Balance .....  |                | \$2,993,720 18 |

Query 11. The number of acres land relinquished by the Choctaws, by the treaty of 1830, and what is the aggregate of all the payments to them, and all the expenditures made for their benefit under the provisions of that treaty.

Answer. In various published statements heretofore, the aggregate number of acres embraced in the Choctaw cession under the treaty of 1830 is set down at 7,796,000, but in a statement or estimate obtained from the General Land-Office since the receipt of the call of the committee, the number given is 10,753,660.41.

The aggregate amount of the payments under the treaty is shown by the following statement, compiled from the records of this Office:

|  |             |             |
|--|-------------|-------------|
| Under the fifteenth article, three chiefs, twenty years..... | \$15,000 00 |             |
| Speakers, secretaries, and captains.....                     | 20,700 00   |             |
| Swords and clothes for captains.....                         | 5,672 37    |             |
|  |             | \$41,372 37 |

|  |                |                     |
|--|----------------|---------------------|
| Under the sixteenth article, removal and subsistence.....                      | \$1,245,203 95 |                     |
| Cattle.....  | 3,865 28       |                     |
|  |                | \$1,249,069 23      |
| Under the seventeenth article, annuity for twenty years.....                   |                | 400,000 00          |
| Under the nineteenth article, amount paid in money for relinquished lands..... |                | 24,640 00           |
| Under the twentieth article, education of forty boys, twenty years.....        | 267,260 73     |                     |
| Buildings.....   | 10,000 00      |                     |
| Three teachers.....  | 50,000 00      |                     |
| Blacksmiths and millwrights.....   | 53,880 00      |                     |
| Blankets, axes, wheels, looms, plows, hoes, wheels, and cards.....             | 27,097 89      |                     |
| Rifles.....  | 37,500 00      |                     |
|  |                | 443,738 62          |
| Under the twenty-first article, Wayne's warriors.....                          |                | 1,718 75            |
|  |                | <u>2,162,538 97</u> |

Query 12. How much of said land would have been absorbed had all the Choctaws availed themselves of the privilege granted to them by the treaty of remaining and taking reservations?

Answer. The only stipulation in the treaty granting in specific terms the privilege of "remaining and taking reservations" is that contained in the 14th article.

The records of this Office show that 1,293 families, embracing 4,397 persons, remained within the ceded territory and presented claims for reservations under the 14th article, which were admitted and for which provision was made in land and scrip to the amount of 1,586,080 acres.

It also appears from the records that before the close of 1833, when the emigration ceased on the part of the Government, 15,000 Choctaws were removed by the United States to the Choctaw country west of Arkansas. If these 15,000 had remained and secured reservations under the 14th article, such reservations, in the proportion of those granted to the 4,397, would have amounted to 5,410,780 acres.

There were also 29½ families, numbering 860 persons, who remained in the ceded territory and prosecuted claims for reservations which for various reasons set forth in the reply to the fifteenth question have not been admitted.

If the land embraced in the claims, amounting to 324,200 acres, be added to the number of acres included in the admitted claims, and to the quantity estimated for the 15,000 who were emigrated by the Government before the close of the five years' limitation contained in the 14th article, the aggregate will be 7,321,180 acres, which is the nearest approximation that this Office can furnish to an estimate of the land that would have been absorbed had all the Choctaws "remained and taken reservations."

Query 13. How many Choctaws did refuse to emigrate at the time of the general emigration of these people and remain east of the Mississippi after the year 1833?

Answer. The operations of the United States in removing the Choctaws ceased in November, 1833. This office has no means of ascertaining the number of Choctaws that remained in Mississippi at the close of that year. During the year 1838 the efforts to effect an emigration were partially resumed; 177 were removed before the 1st of November, 1838. Nothing more was done by the Government until late in the year 1844, when emigration was again commenced and continued for several years in succession.

On the 22d of September, 1844, before the first party started in that year, the agents of the Department reported the number of Choctaws then remaining east "at about 7,000." The muster-rolls show that 6,007 have been removed since the 1st of December, 1844, and 2,068 were reported by Agent Cooper as still remaining east in July, 1856.

In forming an estimate of the number of Choctaws east after the close of the first general emigration, the fact should not be overlooked that in July, 1845, the then Choctaw agent, Captain William Armstrong, forwarded a list of 839 souls, represented to be a part of the "number who emigrated and subsisted at their own expense subsequent to the general emigration under the Government in 1831-2-3."

Query 14. What number of Choctaws were residing in their country west of Arkansas at the date of the treaty of 1830; and what amount would place them on an equality with the eastern Choctaws under that treaty, taking into view all the amounts required to be paid or expended for or on account of the latter, according to said treaty, and including the reservations obtained by them, estimated at \$1.25 per acre?

Answer. This office is not possessed of sufficient information to enable it to furnish the answer called for in this question.

Captain McClellan, the agent for the western Choctaws, states in a letter dated 28th September, 1828, that "there are from forty to fifty Choctaws settled on their lands on Red River." In the same letter he says: "At this time there are upwards of 1,000 Choctaws west of the Mississippi who are settled on Red River and scattered in small villages in the State of Louisiana; some of them are upward of 300 miles from their lands."

On the 12th of March, 1829, he repeats the same statement respecting the 1,000 Choctaws "west of the Mississippi," and adds that he has learned that 150 Choctaws had moved into their own country "to occupy the vacated tenements" then recently left by the whites moving out of Indian country. This information is not sufficiently precise to enable me to state with certainty the number of Choctaws "in their country west," at the date of the treaty of 1830, nor is there any evidence on file to show how far those who were in the country at that time participated in the annuities or other benefits provided by the treaty. It is therefore not in my power to state "what amount it would take to place them on an equality with the eastern Choctaws."

Query 15. The number of unsatisfied claims to reservations under the 14th article of said treaty, and the quantity of land it would require to satisfy them according to that instrument?

Answer. The entire number of claims on file which have not been allowed for reservations under the 14th article is 860, of which 292 are for heads of families claiming one section each, 291 claims of a half-section each for children over, and 277 claims for a quarter-section each for children under ten years of age at the date of the treaty, making an aggregate claimed of 324,300 acres.

Query 16. The reasons why said claimants failed to obtain or were not provided with reservations in accordance with the provisions of the treaty?

Answer. Without going into a detailed history of these claims it will perhaps be sufficient to answer this question in general terms:

First. That the claims of 38 heads, 27 children over and 34 under ten, have never been adjudicated.

Second. That the claims of 191 heads, 206 children over and 195 under ten, were rejected because it did not appear that the claimants occupied their improvements during the full term of five years indicated in the treaty.

Third. That 31 claims, embracing 31 adults, 7 children over and 14 under ten, were rejected because it was not shown that the adults claiming were heads of families.

Fourth. That the claims of 13 heads, 11 children over and 12 under ten, were rejected for want of proof that the intention to remain in the ceded country was signified.

Fifth. That the claims of 5 heads, 8 children over and 3 under ten, were rejected because the witnesses upon whom they relied were impeached.

Sixth. That the claims for 14 heads, 12 children over and 19 under ten, were rejected for various miscellaneous causes.

Query 17. The amount of scrip, funded and unfunded, allowed to Choctaws in lieu of reservations which they failed to obtain when the scrip was issued and paid to them, and what it generally sold for, and for what period or periods was interest allowed and paid on the funded scrip prior to the payment of the principal, under the act of July 21, 1852, to the parties entitled thereto?

Answer. The amount of scrip funded for the benefit of 14th-article claimants by the act of 3d March, 1845, was \$875,000.

Of the unfunded scrip 1,155 pieces were issued in favor of heads of families, being for one half-section each; 1,470 pieces of a quarter-section each, for children over ten; and 1,219 pieces of eighty acres each; for, at the date of the treaty, an aggregate of 702,320 acres.

The following table shows when the scrip was issued and paid:

| Names of agents and when they paid it.  | Heads of families. | Children. |           |
|---|--------------------|-----------|-----------|
|   |                    | Over 10.  | Under 10. |
| John J. McRea, from June, 1843, to March, 1845.....                             | 95                 | 120       | 125       |
| Maj. William Armstrong, from February, 1845, to June, 1847.....                 | 406                | 535       | 460       |
| Col. S. M. Rutherford, from April, 1848, to June, 1849.....                     | 229                | 276       | 169       |
| Col. John Drennen from August, 1849, to May, 1851.....                          | 143                | 171       | 127       |
| Col. John Drennen, by William Wilson, clerk, from May, 1850, to July, 1851..... | 24                 | 31        | 25        |
| Col. J. H. Bowman, from August to November, 1851.....                           | 253                | 335       | 309       |
| Whole amount paid out.....  | 1,150              | 1,468     | 1,215     |
| Eleven pieces of scrip returned by Colonel Bowman.....                          | 5                  | 2         | 4         |
| Whole amount allowed and issued.....  | 1,555              | 1,470     | 1,219     |

There are no data in this office from which to ascertain with certainty the disposition made or the amount realized by the Choctaws for their scrip.

The best information in the power of this Office to furnish in regard to the amount or rates realized by the Indians for their scrip, is contained in the accompanying copy marked B, of a memorandum prepared by Commissioner Medill, dated August 26, 1847.

According to a statement on the subject obtained from the Second Auditor, in whose office

the accounts of the agent who made the payments are filed, interest on the funded scrip was paid as follows :

|   |            |
|---|------------|
| From April 1, 1845, to December 31, 1846..... | \$7,587 50 |
| From January 1, 1847, to June 30, 1848.....   | 32,455 40  |
| From July 1, 1848, to June 30, 1850.....      | 63,393 13  |
| From July 1, 1850, to June 30, 1852.....      | 67,964 31  |

Query 18. The number and extent of claims for reservations under the 19th article of the treaty; whole amount heretofore allowed in land or money, in satisfaction thereof; and the number and extent of said claims still unsatisfied?

Answer. The reservations under the 19th article are of three kinds :

1st. The several specific quantities granted to David Folsom, and to eight others, amounting in the aggregate to 20 sections.

2d. The various classes of reservations dependent upon the quantity of land the claimant had in actual cultivation.

3d. The provision of a quarter-section each, for the Choctaw orphans.

All of the 20 sections first named have been located except the two reserved for Jo-ho-ke-tubbu.

The next division embraces five sets of reserves, classified according to the number of acres which each head of a family had in cultivation; the treaty providing for the first class, restricted to 40, having 50 acres each in cultivation, 640 acres each; second class, restricted to 460, having 30 to 50 acres each in cultivation, 490 acres each; third class, restricted to 400, having 20 to 30 acres each in cultivation, 320 acres each; fourth class, restricted to 350, having 12 to 20 acres each in cultivation, 160 acres each; fifth class, restricted to 350, having 2 to 12 acres each in cultivation, 80 acres each. And any captain, the whole number not to exceed 90, receiving, under this classification, less than a section, was entitled to an additional half-section.

It was further provided that the reservations secured by the 19th article might be sold with the consent of the President, or that if the reservee preferred it, he might relinquish his land to the United States, and receive in commutation therefor 50 cents per acre.

The records of this office show that 748 persons became entitled under the cultivation classes to an aggregate of 148,960 acres.

Of these persons 288 relinquished the land to which they were entitled, amounting to 55,680 acres; 45 of these who thus relinquished, and who were entitled to 6,400 acres, do not appear to have received their respective shares of the commutation money. Four hundred and sixty persons, entitled to 93,280 acres, did not relinquish their lands.

Locations have been made for 362 of these reservees. For the remaining 98, who were entitled to an aggregate of 15,520 acres, no locations appear to have been made.

Of those cultivation claims, therefore which have been allowed, the whole number remaining unsatisfied is 143, embracing an aggregate of 21,920 acres.

Twenty-one thousand four hundred and sixty acres of valuable land were selected for the orphans of the Choctaw Nation, under the 19th article, a considerable portion of which has been sold and the proceeds paid over to them or their legal representatives. The residue is in process of being sold for their benefit.

Query 19. The estimated average value per family of the improvements made by the Choctaws on the lands which they obtained or were entitled to as reservations under the treaty?

Answer. This Office is in possession of no information upon the subject.

Query 20. How much of the amount stipulated by the 15th article of the treaty for the pay of a principal chief has been appropriated and paid for that purpose?

Answer. No part of it. It is due to the Office, however, to guard against any imputation of negligence in this matter, to state that no appropriation was ever asked for to fulfill this stipulation, because it was understood that the Choctaws had not thought proper to elect "an additional principal chief."

Query 21. Whether any, and, if so, how many, of the Choctaws who have emigrated from east of the Mississippi to the Choctaw country west, since the year 1831, at their own expense, have failed to receive an allowance for transportation or for the year's subsistence promised by the 16th article of the treaty, and what has been the usual commutation allowance in such cases?

Answer. This Office has no certain information as to the number of Choctaws who emigrated themselves subsequent to the year 1831. From statements submitted by different agents, however, there appear to have been 960. The Choctaw delegation have filed rolls in this Office prepared by commissioners appointed by the authorities of the nation to inquire into and ascertain such cases, which embrace 893 persons as having so emigrated.

There has been no fixed or uniform amount of allowance for commutation for removal and subsistence in such cases. In those of the Cherokees and Creeks, which are most nearly parallel to that of the Choctaws, the former were allowed by the treaty of 1835-'36 the sum of \$53.33 per capita, and the Creeks, by decision or regulation adopted in regard to them by the Department, \$55.

Query 22. The number and extent of unsatisfied claims for cattle surrendered by the Choctaws under the 16th article of the treaty?

Answer. According to the records of this Office there appear to have been 1,518 head of the different kinds of neat-cattle appraised by agents appointed for the purpose, at the aggregate value of \$3,865.23. Some of these appear to have been paid for in money, and the others by other cattle delivered to their owners after their emigration to their country west of the Mississippi. There is no official information on file as to the number not so appraised and paid for.

The Choctaw delegation have presented and filed rolls prepared by commissioners appointed by the authority of the nation to ascertain and investigate such cases, according to which it is claimed that, on emigrating the Choctaws were compelled to leave behind and entirely lose the following stock, which was never appraised or paid for, viz: 2,796 horses, valued at \$95,974; 4,899 neat-cattle, \$30,835; 10,981 hogs, \$33,697.50—\$64,532 50.

In the accompanying copy of a letter from the delegation, marked C, they explain why and how these rolls are prepared.

Query 23. Whether all the stipulations of the 20th article of the treaty have been fulfilled, particularly in regard to rifles; and, if not, to what extent, stating in case of a deficiency in the supply of rifles, the value thereof.

Answer. This Office is not aware that any of the stipulations in the 20th article of the treaty remain unfulfilled unless it be that in regard to rifles, according to which each warrior who emigrated was to be furnished with a rifle, molds, wipers, and ammunition. The 15,000 who emigrated prior to the close of 1833 were so furnished in the proportion of one to every five Indians. The 6,148 since removed by the Government have not been supplied with any of said articles, for the reason that they were regarded as having elected to remain and become citizens of the States; that therefore the Government, having made provisions for their land-claims under the 14th article of the treaty, was under no obligation to furnish them with either transportation, subsistence, or rifles, the expenditures for their removal being considered as gratuitous on the part of the United States.

Query 24. When the gratuity or annuity, during the pleasure of the President, of \$2,000 to the Choctaws, under a law of 1801, was stopped, and by what authority; whether by direction of the President or Secretary of War, and whether the accounting officers in any adjustment of certain claims of the Choctaws for arrearages made in 1855 reported anything as remaining due and unpaid to the Choctaws under that head; and, if so, how much, and for what year?

Answer. The amount above referred to was stopped in 1839, by being omitted to be included in the estimates from this Office. It does not appear from the files or records of the Office that there was any order or direction from the President or Secretary of War for its discontinuance, the act of the Office in the case being sufficient and tantamount to that of the President. In a report of the Second Auditor of the Treasury, dated February 1, 1855, embracing the results of an examination or adjustment made by him of certain claims of the Choctaws, for arrearages between 1816 and 1853, he included the above amount as remaining due and unpaid to them from 1840 to 1852, inclusive, amounting to \$23,000, but this Office in acting upon his report rejected the item.

Query 25. Same information in regard to the annuity of \$400 paid to the Choctaws under an agreement between the Choctaw chiefs and the Secretary of War in 1804.

Answer. This amount was discontinued in 1835, in the same manner as the gratuity or annuity of \$2,000, and without any order or direction of the President or Secretary of War, so far as shown by the records of this Office. In said report of the Second Auditor, he included this sum remaining due and unpaid to the Choctaws for the 19 years from 1835 to 1852, inclusive, amounting to \$7,600.

Query 26. When the \$500,000 stipulated to the Choctaws by the 3d article of the convention of January, 1837, between them and the Chickasaws, was invested for them, in what stocks, their market value at the time; whether the whole of said principal sum still remains invested, and whether anything has been lost to the Choctaws by said principal sum not having originally been invested by the purchase of the stocks at their market-value at the time, or by any changes since made in the original investment; and, if so, how much principal and interest?

Answer. Said amount was invested for the Choctaws by the transfer to them, on the 11th of February, 1841, of five hundred bonds of the State of Alabama, held for the Chickasaws, for \$1,000 each, bearing an interest of 5 per cent. per annum, payable in New Orleans, and with interest due thereon from the 1st December, 1840.

This Office has no information as to their market-value at the time of their transfer to the Choctaws, but in a report from the Commissioner of Indian Affairs of October 23, 1840, in relation to making the investment in the above mode, "the Chickasaws have not the money, but they have the stocks, the transfer of which will be a fulfillment of their engagement with the Choctaws. If this construction is not sustained, a sale of the Chickasaw stocks, according to a strict construction of the treaty provision, which looks to nothing less in words, the effect will be very serious on the Chickasaws, (a loss and benefit neither contemplated,) for, to raise \$500,000 in cash by a sale of State stocks belonging to the Chickasaws, would require now not much less probably than \$750,000 of those stocks, which, or others, would be repurchased at a corresponding reduction."

A change was made in the investment in the month of June, 1851, the five hundred Ala-

bama 5 per cent. bonds having been disposed of, and \$450,000 Virginia 6 per cent. bonds purchased with the proceeds, which arrangement gives to the Choctaws \$2,000 more interest annually.

It is proper to state that the said Alabama bonds, when purchased for the Chickasaws, cost only \$495,000, and that the Choctaws were, in the month of March, 1850, paid in cash the difference between that amount and their par value, viz, \$5,000.

Very respectfully, your most obedient servant,

CHARLES E. MIX,  
*Acting Commissioner.*

Hon. JACOB THOMPSON,  
*Secretary of the Interior.*

DEPARTMENT OF THE INTERIOR,  
OFFICE INDIAN AFFAIRS,  
March 22, 1860.

SIR: The following-recited preamble and resolutions adopted by the Senate of the United States on the 9th of March, 1859—

“Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and the 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 27th, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions thereof; 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:

“Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the first day of January last, (1859,) 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 one dollar and twenty-five cents 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”—

Having been referred by you to this Office on the 19th day of the same month, (March, 1859,) measures were at once adopted to collect the information necessary to state the required account with all possible exactitude.

The General Land-Office was called upon for the quantity of lands embraced by the Choctaw cession of 1830, the cost of their survey and sale, the quantity thereof sold up to the 1st of January, 1859, and the amount of money received therefor, together with the quantity embraced in the “reservations allowed and secured.”

The treaty of 1855 uses the words “lands remaining unsold,” while the resolution says “residues.” If by the expression first quoted is meant “lands undisposed of,” the amount would be reduced, inasmuch as 2,292,776 acres have been disposed of by Congress under the swamp-land act, and for railroad and school purposes. The payments and expenses under the different provisions of the treaty of 1830, it was assumed could be ascertained with most certainty from the original accounts and vouchers thereof, which, being on file in the office of the Second Auditor of the Treasury, that officer was requested to furnish that portion of the information.

That in reference to “the scrip issued in lieu of reservation,” “the amount to orphans for reservations,” a portion of the payments for removal and subsistence have been collected from the records of this Office.

From the information thus carefully collected, the required account has been stated, and it is herewith transmitted.

Though made up on a somewhat different basis, it will be seen that the result of this account does not differ materially from that of the approximate statement contained in the elaborate report made to you from this Office on the 15th May, 1858, in answer to a series of queries from the Committee on Indian Affairs of the Senate; said statement showing a balance of \$2,993,720.18, while that of the present account is \$2,981,247.30.

It is to be observed that, under the second article of the treaty of 1830, a patent was issued to the Choctaws for the country west of Arkansas, estimated to contain 15,000,000 acres. Subsequently the Chickasaws, with the consent of the United States, purchased a portion of the tract at \$530,000, which the United States paid out of the trust-fund belonging to the Chickasaws, with the exception of \$30,000, paid in the manner directed by the third article of the articles of convention of agreement between the Choctaws and Chicka-

saws, concluded the 17th January, 1837. Under the treaty of 1855, the Choctaws leased a portion of their country for which the United States paid the sum of \$600 000. If these sums are to be regarded as payments under the treaty of 1830, the amount due the Choctaws will be \$1,851,247.30.

I submit with the account, for the information of yourself and Congress, copies of the reports of the Commissioner of the General Land-Office and Second Auditor, marked A and I, and of the supplementary and additional statements prepared in this Office, marked B, C, E, F, G, H, in triplicate, which exhibit the data from which the account has been made up and stated: also, in triplicate, abstract from statement made by the Second Auditor under resolution of the Senate of the 10th March, 1853, of payments for Choctaws' accounts under same treaty, marked D.

The preamble and resolutions of the Senate referred to above are herewith returned.

Very respectfully, your obedient servant,

A. B. GREENWOOD,  
*Commissioner.*

Hon. J. THOMPSON,  
*Secretary of the Interior.*

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

The memorial of the general council of the Choctaw Nation assembled, respectfully sheweth:

That an award was made in their favor under the 11th article of the treaty of 1855, by the Senate of the United States, on the 9th March, 1859, of the net proceeds of their lands ceded by the treaty of 1830.

That the amount due the Choctaw Nation under said award was officially reported, on the 8th May, 1860, to be \$2,981,247.30, which amount, less \$250,000, paid in 1861, has been due the Choctaw Nation from the United States since the 9th March, 1859.

That, in consequence of said award, the Choctaw Nation became liable and bound, by the 12th article of the treaty of 1855, to pay the claims of its individual citizens upon the United States.

That the aggregate of said claims was ascertained and reported to the United States Senate, in the year 1857, by the delegates authorized to represent the nation, to be \$3,671,292.50, being \$690,045.90 more than the amount of the award.

That, since the year 1857, the amount of said claims has largely increased, swelling the aggregate to nearly five and a half millions of dollars.

That a substantially correct account of the nature and character of the various claims embraced in this aggregate is contained in the letter of P. P. Pitchlynn, Choctaw delegate, to the Secretary of the Treasury, dated July 10, 1874, a copy of which is subjoined.

That the adjudication of said claims, and the obligation to pay them, was imposed, by the treaty of 1855, exclusively upon the Choctaw Nation.

That the settlement with and collection from the United States of the amount of said claims, was intrusted more than twenty years ago to the delegation now represented by P. P. Pitchlynn and Peter Folsom, whose powers have been repeatedly reaffirmed and never revoked.

That payment of the amount due under said award has been repeatedly applied for and urged by the Choctaw Nation, through its authorized delegates above referred to.

That the general council beg leave respectfully to add their own urgent solicitations to those above referred to of the authorized dele-



gates of the nation, to the end that the individual claimants may receive the amounts which have been so long due them.

(Signed by order of the senate.)

J. B. MOORE,  
*President Senate.*

Attest: THOMPSON MCKINNEY,  
*Recording Secretary of the Senate, October 29, 1874.*

(Signed by order of the house.)

W. W. HAMPTON,  
*Speaker.*

Attest: WM. P. MCCLURE,  
*Recording Clerk of the House.*

I certify that the within and foregoing is a true copy of the original memorial as signed by order of the senate and of the house of representatives of the Choctaw general council.

[SEAL.]

JNO. P. TURNBULL,  
*Nat. Secretary Choctaw Nation.*

APPENDIX.

WASHINGTON, D. C. July 10, 1874.

SIR: The "liabilities of the Choctaw tribe of Indians to individuals," to which your attention is called by the 3d section of the act of June 23, 1874, making appropriations for sundry civil expenses of the Government, having been for the last twenty years the subject of my official attention as a delegate representing the Choctaws, first in the effort to recover from the United States the amount due such individuals, and subsequently, after the liability to pay them had been transferred by the 12th article of the treaty of 1855 to the Choctaw Nation, in the effort to obtain from the United States the means of enabling said nation to discharge such liabilities, it has occurred to me that it would be proper to place at your disposal any information within my reach tending to facilitate the inquiry contemplated by Congress. The greater part of these liabilities grow out of the unfulfilled stipulations of the 14th article of the treaty of 1830.

A second class is founded on the 19th article of the same treaty.

A third class consists of claims for emigration and subsistence, and for personal property lost during the emigration of 1831, 1832, and 1833.

A fourth class would embrace the claims of Choctaws who emigrated prior to the treaty of 1830.

In round numbers the liabilities—

|                                     |             |
|-------------------------------------|-------------|
| Under the 1st class amount to ..... | \$4,000,000 |
| Under the 2d class amount to .....  | 450,000     |
| Under the 3d class amount to .....  | 600,000     |
| Under the 4th class amount to ..... | 356,792     |

Making an aggregate of..... 5,406,792

As the Choctaws do not claim, and are not likely to realize in their settlement with the Government more than the above aggregate, it is certain that, after paying what may be due to individuals, nothing will, in any event, be left for a school-fund, unless it should so happen that the sum appropriated by Congress equals the above amount, and that the escheats arising from the death of individual claimants without heirs or legal representatives prove to be much larger than there is any present reason to anticipate. In fact, our people have long since ceased to hope that the "general Choctaw fund" for education and other purposes, contemplated in the 13th article of the treaty of 1855, to which the sundry civil act refers, would be increased by any balance remaining under the 12th article "after satisfying the just liabilities of the tribe." That hope was effectually extinguished by the report of the Secretary of the Interior of May 8, 1860, showing that a balance of \$2,981,247.30 was all we could look for, while the individual liabilities we had laid before the Senate amounted to \$3,671,293.20, exceeding by \$690,045.90 the largest sum which the Commissioner of Indian Affairs was willing to admit might be due us. In fact, a disposition has been manifested from time to time in various quarters to reduce us, by what we have re-

garded as unjust deductions, to an allowance of \$2,332,560.85, falling short by \$326,000 of the claims under the 14th article alone, as we presented them to the Senate in 1857, and less than 60 per cent. of these claims, as they now stand, with accrued interest, to say nothing of others equally meritorious, which cannot be ignored by the council.

Full accounts of the 14th-article claims, of the evidence by which they were supported, and of what the claimants have heretofore received, may be found in the Department of the Interior. But as the official records do not show the whole case as we presented it to the Senate, and still less as we understand its present binding force upon the Choctaws, I propose to give you an outline of the claims as they will probably be submitted to our national authorities for adjudication.

The 14th article of the treaty of 1830, better known as the treaty of Dancing Rabbit Creek, gave to each Choctaw head of a family desiring to remain in the States a section of land, and also a half-section for each unmarried child over, and a quarter-section for each child under, ten years of age at the date of the treaty. No other condition was required but the signification to the agent of the intention to remain within six months after the ratification of the treaty. If, however, the parties resided upon the land five years from such ratification, a grant in fee-simple was to issue for the specified quantity. Thus the intention to remain, duly signified, secured the land. Five years' residence thereon secured, in addition thereto, a grant in fee-simple.

To make the facts which follow, and the claims on which they rest, more perfectly intelligible, it is necessary to premise that the treaty was made with and for two classes of Choctaws, those who *were* and those who were *not* willing to emigrate. This appears from the treaty itself, from the journal of the United States commissioners who made it, and from the testimony, on file in the Indian Office, of Greenwood Le Flore, the most prominent and influential of the negotiators among the Choctaws. He says he urged the treaty in the face of a strong opposition, which he determined to remove, if possible, by suggesting the insertion of the 14th article, to satisfy those who believed there was a desire to force them to go west. Accordingly the 14th article begins by saying that "Each Choctaw head of a family being desirous to remain and become a citizen of the States shall be permitted to do so." It will be seen that, sooner or later, the whole force of the Government was arrayed against this permission to remain.

As soon as any considerable number showed a desire to avail themselves of it by "signifying" the "intention to the agent within six months from the ratification of the treaty," they encountered the most determined opposition from that officer, and from all others in the Government service, but most of all from the people of Mississippi, who wanted their lands.

The records of the Indian Office show that 1,585 families claimed the benefit of the 14th article. Of these 1,585, only *sixty-nine* (69) were reported by the agent as having signified their intention to remain, though many hundreds established the fact of their applying to him in person. He himself officially advised the War Department that he had on one occasion "put off" 200 such applications. Ultimately 74 others, making 143 in all, less than *one-tenth* of the numbers of applicants, secured the land to which they were entitled under the treaty; 1,442 lost their homes and improvements, of which number 1,150, after struggling fifteen years against all manner of obstacles, succeeded in obtaining partial indemnity in the shape of land-scrip for half of their reservation and money for the other half. The remaining 292 families have never received any compensation for their losses. Those who represent the 1,150 families claim that \$1.25 per acre, half in scrip and half in money, delivered from time to time between 1844 and 1852, was not an equivalent for the land-grants to which they were entitled in 1836, and ask to be indemnified for the losses they sustained in being deprived of their homes and improvements, most of them before the year 1836.

In behalf of the 292 families, a claim is made for the amount paid into the Treasury for their lands, with damages for their losses in the shape of interest from February, 1836, when their titles would have matured if the treaty had been complied with.

The claims of the 1,150 families as laid before the Senate in 1857, amounted to \$1,848,194.70; calculated up to March 3, 1875, they will amount to \$2,823,910. How this last aggregate is arrived at will be seen by reference to the subjoined statements, the first in the tabular form, marked A, being the copy of an official report from the Commissioner of Indian Affairs, who can doubtless furnish the original.

These 1,150 families, embracing 3,833 claimants, after a rigid scrutiny by several boards of commissioners in Mississippi, subsequently revised by successive Secretaries of War and Commissioners of Indian Affairs, with intervening investigations by committees of both Houses of Congress, extending altogether over a period of ten years, established the fact that they were entitled to land under the treaty; that the particular tracts to which they were entitled, and on which they resided, had been sold by the United States, "so that," in the language of the act of August 23, 1842, "it is now impossible to give said Indians" such land, (5 Statutes at Large, p. 515.) In place, therefore, of the land which it was "impossible to give them," they received for one-half the quantity to which they were entitled, land-scrip or certificates, authorizing them to enter an equal quantity elsewhere; but before the claimant could get this scrip, he was required to emigrate to the Indian country west, where it could not be used.

The act authorizing the issue of the scrip provided that the other half of their land should be paid for in certificates of the same kind, but these latter certificates were subsequently funded by Congress at \$1.25 per acre, (5 Statutes at Large, p. 577,) carrying an interest of 5 per cent., which interest was paid to successive parties of claimants after their emigration-till 1852, when an act was passed stopping the interest, and directing the payment of the principal to the parties entitled. Practically, 1,150 families were deprived of their homes, and, instead of the grants in fee-simple which the treaty provides, got nothing until 1844, when ninety-five of them received scrip for one-half of the land to which they were entitled, and eight years afterward \$1.25 an acre in money for the other half. Other families subsequently in like manner received scrip and money at intervals, varying from ten to fifteen years in the one case, and from sixteen to twenty years in the other, from the period when their rights matured. These differences in the time of delivering the scrip and paying the money arose from the difference in the date of the emigration of the recipients, the Government, in the language of the day, using the scrip as a lever in moving the claimants from Mississippi to the Indian Territory west, notwithstanding the fact that the land-grants for which the scrip was issued were based upon the permission given in the 14th article to remain in the land of their birth. The United States agents were first instructed to deliver no part of the scrip until after the claimants had actually started on their journey west; subsequently they were directed to withhold it until their arrival in their new homes.

The foregoing facts will give you some idea of the foundation upon which the greater part of the claims under the 14th article are based. Perhaps a better illustration will be to specify an individual case; for example, Chisse Homa, or Red Post-Oak, was entitled to a section, or 640 acres of land, which was sold by the Government before the year 1836 for \$800. By way of indemnity he received in 1846 a certificate authorizing him to enter other land. He had made arrangements to locate the scrip for his own use in the State of Mississippi, when he was told by the Government agent that neither he nor his people should have any of the certificates issued for their benefit until after they had crossed the Mississippi River on their journey west. Being forced into a position where it was useless to him, he sold it for \$25. This was in March, 1846. In 1852 he received from the Government \$400 in money for the other half of his land, interest on that amount at 5 per cent. having been paid him during the five preceding years.

Captain Post-Oak contends that the land on which he lived during the prescribed term of five years was his land by the terms of the treaty; that when the United States sold it for \$800, the purchase-money paid into the Treasury belonged to him; that as between himself and any private individual he would have been entitled to and could have recovered damages—

First. For non-performance of the promise to make him a title.

Second. For the loss of his home and improvements in consequence of the wrongful sale of his land.

Third. For the use of his money received for the sale of his land.

That a very small measure of damages sustained under any one of these three heads would be an allowance of interest on the sale of his land from the day the money went into the Treasury up to the time he became fully indemnified for his losses, giving credit for amounts received from time to time, and stopping the interest on such amounts. Such an allowance of interest, added to the difference between the par value at \$1.25 per acre of the scrip paid him, and the amount actually realized for the same, would show the following results in stating an account, as between the United States and Captain Post-Oak, namely:

*United States to Captain Red Post-Oak, Dr.*

|   |          |
|---|----------|
| 1836, February 24, to proceeds of land sold .....   | \$500 00 |
| 1846, March, to 10 years' interest on same, namely, from February 24, 1836, five years after the ratification of the treaty, to the time when the scrip was paid him in March, 1846, at 5 per cent. per annum ..... | 400 00   |
| 1875, March, to interest on \$375, being difference between par value of scrip paid him, \$400 and \$25, the amount realized for the same, for 29 years, at 5 per cent. ....  | 543 75   |
|   | <hr/>    |
|   | 1,743 75 |

*Cr.*

|  |          |
|--|----------|
| 1846, March, by proceeds of half-section of scrip sold for ..... | \$25 00  |
| By cash received for funded half of certificates or scrip .....  | 400 00   |
| Balance due Captain Post-Oak March, 1875 .....                   | 1,318 75 |
|  | <hr/>    |
|  | 1,743 75 |

Full proof of the details of "Chisse Homa's" of Captain Red Post-Oak's case can be found in the Indian Bureau and in the Second Auditor's Office, among 3,833 others of substantially the same character.

The most concise general view of the claims as an aggregate is contained in the subjoined statement A, taken from the report of the Secretary of the Interior to the House of Representatives of May 8, 1860, (House Ex. Doc. No. 82, 1st sess. 36th Cong.,) showing the amount of the scrip to which I have referred as allowed and issued to the Choctaws, and when and by whom it was delivered.

## A.

Extract from report of the Commissioner of Indian Affairs to the Secretary of the Interior, dated May 15, 1858, showing the amount of scrip allowed to Choctaw Indians in lieu of lands to which they were entitled under the provisions of the treaty of 1830.

The amount of scrip funded for the benefit of 14th-article claimants, by the act of March 3, 1845, was, \$872,000.

Of the unfunded scrip 1,155 pieces were issued in favor of heads of families, being for one half section each; 1,470 pieces of a quarter-section each for children over ten, and 1,219 pieces for eighty acres each for children under ten, at the date of the treaty, making an aggregate of 702,320 acres.

The following table shows when this scrip was issued and paid:

| Names of the agents and when they paid it.                                 | Heads of families. | Children. |           |
|--|--------------------|-----------|-----------|
|  |                    | Over 10.  | Under 10. |
| John J. McRea, from June, 1843, to March, 1845.....                        | 95                 | 120       | 125       |
| Maj. William Armstrong, from February, 1845, to June, 1847.....            | 406                | 535       | 460       |
| Col. S. M. Rutherford, from April, 1848, to June, 1849.....                | 229                | 276       | 169       |
| Col. John Drennen, from August, 1849, to May, 1851.....                    | 143                | 171       | 127       |
| Col. John Drennen, by Wm. Wilson, clerk, from May, 1850, to July, 1851.... | 24                 | 31        | 25        |
| Col. J. H. Bowman, from August to November, 1851.....                      | 253                | 335       | 309       |
| Whole amount paid out.....   | 1,150              | 1,468     | 1,215     |
| Eleven pieces of scrip returned by Colonel Bowman.....                     | 5                  | 2         | 4         |
| Whole amount allowed and issued.....                                       | 1,155              | 1,470     | 1,219     |

OFFICE INDIAN AFFAIRS, March 22, 1860.

As each head of a family received a half, each child over ten a quarter, and each child under ten an eighth of a section of land-scrip, the foregoing statement marked A shows that there were delivered in such scrip as follows:

## B.

| By whom delivered.                           | No. of acres. | No. of claimants. |
|--|---------------|-------------------|
| John J. McRae.....                           | 59,600        | 340               |
| Maj. Wm. Armstrong.....                      | 252,320       | 1,401             |
| Col. S. M. Rutherford.....                   | 130,960       | 674               |
| Col. John Drennen and Clerk Wilson.....      | 97,920        | 521               |
| Col. J. H. Bowman.....                       | 159,360       | 897               |
| Total number acres and number claimants..... | 700,160       | 3,833             |

And also as the scrip delivered was in each instance for half the land to which the claimant was entitled, the other half being funded, that the aggregate reservations of the parties receiving the scrip is as follows:

C.

| By whom delivered.                      | No. of acres. | Value at \$1.25 per acre. |
|---|---------------|---------------------------|
| John J. McRea.....                      | 119, 200      | \$149, 000                |
| Maj. Wm. Armstrong.....                 | 504, 640      | 630, 800                  |
| Col. S. M. Rutherford.....              | 261, 920      | 327, 400                  |
| Col. John Drennen and Clerk Wilson..... | 195, 840      | 244, 800                  |
| Col. J. H. Bowman.....                  | 318, 720      | 398, 400                  |
| Total number acres and value.....       | 1, 400, 320   | 1, 750, 400               |

When an additional allowance for the above claimants was first asked for, in 1854, on the ground of losses sustained on the scrip delivered them, it was ascertained that the whole amount they received in money for their 700,160 acres of scrip was \$118,400. I have not at hand the data from which it was obtained and verified, but have no doubt that if it varies from the truth it is in being over rather than under the mark; it is equal to an average of  $16\frac{91}{100}$  cents per acre, or  $\$108\frac{22}{100}$  per section. To my certain knowledge large numbers of the claimants never received anything. The largest price paid was \$200 per section, while a great many received only \$50 per section.

Assuming, for the purpose of illustration, that the sum of \$118,400 was equally divided among all, I have prepared the following tabular statement, showing—

First. The aggregate amount paid into the Treasury for the land belonging to the different parties receiving scrip, as shown by the foregoing tables.

Second. The aggregate interest on such amounts paid into the Treasury from February, 1836, when the rights of the claimants under the treaty matured, until the scrip was delivered.

Third. The aggregate par value of the scrip delivered, at \$1.25 per acre.

Fourth. The average aggregate receipts in money by the claimants for such scrip—assuming simply for illustration that the sum of \$118,400 was divided equally among the different parties, which was not the fact.

Fifth. The loss sustained by such parties in the difference between the par value of the scrip delivered them and what they got for it.

Sixth. The interest on such loss from the time the scrip was paid, up to March, 1875.

Thus, the value of the lands belonging to the parties to whom the said scrip was paid, is as follows :

D.

| Scrip, by whom delivered. | Value of reservations. | Interest on value of reservation. |             | Par value of scrip. | Amount scrip sold for. | Loss on sale of scrip. | Interest on loss on sale of scrip. |             |
|---------------------------|------------------------|-----------------------------------|-------------|---------------------|------------------------|------------------------|------------------------------------|-------------|
|                           |                        | When.                             | Amount.     |                     |                        |                        | Years.                             | Amount.     |
| McRae.....                | \$149, 000             | 1836 to 1844                      | \$59, 600   | \$74, 500           | \$10, 000              | \$64, 500              | 31                                 | \$99, 975   |
| Armstrong.....            | 630, 800               | 1836 to 1846                      | 315, 400    | 315, 400            | 42, 400                | 273, 000               | 29                                 | 395, 850    |
| Rutherford.....           | 327, 400               | 1836 to 1848                      | 196, 440    | 163, 700            | 22, 000                | 141, 700               | 27                                 | 191, 295    |
| Drennin & Wilson          | 244, 800               | 1836 to 1850                      | 171, 360    | 122, 400            | 17, 000                | 105, 400               | 25                                 | 131, 750    |
| Bowman.....               | 398, 400               | 1836 to 1851                      | 298, 800    | 199, 200            | 27, 000                | 172, 200               | 24                                 | 206, 640    |
| Total.....                | 1, 750, 400            | .....                             | 1, 041, 600 | 875, 200            | 118, 400               | 756, 800               | .....                              | 1, 025, 510 |

By adding together the amounts due these claimants, as shown by statement D as follows :

|   |               |
|---|---------------|
| First. Of interest from the year 1836, when the rights of the claimants to their reservations matured under the treaty, to the time when the scrip was paid them, or..... | \$1, 041, 600 |
| Second. The amount of loss they sustained on the scrip, or.....   | 756, 800      |
| Third. The interest on such losses, from the time they were incurred, up to the earliest possible period of payment in March, 1875, or.....                               | 1, 025, 510   |
| The aggregate amount due this class of claimants will be.....   | 2, 823, 910   |

That three-fourths of this large amount is for interest is not the fault of the claimants. What they wanted and begged for was the land on which they lived; the homes secured to them by the treaty.

When after fifteen years' delay scrip was substituted, they wanted to use that scrip in securing other homes, but the Government would not let them.

The funding act was passed without any solicitation on their part, or on the part of any one authorized to represent them.

It was a statutory declaration that the proceeds of their lands belonged to them, and that they were entitled to interest for the use of the money.

If they were entitled to interest at all, the right began to accrue the day the price of their land was paid into the Treasury, and not, as the Indian Office decided, the day when their scrip was delivered to them.

If they were entitled to interest at all, they were entitled to interest on the whole of the price of their land so long as it, or any part of it, was or may be withheld, and not exclusively on the "funded" half of it.

The "rejected claims" under the 14th article, are for 292 "heads;" 291 children over, and 277 children under, ten, at the date of the treaty; numbering in all 860 persons, claiming 324,320 acres of land sold by the Government for \$405,400.

The fact that these parties were Choctaws; that they lived in the ceded territory at the date of the treaty; that they remained there the specified time, some of them indeed never leaving it, has never been disputed. The objections to these claims were, it is believed, exclusively of a technical character, and a strong conviction has always been felt among our people that they were just and ought to be paid. So far back as 1850, the council sent a delegation to Washington to secure an allowance for them, and I have never heard any one in the nation express a doubt as to the obligation resting upon us to pay them in full, since the liability on that account was transferred by the treaty to the Choctaw people.

|   |           |
|---|-----------|
| These claims amounted as above stated, for the amount for which the claimants' lands were sold, to..... | \$405,400 |
| Interest on this amount from 1836 to 1875, 29 years, at 5 per cent.....                                 | 790,530   |

|   |           |
|---|-----------|
| Amount due this class of claimants..... | 1,195,930 |
|---|-----------|

As originally presented to the United States the claims of the Choctaws, under the 19th article of the treaty of 1830, amounted to \$451,800.

The intention of the treaty was, to secure to 1,600 families pay for their improvements by allowing them to either sell, or to relinquish to the Government in exchange for money, reservations proportioned in extent to the size of their fields.

When these came to be measured, and the reservations dependent upon them were determined, it was found that instead of 1,600 families securing 458,800 acres, as the treaty contemplated, only 731 families were provided for, and were allotted 123,680 acres, being 334,720 acres less than the treaty had contemplated, and that of five classes of families having improvements, all fell short of the number for which the treaty intended to provide, except the fifth class, or those having fields of the smallest size, which was found to number 1,763 families, more than five times the restricted number of that particular class as defined in the treaty, and 163 more than all the five classes for whom the treaty intended to provide.

The Choctaws complained of this injustice as soon as its practical working was perceived, but to no effect. The obvious fact was, that they had been misled by their ignorance of the size of an acre.

The council was willing to press, and did press, upon the United States the injustice done to that class who had improvements, and who ought to have been permitted to fill out the missing numbers of the classes supposed to own larger improvements, but to no purpose. Whether the council would or would not be willing to recognize any obligations on the part of the nation to make good their loss to the disappointed applicants is a question which I am not prepared to answer.

Of one branch of the 19th-article claims, however, I can speak with certainty, and that is, of the 143 Choctaws who were duly registered, and whose rights were fully acknowledged to reservations amounting to 21,920 acres of land, but which reservations have never been secured to the parties entitled; their names are duly enrolled on the proper lists on file in the Indian Office, where full lists of the 1,032 families who failed to get any allowance for their improvements can also be seen.

The parties who claim an allowance for emigration and subsistence, and those who lost cattle, for which they were never indemnified, have applied to the Government for relief from time to time during the last thirty years, and when the treaty of 1855 was concluded other claims were presented for the loss of horses, hogs, and other property not specified in the treaty, but lost in consequence of, or rather during, and directly caused by the emigration, which to a certain extent was compulsory.

These claims were as follows:

|  |                   |
|--|-------------------|
| 960 self-emigrants, at \$45 each .....     | \$43,200 00       |
| 4,899 head of cattle, valued at .....      | 30,835 00         |
| 2,796 head of horses, valued at .....      | 95,974 00         |
| a of hogs, valued at .....                 | 33,697 50         |
| <b>Total of this class of claims .....</b> | <b>203,706 50</b> |

These claims were regularly presented in 1856, but have never been adjudicated, as it was never known how much would be obtained from the United States. The amount recommended by the Senate Committee on Indian Affairs of \$2,332,560.85, as in full for the "net proceeds" falling short by \$300,000 of the amount claimed in 1857, for the 14th-article claims alone, it was felt that whatever was taken for self-emigrants and lost property must be at the expense of those entitled under the 14th article, and it was deemed unadvisable to create, by premature adjudication, ill-feeling between the two classes of claimants; at the same time the justice of the demands of those who had lost property during the first emigration, and of those who had removed themselves at their own expense, was fully conceded and recognized by all classes. The parties presenting them have never asked for interest, but whenever there is anything like an adjudication the demand is sure to be made, and the popular sentiment of the nation will undoubtedly be against what would seem to be the invidious distinction of allowing interest to one set of claimants and refusing it to another equally meritorious. I have therefore added to the above sum of..... \$203,706 50 this item: Forty years' interest, at 5 per cent..... 407,413 00

**Making a total of these claims, principal and interest..... 611,119 50**

It will be understood that this statement refers exclusively to claims sent to the delegation in 1857; there is reason to believe, in fact I know, that there are others of the same kind, equally valid, which have not been presented, and which will considerably increase the aggregate.

One item remains to be considered—that embracing the claims of Choctaws who emigrated to the Indian Territory, west, before 1830.

These claims have never been made out or presented by the parties interested.

When the delegation of which I was a member first prepared their case to be submitted to the Senate, under the 11th and 12th articles of the treaty of 1855, it was deemed advisable to call the attention of the Senate to this subject, for the reason that serious disturbances had arisen among the Cherokees on account of the omission to make provision in their treaty, made at New Echota, in 1835, for the Western or "Old Settler" Cherokees who had emigrated prior to that treaty. For that class, after a long and angry controversy, special allowance was made in the 4th article of the treaty of 1846, (9 Statutes at Large, pp. 872-3.) based upon a decision in their favor resting upon grounds which have their parallel in the case of the Choctaws who had gone west when the treaty of 1830 was concluded.

It is not for me to say what course in regard to these claims will be pursued, either by the council or the claimants themselves, but I have thought it proper, in order to a full understanding of the whole subject, to lay the matter before you as it was originally presented to the Senate. Based upon such data as we then had, the interest of the 2,000 Choctaws in our country west when the treaty of 1830 was made, was estimated at \$356,792.

You will perceive from these details that it is not easy to determine accurately the amount of "liabilities due from the Choctaw Nation to individuals," as the council must first decide how far it will recognize claims under the 19th article of the treaty of 1830, and what allowance, if any, shall be made to the representatives of those who emigrated before the date of that treaty. These points settled, the question will still remain to what extent the 14th-article claimants must give way, if there is not enough for all, to those who claim as self-emigrants and for lost property.

The machinery for adjudicating these various claims has been in existence for many years, but there has been a strong feeling against the determination of any one class of claims until it was first known how much there would be to pay the claim when decided.

To recapitulate:

Of the first class, the names of the 3,833 claimants, embracing 1,150 heads of families, 1,468 "children over ten," and 1,215 "children under ten," at the date of the treaty of 1830, can all be found on the files of the Indian Office.

The amount estimated to be due them is \$2,823,910, which aggregate is liable to variation in this, namely, in the amount which was paid to individual claimants for scrip sold, which may not be as much, though it will certainly not exceed the estimate presented in the foregoing tables.

What is not known respecting these claims is the names of the present living representatives, or, in other words, of the parties entitled to draw the money; nor is it desirable, for many reasons, that it should be known until the money is ready to be paid.

Of this same class the names are also known of the 860 claimants included in the 292 families whose claims for reservations under the 14th article have heretofore been rejected.

These names are all registered in the Indian Office. The amount that will be due them on the 4th of March next, calculated on the basis of allowances heretofore made to other 14th-article claimants, and extending the computation of interest back to February, 1836, when their right to a fee-simple title matured, will be \$1,195,930.

As to the aggregate liabilities of these two divisions of the first class of claims, there is no question or dispute among the Choctaws. They will amount to \$4,019,840. The only doubt will be as to the particular individuals entitled to represent deceased claimants.

The names of the various claimants of the second class, under the 19th article of the treaty of 1830, are also on file in the Indian Office. How much they ought to receive cannot be determined until the council settles the principle which shall govern the allowance, and decides what classes among them shall or shall not be considered. The aggregate cannot exceed \$451,800, unless the council should decide to allow interest.

The number and names of the parties who paid the expense of their own emigration and year's subsistence are all well known among the Choctaws, and ought to be on file in the Indian Office, as their claims have been frequently presented. They amount, as first presented, to \$43,200. The only question that can arise in their case will be as to the allowance of interest.

The lost-property claims are those which will probably be the hardest to decide correctly, owing to the difficulty of obtaining proof at this late day of quantities and values during the emigration of 1831, 1832, and 1833. Some of them were prepared and presented in 1857, but large numbers of the claimants have felt unwilling to take any steps until there was money in sight to pay their claims when established. They have felt discouraged by the utter failure of their repeated efforts, during the last forty years, to get their claims even considered, much less paid, and have long since despaired of getting anything. Those heretofore presented amount without interest to \$160,506.50.

As already stated, the claims in behalf of those who emigrated before the year 1830 have never been prepared or presented, nor do I know that they ever will be; the estimated amount due them was inserted in the statement presented to the Senate, as a matter of precaution, because it was known that a valid claim existed whether it was presented or not.

I must be permitted, before closing, to say that although the amount reported to be due as the award of the Senate by the Secretary of the Interior is, we think, less than the actual net proceeds of the cession of 1830, and therefore less than we are entitled to, yet regarding it as the award of the Senate, and therefore binding upon us by the 12th article of the treaty of 1855, we have long since made up our minds to accept that sum as all we can claim by the terms of our bargain as expressed in the treaty of 1855, which made the decision of the Senate final.

In conclusion, I desire to express for myself and for the people I represent our entire willingness to communicate at any and all times any information within our reach which you may wish to obtain.

I have the honor to be, very respectfully, your obedient servant,

P. P. PITCHLYNN,

*Choctaw Delegate.*

Hon. B. H. BRISTOW,  
*Secretary of the Treasury.*

WASHINGTON, D. C.,  
November 27, 1874.

SIR: In a communication from the then Solicitor of the Treasury, transmitted to the Senate by your predecessor on the 6th of June, 1872, the suggestion appears that, by the 12th article of the treaty of 1855, no part of the award of the Senate under that treaty can be paid until after the individual claims referred to in that article have been adjudicated.

Though one of the delegates who negotiated the treaty of 1855, and engaged ever since with little intermission in trying to secure the payment of the award referred to, I never heard of that construction of the 12th article until I saw it in Mr. Banfield's letter.

As others may possibly take the same view, I will state the meaning of that article as the Choctaw delegates understood it when they signed the treaty.

We had presented claims on the Government, individual and national, for a large amount. We had also contended for the net proceeds of the lands ceded by the treaty of 1830, and had submitted a statement show-



ing that our individual and national claims called for a larger sum than the "net proceeds" would probably give us.

After refusing to listen to our demands, the Government finally answered them in the 11th and 12th articles of the treaty of 1855.

The 11th article calls upon the Senate to say which we shall have, the net proceeds or a gross sum in payment of all our claims, individual and national.

The 12th article says that whatever the Senate may award, whether net proceeds or gross sum, the award must be in full payment of all claims, individual and national, and that individual claimants must thenceforward look to the Choctaw Nation; the United States would no longer be liable. The Choctaw Nation must become bound for all just claims of individuals; but not bound to pay those that were *not* just.

The questions which *were* and which *were not* just, was for the Choctaw Nation, and not the United States, to determine.

The advice and direction of the then United States agent, General Cooper, in making settlements and payments after the sum necessary to pay all liabilities had been turned over to the Choctaw Nation, was desired because he had been and was still engaged in paying the fourteenth-article claimants under circumstances which gave him better knowledge than we had of the Choctaws living east of the Mississippi River.

So far the main object of the 12th article, as we understood it, was to transfer the liability for individual claims from the United States to the Choctaw Nation, and to wipe out *all* our claims on the Government, individual and national.

After securing—

1st. The release of the United States;

2d. The transfer of liability to the Choctaw Nation;

3d. The limitation of that liability to just claims; and

4th. The exclusive right of the Choctaw authorities to determine *what* claims were just, the 12th article proceeds to say that so much of the Senate award as the Choctaw authorities may determine to be necessary for the payment of their just liabilities shall be paid to them by the United States.

Nothing is said about the separate adjudication of each individual claim, nor is such adjudication made a condition-precedent to the payment of the award.

True, the authorities were to ascertain how much of whatever might be awarded was necessary for the payment of just liabilities, and, to do that, had to ascertain what liabilities *were* just.

But there was nothing in the treaty to prevent them from "adjudging" such liabilities by classes or groups, instead of in detail, if by so doing they could "ascertain" how much it would take to pay them.

It so happens that nearly all the claims were so grouped in classes that it was easier and quicker to determine the limits of the aggregate required than it was to make a separate calculation for each individual. This was true of three out of the four classes of claims indicated in my letter of July 11, 1874, and partly true of the fourth.

It is needless, however, to speak of more than one class, namely, the claims under the 14th article of the treaty of 1830, because that class alone exceeded, in 1859, the amount of the award then made.

The justice of that class had already been adjudged in the strongest manner by the highest Choctaw authority, the national council, which had sent two different delegations to Washington to secure what was due the claimants. The treaty of 1855 was the result of the efforts thus made. Every claim in the class referred to had been "adjudicated"

long before 1855 under the special authority of Congress. The name and locality of every claimant and the amount claimed was and is matter of record. The Choctaws applied for copies of the record, not for the purpose of re-adjudication, but simply to enable the proper authorities to identify with greater certainty the claimants or their representatives in disputed cases. They never dreamed of going behind the decrees in favor of the 1,150 families to whom scrip was awarded, and they regarded the action in the cases of the 292 families whose claims were rejected as equally conclusive in establishing the fact that those families had remained in Mississippi and were therefore entitled to the benefits of the 14th article.

That certain lands belonging to the "scrip claimants" had been wrongfully sold, that the proceeds of those lands constituted a trust-fund in the Treasury belonging to them, were facts which had not only been established by specially-authorized commissioners, but had been affirmed by the United States in several successive acts of Congress appropriating interest on part of that trust-fund. The single point in this case was that only half of what was due them had been paid, and that the alleged payment of the other half was substantially no payment, the claim for what was still due, with accruing interest, constituting the bulk of the Choctaw claims as presented to the Senate. What we asked for was that the short payment of principal and interest of the fourteenth-article trust-fund should be made good, and the Senate in making the award established the validity of the claim, which, indeed, was too obvious to admit of dispute.

Being a claim for unpaid balance of a trust-fund, with interest accruing till paid, manifestly the amount due could not be ascertained till the period of payment was first determined, and then it was the work of an accountant and not of a judicial tribunal.

The same reasoning applies to the rejected claims, which had also been adjudicated, the adjudication having established the fact that the families claiming had remained in the ceded territory, and were, therefore, as every Choctaw believes, entitled to the proceeds of their homes, which had been sold by the United States, the only real difference between the two classes being that one class had received something, while the other had received nothing. Interest, therefore, accrues in one case on the price of the land from the day it became due till it is paid in full to the owners; in the other, on the price up to the first payment, and then on unpaid balances, until the debt is discharged.

Proceeding on this principle of computation, it will be readily seen that the fourteenth-article claims, either as presented to the Senate in 1857, or as explained in my letter to you of July 11, a copy of which was recently transmitted to you as part of the memorial addressed by the general council to Congress, exceeded on the 9th of March, 1859, the award that day made. One of the exhibits contained in that letter shows an aggregate of \$2,823,910 due to 1,150 Choctaw families to whom scrip has been heretofore awarded in part satisfaction of fourteenth-article claims, which aggregate is made up in part of \$1,025,810 for interest on various sums, amounting, together, to \$756,800, for different periods, ranging from twenty-four up to thirty-one years, being brought down to March, 1875, when it was hoped that the claims would be paid.

If that interest be calculated up to March, 1859, when the award was made, instead of March, 1875, a reduction of sixteen years will be effected, which at 5 per cent. would be equal to 80 per centum on the principal sum of \$756,800 indicated in the exhibit.

|   |                |
|---|----------------|
| From the aggregate of.....  | \$2,823,910 00 |
| Deduct 80 per cent., or sixteen years' interest on \$756,800, equal to..... | 605,440 00     |
| Leaves for amount due 1,150 families in March, 1850.....                    | 2,218,470 00   |

In like manner, afterward in the same letter the rejected claims are stated as amounting—

|   |              |
|---|--------------|
| For principal.....  | \$405,400 00 |
| For 39 years' interest from 1836, when the claims matured, to 1875..... | 709,530 00   |
| Making a total of.....  | 1,195,930 00 |
| Deduct interest from 1859 to 1875, 16 years, at 5 per cent.....         | 324,320 00   |
| Leaves amount due March, 1859.....                                      | 871,610 00   |

Add these aggregates together, namely:

|  |              |
|--|--------------|
| For 1,150 families.....  | 2,218,470 00 |
| For 292 families.....  | 871,610 00   |
| Gives the sum of.....  | 3,090,080 00 |
| due March, 1859, on fourteenth-article claims.                 |              |
| The award of the Senate in 1859 was.....                       | 2,981,247 30 |
| Being this amount less than the fourteenth-article claims..... | 108,832 70   |

The above statement rests upon facts and figures set forth in my letter of July 11, which is made part of the memorial of the general council to Congress.

A clearer view, based upon facts contained in the same letter, though not therein summarized in exactly the same way, and all taken from official records, would show—

|  |                |
|--|----------------|
| Eleven hundred and fifty families entitled to 1,400,160 acres of land, sold by the United States, "which it was therefore impossible," in the language of Congress, "to give them," the proceeds of which belonged to them and paid into the Treasury, were..... | \$1,750,200 00 |
| Interest on the trust-fund * thus created, from the 24th February, 1836, when the right to the land matured, to March, 1848, the assumed average period of the first payment, 12 years, at 5 per cent.....   | 1,050,120 00   |
| Amount due in March, 1848.....   | 2,800,320 00   |

## CREDIT.

|  |              |
|--|--------------|
| By proceeds of land-scrip delivered at various times between June, 1843, and December, 1851, less than half of it before March, 1848, which is assumed as the date of delivery, for convenience of illustration..... | 118,400 00   |
| Balance due March, 1848.....   | 2,681,920 00 |

## CREDIT.

|   |              |
|---|--------------|
| By amount appropriated by Congress in money, in the year 1852.....  | 872,000 00   |
| Leaving a balance of.....   | 1,809,920 00 |
| To which add for interest on \$756,700, being the difference between \$375,100, the par value of the scrip delivered between June, 1843, and December, 1851, and the proceeds thereof, or \$118,400, from March, 1848, to March, 1859, 11 years, at 5 per cent..... | 416,185 00   |
| Amount due in March, 1859.....  | 2,226,105 00 |

\* See report of Hon. Jno. C. Spencer, Secretary of War, Senate Doc. 188, 27th Congress, 2d sess., page 3, in which the proceeds of the fourteenth-article reservations are characterized as "trust-funds."

In the foregoing statement a distinction is made in charging interest between the half paid in scrip and the half paid in money. Interest is charged on the *whole* of the proceeds of the reservations sold from the 24th of February, 1836, when the right to receive patents for them matured, up to March, 1848, the assumed average period of the delivery of the scrip paid for one-half of each reservation. The amount realized for the scrip is then deducted from its par value, and the interest is charged on the difference or discount from March, 1848, to March 10, 1859, the date of the Senate award, a period of 11 years.

But on the other half, paid the claimants in money, there is no charge for interest after March, 1848, although the half in money was not paid until after July, 1852. The charge is not made for the simple reason that the interest was paid regularly on that half, by order of Congress, as will be seen by reference to the act of March 3d, 1845, 5th Statutes at Large, page 777; the payment in each instance commencing as soon as the scrip half was delivered, and continuing until 1852, when the principal was appropriated.

See act June 27, 1846, 9th Statutes at Large, page 34.

See act March 1, 1847, 9th Statutes at Large, page 145.

See act September 30, 1850, 9th Statutes at Large, page 555.

See act July 21, 1852, 10th Statutes at Large, page 19.

The delivery of the scrip was made by the Commissioner of Indian Affairs the initial point for interest to commence running under the act of March 3, 1845, instead of the date of the act itself, making a difference to the claimants, in that one item alone, of \$150,989.70, as may be seen by reference to the report on which the Senate award was based, (Senate Report Com., 2d session 35th Congress, page 14,) wherein the ground is taken that, in equity, interest would run from February 24, 1836.

Of those claimants who received neither scrip nor money for the lands of which they were deprived :

|   |              |
|---|--------------|
| Two hundred and ninety-two families became entitled, February 24, 1836, to patents for 324,320 acres, sold by the Government for..... | \$405,400 00 |
| Interest from February 24, 1836, to March 10, 1859, 23 years, at 5 per cent.....  | 466,210 00   |
| Amount due claimants to March 10, 1859.....   | 871,610 00   |

For which amount the Choctaw Nation is undoubtedly liable, as it has persistently asserted the validity of these claims from the year 1850 down to the present month. That is, it has invariably insisted that by remaining in the ceded territory the prescribed term, the claimants acquired a right to their homes under the fourteenth article of the treaty of 1830. And if any future legislation should open the courts of the United States to Indians as citizens, with the right to sue and be sued, for that amount the Choctaw national funds will be liable, under the twelfth article of the treaty of 1855, in case the award of the Senate is ever paid.

These two items added together, namely :

|   |                |
|---|----------------|
| For 1,150 "scrip" claimants.....                      | \$2,226,105 00 |
| For 292 "rejected" claimants.....                     | 871,610 00     |
| Give the aggregate of.....                            | 3,097,715 00   |
| due fourteenth-article claimants in March, 1859.      |                |
| The award of the Senate March 10, 1859, was.....      | 2,981,247 30   |
| Being less than the fourteenth-article claims by..... | 116,467 70     |

The fact that every one of the above claims of both classes has been adjudicated by the United States, and that the Choctaw Nation, upon

which alone rests the ultimate responsibility and burden, has, with full knowledge of such adjudication, "adjudged" both classes of claims to be equitable and just, and has, in its recent memorial to Congress, made its requisition for the whole amount of the award of the Senate as necessary for the payment of its just liabilities, will, I think, satisfy you that nothing should "be deducted from the sum due from the United States to the Choctaw tribe" for educational purposes, under the thirteenth article of the treaty of 1855, as the amount of said award is not enough to pay the individual claim "adjudged" by the authorities of the tribe to be equitable and just.

Although a large number of the claims in the three other classes specified in my letter of July 11 have been "adjudged" equally just by "the proper authorities," none of them are included in the foregoing exhibit, for the reason not only that it is unnecessary for the present purpose, the fourteenth-article claims alone exceeding the award of the Senate, but also because they had not been in like manner specially adjudicated by the United States, and had not so prominently influenced the general council in the steps which preceded and led to the treaty of 1855, and, moreover, because the other classes of claims do not stand upon the same footing with those under the fourteenth article in constituting a lien upon the Choctaw national funds, if those funds should ever become the subject of adjudication in the United States courts.

Very respectfully, your obedient servant,

P. P. PITCHLYNN,  
*Choctaw Delegate.*

HON. BENJ. H. BRISTOW,  
*Secretary of the Treasury.*

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AN ACT defining the duties and powers of the commissioners, the jurisdiction of the Court of Claims, fixing their pay, and for other purposes.

SECTION 1. *Be it enacted by the general council of the Choctaw Nation,* That whereas the Senate of the United States has awarded to the Choctaws the net proceeds of the land ceded by them to the United States by the treaty of Dancing Rabbit Creek, September, A. D. 1830, deducting therefrom the proper expenditures for surveying, selling, &c.;

SEC. 2. *Be it further enacted,* That whereas the Choctaws, by the twelfth article of the treaty of June 22, 1855, accepted the same in full satisfaction of national and individual claims, thereby becoming liable, and assuming the payment of individual claimants:

SEC. 3. *Be it further enacted,* That the three commissioners now appointed under sixth section of the constitution, and two others to be appointed by the governor, who, after being commissioned and qualified according to law, shall be, and the same are hereby, constituted a court of claims, who, before entering upon the duties of their office, shall take the oath of office prescribed in the constitution, which oath may be administered by the governor or judge of any court of record.

SEC. 4. *Be it further enacted,* That the court of claims shall have jurisdiction over all claims for self-emigration, all claims under the 14th and 19th articles of the treaty of September, 1830, and also claimants under the supplement, claims for lost property in emigrating to this nation during the years 1831, 1832, 1833, and for property scheduled to the General Government agents.

SEC. 5. *Be it further enacted*, That all claims against the nation shall be brought within eighteen months from and after the passage of this act, and not thereafter. Claimants shall have the right to appear before said court of claims in proper person or by attorney: *Provided*, That none shall be attorneys except those legally qualified to practice before the courts of this nation, being citizens thereof.

SEC. 6. *Be it further enacted*, That said court of claims shall, as well as claimants, have the power to summon any person or persons as witnesses on the part of the nation, and in case the personal attendance of the summoned cannot be had, depositions may be taken by either party before any judge or other officer legally qualified to administer an oath, sufficient notice being given to the adverse party of the time and place of taking the same.

SEC. 7. *Be it further enacted*, That the court of claims shall choose from among themselves the presiding commissioner, who shall be styled the chief commissioner, and enter the same on the minutes of the court, and said chief commissioner shall have power to sign the minutes and certify any matter of fact of record in said court.

SEC. 8. *Be it further enacted*, That the court of claims shall have power to appoint a clerk, by and with the advice of the governor, to hold his office as long as business may require, but may be removed, for any good and sufficient cause, from office. Said clerk shall take the oath of office prescribed in the constitution before any judge of a court of record, and shall be allowed for his services three dollars per day, payable quarterly out of the national treasury, by certified certificate from under the hand and seal of the chief commissioner of the court.

SEC. 9. *Be it further enacted*, That for preventing errors in entering upon the judgment or orders of said court, the minutes of the proceedings of every day shall be drawn up by the clerk before the next day's sitting of the court, when the same shall be read in open court, and such corrections as may be necessary made, and then signed by the chief commissioner of the court and carefully preserved in a well-bound book, to be kept for the purpose, if necessary, of making *pro-rata* payment on adjudicated claims of judgment rendered; and the last day of each sitting of said court the proceedings of that day shall be drawn up, read, corrected, and signed on the same day as aforesaid.

SEC. 10. *Be it further enacted*, That the commissioners shall for their services receive three dollars for every day they shall be actually engaged in the discharge of their duties as commissioners, payable quarterly out of any funds in the national treasury not otherwise appropriated. A certificate under the hand and seal of the chief commissioner of the number of days, and the amount, shall be presented to the auditor, who shall issue his warrant on the national treasurer for the same.

*And be it further enacted*, That the witness or witnesses appearing in behalf of the nation in the court of claims will be allowed two cents per mile and fifty cents per day in attending the above said court, out of any money in the treasury not otherwise appropriated, on the order or certificate of the chief commissioner to the national auditor for the same.

SEC. 11. *Be it further enacted*, That in case any vacancy shall occur in the court of claims, either by death, resignation, or removal from office, the governor shall have power to fill such vacancy by appointment.

SEC. 12. *Be it further enacted*, That, in case of necessity, the court shall have power to appoint a bailiff, who shall execute all orders of

said court, and for his services shall receive the same as that of constable for like services.

SEC. 13. *Be it further enacted*, That the said court shall hold its sessions at the following places, to wit: Skullyville, one month, commencing first Monday in January, 1860; John Riddle's, two weeks, commencing first Monday in February, 1860; Boggy Depot, commencing third Monday in February, to hold two weeks; Mayhew, three weeks, commencing first Monday in March, 1860; John Caffrey's, three weeks, commencing fourth Monday in March, 1860; Doaksville, one month, commencing third Monday in April, 1860; Lukfatah, one month, commencing third Monday in May, 1860; Jessee McKinney's, two weeks, commencing third Monday in June, 1860.

*Be it further enacted*, That in case the said court of claims shall not complete the adjudication of claims enrolled within specified times, then additional terms shall be held by said court; times and places to be fixed by said court for final and entire adjudication.

Approved October 21, 1859.