44TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 499.

CHOCTAW INDIANS.

MAY 15, 1876.—Recommitted to the Committee on Indian Affairs and ordered to be printed.

Mr. WILSHIRE, from the Committee on Indian Affairs, on leave submitted the following

REPORT:

[To accompany bill H. R. 3463.]

The Committee on Indian Affairs, to whom was referred the memorial of the Choctaw Nation, asking for the settlement of their claims for lands ceded to the United States under the treaty of 1830, *respectfully submit the following report:*

The subject presented by this memorial has been before Congress in one or another of various forms for many years, and has been the subject of a great deal of consideration and discussion without any successful determination. It grows out of the treaty between the United States and the Choctaw Nation of Indians of date June 22, 1855, which was the result of negotiations on the part of the Choctaw Nation for the purpose of securing the settlement and payment and satisfaction of the various claims, national and individual, of the Choctaw Nation and people against the United States under the treaty of 1830.

It was claimed by the delegates of the Choctaw Nation that by a fair construction of the treaty of 1830 itself the United States were bound to account to the Choctaw Nation for the net proceeds of all the lands ceded to the United States by that treaty.

The Choctaw Nation, failing to secure what they claimed to be justly due them under the treaty of 1830, consented to further treat with the United States on that subject, and, to that end, on the 22d day of June, 1855, entered into a treaty with the United States, by the eleventh and twelfth articles of which the United States declared that, and agree 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.)

It will be seen that by the twelfth article of this latter treaty it is specifically provided that whatever might be awarded by the Senate to the Choctaws, in this behalf, they were to receive in *full satisfaction* of all claims, national and individual. To show that the Choctaws were not only bound to accept the award thus made, but that the Government of the United States was bound also to comply with the same, this article declares that, "it being expressly understood that the *adjudication and decision* of the Senate shall be final."

This treaty was ratified June 22, 1855. On the 9th day of March 1859, upon the unanimous report of the Committee on Indian Affairs of the Senate of the United States, which had fully and maturely considered the question, and after consideration and free debate in open Senate, the award, adjudication, and decision, in pursuance of the power conferred by the treaty, was made and given, whereby it was, by that high tribunal, adjudged "that the Choctaws be allowed the proceeds of the sales of such lands as have been sold by the United States, on the first day of January last, (1859,) deducting therefrom the cost of their survey and sale, and all proper expenditures and payments under said reaty, 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 allowed twelve and a half cents per acre for the residue of said lands."

In pursuance of that *adjudication*, *decision*, and *final* award of the Senate, the Secretary of the Interior, who, by that *decision* and award, was directed to state, or cause to be stated, an account with the Choctaws under the treaty of 1855, according to the principles thus prescribed for the settlement of their claims, and to report the same to Congress. And, in pursuance of that direction, the Secretary of the Interior did state said account, and reported the same to the Senate, May 28, 1860, which is as follows:

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	10,423,139.69	
Area of reservations "allowed and secured" which are to be deducted and excluded from computation in the account	334,101.02	
Leaving	10,089,038.67	
Quantity sold up to January 1, 1859	5,912,664.63	
Residue of said lands	4,176,374.04	
Of this residue, 2,292,766 acres have been disposed of under the swamp-land act, and grants for railroads and school purposes, up to January 1, 1859.		
The proceeds of the sales of the lands sold up to January 1, 1859, viz, 5,912,664.63 acres, amounted to		$7,556,578 05
The residue of said lands, viz, 4,176,374.04 acres, at 12½ cents per acre, amounted to		522,046 75
		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, 10,423,139.69 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 56	
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	$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
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 76
TWENTIETH ARTICLE.		
Education of forty youths for twenty years	$217,260 73	
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
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 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 fourth article of the treaty of 1830		21,408 36

For payments made for Choctaw account, being for expenses incurred in locating reservations under the treaty with said tribe of 27th September, 1830	$19,864 00	
Total amount of charges	5,097,367 50	$8,078,614 80
When deducted from the proceeds of the land sold, and the "residue of said lands," at 12½ cents per acre		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	$7,556,568 05
Deduct cost of survey, &c., at ten cents	755,656 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 proceeds of the sales, up to the 1st of January, 1859, of 5,912,664.13 acres in the Choctaw cession of 1830, the sum of $362,100.70. The inquiry in Senator Sebastian's letter is so comprehensive that it may be proper to add—

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

3d. And likewise upon *Choctaw scrip*, that has been issued, equal to 169,402 acres, valued in like manner, there has been paid $10,587.62.

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.

This account stated, was referred by the Senate to its Committee on Indian Affairs, which committee, on the 19th of June, 1860, after a care-

ful review and examination of the whole case, made a labored report to the Senate, from which the committee make the following extracts:

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 $2,981,247.30.

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

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

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

The net proceeds of the ceded lands having been by the Senate awarded to the Choctaws, not as a matter of legal right upon the letter of the treaty of 1830, but under the power given by the submission in the treaty of 1855, not alone to decide whether the Choctaws were *entitled* to those net proceeds, but also whether they should be *allowed* them, in fulfillment of the duty created by that treaty, to give the rights and claims of the Choctaw people "a just, fair, and liberal consideration;" because of the impossibility of ascertaining the real amount to which upon a fair settlement the Choctaw Nation and individuals were entitled; but which amount, it was evident, was of startling magnitude; as the only mode by which equal justice could by any possibility be done between them and the United States; and because, under the treaty of 1830, taken in connection with the discussions and propositions that preceded the treaty, their *equities* to have the net proceeds were very strong indeed; therefore, it seemed to the committee to be an equitable construction of the award and its true intention that the United States should return to the Choctaws only so much as remained in their hands as profits from the lands ceded by the treaty of 1830, after payment of all expenses and disbursements of all kinds; and twelve and a half cents per acre for such lands only as still remain in the possession of the United States unsold.

The committee have therefore thought that there should be charged against the Choctaws, as a further deduction not made by the Secretary of the Interior, the 5 per cent. on the net proceeds of the actual sales of said lands, [$5,912,664.13,] 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.—(Senate report of committee, No. 283, first session Thirty-sixth Congress.)

The account, as stated by the Secretary of the Interior, was thus approved as correct, but submitted it as their opinion that the Choctaws ought to be charged further with the five per centum on the net proceeds of sales of their lands, which the United States had seen fit to give to the State of Mississippi, amounting to the sum of $362,100.70; and that the words, "the residue of said lands," in the award, ought not to be construed to include such of them as had been given to the State of Mississippi, under the swamp-land act and for railroad and school purposes.

In the light of the treaty of 1855, interpreted according to the well-known rules of construing such instruments, independent of its plain provisions, as well as the *adjudication*, *decision*, and award of the Senate of March 9, 1859. *See Senate Journal, second session Thirty-fifth Congress, p.* 493, wherein it is recited in the first resolution as follows:

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.

It seems difficult to see upon what principle of justice, equity, and fair dealing the Choctaws should be charged with the five per centum, paid by the United States to the State of Mississippi, on the net proceeds of said lands, and the lands granted to that State by the United States as swamp and overflowed lands, and lands granted to aid in the construction of railroads or for school purposes.

It does not seem to the committee that the stipulations of the treaty of 1855, or the award of the Senate made in pursuance thereof, will bear such a construction.

That treaty nowhere stipulates that such deductions should or might, at the pleasure of the United States, be made. Every principle of reasoning is against it. Because, 1st. It was the State of Mississippi and not the Choctaws that received the benefits derived from the swamp-land grant. 2d. That State and the country generally received the benefits resulting from grants to railroads and for school purposes, and not the Choctaws specially. 3d. The Choctaws have maintained their own schools out of their own funds, and should not be required to contribute from funds due them from the United States to support public schools in Mississippi.

The award of the Senate, made pursuant to the treaty of 1855, specifies particularly what deductions may be made; this would ordinarily preclude the right to make any other deductions than those specified in the award; this rule certainly obtained in this case, because not only by the stipulations of the treaty was this adjudication and decision final, but by the established and well-recognized principles of the law

of the land it could not be reviewed, impeached, or questioned elsewhere, and, upon the close of that session of Congress, it became *res adjudicata*, entirely beyond the reach of reconsideration, review, or alteration, by the Senate itself.

By the stipulations of the treaty under which that adjudication was made, the Choctaw Nation was bound to accept the award made by the Senate, in full satisfaction and discharge of all claims against the United States, national and individual, even though an insignificant sum in gross had been so awarded them.

Here it may not be amiss to observe that prior to the treaty of 1855, whatever was due to the Choctaws from the United States under former treaties was largely due to the members of that tribe of Indians individually; but the treaty of 1855 changed that character to a liability of the United States to the Choctaw Nation; that nation assuming to adjust and settle, upon the basis of whatever award might be made by the Senate, the claims of its individual members, and in pursuance thereof in October, 1859, the general council of the Choctaw Nation created a court of claims, or board of commissioners, to ascertain and adjust the claims of its individual members. The following is a copy of the act of the council for that purpose:

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 judg-

ment 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; Jesse 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.

Ever since that time the Choctaw people have vainly entreated Congress to give the money thus solemnly promised by the treaty of 1855, and shown to be due them by the stated account of the Secretary of the Interior, made pursuant to the award of the Senate, with interest thereon from the date of the ascertainment of the amount due them, that they might therewith discharge the debts of their nation to its individual members, which the United States, by the treaty of 1855, induced the Choctaw Nation to assume.

There seems to be no valid reason why the adjudication and award made by the Senate, under the power conferred on that body by the treaty of 1855, should not be held as final, binding, and conclusive upon the United States, and of as much dignity, sanctity, and force as the award in favor of the United States against Great Britain made at Geneva. Indeed, it would seem that this award should be more sacredly observed and carried out, because it was not made by a mixed or foreign tribunal, nor by one in which the Choctaw Nation was represented, nor against the judgment and opinion of the representatives of the United States therein, but by the Senate, which body had ratified and confirmed the treaty of 1855, under which the award was made.

Under that treaty the Senate had the expressly conferred power to *adjudicate* whether the Choctaws were or were not entitled to those net proceeds, and to award according to that adjudication. The treaty of 1855 did not, in making that adjudication, confine the Senate to that question alone, but empowered that body to *decide* whether the Choctaws were entitled to the net proceeds of their lands ceded, or whether they should be *allowed* them, under the treaty.

The Senate, then, was the umpire, and, in the language of the treaty, its adjudication and decision in the premises was final, and the Choctaw Nation was bound to accept its award in full satisfaction of all their claim against the United States, whatever that award might be. The following article of that treaty so expressly declares:

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.

This express stipulation was insisted upon by the United States in the negotiations of that treaty, as is shown by one of the concluding correspondences of the Commissioner of Indian Affairs with the Choctaw delegates. In the letter of the Commissioner of Indian Affairs, Hon. George W. Manypenny, to those delegates, dated June 18, 1855, the following language appears:

In relation to the restrictions you desire to impose in the article leasing a portion of your country, I have frankly, and from the very first time that the articles of convention—drawn up, at your instance, by Agent Cooper—were submitted to me, objected to that clause, and inserted an amendment in pencil, which is still remaining therein.

I also objected, at once, to the language used in submitting certain questions to the Senate, seeing no propriety whatever in the qualified submission proposed by the article.

On both these points I have had several free conversations with the Choctaw delegates, and have expressed my opinion very fully and freely, especially as to the absolute necessity of making the award of the Senate for the claims of Choctaws, whether national or individual, *final and conclusive.*

So it will be seen that the stipulation contained in the twelfth article of the treaty of 1855 was objected to by the Choctaws, and insisted upon by the United States as a *sine qua non* to the conclusion of any treaty negotiations.

This conclusion is made irresistible from the following closing paragraphs of the same letter of the Commissioner:

I shall regret if your persistence in the positions you have assumed on the points of difference shall defeat the negotiations, but shall, at the same time, feel assured in my own mind that I have asked nothing but what justice and good faith require.

I am fully sensible of the importance of the harmonious adjustment of the questions of irritation that exist between you and the Chickasaw people, and am desirous to see all causes of difference removed, and am sincerely anxious that your business matters with the Government may be satisfactorily disposed of, to the end that our relations with the Choctaws shall be adjusted and *finally* settled; and shall extremely regret if, by your persistence, that which is so desirable, and seemed so likely at one time to be accomplished, shall fail.

Notwithstanding, the Choctaws, pending the negotiations of the treaty of 1855, seriously objected to that stipulation, making the award of the Senate final, and binding upon them to accept whatever award might be made, in full satisfaction of their claims. Still they finally agreed to that stipulation by entering into the treaty, and, having done so, acting in good faith, they have at all times signified their willingness to accept the amount found due them by the Secretary of the Interior, under the award of the Senate, with interest thereon, from the time such amount was ascertained in full satisfaction of their claims;

indeed they have not only manifested that willingness, but ever since the amount found due them was ascertained, they have been imploring the Government to act in the same good faith and comply with the obligations resting upon it, imposed by itself by the treaty, the award of its Senate, and its accounting-officer.

The claims of the Choctaws, under the treaties with them, have never been denied by any of the departments of the Government; but on all occasions have they been recognized to some extent.

By article 10 of the treaty of 1866, with them and the Chickasaws, the United States re-affirmed *all obligations* arising out of treaty stipulations, or acts of legislation, with regard to the Choctaw Nation, entered into prior to the late rebellion, and in force at that time not inconsistent with the treaty of 1866.

By this latter treaty the Government agreed to renew the payments of all annuities and other moneys accruing under such former treaty stipulations and acts of Congress. Besides, every committee of both branches of Congress, to whom this claim of the Choctaws has heretofore been referred, either before or since the treaty of 1866, have recognized the validity of the same, and the duty of the United States to discharge the obligation the Government assumed by the treaty of 1855. The reports of committees referred to are as follows, and fully sustain the above position:

1st. Senate Committee on Indian Affairs, February 15, 1859.
2d. Senate Committee on Indian Affairs, June 19, 1860.
3d. Appropriations Committee of House of Representatives in bill No. 1227, reported by Hon. Thaddeus 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 Windom, 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.
9th. Report of Hon. James Harlan from Senate Committee on Indian Affairs, January 22, 1873.
10th. Report of Hon. J. P. C. Shanks from House Committee on Indian Affairs, February 22, 1873.
11th. Report of Hon. I. C. Parker from House Committee on Appropriations, April 9, 1874.
12th. Report of Hon. A. Comingo from House Committee on Indian Affairs, May 20, 1874.

In the report of the Senate Committee on Indian Affairs No. 283, made June 19, 1860, it is assumed independent of the stipulations of the treaty of 1855—

There should be charged against the Choctaws, as a further deduction not made by the Secretary of the Interior, the five 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 to the State of Mississippi under the swamp-land act, nor grants to railroads and for school purposes, but so much as in the account is allowed for such lands at twelve and a half cents an acre (or $286,595.75,) should be deducted.

Thus deducting on those accounts the aggregate sum of $648,696.48 from the amount shown by the statement of the account made by the Secretary of the Interior. To these deductions the Choctaws object, insisting that they are not warranted by the stipulations of the treaty of 1855, which they claim only authorizes the deductions specifically mentioned in that treaty.

There never has been an adverse report on the claim of the Choctaws by either house of Congress, though often examined by the committees of each.

THE OBLIGATION OF THE GOVERNMENT TO PAY INTEREST.

On this subject the committee feel constrained to say that the United States, with a great and powerful government, cannot, in equity and justice, nor without national dishonor, refuse to pay interest upon whatever amount there may be found to be due the Choctaw Nation on this account, so long withheld from the Choctaw people without any fault or neglect on their part, or on the part of their national authorities.

The following are some of the reasons why the committee are of opinion that interest should be paid on the amount that may be ascertained to be due them, under the 11th and 12th articles of the treaty of 1855.

These reasons were assigned by the Committee on Appropriations of this House, in the first session of the Forty-third Congress, in the report made by the Hon. I. C. Parker; and after a careful comparison with the authorities and acts of Congress, referred to in these reasons, the committee, with approbation, adopt and insert them in this report:

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 mu-

nicipal 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 interfruit; id est, quantum mihi abest, quantumque lucraci 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-imbursement 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 com-

pensation 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, Twenty-seventh Congress, second 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 au-

thorized 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 had 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 Authur 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 Stat. 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, inclusive, 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-imbursement 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 24, 1813, provided that there be paid to John Dixon the sum of $329.84, with six 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 Dunscombe, 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. 78446, for $1,000, and No. 78447, 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., p. 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 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 1st of January, 1782. (6 Stat. 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., p. 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 interest 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, 1870, 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 cent. per annum, from the 23d day of May, 1818. (6 Stat. at L., p. 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 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.

With regard to this particular claim, the Senate—the body approving the treaty under which the claim arises—the tribunal making the award in favor of the Choctaws—in a report of its Committee on Indian Affairs heretofore referred to, speaking of this award and claim and the obligation of the United States to pay interest upon the balance remaining 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 afore-named 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.

The committee have examined this question of interest with an anxious desire to do but exact justice, as near as may be, to the Indians and the Government; and in doing so, we have considered the question not only by the light of those principles of public law always in harmony with the highest demands of the most perfect justice, but also in the light of the numerous precedents which the Government has furnished in the several acts of Congress referred to.

The committee cannot believe that the payment of interest on the amount due the Choctaws under the treaty of 1855, from the time the award was made by the Senate, would violate any principle of law or establish any precedent which the United States would not be willing to follow in any similar case in which the Government was the claimant. The Government should not repudiate those principles of public law and common justice.

Because the Choctaws are a weak and powerless nation of Indians, is the obligation of the United States to do them justice any less than if they were the equal of this Government in military power?

Could the United States escape the payment of interest to Great Britain on a just debt, after the same had become due?

That there is something due the Choctaws under the treaty of 1855, we venture to say no one who has given any attention to the subject will hazard a doubt. Then that sum, whatever it may be, should speedily and definitely be ascertained and, with interest thereon from the time the award of the Senate under the treaty of 1855 was made, paid to them.

The committee are not unmindful of the fact that the claim of the Choctaws is large, and that the interest upon whatever may be found to be due them will be proportionately large because of the length of time the claim has been unsettled and unpaid.

But it must not be forgotten that the great length of time the payment of this claim has been deferred is entirely the fault of the United States. From the time the account was stated by the Secretary of the Interior, between the United States and the Choctaw Nation under the treaty of 1855, the Choctaws have persistently demanded a settlement and payment of their claim, and for that purpose keeping here at the capital their duly-authorized delegates or representatives, nearly all the time at great expense.

After a full and careful examination of all the matters presented by the memorial of the Choctaws, and the several treaties between the United States and the Choctaw Indians relating to this claim, the committee are of opinion that, in order to secure equal justice both to the United States and the Choctaws, and the claim be adjusted and discharged at an early day, the whole subject-matter relating to the claim should be, by proper legislation, referred to the courts of the country.

The committee therefore report the accompanying bill, and recommend its passage.

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