46TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 4.

AMOUNT DUE CHOCTAW NATION.

MAY 16, 1879.—Recommitted to the Committee on Indian Affairs and ordered to be printed.

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

REPORT:

[To accompany bill H. R. 440.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 440) for the ascertainment of the amount due the Choctaw Nation, having had the same under consideration, beg leave to report:

That the previous history of this claim and the reports made by respective committees of the House of Representatives and the Senate show the following to be the history of this case:

The Choctaw claim, as a legal obligation, rests on the treaty of 1855, which referred claims under a former treaty to the Senate for a decision, which was to be final (11th art. treaty 1855, 11 Stat., 611).

The decision was announced on the 9th March, 1859, in a resolution allowing them the net proceeds of the lands they ceded in 1830, and requiring the Secretary of the Interior to report to Congress the amount due under its prescribed principles of settlement (Sen. Jour., 2d sess. 35th Cong., 493).

The Secretary reported that the amount was $2,981,247.30 (H. R. Ex. Doc. 82, 1st sess. 36th Cong., pp. 2 and 25).

Of this sum, $500,000 was appropriated March 3, 1861 (12 Stat., 238).

One-half the appropriation was paid in money; the other half was payable in bonds which were not delivered (Pres. Mess., Ex. Doc. 34, 3d sess. 35th Cong., p. 9).

The authority to deliver the bonds first conferred March 2, 1861, was renewed by Congress March 3, 1871, and afterward suspended February 14, 1873 (pp. 9 and 10).

In the following year the indebtedness of the government to the Choctaws was referred to in the third section of the sundry civil appropriation act of June 23, 1874, which directed the Secretary of the Treasury to report the liabilities of the Choctaws mentioned in the twelfth and thirteenth articles of the treaty of 1855, "with a view of ascertaining what amount should be deducted from the sum due from the United States to said Choctaw tribe" to enable the tribe to pay such liabilities (18 Stat., 230.)

There has been no subsequent legislation on the subject. As the matter stands, the evidence in the statutes indicates that something is due the Choctaws.

The nature and extent of the liability incurred under the Senate resolution of March 9, 1859, has been discussed in both houses of Congress from the 13th of June, 1860, when it was first proposed in the Senate to pay the amount found due under its decision, down to the enactment above referred to in June, 1874.

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TREATY OF 1820.

The report (574, 2d sess., 35th Cong., p. 2), which accompanied the resolutions adopted by the Senate as its award, shows that the Choctaws rested their claim primarily on the treaty of 1820, when they owned half the area of the State of Mississippi. They then exchanged for their country west, a tract estimated at 6,000,000 acres (2 Ind. Affs., 241), and described in the treaty as a "small part of their land here" (7 Stat., 210).

The residue retained was subsequently ascertained to be 10,423,139 acres (Ex. Doc. 82, 1st sess. 36th Cong., p. 22). Its boundaries were to remain "without alteration" until the Choctaws were sufficiently civilized to become citizens of the United States, when a "limited parcel of land was to be laid off for the benefit of each family or individual in the nation" (7 Stat., 211).

The preceding negotiations and the subsequent treaty of 1825 show that this was understood on both sides to mean the apportionment of the tribal domain among the individual members of the tribe. (7th art. treaty 1825, 7 Stat., 236; 2d Ind. Affs., 240.)

THE TREATY OF 1830.

In 1829 Mississippi extended its jurisdiction over the Choctaw country, and in September, 1830, a treaty was made which in its preamble sets forth that extension, and the inability of the President to protect the Indian from its effects, as a reason for the cession of their country east of the Mississippi (7 Stat., 333).

The fourteenth article of the treaty partially renews the apportionment features of 1820, by providing for all without restriction who chose to remain and become citizens a quantity of land, including their improvements, equal to something over two-thirds of what an apportionment would have given them.

The aggregate ceded was 10,423,139 acres. The Indian Office estimated that 7,321,180 acres would have been absorbed if all the Choctaws had secured the land they might have claimed under the fourteenth article of their treaty (H. R. Ex. Doc. 47, 2d sess. 43d Cong., p. 9).

Under any circumstances, therefore, the treaty of 1830 would have fallen short of the apportionment guarantees of 1820.

The Choctaws contended, however, that the language of the treaty of 1830, coupled with the assurance of the commissioners during the negotiations, shows that the treaty intended that they should have whatever was derived from the sale of their lands after paying all proper charges; that if they emigrated they were to have the proceeds of the land in place of the land itself, as provided by the treaty of 1820.

Commenting on this view and on the apportionment promised in 1820, the report of the Senate committee says that though in strict justice the treaty of 1830 *ought* to have given the net proceeds, in point of fact it did *not* give them, and therefore under that treaty the Choctaws are not "entitled" to them.

The report then proceeds to examine at length the losses caused by the failure to execute the treaty. Its conclusions have been assailed in a document emanating from the Treasury Department (H. R. Ex. Doc. 69, 3d sess. 42d Cong.). But a subsequent document from the same department shows that the information on which the report of the Senate committee rests was furnished officially by the Indian Bureau (H. R. Ex. Doc. 47, 2d sess. 43d Cong., p. 7 to 13), and every material statement

then made is confirmed by the same bureau in the message lately transmitted to Congress by the President (H. R. Ex. Doc. 34, 3d sess. 45th Cong.).

The statements of the Indian Office show that several thousand Indians remained in the ceded territory relying on the stipulations of the treaty; that of more than 1,500 families who endeavored to secure their homes and improvements under the fourteenth article less than 150 succeeded; that of those who failed some were afterward partially indemnified, but that a large number were deprived of their land and never received any equivalent whatever.

The report proceeds to examine various items in the Choctaw claim, and adds that it is evident from these facts that the Choctaws are entitled to receive from the United States a large sum in gross for non-performance of the stipulations of the treaty of 1830, but how much that sum should be, "it is now impossible to ascertain" (page 14), and that the only practicable mode of adjustment is to give them the net proceeds of their lands, because it is the only course by which justice can now be done (page 17), and "because it would really amount to a little more than half of what might be recovered in a court of equity if the case were one between individuals" (page 18).

The report closes with the resolution that the Choctaws be allowed the net proceeds of the lands they ceded in 1830, being the same in substance that was adopted on the 9th of March, 1859.

It has been objected that this decision was made without debate, without sufficient knowledge of the subject, and under a misapprehension as to the amount involved.

But these objections were all urged during the next ensuing session of the Senate in discussions which turned mainly on the question how much was due under the resolutions.

"We did agree," said Mr. Toombs, who voted against the first proposition to pay the claim, "to give the Indians the net proceeds; but the difficulty is as to what are the net proceeds." (Globe, June 13, 1860, p. 2937.)

In the same debate it was contended by some Senators that the true amount was $2,332,560.85; by others, that it was $1,851,247.30. In the following February, a provision was inserted by the Senate in an appropriation bill for the payment of $1,202,560.85, as the "undisputed balance" due the Choctaws under the "award" of March 9, 1859. (Globe, Feb. 2, 1861, pp. 704, 831, 832.)

The clause was rejected by the House; but it was contended by some members that the Choctaws were entitled to the full sum of $2,981,247.30 reported by the Secretary of the Interior.

The question between the two houses was settled by an appropriation of $500,000, "on account of their claim under the eleventh and twelfth articles of their treaty" of 1855. (12 Stat., 238.)

There seems to be no doubt that the half of this sum, payable in bonds which have never been issued, is still due. How much more the Choctaws are justly entitled to receive is a question not easily answered. The differences above referred to were not confined to the debates. Committees of both houses have from time to time reported different amounts. Thirteen such reports have been made since 1861, which agree on one point alone, and that is that the Choctaws have a just claim which ought to be settled.

The halls of Congress are obviously not the place to adjust the items of an account. The Indians have asked for a reference to the courts. While on the one hand it would seem eminently proper to let a judicial

tribunal ascertain how much is legally and equitably due, on the other there can be no serious objection to permitting the courts to examine and determine the questions at issue between the government and the Choctaws.

Under this state of facts your committee report and recommend that the bill (H. R. No. 440) be reported back to the House with the recommendation that the same do pass.

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