

## PROVINCE OF OKLAHOMA.

MARCH 21, 1876.—Recommitted to the Committee on Indian Affairs and ordered to be printed.

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

### REPORT:

[To accompany bill H. R. 2823.]

*The subcommittee to which was referred the bill for establishing a government for the Territory of Oklahoma, having carefully considered the same, present the accompanying substitute therefor, and thereupon report as follows:*

What is known as the Indian Territory, which the bill herewith reported proposes to erect into a province, is all that region of country lying between the State of Kansas on the north and that of Texas on the south, and the States of Missouri and Arkansas on the east and the State of Texas and the Territory of New Mexico on the west; in extent about equal to the State of Georgia, and chiefly between 34° and 37° north latitude and 94° 30' and 100° west longitude; a land in part of forest, in larger part of prairie, of vast mineral wealth and great fertility of soil, intersected by five rivers, and capable of becoming a great and prosperous State.

The eastern part of this country, somewhat more than half of the whole, is owned and occupied chiefly by dependent civilized nations, the Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws. A small portion of the northeastern part is owned and occupied by the Quapaws, Senecas, Shawnees, and other fragments of decayed tribes. West of the Choctaws and Chickasaws are settled lands of the uncivilized tribes, the Peneteghka band of the nation known to us as Comanches, the Ta-wai-hash or Wichitas, the Cadohadachos or Caddos, the Toncawes, Ciawis, Kishais, Huecos, Ta-wa-ka-ros; and the western part of the Territory is the hunting-ground of the Comanches and Cai-a-was. The Wa-sa-shis or Osages have also been settled in the Cherokee country. There are also among the other tribes small bands of the Sha-wanos, the O-po-nagh-ke or Delawares, and the Shack-a-po, known to us as Kickapoos; and several wild tribes, besides these named, range and hunt through the treeless regions between the Upper Arkansas and Red River.

The Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws are neither nomads, barbarians, nor pagans. They are civilized and Christian peoples, living under settled governments and laws wisely adapted to their simple needs. They are peaceful, law-abiding, orderly and moral, freer of vice or crime than almost any other people in the world.

They have been more than forty years neighbors of the people of Arkansas and Missouri, and in all that time the laws of good neighborhood have not been broken on either side, nor has the power of the United States ever had to be called upon to keep the peace upon that frontier.

The men of these five tribes are agriculturists, having comfortable homes and farms, and largely engaged in raising cattle. The Cherokees, Choctaws, and Chickasaws have written constitutions of government. Laws printed in their own and the English language. Legislatures each composed of an upper and lower house, and county, circuit, and supreme courts of justice. The Creeks and Seminoles have departed less from their ancient forms of government; but they are well and wisely governed by law-makers and elective chiefs.

The most striking characteristics of these peoples are truthfulness, strict fidelity to their promises, and singular honesty. They never betray a trust or break a promise. They have never, in even the slightest matter, violated a treaty; it needs no oath to make it sure that their testimony shall be true; and they have not yet learned how to cheat their creditors by fraudulent devices.

By the report of the Board of Indian Commissioners for 1872, and the tables of comparative statistics therein given, it was shown that in population, number of acres cultivated, products, wealth, valuation, and school statistics, the Indian Territory was equal to any one of the organized Territories of the United States, and far ahead of most of them. It had a smaller area than any other, and a larger population than any excepting Utah and New Mexico. It had more acres of land under cultivation than Washington, over one-third more than Utah, and more than twice as many as Colorado or Montana; and the number of bushels of wheat, corn, and other farm-products raised in the Indian Territory was more than six times greater than was raised in either Utah, New Mexico, or Colorado.

It is sufficient for the purposes of this report to append the following tabular statement, from the report of the same commissioners, which is much less favorable to the civilized tribes than one for 1875 would be, because they are still slowly recovering from the exhaustion and impoverishment consequent upon four years of war.

These tables, corrected only as to the numbers of the tribes and with the addition of the colored population, show, as the board of commissioners stated, that "the partially-civilized tribes, numbering about 50,000, (55,000,) have, in proportion to population, more schools, and with a larger average attendance, more churches, church-members, and ministers, and expend far more of their own money for education than the people of any Territory of the United States, and the number of schools and academies is much smaller now than before the war.

*Statistics of the Indian Territory.*

Nations and tribes.	Number.	Wealth in individual property.	Acres of land.	Acres cultivated.	Bushels of grain, &c., raised.	Value of grain, &c., raised.	No. of horses, cattle, sheep, swine, &c.	Value of horses, cattle, sheep, swine, &c.	No. of church-members.	No. of schools.	No. of teachers.	Cost of schools.	No. of scholars.	Citizens of United States inter-married.	Negroes.	Citizens of United States resident by permit and otherwise.
Choctaws .....	16,000	\$4,746,000	6,688,000	27,082	2,116,596	\$1,801,500	29,940	\$838,000	2,500	36	39	\$36,000	900	.....	3,000	.....
Chickasaws .....	6,000	1,582,000	4,377,600	14,500	380,000	320,000	44,500	394,000	14	17	17	33,000	439	.....	2,000	.....
Cherokees .....	18,000	4,995,055	3,844,712	120,000	3,200,000	1,703,155	200,000	1,457,000	2,500	62	62	25,000	2,033	.....	3,000	.....
Creeks .....	12,295	3,113,200	3,250,560	28,600	727,100	602,100	113,400	933,200	2,050	32	32	14,258	860	.....	3,000	.....
Seminoles .....	2,398	379,155	200,000	7,500	153,075	153,150	34,525	133,025	No data	4	4	2,475	207	.....	500	.....
Others .....	18,523	2,172,408	8,969,721	6,995	162,564	83,705	42,100	1,691,896	No data	16	34	16,675	654	.....	.....	.....
Total .....	73,216	16,987,818	27,330,593	204,677	6,739,335	4,663,610	464,465	4,947,121	.....	164	185	127,408	5,093	3,000	11,500	3,000

In 1825, President Monroe, in his message to Congress, urged the acquisition from the native tribes of "a sufficient tract of country west of the State of Missouri and the Territory of Arkansas, in order to establish permanent settlements in that quarter of tribes which were proposed to be removed" from the country east of the Mississippi; and the Secretary of War, in his report of that year, recommended that "*the strongest and most solemn assurances*" should be given "that the country given them should be theirs as a permanent home for themselves and their posterity, without being disturbed by the encroachments of our citizens."

President Jackson, in his message of December, 1829, recommended the removal of the Choctaws and other Indians to the country west of the river Mississippi, and said: "As a means of effecting this end, I suggest for your consideration the propriety of setting apart an ample district, west of the Mississippi, and without the limits of any State or Territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it, each tribe having a distinct control over the portion designed for its use. There they may be secured in governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the different tribes."

On the 30th of May, 1830, an act of Congress was accordingly passed, providing for an exchange of lands with the Indians residing in any of the States or Territories, and their removal west of the Mississippi. This act provided that "in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribes or nation with which the exchange is made, that the United States will forever secure and guarantee to them, their heirs or successors, the country so exchanged with them; and, if they prefer it, the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States if the Indians become extinct or abandon the same."

Under and by virtue of this act of Congress, treaties with the Cherokees, Creeks, and Choctaws were made, guaranteeing to them the lands acquired by them west of the Mississippi, and patents in due form were signed by the President and given to each. The Seminoles hold under the Creeks; and the Chickasaws purchased a joint interest with the Choctaws.

The highest judicial authority has settled, in the case of *Holden vs. Joy*, that the Cherokees have a complete title in fee-simple to their lands, and the titles of the other nations are the same.

The United States solemnly covenanted with these nations that no Territory or State should ever have a right to pass laws for their government; and that no part of the land granted them should ever be embraced in any Territory or State; but in the year 1866 they consented, by treaty, to the convening annually of a council of delegates from each nation and tribe lawfully resident within their territory, to have and exercise certain limited legislative powers; to the establishment of a court or courts of the United States therein; and that the superintendent of Indian affairs should be the executive of the Territory, with the title of governor, with only such powers as would properly belong to an executive officer charged with the execution of the laws which the council should be authorized to enact.

Of this council of the tribes, paid by the United States, there have been two or three sessions, perhaps more, without useful result of any sort.

Many bills have, from time to time, been introduced into Congress proposing to establish a territorial government over the country in question, and the Indians to be affected thereby have said to Congress, in the language of the solemn remonstrance and appeal of the Choctaws, in regard to one of the bills: "If the bill in question were an honest and fair attempt to carry into effect the provisions of the treaty in regard to such organization, the Choctaw people would have no right to complain; but they do show unto Congress that it is an unfair and dishonest attempt, scheme and plot, for sinister purposes to pervert the said treaty, and to further the interests and content the greed of a hungry band and combination of vultures, of the same class as those by whom the Choctaws were fleeced and plundered, and the United States dishonored in Mississippi."

There already exists, in conformity to treaty agreement, the legislative branch of a confederated government of the nations and tribes in the country in question. The gentlemen representing them, who presented to the committee objections to the bill, were unanimous in desiring the establishment of the judicial branch by the creation of a court or courts of the United States; why, then, should there not be an executive branch, to see executed the enactments of the legislature and the decisions of the judiciary?

They already have such executive power in its worst possible shape, because it is essentially despotic and irresponsible. The Secretary of the Interior is king, and the superintendents and agents are his pachas.

Your committee do not doubt that there should be courts of the United States, an executive power resident there, and a limited legislative power in this Indian country. The establishment of such a government, to maintain peace among the various nations and tribes, and to enforce the laws of the United States, as well as to give greater dignity and efficiency to the government and courts of the civilized nations, and protect those nations in their rights, becomes every day more apparent; as also the expediency does of effecting a political organization which shall prepare that country to become one of the States of the Union. The treaties authorize the establishment of such a government, and it need not be discussed whether, if they could not, the United States could be divested of the political power over any portion of the country within their limits.

But by the treaties the local judiciaries of the nations cannot be interfered with; nor can the legislative power that may be created enact any law inconsistent with treaty stipulations, "or legislate upon matters pertaining to the legislative, judicial, or other organizations, laws or customs of the several tribes or nations," except as provided for by the treaties.

It is the part of a wise statesman to respect the prejudices even of intelligent communities, which ought to have none. The idea most cherished by each of these nations is its nationality. It is chiefly their unconquerable aversion to surrender this, which stands most in the way of their acceptance of a territorial government. It is, in effect, not a prejudice, but a just pride of race and blood, more potent with them than any other incentive to action; a pride which they have a just right to cherish, and of which who can truly say that it is not praiseworthy?

This just pride, this high and noble sentiment, is respected by the bill which we submit, and its provisions in no degree diminish or affect the nationality of the civilized tribes, and, respecting even their prejudices against the word "Territory," which seems to them to contain a menace, and against incorporation whereunto they deem themselves guaranteed

by treaties, we propose to call the political organism contemplated by the bill, as the Romans called Gaul and Britain, *province*.

The United States have, by acts of Congress, undertaken to give to certain railway corporations large grants of the lands belonging in fee-simple to these nations, contingent upon the extinguishment of their title. They fear that if they are made a Territory, they will be held to have become extinct as nations within the meaning of treaties and patents, and that thereupon these grants will be held to take effect.

It is due to simple honesty and good faith that they should have ample guarantees against this apprehended danger. Nor are their apprehensions wholly unfounded, when so little is thought of their fee-simple title, that the Secretary of the Interior can, with a stroke of the pen, grant to a railroad corporation, whose road runs across their whole country from north to south, a strip of land a hundred feet in width on each side of the road, under simple grants by treaty of the right of way, to inure upon the making of due compensation; for which right of way no compensation has ever been made or even offered.

The treaties and patents convey the lands in fee-simple to the *individuals* of each nation, their heirs and successors, or descendants. The lands of the Choctaws and Chickasaws are forever secured and guaranteed "*to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common.*" So that each member of either tribe, then or afterward in being, should have an equal undivided interest in the whole.

The provision that the lands should revert to the United States if the Indians should become extinct or abandon the same, is simply the declaration of a right of escheat. The Supreme Court, in *Holden vs. Jay*, declared that it "entertained strong doubts whether that condition in the Cherokee patent is valid, as it was not authorized by the treaty under which it was issued;" and also, that it might well be held that if it reduced the estate conveyed to less than a fee, it was void.

The United States have, at the best, only a possibility of a reverter; and that possibility is not the subject of a grant. Moreover, it is very doubtful whether a state or nation can, in anticipation of such a contingency, grant a right of escheat that may arise in the future, and it is absolutely certain that the United States cannot create the contingency, to their own profit, by extinguishing the nationality of the Indians. In *Holden vs. Jay*, the Supreme Court said that the sale in trust by the Cherokees to the United States did not constitute such an abandonment as was contemplated by the condition in the patent.

And, as to the Choctaws and Chickasaws, the treaty of 1866 provides that they may subscribe to the stock of each road running through their country, at a price to be agreed on between them and the company, alternate sections of the unoccupied lands for a space of six miles on each side of the road, for which the company should be entitled to patents; and these provisions are totally inconsistent with the improvident conditional grant of lands in which the United States had nothing to grant, contained in the acts of Congress on which the railway companies rely.

As the lands of these nations belong in fee-simple, in common, to the individuals of each, the mere extinction of their nationality could not work a reverter. There will be necessary for that, the extinction of the very last individual of each nation respectively. If the supposed right, which is a mere possibility of reverter, lessened the quantity of the fee, and made the estate granted inferior to a fee, it would be idle to talk of the division of the lands in severalty, and sale of portions by individuals to those desiring to settle in the country.

Finally, by the treaties of 1866, when the Indians consent to the survey and partition in severalty of their lands, each is to hold in fee-simple absolute, and any right of reverter to the United States will cease, *as of the date of the treaty*; so that it was not in the power of the United States after making the treaty to grant to others the possibility of a reverter.

It is very clear that the contingent grants to the railroad companies were calculated to produce very mischievous effects upon the minds of the Indians, insecure as they had been made to feel themselves in the possession of rights guaranteed by treaties, especially since the decision of the Supreme Court that the internal-revenue laws are in force in their country by virtue of a clause in an act of Congress, in direct violation of the treaty of 1866 with the Cherokees.

The committee think that the contingent grant in question was utterly indefensible, without consideration, gravely injurious to the Indians, a perpetual menace, a worthless pretense of a grant in reality, which can only be made of value and substantial by the most shameless ill-faith, and that it ought to be repealed, as also all laws or provisions of laws should be which annul or violate provisions of treaties securing rights to the tribes with which they have been made; and they have, therefore, by the bill submitted, relinquished all right and possibility of reverter, and repealed such provisions of law contrary to treaties.

By a provision of law for which it is impossible to offer excuse or apology, the doors of the Court of Claims of the United States are shut against any claim under an Indian treaty. These nations are bodies politic and corporate, with whom we treat, bargain, and contract, to whom we sell, from whom we buy, whom we can owe, and to whom we can make the most solemn promises, and become bound by the most stringent obligations. But if we become their debtors, in what solemn manner soever, we tell them that they shall not come into our own court to ask for justice and payment of the debt. This is very unworthy of a just or great nation, and it has subjected us, and justly so, to the humiliation of having addressed to our Secretary of the Interior, by the delegate of one of these nations, these terrible words: "It is not a good nor a wise government which denies to the humblest human creature whom it governs all remedy to enforce his rights; for, when it denies the remedy, it annuls the right, (or rather paralyzes it, for no human power can annul a right, if even God can,) and so does that which is unjust, dishonorable, and dishonest. \* \* \* I am an Indian, and I only express what an Indian feels. Few kings have denied all justice, and remedy, and rights in their courts, to even the lowest and humblest of their subjects. Even the Saxon swine-herd was not *entirely* without the protection of the law; and in Rome, under Domitian, the slave could be heard to revindicate his *peculium*. Yet the ancestors of the Romans had not solemnly stipulated for themselves and their descendants that they would not sell, would not deny, would not *delay* justice to *any* one. \* \* \* We are utterly powerless to enforce or assert a single right. \* \* \*

"There never was in all the world a people more utterly without any lawful remedy for wrong, or means of asserting a right, than the Choctaws and Chickasaws are."

"In a great republic," it was said by the same delegate, in a letter to the Speaker of the House of Representatives, "we are the only human creatures that have no rights, because we have no remedy to enforce any right."

We cannot expect these Indians to trust to our assurances, or to believe that any bill creating a government over them will not prove a snare



and a trap, the first step toward their destruction to be followed by encroachment after encroachment, the annihilation of one after another of all their rights of self-government, unless we give them earnest of our sincerity and good faith.

Guarantee to them the preservation of their local and domestic institutions, their laws, legislatures, courts, usages and customs; give up the pitiful reverter that disturbs them in regard to their lands, and say frankly, "they are yours in fee absolute," and say also, "if you claim that we owe you moneys, prefer your claims in our court, and they shall be fairly heard and justly decided, and what we owe you we will pay," and we may, by establishing a proper government, insure the future opening of their country and the establishment of a State.

We have no right to establish a government in the Indian Territory for any other than the limited purposes of enforcing the laws of the United States, securing the Indians in their rights under treaties, maintaining peace and harmony among all the nations, and regulating their intertribal concerns, and governing the uncivilized tribes and bands, settled or nomadic, in the province. For these and no more the bill provides.

The general council is useless. The representatives of uncivilized bands cannot perform the functions of civilized legislators. The machinery of civilized republican representative government is wholly unfitted for these bands.

A legislature of two houses of all the civilized nations and tribes is by far too cumbrous and unwieldy a machine to be effective and useful. It would but wrangle, involve heavy cost, and bring forth no good fruit.

The bill therefore proposes a council of a few members, invested with united legislative powers, which, the committee believe, will work efficiently and well.

To give to these Indians a government that will be beneficial to themselves, that will work well, not endeavoring to do too much, to give them an efficient judiciary, invested with a specific healthful jurisdiction, a legislature that will truly and intelligently represent them, and an executive that will protect and defend them, and see the laws executed, the tribunals respected, and justice done—these are the objects that the committee believe will be attained if the bill herewith submitted becomes a law.

The United States will not lend themselves, unless they are overreached, to any private or corporate interests that can only be advanced and furthered at the expense of these remnants of powerful tribes, whom the republic long ago solemnly accepted as its wards, and to protect and defend, and deal generously and more than justly by whom it is bound by obligations such as rarely rest upon the conscience of a nation. They deserve that in legislating for them, we should consult their interest alone. We have no claims against them. They owe us nothing, all the balances on the ledger are against us. Thrust out into the wilderness when it was worthless to us, they have civilized themselves and made themselves fit to be our fellow-citizens. We shall be just to ourselves only by being just to them. We therefore recommend the adoption of the accompanying bill as a substitute for House bill No. 1923.