54TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { DOCUMENT No. 97.

# ALLOTMENT OF WICHITA INDIAN LANDS.

## LETTER

FROM

## THE SECRETARY OF THE INTERIOR,

TRANSMITTING

*A reply to the resolution of the House relating to the allotment of Wichita Indian lands in the Territory of Oklahoma, and also transmitting accompanying documents.*

DECEMBER 24, 1895.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
*Washington, December 23, 1895.*

SIR: I have the honor to acknowledge the receipt of the following resolution, passed by the House of Representatives:

Whereas by act of Congress, approved March 2, 1895, an agreement between the Wichita and affiliated bands of Indians in Oklahoma and the United States commissioners was duly ratified and provision made for the allotment of lands therein to the Wichita Indians, and providing for the opening of the surplus lands after allotment to homestead settlement; and

Whereas the Secretary of the Interior has wholly failed to appoint agents to allot said lands as provided in said act: Therefore be it

*Resolved*, That the Secretary of the Interior is hereby directed to report to this House, first, the reasons and causes operating, if any, to delay the appointment of allotting agents and the allotting of said lands to said Indians; second, whether any of his connections or relations by blood or marriage are acting as attorneys for said Indians, or any party or parties interested in delaying the opening of the same to settlement, if not incompatible with the public service.

The lands occupied by the Wichita and affiliated bands of Indians are a part of what is known as the "leased district." By the treaty of June 22, 1855, the Choctaws and Chickasaws leased all their lands lying between 98° and 100° west longitude to the United States. The lands occupied by the Wichitas and the affiliated tribes fall within this class. On June 28, 1866, the United States entered into another treaty with the Choctaws and Chickasaws. By the third article of this treaty it is provided "that the Choctaws and Chickasaws in consideration of the sum of $300,000, hereby cede to the United States the territory west of 98° west longitude, known as the 'leased district.'" There is a difference of opinion as to whether the Choctaws and Chickasaws, by the treaty of 1866, conveyed to the United States an absolute title, or

whether they ceded to the United States the lands referred to only for the purpose of allowing the same used for locating thereon friendly Indians. By those who maintain the latter contention it is insisted that so soon as the United States ceases to maintain friendly Indians upon the land now occupied by the Wichitas and affiliated tribes, then the lease granted by the Choctaws and Chickasaws is terminated and the fee-simple title vests in the Choctaws and Chickasaws. It will be remembered that the issue made by this contention has been discussed before Congress. Both the Senate and the House sustained the construction contended for by the Choctaws and Chickasaws and held their revisionary interest to be good to the land between 98° and 100° west longitude, and the Government paid $2,942,650 for a portion thereof occupied by the Cheyennes and Arapahoes.

President Harrison failed to carry into effect the first appropriation for this payment. His reasons will be found in a message dated February 18, 1892.

A much fuller presentation of this question will be found in an official communication from myself to Hon. A. J. Hunter, chairman of the subcommittee of the Committee on Indian Affairs, dated May 8, 1894, a copy of which is hereto attached, marked Exhibit A. In this letter I urged that it would be unwise to close negotiations with the resident Indians upon these lands and throw them open while the claims of the Choctaws and Chickasaws were left for after-decision, and in this connection stated that—

> So long as the lands are occupied by friendly Indians the reversionary interest of the Choctaws and Chickasaws, if they have any such interest, is practically of no value. Their reversionary interest, if they have such interest, matures when the friendly Indians are moved from a portion of these lands. * * * The alleged claim of the Choctaws and Chickasaws ought to be settled either by a reference to the courts or by an agreement before the friendly Indians are moved from these lands.

The act of March 2, 1895, provides for a reference to the courts of the claim of the Choctaws and Chickasaws, and requires that the United States and the Wichitas shall be parties to the litigation. The Choctaws have filed a petition in the Court of Claims, setting up their interest, and the Wichitas have answered this petition. There is now pending a motion by the Wichitas to limit the plaintiffs in their time to take testimony. The Chickasaws are represented by Messrs. James S. Standley and J. H. McGowan; the Choctaws by Messrs. Samuel Shellabarger, J. M. Wilson, and Robert L. Owen; the Wichitas are represented by Messrs. Josiah M. Vale, Andrew A. Lipscomb, Philip Walker, William C. Shelley, George D. Day, and Dennis W. Bushyhead.

The agreement with the Wichitas, and the act of March 2, 1895, left to the executive department discretion as to when allotments should be made. I have delayed suggesting to the President the appointment of allotting agents on account of the disadvantages which might accrue from having the allotments made and the surplus lands thrown open to settlement before the claim of the Choctaws and Chickasaws is adjusted.

First. If it is held that the Choctaws and Chickasaws have a reversionary interest, then that interest is worthless so long as friendly Indians occupy the lands as a Government reservation. If it becomes necessary to purchase the reversionary interest held by the Choctaws and Chickasaws, it will be very much better to purchase that interest while it is still a contingent interest, rather than to change it into a fee simple title, and then to begin negotiations for its purchase.

Second. If the claim of the Choctaws and Chickasaws is sustained it would not only affect the title to the unallotted land which is to be

opened to settlement, but might affect, also, the title to the land on which allotments are to be made.

The act of March 2, 1895, provides that the Court of Claims shall hear and determine the claim of the Choctaws and Chickasaws to the lands ceded by the agreement between the Wichitas and the United States. This agreement cedes all the lands occupied by the Wichita Indians to the United States, and requires a subsequent allotment to these Indians of portions of the land thus ceded. The litigation, therefore, certainly involves the title of the land to be allotted as well as the lands to be opened.

The act of March 2, 1895, requires the money derived from the sale of surplus land to be held subject to the claim of the Choctaws and Chickasaws. This provision, however, fails to acquire title to the United States of the Choctaws and Chickasaws. No agreement has been obtained from them to accept the money derived from the sale of a portion of the land in settlement of their claim for all of the land.

If the allotments are made and the balance of the lands thrown open before a decision is rendered upon the claim of the Choctaws and Chickasaws, the United States would be placing the Indians upon land under an agreement which involved the transfer of a good title by the United States, and would also be throwing open land to settlement, when in point of fact the United States did not have clear title to the land.

If, therefore, the authority given this Department by the act of March 2, 1895, is executed before the court decides that the Choctaws and Chickasaws have no title, or before the Government acquires the title of the Choctaws and Chickasaws, if the court decides that they have a reversionary interest, the Government would be placing Indians and settlers upon land under an act which conceded the title to be in dispute.

It is unnecessary to discuss the serious complications which might arise, involving the settler, the Indian, and the Government, from such action.

A letter was addressed to the Hon. A. J. Hunter, chairman of the Subcommittee of the Committee on Indian Affairs, March 30, 1894, and a copy of the same is hereto attached, marked Exhibit B; a telegram was sent January 15, 1895, to Hon. J. W. Maddox, a member of the Committee on Indian Affairs, and a copy of the same is hereto attached, marked Exhibit C. Both the letter and the telegram present the views of the Department as to the length of time which should elapse before the unallotted lands could properly be thrown open to settlement. I can not, however, say that the views contained in them influenced my course after the adoption of the act of March 2, 1895, for the delay has been due alone to the conclusion that the authority given to the Department by the act of March 2, 1895, to allot a portion of this land and open the surplus to settlement, should not be exercised until the cloud is removed from the title.

The resolution also inquires "whether any of his (referring to the Secretary of the Interior) connections or relations by blood or marriage are acting as attorneys for said Indians or any party or parties interested in delaying the opening of the same (the Wichita lands) to settlement."

Andrew A. Lipscomb, esq., of the city of Washington, is the husband of the second cousin of my wife. He is one of the counsel for the Wichitas in the litigation growing out of the claim by the Choctaws and Chickasaws for the reversionary interest in the land occupied by the Wichitas. I attach as Exhibit D a copy of the contract made by

the Wichitas with their attorneys. It will be seen that the compensation of the counsel for the Wichitas is to be a percentage of the money derived from the sale of the surplus land in case it is decided that the Choctaws and Chickasaws have no reversionary interest in those lands. I am not aware of any interest which the counsel for the Wichitas can have in delaying the allotment and the sale of the surplus lands. Niether has ever suggested an interest or a desire on their part or their clients part for delay. No connection or relation by blood or marriage of mine is acting as attorney for any party or parties interested in delaying the opening of these lands to settlement. No party or parties have presented to the Interior Department any objection to the full and immediate execution of the act of March 2, 1895.

Respectfully,

HOKE SMITH, *Secretary.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

EXHIBIT A.

DEPARTMENT OF THE INTERIOR,
*Washington, May 8, 1894.*

SIR: On the 10th ultimo you submitted to me the following question:

"Will you please inform me, as chairman of the subcommittee on Territories, what, if any, title the Choctaws and Chickasaws have in the lands known as the 'leased district' west of the 98th degree of longitude, claimed by the Wichita and Kiowa Indians, notwithstanding the action of the Fifty-first and Fifty-second Congresses? Did they not cede all their right and title by the treaty of 1866?"

The title of the Choctaw Nation to these lands originated by the treaty of 1820 (7 Stats. L., 210), by the second article of which it was provided that—

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

The western boundary of the Choctaw lands, according to the above description, was at or near the one hundred and third degree of west longitude. In 1821 the United States entered into a treaty with Spain (8 Stat. L., 252), by the third article of which it is provided that—

"The boundary line between the two countries west of the Mississippi shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river to the thirty-second degree of latitude; thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; then following the course of the Rio Roxo westward to the degree of longitude 100 west from London and 23 from Washington; then crossing the said Red River, and running thence by a line due north to the river Arkansas."

By this cession of 1821 the United States disposed of all the Choctaw lands west of one hundredth degree of west longitude.

By treaty between the United States and the Choctaw Nation, dated September 27, 1830 (7 Stat. L., 333), it is provided by the second article that—

"The United States under grants specially to be made by the President of the United States shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian Fork, if in the limits of the United States, or to those limits." * * *

By this last description the extent of the Choctaw lands westward was limited to the one hundredth degree of west longitude, for, as will be seen by the treaty between the United States and Spain, above referred to, the United States had parted with title to the lands west of the one hundredth degree of west longitude. The quantity of land lying west of the one hundredth degree of west longitude, and

within the original boundary by the Choctaw treaty of 1820, is considerable, but just how much I am not advised.

On the 22d of June, 1855, the United States entered into another treaty with the Choctaw Nation, by article 1 of which it is provided that:

"The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country, viz, beginning at a point on the Arkansas River, one hundred east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and running thence due south to Red River; thence up Red River to the point where the meridian of one hundred degrees west longitude crosses the same; thence north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning."

The second article of said treaty provides just what portion of said country should be set apart to the Chickasaws, as follows:

* * * "Beginning on the north bank of Red River at the mouth of Island Bayou, where it empties into Red River, about twenty-six miles on a straight line below the mouth of False Wachitta; thence running a northwesterly course along the main channel of said bayou to the junction of the three prongs of said bayou nearest the dividing ridge between Wachitta and Low Blue rivers, as laid down on Captain R. L. Hunter's map; then northwesterly along the eastern prong of Island Bayou to its source; thence due north to the Canadian River; thence west along the main Canadian to the 98th degree of west longitude; thence south to Red River, and thence down Red River to the beginning." * * *

It will be borne in mind that the Choctaw Indians at the date of the treaty of 1855 owned land as far west as the one hundredth degree of west longitude, and the Chickasaws were given by said treaty an interest in the Choctaw lands east of the ninety-eighth degree of west longitude.

By the ninth article of said treaty it is provided that—

"The Choctaw Indians do hereby absolutely and forever quitclaim and relinquish to the United States all their rights, title, and interest in and to any and all land west of the one hundredth degree of west longitude." * * *

And it also in said article provided that:

"The Choctaws and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude for the permanent settlement of the Wichitas and such other tribes or bands of Indians as the Government may desire to locate therein; excluding, however, all the Indians of New Mexico and also those whose usual ranges at present are north of the Arkansas River and whose permanent locations are north of the Canadian River."

And further, that such Indians "shall be subject to the exclusive control of the United States, under such rules and regulations, not inconsistent with the rights and interests of the Choctaws and Chickasaws, as may from time to time be prescribed by the President for their government."

By this article of the treaty the Choctaw Nation sold and relinquished to the United States all its right, title, and interest in its lands west of the one hundredth degree of west longitude; and the Choctaws and Chickasaws leased all their lands lying between the ninety-eighth and one hundredth degrees of west longitude. For this sale of land west of the one hundredth degree by the Choctaw Nation, and for the lease of the lands between the ninety-eighth and the one hundredth degrees by the Choctaw and Chickasaw Nations, the United States agreed to pay, and did pay, the sum of $800,000 ($600,000 to the Choctaws and $200,000 to the Chickasaws); the interest of the Choctaws in said lands being treated as three-fourths, and the interest of the Chickasaws one-fourth.

On June 28, 1866, the United States entered into another treaty with the Choctaw and Chickasaw nations, and by the third article of said treaty it is provided that—

The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby ceded to the United States the territory west of the 98th degree, west longitude, known as the "leased district" * * *

It is upon the proper construction of this clause of the treaty of 1866 that the question presented by you arises.

There is a difference of opinion as to whether the Choctaws and Chickasaws, by the treaty of 1866, conveyed to the United States an absolute title, or whether they ceded to the United States the lands referred to for the purpose of the same being used for locating thereon friendly Indians. By those who claim that the Choctaws and Chickasaws absolutely conveyed these lands to the United States it is contended—

(1) That the terms used in the treaty are sufficiently comprehensive to pass a full title to the United States.

(2) That by the treaty of 1855 these lands were leased to the Government for the purpose of locating friendly Indians thereon, but excluded therefrom certain Indians; and the Choctaws and Chickasaws reserved the right to settle upon said lands, if they chose to do so; that none of these limitations, restrictions, or privileges in reference to these lands appear in the treaty of 1866.

(3) That under the treaty of 1855 the Choctaw and Chickasaw nations were paid $800,000 for the sale by the Choctaws of their lands west of the one hundredth degree of west longitude and for the lease by the Choctaws and Chickasaws of their lands west of the ninety-eighth degree; that the Choctaws received one-fourth of this amount which indicates that the bulk of the sum of $800,000 or all of it was really paid for a perpetual lease of their lands lying between the ninety-eighth and one hundredth degrees of west longitude; and that under the treaty of 1866 an additional sum of $300,000 was paid; that the language of the treaty of 1866 is that the land is ceded for and in consideration of the sum of $300,000. And it is contended that this additional $300,000 was given for the complete and perfect extinguishment of the Indian title to said lands, the Government having the same perpetually leased.

(4) That by the treaty of August 25, 1868 the Kiowa, Comanche, and Apache reservations in the leased lands were created; and that treaty provided that—

"Said district of country shall, be and the same is hereby, set apart for the absolute and undisputed use and occupation of the tribes herein named, and for such friendly tribes or individual Indians as from time to time they may be willing (with the consent of the United States) to admit among them."

And it is contended that by making this treaty the Government dealt with the lands as though it had the fee simple title; that it was understood at the time that the Government did have the fee simple title to these lands and devoted them to the absolute use and occupancy of the Kiowas, Comanches, and Apaches, and such other friendly Indians as they might be willing to admit among them, which, it is plain, is inconsistent with the idea that the Government simply held the lands in trust for the purpose of locating friendly Indians thereon.

(5) That in addition to the treaty rights conferred upon the Kiowas, Comanches, and Apaches, these Indians can take their lands in severalty at any time and have patents issued conveying the lands to them in fee simple under the terms and restrictions of the general allotment law, and it is contended that this action on the part of the Government is inconsistent with the idea that the cession of these lands was a mere trust to the United States for the use of friendly Indians.

(6) It is contended further that in 1865 a proposition was made by the United States to the Choctaws and Chickasaws, Creeks, Seminoles, and Cherokees to treat with them for portions of their land, and treaties were made; and that the treaty with the Creeks provides:

"In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Creeks hereby cede and convey to the United States, to be sold and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain."

And in the Seminole treaty the language is:

"In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey to the United States their entire domain, being," etc.

While in treaty with the Choctaws and Chickasaws the language is:

"That the Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98th degree of west longitude."

and that the difference in the language used in these treaties (the Creeks and Seminoles ceding the lands in trust for a certain purpose and the Choctaws and Chickasaws ceding the lands without limitation or restriction) was intentional, and that the Choctaws and Chickasaws meant thereby to convey unconditionally their lands lying west of the ninety-eighth degree of west longitude.

This construction of the treaty ceding the lands west of the ninety-eighth degree of west longitude is advocated by my immediate predecessor, Mr. Secretary Noble, and also very strongly by President Harrison in a message to Congress, February 17 1892.

On the other hand it is intended that by the treaty of 1855 the lands of the Choctaws and Chickasaws west of the ninety-eighth degree of west longitude were leased to the United States, i. e., held in trust for the purpose of locating friendly Indians thereon with certain restrictions which excluded certain Indians from occupying the lands, and with the privilege to the Choctaws and Chickasaws that they might if they chose to do so, settle upon any of said lands; that the treaty of 1866 did not in anywise change the character of the trust except that the United States were given thereby unlimited authority to settle upon said lands any friendly Indians and also denied the right thereafter of the Choctaws and Chickasaws to settle upon any of said land.

In support of this view of the question it is contended:

(1) That the Choctaws by the treaty of 1855 relinquished all title and claim to all their lands west of the one hundredth degree of west longitude, amounting to several millions of acres, for which, and for the lease of the lands of the Choctaws and

Chickasaws west of the ninety-eighth degree, they received the small sum of $800,000; that this sum or the larger portion thereof was intended as compensation for the lands relinquished to the United States by the Choctaws west of the one hundredth degree, and that the lease of the lands west of the ninety-eighth degree was for a mere nominal sum, and notwithstanding the fact that the lease was a very small part of the consideration for the $800,000, yet one-fourth of this amount was given to the Chickasaws who had no interest whatever in the lands west of the one hundredth degree, and that, therefore, the Government of the United States has really never paid for the leased lands.

(2) That it is stated in the treaty of 1866 that the Choctaw and Chickasaw land west of the ninety-eighth degree is ceded to the United States for and in consideration of the sum of $300,000, but that in point of fact the $300,000 were not given for the purchase of these lands, but were given to be used for the benefit of the freedmen residing in said Choctaw and Chickasaw nations; that by the treaty of 1866 negro slavery thereafter was prohibited within said nations; that said $300,000 were given, and it is provided that the same shall be invested and held, by the United States in trust for said nations until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent residence in said nations at the date of the treaty of Fort Smith and their descendants theretofore held in slavery among said nations all the rights, privileges, and immunities, including the right of suffrage of citizens of said nations, excepting the annuities, moneys, and public domain belonging to said nations, respectively, and also:

"To give to such persons who were residents as aforesaid and their descendants forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land after the Choctaws and Chickasaws and Kansas Indians have made their selections, as herein provided; and immediately on the enactment of such laws, rules, and regulations the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one-fourth to the latter, less such sum at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations, respectively."

It is contended that this article provided that the Choctaws and Chickasaws should have the $300,000, provided they should give to the freedmen, former slaves, each forty acres of land and should admit them to all the rights, privileges, etc., of citizens, including the right of suffrage, except an interest in the annuities, moneys, and public domain of said nations, less such sum as was necessary to pay $100 per capita to such persons of African descent as chose to remove and did actually remove from said nations, respectively. It is provided in the treaty that:

"Should the said laws, rules, and regulations not be made by the legislatures of said nations, respectively, within three years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said Territory in such manner as the United States shall deem proper—the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove."

It is claimed that the $300,000 were to be paid to the Choctaw and Chickasaw nations, respectively, for the benefit of the persons of African descent who had formerly been slaves in said nations; that the $300,000 was to compensate the Choctaw and Chickasaw nations for giving to each freedman 40 acres of land and for admitting them to the rights and privileges of citizenship; that it was estimated at the time that the number of persons of African descent in the Choctaw and Chickasaw nations was 3,000, and that the $300,000 was the amount which it was estimated would be sufficient to pay to each one $100 who might choose to remove from the nations, respectively, and to compensate the Choctaw and Chickasaw nations at the rate of $100 for each person of African descent who might remain within said nations, and who should be admitted to citizenship and given 40 acres of land; and that no part of said sum was received really in payment for the ceded lands.

(3) That the $800,000 provided for by the treaty of 1855 was not in fact compensation for the lease of the lands west of the ninety-eighth degree, and that the $300,000 provided for in the treaty of 1866 was not in any sense compensation for the extinguishment of the title of the Choctaws and Chickasaws to their lands west of the ninety-eighth degree, nor for the lease of said lands.

(4) That the United States Government was desirous of locating all the Indians possible within what is known as the Indian Territory; that the treaty of 1855 forbade the use of what is known as the leased lands of the Choctaws and Chickasaws for Indians north of the Canadian River; that the United States was desirous of

having the unrestricted right to place friendly Indians upon these leased lands and upon lands of other of the civilized tribes, and with that view the Government proposed to negotiate treaties with the Choctaws and Chickasaws, Creeks, Seminoles, and Cherokees; that the Honorable D. M. Cooley, Commissioner of Indian Affairs, was appointed a commissioner on the part of the United States Government to negotiate a treaty with these Indians, and that as such commissioner he addressed the council of these Indians and declared that, as the representative of the President of the United States, the commission for which he spoke was empowered to enter into new treaties with the proper delegates of the tribes located within the Indian Territory and others living west and north of the Indian Territory; "that such treaties must contain substantially the following stipulations," and among those named are the fifth and sixth propositions, as follows:

"Fifth. A part of the Indian country to be set apart to be purchassd for the use of such Indians from Kansas or elsewhere as the Government may desire to colonize therein.

"Sixth. That the policy of the Government to unite all the Indian tribes of this region into one consolidated government shall be accepted."

It is contended that the object of making the treaty was to procure lands for the use of the Indians, and not with a view of vesting title absolutely in the United States Government; that in the treaty made soon thereafter with the Creeks it is provided that the lands so conveyed are to be used as homes for such Indians as the United States may choose to settle thereon; and in the Seminole treaty made soon thereafter, the lands are ceded to the United States in compliance with the desire of the United States to locate other Indians and freedmen thereon; that while the use to which the lands ceded by the Choctaws and Chickasaws was to be devoted is not expressly stated in the treaty, yet that was the object for which the cession was obtained, and that the Choctaws and Chickasaws understood at that time that they were ceding their lands west of the ninety-eighth degree for the purpose of being occupied by friendly Indians, and for no other purpose.

(5.) That Hon. D. M. Cooley, Commissioner of Indian Affairs, and one of the Commissioners to negotiate said treaty, so understood said treaty at the time, and in making his annual report as Commissioner of Indian Affairs to the Secretary of the Interior after the treaty had been negotiated, but before its ratification and promulgation, he uses this language:

"With the Choctaws and Chickasaws a treaty was agreed upon on the basis of the seven propositions heretofore stated, and in addition to which those tribes agreed to a thorough and friendly union among their own people, and forgetfulness of past differences to the opening of these leased lands to the settlement of any tribes whom the Government of the United States may desire to place thereon."

It is contended that the Government understood at the time the meaning of the treaty of 1866 to be that the Choctaws and Chickasaws consented "to the opening of the leased lands to the settlement of any tribes whom the Government of the United States might desire to place thereon," thereby removing formal restrictions, and that it was for this purpose, and for this purpose alone, that the cession was made, and not with the view of vesting title absolutely in the United States.

(6) And that since the treaty was promulgated the construction contended for by the Choctaws and Chickasaws has been adopted by the Government; first, by the Secretary of the Interior, Mr. Schurz, as far back as 1879, in reply to a communication from the Secretary of War, who said:

"The lands ceded by the Choctaws and Chickasaws were by article 9 of the treaty of June 22, 1855, leased to the United States for the permanent settlement of the Wichitas and such other tribes or bands of Indians as the Government may desire to locate thereon. The treaty of 1866 substituted a direct purchase for the lease but did not extinguish or alter the trust."

Second, by Mr. Secretary Teller, on February 14, 1881, in answer to a Senate resolution inquiring as to the present status of lands in the Indian Territory, other than those claimed and occupied by the Five Civilized Tribes, who said:

"These lands were acquired by treaties with the various Indian nations or tribes in that Territory in 1866, to be held for Indian purposes and to some extent for the settlement of the former slaves of some of said nations or portions thereof."

And third, by the action of both Houses of Congress in 1892, the history of which action is as follows: President Harrison sent to Congress a message in which he gave as a reason for not having carried out that portion of the Indian appropriation act of 1891, which made an appropriation to pay the Choctaws and Chickasaws for a portion of the leased lands, that the Choctaws and Chickasaws had made an absolute cession of the leased lands to the United States by the treaty of 1866, and that they had neither a legal or equitable title thereto.

The reports of the Senate and House Committees on Indian Affairs, made in reply to said message, sustained the claim of the Choctaws and Chickasaws, which reports were adopted by the respective Houses.

(7) It is therefore contended that both parties to the treaty of 1866 understood the treaty to be that these lands were ceded for the purpose of giving the United States the unlimited right to settle friendly Indians thereon, and that the cession did not extinguish the Indian title to said lands.

(8) That the Choctaws and Chickasaws have always understood the meaning of the treaty to be that their lands west of the ninety-eighth degree were ceded for the purpose only of giving to the United States the unlimited right to settle thereon friendly Indians without restriction; that this being their understanding and construction of the treaty, the same should be so construed; and they contend that the rule laid down by the Supreme Court, in 6 Peters, pp. 515-582, for construing treaties and agreements between the United States and Indian tribes, should control in this instance, to wit:

"The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend that the word 'allotted' if reference to the lands guaranteed to the Indians in certain treaties, indicates a favor conferred rather than a right acknowledged, would, it would seem to me, do injustice to the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction."

And they also claim that the treaty should be construed according to the rule laid down by the Supreme Court in the case of the Choctaw Nation (119 U. S., 1) for construing agreements between the United States and Indians as follows: "Between a superior and inferior, whereby the latter is placed under the care and control of the former, and which, while it authorizes the adoption on the part of the United States of such policy as their own public interest may dictate, recognizes, on the other hand, such an interpretation of their acts and promises as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection. The parties are not on an equal footing, and that inequality is to be made good by the superior justice, which looks only to the substance of the right, without regard to technical rules framed under a system of municipal jurisprudence, formulating the rights and obligations of private persons equally subject to the same laws."

I have thus fully presented the contention upon both sides of this question. I will not take time to answer the contention of the Choctaws and Chickasaws. After careful investigation I do not believe that they have any interest in the leased district. Were the matter left to the decision of this Department I should hold that they ceded all their right and title by the treaty of 1866. But they were sufficiently persuasive to satisfy at least one former Congress of the validity of their claim, and I suggest that it would be unwise to close a negotiation with the Kiowas and Comanches by which the land would be opened, and leave the claim of the Choctaws and Chickasaws for future decision. So long as the lands are occupied by "friendly Indians," the reversionary interest of the Choctaws and Chickasaws, if they have any such interest, is of practically no value. Their reversionary interest, if they have such interest, matures when the "friendly Indians" are moved from a portion of these lands. When the treaty of 1866 was made it is undoubtedly true that neither the United States nor the Choctaws and Chickasaws contemplated opening this land at any time for settlement. The Choctaws and Chickasaws never expected to obtain any additional pay for these lands. The United States will be compelled to pay the Kiowas and Comanches for them, and I suggest that the alleged claim of the Choctaws and Chickasaws ought to be settled either by a reference to the courts or by an agreement before the "friendly Indians" are moved from these lands.

Very respectfully,

HOKE SMITH, *Secretary.*

Hon. A. J. HUNTER,
*House of Representatives*

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EXHIBIT B.

DEPARTMENT OF THE INTERIOR,
*Washington, March 30, 1894.*

SIR: I have the honor to acknowledge the receipt of your letter of February 7, 1894, inclosing copies of House bills Nos. 2876, 2877, and 3962, to ratify and confirm certain agreements with the Indians, and providing for the allotment and opening to entry of the surplus lands remaining after the allotments.

In said reference it is stated any suggestions "by amendment as to the manner of disposing of the lands will be thankfully received."

These bills have been referred to the Commissioner of Indian Affairs, and also to the Commissioner of the General Land Office, and copies of their reports thereon are herewith, dated February 17, 1894, and March 13, 1894, respectively.

The principal suggestions made by the Commissioner of Indian Affairs in his report are as follows:

That in the matter of opening of ceded lands that the same be postponed for at least three years from the time of ratification of the agreements with the Indians, during which time the allotments may be made to the Indians as provided for in these bills; that in the reference of certain matters to the Court of Claims for decision, the right of appeal to the Supreme Court of the United States should be accorded to the United States as well as to the Indians; that no portion of the moneys received by the Indians under these agreements shall be applied to the payment of judgments for Indian depredations under the act of March 3, 1891, and that the commission allowed Agent Luther H. Pike be reduced to 6 per cent.

Drafts of the sections to be added to these bills have been drawn to carry into effect these suggestions, and much of the same could be accomplished by amendment of existing sections without the addition of new sections to the bill.

Your attention is particularly called to these and other suggestions of a similar nature contained in the report of the Commissioner of Indian Affairs.

The Commissioner of the General Land Office, in his report, suggests an amendment of that part of the section providing for the disposal of the surplus lands, wherein it is provided "that the rights of honorably discharged Union soldiers and sailors of the late civil war, as defined and described in sections 2304 and 2305 of the Revised Statutes, should not be abridged," by inserting the following "except as regards the payment of $1.25 per acre above provided for."

This amendment would seem to be necessary in order to remove any doubt in the matter of the rights intended to be conferred upon honorably discharged soldiers and sailors under the proposed legislation.

The only matter remaining for consideration is as to devising some plans in providing for the opening of the surplus lands to avoid the great rush and contention of crowds competing for the lands, at a particular time prescribed in advance, as has been the custom heretofore in the opening of similar lands.

It is particularly difficult to devise a plan so as to afford an equal opportunity to all citizens desiring to acquire homes on these and similar cessions in an orderly manner, but the necessity of some such legislation is made more apparent by each opening to entry of lands of this character.

I would suggest that the plan set forth in House bill 6112, entitled "A bill to provide for the opening of Indian reservations and for other purposes," be adopted in this case.

That the Secretary of the Interior be authorized to cause the public lands to be surveyed and to locate townsites at suitable places, to be surveyed into lots, blocks, streets, and alleys.

That all the agricultural lands which are non mineral and not included in any townsite to be sold at public auction, after due notice inviting bids for the same, in sub-divisions not exceeding 160 acres or not less than 40 acres except in case of fractional lots, and stating the time during which bids in writing and sealed will be received by the register of the local land office. Each tract to be sold to the highest bidder, one-fifth of the purchase money to be paid in cash and the remainder in four equal installments, under the regulations prescribed by the Secretary of the Interior; provided that no lands shall be sold at less than the price per acre paid by the United States therefor.

Only those persons who are qualified to enter under the homestead law shall be entitled to bid or purchase at such sale. That the purchaser shall, within six months from the date of his purchase, establish his residence on the land purchased and within seven years within the date of the original purchase submit proofs showing compliance with the requirements of the homestead law. The amount bid shall be paid in addition to the ordinary homestead fees and commissions. Communication of any entry under this act may be made in accordance with the provisions of section 2301, Revised Statutes of the United States, as amended by the sixth section of the act of March 3, 1891, on proper proof of payment of final homestead commissions in addition to the purchase price under this act. Any agricultural lands remaining undisposed of after having once been offered for sale shall be opened to settlement after due notice for that purpose under the public lands laws of the United States, but any person making entry under this provision shall pay for the lands not less than the price per acre paid by the United States in addition to the ordinary fees and commissions. Lots in townsites shall be sold to the highest bidder not to exceed two lots to any one bidder, after thirty days' notice, sealed bids in writing to be made as in the case of agricultural lands, and any lots remaining undisposed of to be sold at private entry at not less than $10 for each lot.

The rights of honorably discharged soldiers and sailors, as defined by sections 2304 and 2305 of the Revised Statutes, should be preserved so far as is practicable under this general plan.

As to the date of opening these lands to settlement, I do not fully agree with the Commissioner of Indian Affairs that it should be fixed at three years from the ratification of the agreement. It will require considerable time to make the allotments, and since the ceded lands can not be designated until after that, the opening will be necessarily delayed that long. This should, in my opinion, be sufficient time to enable the Indians to adjust themselves to their new condition.

The papers referred to in the report of the Commissioner of Indian Affairs are also herewith transmitted.

Very respectfully, HOKE SMITH, *Secretary.*

Hon. A. J. HUNTER,
*Chairman of the Subcommittee of the Committee on Indian Affairs,*
*House of Representatives, Washington, D. C.*

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EXHIBIT C.

[Telegram.]

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *January 15, 1895.*

Hon. J. W. MADDOX, *House of Representatives:*

I repeat communication received from Commissioner of Indian Affairs, as follows:

"Replying to inquiry of Hon. John W. Maddox, of the House Committee on Indian Affairs, addressed to this office by telephone yesterday, I would say that I do not think the Wichitas are prepared for allotments in severalty and citizenship.

"They are further advanced than their neighbors, the Cheyennes and Arapahoes, but still I doubt the expediency of making them citizens. If, however, the pending agreement should be ratified it should be expressly provided that none of the unallotted lands shall be opened to settlement for three years at least after the allotments to the Indians shall have been made and approved. I should be strongly opposed to any legislation that did not make such provision. This office made full report on House resolutions 2876 and 3962 on February 17, 1894"—

and express my concurrence in his views.

HOKE SMITH, *Secretary.*
By W. C. P.

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EXHIBIT D.

*Contract between the Wichita and affiliated bands of Indians and Josiah M. Vale, of Washington, D. C.; George D. Day, of Howard County, Md.; Andrew A. Lipscomb, of Washington, D. C., and Dennis W. Bushyhead, of Tahlequah, Ind. T.*

Whereas under the terms of certain articles of agreement made and entered into at Anadarko, in the Indian Territory, on the 4th day of June, A. D. 1891, by and between David H. Jerome, Alfred M. Wilson, and Warren G. Sayer, commissioners on the part of the United States, and the Wichita and affiliated bands of Indians in the Indian Territory, it was stipulated and agreed in the first article of said agreement that—

The said Wichita and affiliated bands of Indians in the Indian Territory did thereby cede, convey, transfer, relinquish, forever and absolutely, without any reservation whatever, all their claim, title, and interest of every kind and character in and to the lands embraced in the following-described tract of country in the Indian Territory, to wit:

"Commencing at a point in the middle of the main channel of the Washita River where the ninety-eighth meridian of west longitude crosses the same; thence up the middle of the main channel of said river to the line of 98° 40′ west longitude, thence on said line of 98° 40′ due north to the middle of the channel of the main Canadian River; thence down the middle of said main Canadian River to where it crosses the ninety-eighth meridian; thence due south to the place of beginning;" and

Whereas by the second article of said agreement it is provided that there shall be allotted to each and every member of said Wichita and affiliated bands of Indians in the Indian Territory, native and adopted, one hundred and sixty acres of land in the manner prescribed in said agreement; and

Whereas by the terms of the fifth article of said agreement it is provided that in addition to the allotments provided for in said agreement and the other benefits to be received under the articles thereof said Wichita and affiliated bands of Indians claim and insist that further compensation in money should be made to them by the United States for their possessory right in and to the lands above described in excess of so much thereof as may be required for their said allotments thereof, it is further agreed in said article that the question as to what sum of money, if any, shall be paid to said Indians for such surplus lands shall be submitted to the Congress of the United States, the decision of Congress thereon to be final and binding upon said Indians; provided if any sum of money shall be allowed by Congress for surplus lands, it shall be subject to a reduction for each allotment of land that may be taken in excess of one thousand and sixty (1,060) at that price per acre, if any, that may be allowed by Congress; and

Whereas in said agreement it is provided by its terms that it shall have effect whenever it shall be ratified by the Congress of the United States; and

Whereas the Congress of the United States have accepted, ratified, and confirmed said agreement; and

Whereas it is admitted by the United States that the Choctaw and Chickasaw nations claim to have some right, title, and interest in and to the lands ceded by the foregoing agreement, which claim is controverted by the United States, therefore jurisdiction has been conferred upon the Court of Claims to hear and determine the said claim of the Choctaws and Chicksaws and to render judgment thereon, it being the intention of the act conferring jurisdiction upon said Court of Claims in the premises to allow said Court of Claims jurisdiction, so that the rights, legal and equitable, of the United States, and the Choctaw and Chickasaw nations, and the Wichita and affiliated bands of Indians in the premises shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party in the hearing of said claim, the Attorney-General being authorized to appear in behalf of the United States, only, either of the parties to said action having the right to appeal to the Supreme Court of the United States, and it being provided further that said action shall be presented by a single petition making the United States and the Wichita and affiliated bands of Indians parties defendant, which petition shall set forth all the facts on which the said Choctaw and Chickasaw nations claim title to said land; and

Whereas it appears that the said Wichita and affiliated bands of Indians are made, or are about to be made, defendants in said suit, and that they will be required to make answer to a petition filed against them in the Court of Claims, and that they will be required to defend an action about to be instituted against them in said court, which is liable to be appealed to the Supreme Court of the United States;

And whereas it is essential to the interests of the said Wichita and affiliated bands of Indians that they employ counsel learned in the law to appear and defend their rights in said Court of Claims, and appear and represent their interests in the Supreme Court of the United States, if the same shall be necessary, and to appear and represent them, the said Indians, before committees of the Congress of the United States if the business referred to in this contract shall be brought before the Congress of the United States or before the Executive Departments, to the end that the rights of said Indians shall be fully protected and secured to them in the premises;

Now, therefore, this contract entered into this 1st day of May, A. D. 1895, between the Wichita and affiliated bands of Indians by Towaconie Jim, Niastoe, Ker kee wah kai off, Ker wah hunt tee nish, Jim Bob, White Bread, Beayoum tea noe, Caddo Jake, Jack Thomas, their duly authorized attorneys in fact expressly thereunto empowered, and Josiah M. Vale, Andrew A. Lipscomb, attorneys and counsellors at law, of the city of Washington, in the District of Columbia, George D. Day, of Howard County, Md., and Dennis W. Bushyhead, of Talequah, Ind T.,

Witnesseth: That the special purpose for which this contract is made is to secure the services of said Josiah M.Vale, George D. Day, Andrew A. Lipscomb, and Dennis W. Bushy Head, as the attorneys for said Wichita and affiliated bands of Indians, to appear and defend the rights of said Indians in the Court of Claims in any action which may be instituted against the said Indians or to which they may be made a party in said court as hereinbefore set forth, and to appear and represent said Indians and their interests in the Supreme Court of the United States if the same shall be necessary, and to appear for and represent said Indians before the committees of the Congress of the United States and Executive Departments, if the business referred to in this contract shall be brought before the Congress of the United States, to the end that the rights of said Indians shall be fully protected and secured to them in the premises.

Second. That this contract shall continue in full force and effect for the period of ten years from the date of the signing hereof by said Josiah M. Vale, George D. Day, Andrew A. Lipscomb, and Dennis W. Bushy Head.

Third. That said Josiah M. Vale, George D. Day, Andrew A. Lipscomb, and Dennis W. Bushy Head, acknowledge themselves retained and employed by said Wichita

and affiliated bands of Indians, and agree, for and in consideration of the covenants hereinafter expressed, to represent the interests of the said tribe of Indians in the matter herein specified as the purposes of this contract, and to do and perform all things necessary and proper to be done in their capacity as attorneys and counselors of said tribe of Indians touching said matters.

Fourth. In consideration whereof the said Wichita and affiliated bands of Indians, by their duly authorized and empowered attorneys in fact, hereby employ and retain the said Josiah M. Vale, George D. Day, Andrew A. Lipscomb, and Dennis W. Bushy Head, to do and perform the things above set forth as the purposes of this contract, and they, the said Wichita and affiliated bands of Indians, hereby covenant and agree to pay to said Josiah M. Vale, George D. Day, Andrew A. Lipscomb, and Dennis W. Bushy Head, or their legal representatives, a sum of money equal to six per cent of the compensation which may or shall hereafter be paid to them, the said Indians, by the United States or set aside for their use and benefit for their possessory right in and to the lands above described, including reservations, in excess of so much thereof as may be required for the allotments to said Indians as herein set forth, and the said compensation to said Josiah M. Vale, George D. Day, Andrew A. Lipscomb, and Dennis W. Bushy Head shall be paid to them, their legal representatives, heirs, or assigns, out of the proceeds of the said fund arising from the payment by the United States to said Indians, or the setting aside thereof to the use or benefit of said Indians for their possessory right in and to the above-described lands, immediately upon the said fund being set apart for said Indians or to their use and benefit.

Fifth. The basis of the claim or right of said Wichita and affiliated bands of Indians herein set forth is their alleged right to a money compensation to them for their possessory right in and to the lands above described in excess of so much thereof as may be reserved for allotment under and by the terms of the agreement between the Commissioners of the United States and the said Wichita and affiliated bands of Indians hereinbefore referred to; that the source from which such money compensation shall be derived is the United States, and the money and compensation derived from the settlement and determination of the rights of said Indians in the lands herein referred to is to be disposed of in accordance with law for the use and benefit of said Indians after deducting therefrom the compensation herein agreed to be paid to said Josiah M. Vale, George D. Day, Andrew A. Lipscomb, and Dennis W. Bushy Head, and the payment of such compensation to said Josiah M. Vale, George D. Day, Andrew A. Lipscomb, and Dennis W. Bushy Head.

In testimony whereof the said parties hereto, the said Wichita and affiliated bands of Indians by their attorneys in fact, Towaconis Jim, Niasto, Ker-kee-wah-kai-off, Ker-wah-hunt-tee-nish, White Bread, Beayoun-tea-noe, Caddo Jake, Jack Thomas, and Jim Bob, thereunto duly authorized and empowered, and Josiah M. Vale, George D. Day, Andrew A. Lipscomb, and Dennis W. Bushy Head, on their own behalf, have hereunto affixed their signatures, the same being signed in quadruple by the attorneys in fact for said Indians at Anadarko, in the Territory of Oklahoma, by said Towaconis Jim, Niastoe, Kei-kee-wah-kai-off, Kei-wah-hunt-tee-nish, White Bread, Beay-oun-tea, Caddo Jake, Jack Thomas, and Jim Bob, on the first day of May, 1895, and by the said Josiah M. Vale and Andrew A. Lipscomb, at the city of Washington, in the District of Columbia, on the 22nd day of May, A. D. 1895, and by the said George D. Day and Dennis W. Bushy Head, at Anadarko, in the Territory of Oklahoma, on the first day of May, 1895.

TOWACONIS JIM (his x mark).
NIASTO (his x mark).
KEIKEE-WAH-KAI-OFF (his x mark).
KEI-WAH-HUNT-TOE-NIAH (his x mark).
DENNIS W. BUSY HEAD.
GEORGE D. DAY.
WHITE BREAD (his x mark).
BEAYOUN-TEA (his x mark).
CADDO JAKE (his x mark).
JIM BOB (his x mark).
JACK THOMAS (his x mark).
JOSIAH M. VALE.
ANDREW A. LIPSCOMB.

Witnesses:

M. Z. WALLICE,
E. F. BENTON,
(As to first ten; as to last two.)

Witnesses to Jack Thomas mark and signature:

S. J. RICHARDS.
CHAS. RIDER.