

CHOCTAW AND CHICKASAW INDIANS.

JUNE 17, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany Mis. Doc. 275.]

The Committee on Indian Affairs, to whom was referred the message of the President relative to the act to pay the Choctaw and Chickasaw Indians for certain lands then occupied by the Cheyenne and Arapahoe Indians, and the memorial of the Chickasaws relating to said message, and the memorial of the Choctaws relating to the same subject, have considered the same, and adopt in substance the report of the Senate committee thereon (Report 552, Fifty-second Congress, first session), as follows:

By an act of the last Congress, approved by the President on March 3, 1891, an appropriation was made to pay the Choctaw and Chickasaw Indians the sum of \$2,991,450 "for all the right, title, interest and claim which said nations of Indians may have in and to certain lands now occupied by the Cheyenne and Arapahoe Indians under Executive order." The money so appropriated has not been paid, and the President sent the message under consideration to Congress to explain why it had not been done, and to make certain suggestions or recommendations in connection therewith.

The President's objections to this measure are in brief as follows, taken in the order in which they are stated in his message:

(1) The agreement on the part of the Choctaws to pay three of their citizens 25 per cent of the amount appropriated to that nation, and of the Chickasaws to pay 10 per cent of the amount appropriated to them, as a fee for prosecuting the claims.

(2) That there are charges that the act of the Choctaw council stipulating for the payment of this fee was procured by corrupt means.

(3) That the Choctaws have by law provided for the distribution of this fund per capita amongst Choctaws by blood, excluding white and colored citizens from participation therein.

(4) That he does not believe that these lands were "ceded in trust" by article 3 of the treaty of 1866, but seems to conclude that the Government has an absolute title to them.

Taking these objections up in the order of their importance, the question of title to these lands must first be considered.

The President, in attempting to maintain his position as to the title to the leased district, seems to assume that Spain owned all the country west of 100 degrees west longitude in 1820, and that the \$800,000 paid the Choctaws in 1855 must have been mainly paid for the leased district, and not for the failure of title to more than 6,539,440 acres of land west of 100 degrees, and that the United States acquired in 1855 from the Choctaws and Chickasaws the same rights in the leased district that were acquired in 1866 from the Creeks and Seminoles to their

western country; and, further, that in 1866 the Government of the United States acquired an absolute title to the leased district. None of these positions are sustained by the history of those transactions.

By the treaty of June 22, 1855, the Choctaws relinquished to the United States all of their title to the lands west of the one hundredth meridian of west longitude, and the Choctaws and Chickasaws *leased* to the United States, for certain specified uses, their lands west of the ninety-eighth meridian. The aggregate consideration for the relinquishment and lease was fixed in the treaty at \$800,000. There was no apportionment of this consideration as between the relinquishment of the lands west of the one hundredth meridian and the lease of the land west of the ninety-eighth meridian. The following are the provisions of the treaty relating to this subject:

ART. 9. The Choctaw Indians do hereby absolutely and forever quitclaim and relinquish to the United States all their right, title, and interest in and to any and all lands west of the one hundredth degree of west longitude, and 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 Wichita 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, but including those bands whose permanent ranges are south of the Canadian, or between it and the Arkansas, which 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: *Provided, however,* That the territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore. (11 Stat., 313.)

ART. 10. In consideration of the foregoing relinquishment and lease, and as soon as practicable after the ratification of this convention, the United States will pay to the Choctaws the sum of six hundred thousand dollars, and to the Chickasaws the sum of two hundred thousand dollars, in such manner as their general councils shall respectively direct. (11 Stat., 613.)

Now, what was the interest in lands west of the one hundredth meridian which the Choctaws by this treaty relinquished to the United States?

The following are the stipulations of the treaty of October 18, 1820:

ART. 1. To enable the President of the United States to carry into effect the above grand and humane objects, the Mingoes, head men and warriors of the Choctaw Nation, in full council assembled, in behalf of themselves and the said nation, do, by these presents, cede to the United States of America all the land lying and being within the boundaries following, to wit: Beginning on the Choctaw boundary, east of Pearl River, at a point due south of the White Oak Spring, on the old Indian path; thence north to said spring; thence northwardly to a black oak standing on the Natchez road, about forty poles eastwardly from Doake's fence, marked A. J. and blazed, with two large pines and a black oak standing near thereto and marked as pointers; thence a straight line to the head of Black Creek or Bouge Loosa; thence down Black Creek or Bouge Loosa to a small lake; thence a direct course so as to strike the Mississippi one mile below the mouth of the Arkansas River; thence down the Mississippi to our boundary; thence around and along the same to the beginning. (7 Stat., 211.)

ART. 2. For and in consideration of the foregoing cession on the part of the Choctaw Nation and in part satisfaction for the same, the commissioners of the United States in behalf of said States do hereby cede to said nation a tract of country west of the Mississippi River situate between the Arkansas and Red river 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. (7 Stat., 211.)

Here was an exchange of lands between the United States and the Choctaw Nation. The Choctaws ceded to the United States certain lands described by metes and bounds east of the Mississippi River, and

the United States ceded to the Choctaws certain lands described by metes and bounds west of the Mississippi. The consideration for which the Choctaws ceded to the United States their lands east of the Mississippi *was not a part of the land* included within the metes and bounds of the western country ceded to them by the United States, *but was the whole of the land* included within those metes and bounds. If it had happened that a part of the land covered by this deed of the United States to the Choctaws was not in fact and in law owned by the United States on the 18th day of October, 1820, when the treaty was signed, the obligation of the United States would have been identical with the obligation incurred by an individual who, being a party to an exchange of farms, should prove not to be the owner of all the land covered by his deed.

In that event it would have become the duty of the United States to do one of four things: Either to acquire a complete title to all the land covered by their deed, and to convey the same to the Choctaws, or to restore to the Choctaws a part of their land east of the Mississippi River; or to rescind the treaty altogether and place the parties *in statu quo*, or, finally, to make just reimbursement in money for the land purchased and paid for by the Choctaws, but not delivered by the United States.

If it had been true that on the 18th day of October, 1820, the date of the exchange of lands between the United States and the Choctaw Nation, the United States had owned no lands between the Red and Canadian rivers west of the one hundredth degree of west longitude, then unless the United States had subsequently acquired and conveyed such lands, or restored to the Choctaws a part of their land east of the Mississippi River, or rescinded the treaty, the United States would have become bound to make just compensation to the Choctaws in money for the lands deeded but not delivered to them. So it would have to come to pass that when the Choctaws, on the 22d day of June, 1855, relinquished their interest in the lands west of the one hundredth meridian, the interest so relinquished, as between the Choctaws and the United States, would have been precisely as valuable if the United States had not owned these lands on the 18th of October, 1820, as it would have been if the United States had owned the lands on that day. In one case it would have been the land itself the Choctaws relinquished on the 22d day of June, 1855; in the other case it would have been an indisputable claim for the just value of the lands which the Choctaws relinquished.

But while the reimbursement, to which the Choctaws would have been entitled for the relinquishment of their interest in these lands west of the one hundredth meridian of longitude in 1855, would have been the same whether the lands did or did not belong to the United States on the 18th day of October, 1820, when the exchange was made, the fact is that on that day these lands did belong to the United States, and while this question in this view of the case may not be material to the issue, your committee think that for a full and complete understanding of the matter it is best to show this fact.

On the 18th day of October, 1820, when the commissioners of the United States and the commissioners of the Choctaw Nation signed the treaty by which the Choctaw Nation ceded to the United States their lands east of the Mississippi River, in exchange for their new country west of the Mississippi, the United States owned all the land which is included between the one hundredth and the one hundred and third meridians of west longitude and the Red and Canadian

rivers. This tract of land became a part of the province of Louisiana, upon the original acquisition of that province by France by virtue of the discovery of La Salle in 1683 and the settlement of La Salle on the bay now known as Matagorda Bay in 1685.

It continued to be a part of Louisiana for seventy-seven years from the acquisition of that province by France in 1683 and 1685 until France ceded Louisiana to Spain on the 3d of November, 1762. It was a part of the province of Louisiana that France then ceded to Spain. It continued to be a part of the province of Louisiana during the period of thirty-eight years from the cession by France to Spain in 1762 to the retrocession by Spain to France in 1800 by the treaty of St. Ildefonso. It was a part of the province of Louisiana retroceded to France by that treaty.

It remained a part of Louisiana from the retrocession by Spain to France in 1800 to the cession by France to the United States in 1803.

And, finally, it continued to be a part of Louisiana from 1803 until the treaty of October 18, 1820, between the United States and the Choctaws, and was ceded by that treaty to the Choctaw Nation. The facts stated above are established by the State papers in the archives of the Government of the United States, by sixteen different maps of Louisiana published in London, Paris, Leyden, St. Petersburg, and Amsterdam, between the year 1702 and the year 1774, and by a map published in Paris in 1820, by M. Barbe-Marbois, who was the French negotiator of the treaty by which Louisiana was ceded to the United States in 1803.

Copies of these state papers and maps are embraced in the appendix to said report of the Senate committee.

Now, it happened that there was an inconsistency between the *natural objects* and one of the *courses* specified in the conveyance made by the United States to the Choctaws in the treaty of October 18, 1820. It is a fact that a line drawn *due south* from the *source of the Canadian* will not touch *Red River*, because the source of the Red River is farther eastward than the source of the Canadian.

But Mr. Justice Story, delivering the opinion of the Supreme Court of the United States in *Preston's Heirs vs. Bowman* (6 Wheat., 580) laid it down as "a universal rule that course and distance yield to natural and ascertained objects." And in *Newson vs. Prior* (7 Wheat., 7) Chief-Justice Marshall said:

The courts of Tennessee, and all other courts by whom cases of this description have been decided, have adopted the same principle and adhered to it. It is that the most material and most certain calls shall control those which are less material and less certain. A call for a natural object, as a river, or a known stream, a spring, or even a marked tree, shall control both course and distance.

It is unnecessary to cite the numerous, not to say innumerable, authorities by which this principle has been recognized and approved.

Applying these indisputable rules of law to the case under consideration, we find that two of the calls of this conveyance to the Choctaw Nation are for *natural objects*; namely, first, the *source of the Canadian River*; and second, the *Red River*; that a third call is for a *course* connecting the Red River and the source of the Canadian; that this course, being due south from the source of the Canadian, is inconsistent with the other two calls, because the source of the Canadian is further west than that of the Red River, and that this third call is therefore controlled by the other two calls of the description. The result is that the Red River and the source of the Canadian are to be connected by a straight line from the source of the Canadian to the nearest point of the Red River, which nearest point happens to be the source of the Red River.

But on the map accompanying the report of the Commissioner of Indian Affairs for 1888 the source of the Canadian River is located in $104^{\circ} 30'$ west longitude, and 37° north latitude, and the source of the Red River in $103^{\circ} 30'$ west longitude, and $34^{\circ} 45'$ north latitude. A line drawn from the source of the Canadian to the source of the Red River lies wholly west of $103^{\circ} 30'$, and may, therefore, lie within territory which belonged to Spain in 1820. But it is certain that the cession to the Choctaws carried all the land between the one hundredth and one hundred and third meridians and the Red and Canadian rivers: The map No. 18, appended to said report of the Senate committee, accurately traced from the map published in the report of the Commissioner of Indian Affairs for 1888, shows the dimensions of the lands of the Choctaws west of the one hundredth meridian. It contained 10,296 square miles and 6,589,440 acres.

Your committee therefore believe that when the Choctaws relinquished their interest in the lands between the Red and the Canadian rivers west of the one hundredth meridian of west longitude, on the 22d day of June, 1855, they were entitled to receive in compensation for that relinquishment the just value of those lands. What, then, was the just value of those lands in 1855? The territory of the Choctaws west of the one hundredth meridian of west longitude contained 286 full townships, excluding fractional townships, amounting to 10,296 square miles or 6,589,440 acres of land. At the price of $12\frac{1}{2}$ cents per acre this land amounted in value to \$823,680. But in the treaty of June 22, 1855, the sum of \$800,000 was constituted the entire pecuniary consideration, not only for the relinquishment by the Choctaws of their interests west of the one hundredth meridian, but also for the lease by the Choctaws and Chickasaws to the United States of the land between the ninety-eighth and the one hundredth meridians. The sum of \$800,000 was not more than sufficient to compensate the Choctaws for the relinquishment of the land west of the one hundredth meridian. Nothing remained, then, to apply on the lease of the land between the ninety-eighth and one hundredth meridians, which amounted to 7,713,239 acres. The rent of the 7,713,239 acres of land between these meridians was, therefore, altogether nominal—it did not amount to \$1. For less than \$1, then, the United States have held 7,713,239 acres of land from June, 1855, down to March, 1892, a period of more than thirty-six years.

Now, what considerations could possibly have reconciled the Choctaws and Chickasaws to a lease covering 7,713,239 acres of land for a period of thirty-six years at an aggregate rental of less than \$1? There were two considerations which reconciled the Choctaws and Chickasaws to this lease. These considerations were the uses to which the lands were devoted. In the first place, by the express terms of the lease, the lands were to be used for a permanent settlement of the Wichitas and other bands or tribes of Indians, entirely satisfactory to the Choctaws and Chickasaws, and to none other; in the second place, they were to remain open to settlement by the Choctaws and Chickasaws themselves, as before the lease.

But on the 27th day of September, 1830, ten years after the Choctaws had purchased and paid for their western country, including this land west of the one hundredth meridian, the United States caused the following article to be inserted in a new treaty between the United States and the Choctaw Nation:

ART. 2. The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of coun-

try 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; thence due south to Red River and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. (7 Stat., 331.)

In this article the western line of the Choctaws is declared to extend from the "source of the Canadian fork, *if in the limits of the United States,*" due south to Red River. But there was no such "if" in the deed by which the Choctaws acquired this land, on the 18th of October, 1820, and under which they had already held it, or claimed to hold it, for ten years.

What is the explanation of this new demarcation of the western boundary of the Choctaw country? And what is its bearing upon the right of the Choctaws for compensation for the relinquishment subsequently made by them in the treaty of June 22, 1855? The explanation of this change of boundary is this: After the United States had sold this land to the Choctaws, and received payment in full therefor, the United States sold the same land, out from under the Choctaws, to the King of Spain. On the 19th day of February, 1821, four months after the purchase of this land by the Choctaws, the Senate of the United States ratified a treaty whereby the United States sold the western part of the province of Louisiana, including the land of the Choctaws west of the one hundredth meridian to the Spanish King in part payment for the much-coveted province of Florida. This treaty was signed on the 22d of February, 1819; but it had been rejected by the King of Spain. Pending the negotiation of the treaty by which the United States sold this land to the Choctaws, the United States never disclosed to the Choctaws their purpose to sell the land to a foreign power.

The Choctaws were not apprised that a consummation of such a sale to the King of Spain awaited a possible ratification by that King of a treaty which had stood rejected for nearly two years, and its subsequent ratification by the Senate of the United States. And yet this Spanish treaty divested the Choctaws of their legal title to the land west of the one hundredth meridian, which the United States had previously deeded them, and for which they had fully paid. Indeed, when the United States sold this land to the Choctaws, without notifying them of the negotiations with Spain, it was far from being certain or even probable in the minds of the legislative and executive officers of the Government of the United States that the exchange of western Louisiana for Florida would be consummated; for not only had the King of Spain rejected the treaty, but a vigorous opposition to the exchange of western Louisiana for Florida had sprung up in the Congress of the United States, based on the ground that the price to be paid for Florida was extravagantly large, and also on the ground that the sale of the territory of the United States to a foreign government by the President and the Senate, in the exercise of the treaty-making power, without the coöperation of the House of Representatives was unconstitutional and void. On the 28th day of March, 1820, Henry Clay, of Kentucky, introduced the following resolutions in the House of Representatives of the United States:

(1.) *Resolved*, That the Constitution of the United States vests in Congress the power of disposing of the territory belonging to them, and that no treaty purporting to alienate any portion thereof is valid without the concurrence of Congress.

(2.) *Resolved*, That the equivalent proposed to be given by Spain to the United States, in the treaty concluded between them on the 22d day of February, 1819, for

that part of Louisiana lying west of the Sabine, was inadequate, and that it would be inexpedient to make a transfer thereof to any foreign power, or to renew the aforesaid treaty.

On the 3d of April, 1820, Mr. Clay delivered a speech in the House of Representatives in support of these resolutions, in which he is reported as follows:

The first resolution which he had presented asserted that the Constitution vests in the Congress of the United States the power to dispose of the territory belonging to them, and that no treaty purporting to alienate any portion thereof is valid without the concurrence of Congress. The proposition which it asserts was, he thought, sufficiently maintained by barely reading the clause in the Constitution on which it rests: "The Congress shall have power to dispose of, etc., the territory or other property belonging to the United States." * * *

But in the Florida treaty it was not pretended that the object was simply a declaration of where the western limit of Louisiana was. It was, on the contrary, the case of an avowed cession of territory from the United States to Spain. * * *

On the second resolution he said:

It results, then, that we have given for Florida, charged and encumbered as it is, first, unencumbered Texas; second, \$5,000,000; third, a surrender of all our claims upon Spain not included in that five millions; and, fourth, if the interpretation of the treaty which he had stated were well founded, about 1,000,000 acres of the best unseated land in the State of Louisiana, worth, perhaps, \$10,000,000. The first proposition contained in the second resolution was thus, Mr. C. thought, fully sustained. The next was, it was inexpedient to cede Texas to any foreign power. Mr. C. said he was opposed to the transfer of any part of the territory of the United States to any foreign power. They constituted, in his opinion, a sacred inheritance of posterity which we ought to preserve unimpaired. He wished it was, if it were not, a fundamental and available law of the land that they should be inalienable to any foreign power. * * *

The last proposition which the second resolution affirms is that it is inexpedient to renew the treaty. If Spain had promptly ratified it, bad as it is, he would have acquiesced in it. After the protracted negotiation which it terminated, after the irritating and exasperating correspondence which preceded it, he would have taken the treaty as a man who has passed a long and restless night, turning and tossing in his bed, snatches at day an hour's disturbed repose. But she would not ratify it; she would not consent to be bound by it, and she has liberated us from it. * * * Let us put aside the treaty; tell her to grant us our rights to their uttermost extent. And if she still palters, let us assert those rights by whatever measures it is for the interest of our country to adopt. (Ann. Cong., Sixteenth Congress, first session, Vol. 2, pp. 1691, 1724, 1725, 1726, 1729, 1730, and 1731.)

The final ratification of the Spanish treaty extinguished the title of the Choctaws to their land west of the one hundredth meridian, but it did not extinguish their right of reclamation against the United States for this land, which had been sold to the Choctaws by the United States and paid for by the Choctaws, and then sold without the knowledge or consent of the Choctaws to the King of Spain. When the Choctaw treaty of 1830 was signed the United States, being apprehensive that a part of the land sold to the Choctaws by metes and bounds in 1820 would prove to be within the boundaries of the land subsequently sold to Spain, in part payment for Florida, insisted upon such a modification of the boundaries of the Choctaw Nation as should, in effect, make its western line coincident with the eastern line of the land sold to Spain. By the Spanish treaty the eastern boundary of that part of Louisiana which was ceded to Spain in exchange for Florida was fixed as follows:

ART. 3. 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 one hundred west from London and twenty-three from Washington; then crossing the said Red River and running thence by a line due north to

the river Arkansas; thence following the course of the southern bank of the Arkansas to its source in latitude forty-two north, and thence by that parallel of latitude to the south sea. (8 Stat., 254.)

The stipulation in the Choctaw treaty of 1830 as to boundaries was a mere recognition of what had been for nine years an accomplished fact. It was only a recognition of the fact that so much of the land sold to the Choctaws on the 18th of October, 1820, as lay west of the one hundredth meridian had been sold to Spain on the 19th of February, 1821, and that the title of the Choctaws thereto had been extinguished by such sale. It was in no sense a stipulation, either express or implied, on the part of the Choctaws to waive their right for reimbursement for the lands which they had bought and paid for and then involuntarily lost. If this land had not been the property of the United States when the United States conveyed it to the Choctaws and received payment therefor from the Choctaws, the right of the Choctaws to reimbursement would have been incontestable. *A fortiori* was the right to reimbursement incontestable when the United States, having sold the land to the Choctaws and received full payment for it, subsequently sold it, without their knowledge or consent, to the King of Spain.

It was with good reason, then, that the United States and the Choctaws stipulated in the treaty of June 22, 1855, for the relinquishment of the interest of the Choctaws in the land west of the one hundredth meridian. This stipulation was not merely a nominal stipulation for the relinquishment of an intangible, nebulous, imaginary claim, but was a bona fide stipulation, entered into for the relinquishment of a substantial right, recognized as such by both parties to the treaty.

The books, documents, and maps showing the interest of the Choctaws and Chickasaws in the lands west of the ninety-eighth meridian, known as the "leased district," have always been readily accessible to the Secretary of the Interior, and yet when, in pursuance of the authority conferred by section 14 of the Indian appropriation act, approved March 2, 1889, a commission was appointed "to negotiate with the Cherokee Indians, and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude, in the Indian Territory, for the cession to the United States of all their title, claim, or interest of every kind or character in and to said lands," the Secretary, in his "compilation concerning the legal status of the Indians and lands in the Indian Territory," issued to the commissioners, informed them that the interest of the Choctaws and Chickasaws in Greer County, which was a part of the "leased district," had been extinguished by the treaty of 1866. This was tantamount to an assertion that the interest of the Choctaws and Chickasaws in the entire "leased district" had been extinguished by the treaty of 1866, and it was the only allusion to the interest of the Choctaws and Chickasaws in the leased district made in that compilation. The Secretary's statement is printed on page 30 of Senate Ex. Doc. No. 78, Fifty-first Congress, first session, as follows:

Greer County.—While that part of the Choctaw and Chickasaw country lying immediately west of the Kiowa and Comanche and Apache reservations, and between the Red River and the North Fork thereof and the State of Texas (marked No. 31 on the map), is not subject to negotiation, the Indian title thereto having been extinguished by the treaty of 1866 with those Indians, I deem it proper to give its status, as understood by this Department.

On the 19th. of December, 1889, the Senate adopted the following resolution:

Resolved, That the Secretary of the Interior be directed to send to the Senate the compilation recently made in the Indian Bureau concerning the legal status of the Indians and lands located in the Indian Territory, and that he also, if not incom-

patible with the public interest, send to the Senate instructions issued to the Commission recently appointed pursuant to act of Congress to negotiate for the cession to the Government of lands west of the ninety-sixth degree in the Indian Territory.

The Secretary, however, not only declined to send the "instructions," but also declined to send the "compilation." His answer to the resolution of the Senate is printed in Senate Ex. Doc. No. 21, first session, Fifty-first Congress, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, December 21, 1889.

Sir: I have the honor to acknowledge the receipt of the following resolution of the Senate, dated 19th instant:

"Resolved, That the Secretary of the Interior be directed to send to the Senate the compilation recently made in the Indian Bureau concerning the legal status of the Indians and lands located in the Indian Territory, and that he also, if not incompatible with the public interest, send to the Senate instructions issued to the commission recently appointed pursuant to act of Congress to negotiate for the cession to the Government of lands west of the ninety-sixth degree in the Indian Territory."

In response thereto I have the honor to state that no compilation has been made by the Indian Bureau concerning the legal status of the Indians and lands located in the Indian Territory other than that embodied in the instructions to the Cherokee Commission.

In view of the pending negotiations with these Indians, I deem it incompatible with the public interest that these instructions at this time be made public.

With the final report of the commission a copy of the instructions herewith requested will be furnished.

I have the honor to be, very respectfully,

JOHN W. NOBLE,
Secretary.

The PRESIDENT OF THE SENATE.

Thereupon the Senate, by a resolution adopted March 10, 1890, peremptorily directed the Secretary to send the compilation to the Senate, as follows:

Resolved, That the Secretary of the Interior be directed to send to the Senate the compilation recently made in the Indian Bureau, concerning the legal status of the Indians and lands within the Indian Territory.

The Secretary replied as follows:

DEPARTMENT OF THE INTERIOR,
Washington, March 12, 1890.

Sir: I have the honor to acknowledge the receipt of Senate resolution in the following words:

"Resolved, That the Secretary of the Interior be directed to send to the Senate the compilation recently made in the Indian Bureau, concerning the legal status of the Indians and lands within the Indian Territory."

In response thereto I transmit herewith the compilation called for, from which has been eliminated the instructions given the Cherokee Commission.

I have the honor to be, very respectfully,

JOHN W. NOBLE,
Secretary.

The PRESIDENT OF THE SENATE.

The Secretary had access to the books, documents, and maps, which showed the interest of the Cheyennes and Arapahoes in the Cimarron tract of more than 5,000,000 acres, as well as in the tract of 2,489,160 acres within the "leased district," when he issued his "instructions" to the commissioners as above stated. Indeed, in this "compilation," on pages 9 and 10 of Senate Ex. Doc. No. 78, first session, Fifty-first Congress, the Secretary, referring to the Cimarron tract, says:

These lands, it must be conceded, were secured to these tribes by solemn treaty stipulation, and they have made no treaty ceding them, nor agreement of relinquishment that is of any binding force or effect. They have committed no act of forfeiture. Their title stands to-day as it did at the date of the ratification of the treaty of 1867. As between the United States and the Cheyennes and Arapahoes, the title

to the lands is in these Indians, and they have a perfect and indisputable right to remove to that reservation and enjoy all the privileges guaranteed to them by the treaty.

The commissioners refused to negotiate with the Choctaws and Chickasaws for their interest in the "leased district;" but they proceeded to negotiate with the Cheyennes and Arapahoes for a cession of their interest in that part of the "leased district" on which they were located by the executive order dated August 10, 1869, although there can be no pretense that the President had any authority to vest any sort of title to these lands in these Indians.

It seems to be a necessary inference from the facts just stated that the instructions which the Secretary declined to furnish to the Senate *required* the commissioners to negotiate with the Cheyennes and Arapahoes for their interest in the "leased district," which was, in fact, a mere right of occupancy and in no sense a title to the land, but *did not permit* them to negotiate with the Choctaws and Chickasaws for their interest therein, thus actually suspending the law, notwithstanding the fact that Congress had explicitly directed the commission, to use the words of the statute, "to negotiate with the Cherokee Indians and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory, for the cession to the United States of all their title, claim, or interest of every kind and character in and to said lands," which clearly embraced in its terms the claims of the Choctaws and Chickasaws to the "leased district."

The commissioners having, in pursuance, as your committee infer, of the instructions of the Secretary of the Interior, refused to negotiate with the Choctaws and Chickasaws for the relinquishment of their interest in the "leased district," the governor of the Chickasaw Nation it appears sent B. C. Burney and Overton Love, citizens of that nation, to Washington to apply to Congress for protection against the threatened invasion of their rights. Your committee are informed that before making their formal application to Congress the Chickasaw delegates, Messrs. Burney and Love, had an interview with a well-known financier and capitalist, now a distinguished member of the Executive Department of the Government, in which he said to them that, if they could obtain from Congress authority to sell the lands embraced within the "leased district" at private sale, a syndicate could be organized to purchase them at the price of \$5 per acre, at which rate the lands, being in area 7,713,239 acres, would amount to \$38,566,190, and at the same time he expressed the opinion that the proposed syndicate would be able to sell the lands for \$10 per acre, at which rate the lands would have yielded the syndicate a profit of more than \$35,000,000.

If the law as it stands had been executed and the amount appropriated paid to the Choctaws and Chickasaws, and the Cheyenne and Arapahoe agreement had also been ratified and afterwards executed, even though it might be said that the Government had had to "pay twice for these lands," yet it would have bought land worth \$5 per acre for \$1.31 per acre, and which it proposed to sell to actual settlers at \$1.50, which upon a sale of the entire tract would yield, leaving out of the account 96,000 acres given in severalty to the Cheyennes and Arapahoes, a net profit to the Government of \$454,700, and to the settlers lands worth \$11,965,800 for \$3,589,740, or a net profit of \$8,376,060.

In the message of the President, transmitted to Congress February 17, 1892, he says:

After a somewhat careful examination of the question I do not believe that the lands for which this money is to be paid were, to quote the language of section 15

of the Indian appropriation bill already set out, "ceded in trust by article 3 of treaty between the United States and said Choctaw and Chickasaw nations of Indians, which was concluded April 28, 1866."

The President is of the opinion that the lands in question were not ceded in trust to the United States by this treaty. He thinks that an absolute, unqualified title was conveyed by the treaty, and as he elsewhere says, that the United States paid the Choctaws and Chickasaws therefor the sum of \$300,000. On the contrary, your committee believe that the estate conveyed was a trust estate only; that whereas the treaty of 1855 empowered the United States to locate upon these lands only those Indians whose ranges were included within certain specified limits, this treaty of 1866 authorized the United States—

(1) To locate upon these lands Indians like the Cheyennes and Arapahoes, whose ranges were not within the limits designated in the treaty of 1855, and whom, prior to the treaty of 1866, the United States had no right to locate upon the lands;

(2) To locate upon the lands Choctaw and Chickasaw freedmen;

(3) Deprived the Choctaws and Chickasaws themselves of the right to settle thereon.

The treaty disposed of this sum of \$300,000 as follows:

It was to remain in the Treasury of the United States. If the Choctaws and Chickasaws should decide not to confer citizenship upon their freedmen, and the United States should remove the freedmen with their consent from the Choctaw and Chickasaw nations, then the sum of \$300,000 was to be held in trust for the freedmen. If the Choctaws and Chickasaws should decide not to admit their freedmen to citizenship, and the freedmen should decline to be removed from the Choctaw and Chickasaw nations, then this sum of \$300,000 was to remain the property of the United States. But if within two years the freedmen should be invested with citizenship, and should refuse to leave the Choctaw and Chickasaw nations, then, and only then, was the money to be paid to the Choctaws and Chickasaws.

The purpose of this provision relating to the \$300,000 was not to pay for the land. Its object was to cover the cost of the removal of the freedmen if the Choctaws and Chickasaws should not admit them to citizenship, or to compensate the Choctaws and Chickasaws in some measure for the benefits conferred upon the freedmen by conferring citizenship upon them, in case this should be done. These benefits were material and substantial; in addition to all the civil and political rights enjoyed by the Indians themselves, they acquired property rights such as were conferred upon no freedmen outside of the Indian Territory. They have the free use of lands just as the Indians have, and the benefit of excellent schools, for the support of which they have never contributed in any way a single cent. To have these rights conferred upon 3,000 freedmen the Government agreed to pay \$300,000. The Choctaws agreed to it, the Chickasaws did not. This sum was fixed at \$300,000 because the number of freedmen were estimated at 3,000, and it was agreed that each freedman, in case of removal, should receive for the expenses incident to emigration the sum of \$100.

The Choctaws admitted their freedmen to citizenship and received their share of the sum of \$300,000, less \$7,200 paid to freedmen who promised to emigrate from the Choctaw Nation.

The Choctaws and Chickasaws claim that their position was like that of the Creeks and Seminoles, who have already been paid under the acts of March 1 and 2, 1889, for their interest in the lands ceded by the treaties of 1866.

The language of the Creek treaty is:

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 to 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, etc.

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.

In the Choctaw and Chickasaw treaty the words are:

The Choctaws and Chickasaws, in consideration of the sum of \$300,000, hereby cede to the United States the territory west of the ninety-eighth degree west longitude: *Provided*, etc.

The difference between these treaties is that the Choctaw and Chickasaw treaty does not contain the words "in compliance with the desire of the United States to locate other Indians and freedmen thereon" preceding the words of conveyance; but this committee believe that these words are distinctly implied and just as binding upon the United States as if they had been so used, for the reason that when the Commissioners of the United States met these Indians to negotiate this treaty they informed the Indians that they were authorized to treat only upon condition that they (the Indians) would consent that the Indian country should be set apart for Indian occupation. This demand of the Government was acceded to by the Indians, and upon this condition the treaty was made. The agents of the United States so reported to their Government at the time, and it has been so understood since.

The following is taken from a report made to Congress in this case by the Indian Office September 13, 1890:

The records of this office show that in 1865 a commission was appointed to negotiate with the Indians of the then Southern Superintendency, among them the Choctaws, Chickasaws, Creeks, Seminoles, and Cherokees. * * * A council was held between this commission and representatives of the Southern Indians at Fort Smith, Ark., in September, beginning on the 8th and ending on the 21st day of that month. On the 9th of September, 1865, the president of the commission, Hon. D. N. Cooley, who was also at that time Commissioner of Indian Affairs, addressed the council, * * * and declared * * * that, as the representatives 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 above named living west and north of Indian Territory, that such treaties must contain substantially the following stipulations, viz:

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

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

"Seventh. No *white person*, except officers, agents, and employes of the Government, or of any internal improvement company authorized by the Government, will be permitted to reside in the Territory, unless formally incorporated with some tribe according to the usage of the band."

On September 11, 1865, in a letter addressed to the commissioners of the United States, the Choctaw delegates said: "In answer, therefore, to your propositions to the several tribes of Indians, we say that the first, second, third, fourth, fifth, and sixth articles meet our approval;" and submitted in lieu of the seventh proposition a proposition which provided that "no white person, except officers, agents, employes of the Government, or of any internal improvement company authorized by the Government of the United States; also, no person of African descent, except our former slaves, or free persons of color who are now or have been residents of the Territory, will be permitted to reside in the Territory unless formally incorporated with some tribe according to the usages of the band."

Later, in the progress of the council, about the 18th of September, the commissioners of the southern factions of the Choctaw and Chickasaw tribes accepted the

propositions suggested by the commissioners, and before the final adjournment of that council, the 21st of September, all of the delegates of the tribes represented signed a treaty of peace between themselves and the United States. (These proceedings will be found in the Annual Report of the Indian Bureau, 1885, p. 105, etc.)

It will be observed that in each of the treaties made with each of the other civilized tribes, extracts from which are above given, the purpose for which the land was being ceded to the United States is specifically stated. No such purpose is stated in the treaty made about the same time with the Choctaws and Chickasaws.

It is possible that the commission, when it came to negotiate with the Choctaws and Chickasaws, may have omitted from the treaty with those Indians a similar condition and reservation regarding the purposes for which the lands were to be used, because of the fact that the United States had secured by a prior treaty a lease, which amounted to a permanent lease, of the lands in question for Indian purposes, for which, together with other considerations, it had paid the sum of \$800,000. Considering this fact, the commission negotiating the treaty may have considered the payment of the \$300,000 additional, as provided for in the treaty of 1866, a sufficient compensation for an absolute cession of all right, title, and interest that the Choctaws and Chickasaws had in and to the said "leased district." This conclusion, however, can not be fairly reached, when the record of the negotiations is fully considered; for we have already seen that these Indians accepted the terms proposed by the commission, upon which the treaties would be negotiated; and these very terms indicate the purpose for which the ceded lands were to be used. And it shows quite clearly that the Indians understood that they were parting with whatever right, title, and interest remained to them in the "leased district" to the United States, to be used for the location and settlement of other Indians thereon.

The negotiations made about that time by the United States with Indian tribes show very conclusively that a policy had been carefully mapped out for the acquisition by the United States of the right to locate other Indians upon portions of the lands owned and occupied by the five civilized tribes in the Indian Territory.

I am inclined, therefore, to the opinion that the Choctaw and Chickasaw Indians have good ground for the claim that the United States took the land ceded by them upon the trust to settle other Indians and freedmen thereon, as the policy upon which the negotiations were made clearly indicated its desire and purpose to do.

While there are clearly no words of limitation in the treaty of 1866 as to the use to which the ceded lands should be put by the United States, the history of the negotiation preceding and resulting in that treaty and the subsequent treatment of the subject quite clearly indicate that the Choctaws and Chickasaws have good ground for claiming that they understood that the lands were to be used for the location of other Indians and freedmen thereon.

Hon. D. N. Cooley was Commissioner of Indian Affairs at the time this treaty was negotiated. He was president of the treaty commissioners, was himself personally present and conducted the negotiations, and in his formal report as Commissioner of Indian Affairs to the Secretary of the Interior, in 1865, he uses this language:

With the Choctaws and Chickasaws a treaty was agreed upon 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 the leased lands to the settlement of any tribes whom the Government of the United States may desire to place thereon, etc.

The Secretary of the Interior, in an official communication to the Secretary of War, dated May 1, 1879, 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 therein. The treaty of 1866 substituted a direct purchase for the lease, but did not extinguish or alter the trust.

On the 17th of February, 1882, the Secretary of the Interior communicated to the Senate of the United States a decision of the Commissioner of the General Land Office, containing the following statement:

The Choctaw and Chickasaw cession of April 28, 1866 (14 Stat., 769) was, by the tenth section thereof, made subject to the conditions of the compact of June 22, 1855 (11 Stat., 613), by the ninth article of which it was stipulated that the land should be appropriated for the permanent settlement of such tribes or bands of Indians as the United States might desire to locate thereon. The lands embraced in the Choctaw and Chickasaw cession were also included in a definite district, established by

the stipulations of the treaty of 1855, pursuant to the act of Congress of May 28, 1830, the United States reëngaging, by the seventh article of the said treaty, to remove and keep out from that district all intruders.

In pursuance of the stipulations of the foregoing compacts, and in the exercise of the trusts assumed by the United States, under the several treaties, and in accordance with specific provisions of law and the lawful orders of the President, all the lands in the Indian Territory to which the United States has title have been permanently appropriated or definitely reserved for the uses and purposes named. The title of the United States to lands in the Indian Territory is, as heretofore shown, subject to specific trusts, and it is not within the lawful power of either the legislative or executive departments of the Government to annihilate such trusts, or to avoid the obligations arising thereunder. Such trusts are for the benefit of Indian tribes and Indian freedmen.

In response to a Senate resolution of January 23, 1884, the Secretary of the Interior transmitted to the President of the Senate the following communication:

SIR: I have the honor to acknowledge receipt of Senate resolution of January 23 last, directing the Secretary of the Interior—

“To advise the Senate of the present status of lands in the Indian Territory, other than those claimed and occupied by the five civilized tribes, the extent of each tract separately, the necessity for or obligation to keep said lands in their present condition of occupancy or otherwise, and as to whether any portion of said lands, and if so, what portion, are subject to entry under the land laws of the United States, and as to what portion, if any, could be made so subject to entry by the action of the Executive.”

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.

Such are the purposes for which said lands are now being used or held, according to the common understanding of the objects of treaties by which they were acquired; and from these arise the necessity for or obligation to keep said lands in their present condition of occupancy or otherwise.

In an official communication to the President, dated January 26, 1885, the Secretary of the Interior said:

Objection will be made to the occupation of any part of the Indian Territory by other than Indians, on the ground that the Government set apart the Territory for the exclusive use of the Indians and covenanted that no others should reside therein. It is not denied that the treaties so provide. It is, however, within the power of the Government, with the consent of the Indians interested, to change this provision of the treaties so that these desirable unoccupied lands may be placed within the lawful reach of the settlers.

In the case of *The United States v. Paine*,² (2 McCrary, 290), the court said:

Now we must look to the acts of the Government, since the adoption of this treaty, in order to understand its purpose. We find that in the year 1866 it entered upon the policy of settling tribes of Indians, other than the five civilized tribes, in the Indian country. Since that time by treaties, laws, and executive orders of the President it has settled upon reservations in the Indian country the Cheyennes, the Arapahoes, the Kiowas, the Comanches, the Wichitas, the Pawnees, the Sacs and Foxes, the Nez Perces, the Poncas, the Modocs, the Kansas, the Osages, the Pottawatomies, the Absentee Shawnees, as well as some other small tribes. This explains why the treaty-making power thought, on March 21, 1866, that there was an urgent necessity of the Government for more lands in the Indian Territory. This shows that the Government not only had a desire to locate other Indians in the Indian Territory, but to a great extent it has consummated that desire.

But the President, referring to the leased district, says:

As to these lands, the Government had already, under the treaty of 1855, secured the right to use them perpetually for the settlement of friendly Indians. This was not true as to the other tribes referred to.

This statement, if material to the question now at issue, means, first, that by the treaty of 1855 the Government acquired the right to locate upon these lands *any* Indian tribes which it might be convenient for the Government to locate thereon, without restriction or limitation;

and, secondly, that the Government, by the treaty of 1855, acquired the right to allot these lands in severalty to such Indians. On both of these points, your committee think, the President is mistaken.

The treaty of 1855 secured to the Government the right to locate on the lands in controversy those Indian tribes whose homes and ranges were within certain designated limits, and no others. The following is the text of the treaty:

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 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 all those whose usual ranges at present are north of the Arkansas River, and whose permanent locations are north of the Canadian River, but including those bands whose permanent ranges are south of the Canadian, or between it and the Arkansas.

Moreover, the treaty of 1855 did not grant, or purport to grant, to the United States any right to allot these lands in severalty to individual owners, or to transfer the ownership of the lands. As to these lands the treaty of 1855 was not a deed in fee simple, but only a lease from the Choctaws and Chickasaws to the United States. It empowered the United States, not to convey, but only to sublet the lands. The words of the treaty are:

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.

Until the Choctaws and Chickasaws assented to the provisions of the act of March 3, 1891, they were never willing nor did they ever consent that these lands should be opened to settlement by whites, or allotted, or conveyed in severalty, to whites, blacks, or Indians.

The President expresses the opinion that the conditions attached to the cessions in the Creek and Seminole treaties of 1866 were the same as those which were attached to the lease in the Choctaw and Chickasaw treaty of 1855, and that, therefore, the claim of the Choctaws and Chickasaws that the cession in their latter treaty of 1866 was encumbered by a condition, or trust, is not supported by any analogies of the Creek and Seminole cases. This is a mistake. The trusts created in the Creek and Seminole treaties of 1866 were trusts (1) for the location of friendly Indians, in general, without restriction, and (2) for the location of freedmen. Neither of these two trusts was created by the Choctaw and Chickasaw treaty of 1855. Neither of them existed, in the case of the leased district, until created by the Choctaw and Chickasaw treaty of 1866. The trust created by the Choctaw and Chickasaw treaty of 1855 was a trust not to locate Indians in general, but to locate certain Indians whose ranges were included within the boundaries designated in the treaty. This treaty of 1855 contained no trust whatever for the location of freedmen. That trust was first created, for the leased district, by the Choctaw and Chickasaw treaty of 1866.

It is true that these two trusts of the Choctaw and Chickasaw treaty of 1866 are not created by express words qualifying the grant. But this is also true of the Creek and Seminole treaties. In those treaties the trusts are not expressed, but are implied in words used in recitals only. They are not implied in either of those treaties, in words used in the body of the grant. The recital in each case is in the following words: "In compliance with the desire of the United States to locate other Indians and freedmen thereon," etc. The words of the grant are even stronger in the Creek and Seminole treaties than in the Choctaw and Chickasaw treaty. The Choctaws and Chickasaws "cede," but the Creeks and Seminoles "cede and convey."

These trusts in the Choctaw and Chickasaw treaty of 1866 are implied in the language of the third article, in which the words of conveyance, the statement of the consideration, and the arrangements for the freedmen are placed in such juxtaposition as not only to warrant, but to necessitate, the inference that it was the object of the parties, and the effect of the treaties, to authorize the United States to locate upon these lands Indians whose ranges were not embraced within the limits designated in the treaty of 1855, and also to locate Choctaw and Chickasaw freedmen thereon, and that the cession was encumbered by corresponding trusts.

If this be not true, if the Choctaw and Chickasaw deed of 1866 was an absolute deed, while those of the Creeks and Seminoles were only deeds in trust, then gross injustice was practiced upon the Choctaws and Chickasaws by the United States in 1866, for the Creeks then received \$325,362 for a deed in trust of only 2,169,080 acres of land, and the Seminoles received \$975,168 for a deed in trust of only 3,250,560 acres; but for 7,713,239 acres of land, which had been previously held by the United States under a gratuitous lease for thirty-six years, the Choctaws and Chickasaws received not a single penny, unless the \$300,000 provided for the freedmen be erroneously reckoned as compensation to the Choctaws and Chickasaws for the grant. And now the President having, in 1889, paid the Creeks for the same lands the additional sum of \$2,530,857, and having, in the same year, paid the Seminoles for the same lands an additional sum of \$1,912,942.02, has, for more than twelve months, refused to pay the Choctaws and Chickasaws the amount appropriated by the act of March 3, 1891.

The third article of the treaty of 1866, standing alone, shows a cession by the Choctaws and Chickasaws to the United States of 7,713,239 acres of land, unsurpassed in point of fertility by any body of land of equal area within the limits of the United States. If the sum of \$300,000, named in this article, constituted the sole consideration for the conveyance, and the United States became the absolute owners of the land in their own right, and not the mere grantees of a trust estate therein, then the remarkable spectacle is presented of a purchase by the United States from their feeble and dependent "wards" of 7,713,239 acres of land, then worth in money more than \$10,000,000 and now worth more than \$40,000,000, for the nominal consideration of \$300,000, which sum of \$300,000 was to remain the property of the United States if the freedmen should not be removed from the Chickasaw and Choctaw nations, or become citizens of those nations, but was to be paid to the freedmen if they should be removed, and was only to be paid to the Choctaws and Chickasaws in the event that they should confer citizenship upon the freedmen and the freedmen should not be removed. Was such a bargain ever before made between a powerful republican government and a dependent Indian tribe? Was such a bargain ever made between an honest guardian and a helpless "ward?"

The treaty between the United States and Spain, by which the United States ceded these lands to Spain, in part payment for Florida, which was ratified February 19, 1821, is designated by the President as the treaty of 1819. And he designates the treaty by which the United States had previously ceded the same lands to the Choctaws as the treaty of 1820. He says:

The boundary between the Louisiana purchase and the Spanish possession, by our treaty of 1819 with Spain, was, as to these lands, fixed upon the one hundredth degree of west longitude. Our treaty with the Choctaws and Chickasaws, made in 1820, extended their grant to the limit of our possessions. It followed of course, that

these lands were included within the bounds of the State of Texas, when that State was admitted to the Union, and the release of the Choctaws and Chickasaws, whatever it was worth, operated for the benefit of the State of Texas, and not of the United States.

These statements are altogether erroneous. They mean that the lands in question had been sold to Spain before the Choctaw treaty of 1820 was made, and so were not ceded to the Choctaws by the treaty of 1820, and, therefore, the release of 1855 operated for the benefit of Texas, whose title was derived from Spain, and not for the benefit of the United States. But the facts are as follows:

The district west of the one hundredth meridian, as already shown, belonged to France, as a part of the province of Louisiana, from 1685 to 1762. In 1762 it was ceded by France to Spain. In 1800 it was retroceded by Spain to France. In 1803 it was ceded by France to the United States. In 1820 it was ceded by the United States to the Choctaws in part payment for their lands east of the Mississippi River. In 1821, while this district was the property of the Choctaws, the United States, without their consent or knowledge, ceded it to Spain in part payment for Florida. It afterwards became successively the property of Mexico and Texas. (American State Papers, vol. 2, pp. 574, 575, 630, 634, 637, 663, 664; vol. 4, pp. 471, 473, 478, 479; Henry Clay's speech, House of Representatives, April 3, 1820; sixteen European maps, eighteenth century.)

The Spanish treaty was negotiated in 1819; but it was most vehemently opposed in the Congress of the United States and was rejected by the King of Spain. While this rejected treaty was dead the United States, in 1820, conveyed the same land to the Choctaws, without disclosing to the Choctaws the facts connected with the defunct Spanish treaty. After the treaty had been dead and buried nearly two years, it experienced a resurrection and a ratification in 1821.

The Government then found itself in this embarrassing predicament: The Choctaws, by the treaty of 1820, had conveyed to the United States all their lands in the State of Mississippi, and in payment therefor the United States had conveyed to the Choctaws all the lands included within certain defined boundaries west of the Mississippi River. The deed to the Choctaws embraced the district west of the one hundredth meridian, but afterwards, in 1821, the United States, without the consent or knowledge of the Choctaws, conveyed the same lands to Spain in part payment for Florida. It then became obligatory upon the United States, as already indicated, to take one of four courses, either to reconvey to the Choctaws a part of their lands in the State of Mississippi, or to convey to the Choctaws additional lands west of the Mississippi River, or to surrender the treaty of 1820 altogether and restore to the Choctaws all their lands in the State of Mississippi, and receive back the lands ceded to them west of the Mississippi River, or, finally, to compensate the Choctaws in money for those lands west of the one hundredth meridian which had been sold to, and paid for, by them, and subsequently, without their consent, conveyed to Spain. The United States chose the latter course, and by the treaty of 1855, for the sum of \$800,000, secured from the Choctaws a quitclaim of their title to these lands and a lease of the lands between the ninety-eighth and one hundredth meridians of west longitude. That a large part of this consideration must have applied to the lease the President says:

It seems probable that a very considerable part of this consideration must have related to the leased lands, because these were the lands in which the Indian title

was recognized and the treaty gave to the United States a permanent right of occupation by friendly Indians.

One of the grounds assigned for the President's opinion is that the Indian title to the leased lands "was recognized" by the United States. This implies that the Indian title to the lands west of the one hundredth meridian was not recognized by the United States. But your committee think that this fact, if it were a fact, would have no bearing whatever upon the question of the apportionment of the consideration of \$800,000 as between the conveyance and the lease. The Indians themselves recognized the fact that the legal title conveyed to them in 1820 had been extinguished by the conveyance to Spain in 1821. They knew that the United States, a sovereign power, invested with the right of eminent domain, had ceded their lands, by a valid treaty, to the King of Spain. But they believed that the ratification of the Spanish treaty in 1821 had not extinguished their right of reclamation against the United States for this transfer of their lands without their consent to a foreign power.

Your committee, therefore, believe that the entire sum of \$800,000, paid, in pursuance of the treaty of 1855, was but a small part of the value of the 6,589,440 acres of land west of the one hundredth meridian, and that the whole of that sum was fairly applicable to the quitclaim or release of that land west of the one hundredth meridian.

The President says:

Our treaty with the Choctaws and Chickasaws, made in 1820, extended their grant to the limit of our possessions. It followed, of course, that these lands were included within the boundaries of the State of Texas when that State was admitted to the Union, and the release of the Choctaws and Chickasaws, whatever it was worth, operated for the benefit of the State of Texas, and not of the United States.

He thinks that when the Choctaws and Chickasaws, for the sum of \$800,000, relinquished their right of reclamation against the United States, for the alienation of their lands, by a release or quitclaim of their interests in those lands, this release "operated for the benefit not of the United States, but of the owner deriving title from Spain." But the Chickasaws assert, with good reason, as your committee think, that when they furnished the United States 6,589,440 acres of land, which was actually applied by the United States in part payment for Florida, the transaction inured to the benefit of the United States. They think that when an individual furnishes a debtor means to pay his debts, the transaction inures to the benefit of the debtor. But, then, it is not true that "our treaty from the Choctaws and Chickasaws, made in 1820, extended their grant to the limit of our possessions." There was no such provision in the treaty of 1820. It occurred for the first time in the treaty of 1830, made ten years after the land had been sold to the Choctaws; and while it did deprive the Choctaws of that part of their land which was sold to Spain in 1821, it did not curtail the area actually ceded by the United States to the Choctaws in 1820, nor did it impair their right of reclamation against the United States.

The President thinks that if an Indian nation, being the owner of a tract of land purchased from the United States and fully paid for, cedes the land back to the United States by a conveyance in trust, the terms of the trust permitting the location of other Indians and of freedmen upon the land, but interdicting the location of white men thereon, the United States can evade the interdict by locating other Indians upon the land and purchasing from them a release from the interdict, and can then open the land to settlement by white citizens. He thinks that upon the assumption that the Choctaws and Chickasaws, in their lease

of 1855 and in their cession of 1866, interdicted the location of whites upon the leased district, it was nevertheless competent for the United States to cede the land to the Cheyennes and Arapahoes and then purchase from the Cheyennes and Arapahoes their interest in the land, with the right to open it to "white settlement," and that, by this device, the United States could evade the interdict of the Choctaws and Chickasaws. He thinks that if the United States, after paying the Cheyennes and Arapahoes for their interest in the lands, should be required to pay the Choctaws and Chickasaws for exemption from the restrictions imposed by their conveyance, then the United States would, in effect, be required to pay twice for the privilege of opening the land to "white settlement," or, as he expresses it, would be compelled to pay twice for the same land.

On this point your committee are constrained to differ in opinion with the President. It certainly was competent for the United States to locate Cheyennes and Arapahoes upon these lands and afterward to pay them whatever the United States saw fit to pay for a quitclaim of their interest in the land and for their consent to the location of whites thereon. But whatever effect such an arrangement might have as between the United States and the Cheyennes and Arapahoes, it could have no effect whatever to release the United States from the restrictions imposed in the treaties of the Choctaws and Chickasaws. In the same way an individual holding land in trust might, by purchasing from his own grantee a release from the obligation of the trust imposed by the grantor, divest his title of the trust and invest himself with an absolute title, and then resist his grantor's demand for redress by setting up his grantee's release and his own payment to his grantee for such release. If the United States saw fit not only to give the Cheyennes and Arapahoes allotments in severalty of a part of the land, but also to pay them money for their quitclaim of the residue and for their consent to its occupation by white settlers, and attempted by that arrangement to evade the terms of the Choctaw and Chickasaw lease of 1855 and cession of 1866, the United States ought to bear the expense of this speculation themselves and can not rightfully recoup that expense from the Choctaws and Chickasaws.

But the President thinks that all or a large part of the money promised to the Cheyennes and Arapahoes, in the agreement of 1890, is to be paid as compensation for their interest in lands within the leased district. This is a mistake. The facts are as follows:

By the Cheyenne and Arapaho treaty of 1867 the United States set apart for the Cheyennes and Arapahoes, and for such other friendly Indians as they should be willing to admit among them, the entire country bounded on the north by the south line of the State of Kansas, on the east by the Arkansas River, on the south and west by the Cimarron River (15 Stat., 594). This tract contained over 5,207,000 acres of land.

By an Executive order, dated August 10, 1869, the President set apart, for the Cheyennes and Arapahoes, the country between the thirty-fifth and thirty-seventh parallels of north latitude, and between the eastern line of Texas and the western line of Oklahoma. This country contains 4,270,771 acres of land. (Commissioner's report, 1888, p. 89.) Of this land, 1,781,611 acres lie north of the Canadian River and outside of the leased district, and 2,489,160 acres lie south of the Canadian River and within the leased district. The authority for the Executive order, setting this land apart for the Cheyennes and Arapahoes, was not conferred by any specific constitutional or statutory provision. Its origin is nebulous, and its origin and nature are not yet well defined.

When, by virtue of the Executive order of August 10, 1869, the Cheyennes and Arapahoes were located in the country north and south of the Canadian River, they already held, under a treaty duly ratified by the Senate, the tract of 5,000,000 acres between the Arkansas and Cimarron rivers. And yet the President is of the opinion that it was competent for the executive authorities of the United States to substitute a reservation set apart by Executive order for a reservation set apart by a duly ratified treaty, with the effect of investing the Cheyennes and Arapahoes with such a title to the 2,489,160 acres south of the Canadian River that a quitclaim of their interest therein to the United States will extinguish not only their own interest, but also that of the Choctaws and Chickasaws. He thinks that to pay the Choctaws and Chickasaws, after paying the Cheyennes and Arapahoes, would be to pay twice for the same land.

Your committee think that this Executive order was not effective to vest in 3,000 Cheyennes and Arapahoes such a title to 4,270,771 acres of land, in addition to the 5,000,000 previously set apart by treaty between the Arkansas and Cimarron rivers, as to make the quitclaim of the Cheyennes and Arapahoes effective, not only to extinguish their own interest, but also that of the Choctaws and Chickasaws.

But Congress will not lose sight of the real character of the Cheyenne and Arapaho agreement of 1890. By that agreement the Cheyennes and Arapahoes quitclaimed to the United States, not only the 2,489,160 acres of land within the leased district, but also the 1,781,611 acres north of the Canadian River, and more than 5,000,000 between the Arkansas and Cimarron rivers, in all 9,630,771 acres. Of this aggregate amount only one-fourth was within the leased district. And yet although 96,000 acres of land within the leased district are given to the Cheyennes and Arapahoes, in severalty, the President is of the opinion that the sum of \$1,500,000 promised to the Cheyennes and Arapahoes in the treaty of 1890 is to be paid mainly, not for the 7,348,611 acres outside of the leased district, but for the 2,489,160 acres within that district.

It is difficult to reconcile this opinion of the President with the statement, made by Secretary Noble, in the "compilation" printed on page 9, of Senate Ex. Doc. No. 78 Fifty-first Congress, first session, in the following words:

The select committee of the Senate, in its report on the removal of the Northern Cheyennes, etc., in speaking of the lands set apart for the Cheyennes and Arapahoes by the Executive order of August 10, 1869, say that "it was never intended to be more than a temporary abiding place for these tribes, where they were to stop until the United States could extinguish the claim of the Cherokees to the lands included in the treaties with the Arapahoes and Cheyennes." (Senate Report No. 708, Forty-sixth Congress, second session, page 2)

Nor is it easy to reconcile this opinion of the President with the following statements, made by Secretary Noble, in the "compilation" printed on pages 7, 8, 9, and 10, Senate Ex. Doc. No. 78, first session Fifty-first Congress, in the following words:

CHEYENNE AND ARAPAHOE RESERVATION ON A PORTION OF THE OUTLET.

By the second article of the treaty with the Cheyennes and Arapahoes, concluded October 21, 1867 (15 Stats., 593), a tract of country west of the ninety-sixth degree, bounded by the Arkansas River on the east, the thirty-seventh parallel of north latitude being the southern boundary line of the State of Kansas on the north, and the Cimarron or Red Fork of the Arkansas River on the west and south, in which boundaries are included 4,294,734 acres of the Cherokee lands west of the ninety-sixth degree, all of which lies west of the Arkansas River, was set apart for the undisturbed use and occupation of said Indians, and for such other friendly Indians as from time

to time, they might be willing, with the consent of the United States, to admit among them.

This tract (so far as it relates to Cherokee lands) is indicated on the map by a dark-blue line and numbered 2.

This cession also covers 730,162 acres, including 53,006 acres subsequently set apart for the Pawnees, of the lands ceded to the United States by the third article of the treaty of 1866 with the Creek Nation of Indians (14 Stat., 785) for the purpose of settling friendly Indians thereon, lying north of the Arkansas River and south of the Cherokee line referred to; also that portion of the unceded Creek territory lying north of the Arkansas River, south of the Cherokee line, and east of the line dividing the Creek domain under the treaty of 1866, numbered on map 23 $\frac{1}{2}$. But as to this latter tract the Cheyennes and Arapahoes acquired the title. (See United States *vs.* Ben Reese, above referred to.)

These lands, it must be conceded, were secured to these tribes by solemn treaty stipulation, and they have made no treaty ceding them nor agreement of relinquishment that is of any binding force or effect. They have committed no act of forfeiture. Their title stands to-day as it did at the date of the ratification of the treaty of 1867. As between the United States and the Cheyennes and Arapahoes the title to the lands is in these Indians, and they have a perfect and indisputable right to now remove to that reservation and enjoy all the privileges guaranteed to them by the treaty.

But then Secretary Noble was actually notified by the commission, in the spring of 1891, that the amount allowed to the Cheyennes and Arapahoes for their interest, not in the "leased district," but in the entire Executive order reservation, was \$250,000. Why this information was not communicated to the President, by the Secretary, your committee are not advised.

This would make the amount allowed for their land in the "leased district" less than \$150,000, or less than 6 cents per acre.

Your committee, therefore, conclude that the United States are not the absolute owners of the leased district, but only hold a trust estate therein; and they submit the following recapitulation of the grounds on which this conclusion is based:

(1) Under the treaty of 1855 the sum of \$800,000 was paid for the release of the land west of the one hundredth meridian and the lease of the land between the ninety-eighth and one hundredth meridians.

(2) Much the larger part of that payment was applicable to the release of the land west of the one hundredth meridian, and a small part, if any, of it to the lease of the land between the ninety-eighth and one hundredth meridians.

(3) In 1865 the commissioners, appointed by the President, officially notified the five civilized tribes, at Fort Smith, that the lands to be treated for were to be acquired for the use, not of white men, but of Indians.

(4) The Choctaws and Chickasaws, as well as the other civilized tribes, formally accepted that basis of the proposed negotiations, and upon that basis consented to treat, and did treat, in 1865.

(5) When the commissioners of the Choctaws and Chickasaws met the commissioners of the United States to negotiate the treaty of 1866, there is no pretense that anything had been paid by the United States towards the purchase of the land between the ninety-eighth and one hundredth meridians, although the United States had held that land under lease for eleven years.

(6) The treaty of 1866 provided no compensation for the transfer of the absolute ownership of the leased district. The sum of \$300,000, named in the third section of that treaty, was to be paid to the freedmen, if they should be removed, but was to remain the property of the United States if citizenship should not be conferred upon the freedmen, and was only to be paid to the Choctaws and Chickasaws in the event that citizenship should be conferred upon the freedmen and they should refuse to emigrate.

(7) The sum of \$300,000, named in the treaty of 1866, was not to compensate the Choctaws and Chickasaws for anything except for conferring citizenship and a right to forty acres of land each, upon the freedmen. If citizenship should not be conferred upon the freedmen, the United States, by the terms of the treaty, were to acquire whatever new interest the treaty conveyed in the land, without paying the Choctaws and Chickasaws a dollar for such conveyance.

(8) The effect of the treaty of 1866 was to authorize the Government of the United States, whenever it should remove the freedmen, to locate them in the leased district.

(9) It was also the effect of the treaty of 1866 to open the leased district to settlement by friendly Indians *in general*; for the treaty of 1866 omitted the inhibition of the lease of 1855, which excluded from that district all Indians, except those residing or ranging within certain specified limits.

(10) The Creeks and Seminoles entered into treaties with the United States in 1866 upon the basis which had been proposed to and accepted by the five civilized tribes in 1865, and which excluded white settlers from the lands to be ceded to the United States.

(11) The United States, in 1866, paid the Creeks 30 cents per acre for 3,250,560 acres, and also paid the Seminoles \$325,362 for 2,169,080 acres, but paid the Choctaws and Chickasaws nothing for 7,713,239 acres ceded, unless the sum of \$300,000 provided as compensation for the possible grant of citizenship to the freedmen is to be regarded as payment for the land.

(12) In 1889 the United States paid the Creeks \$2,280,857.10 for a release of their interest in the lands ceded by them in 1866, and also paid the Seminoles \$1,912,942.02 for a release of their interest in the lands ceded by them in 1866.

(13) To assume that the cession of 1866 was intended, by the parties to the treaty, as an absolute conveyance, is to assume that the Choctaws and Chickasaws intended to convey, and the United States intended to acquire, without any compensation whatever, 7,713,239 acres of land, worth more than \$10,000,000 in 1866 and worth more than \$40,000,000 at the present time.

(14) As the Supreme Court has often held, treaties between the United States and the Indian tribes are not without necessity to be so construed as to work injustice upon the "wards of the nation;" but a construction of the treaty of 1866 which makes that treaty the conveyance of an absolute title to the United States will inflict a grievous and unnecessary wrong upon the Choctaw and Chickasaw nations.

(15) The propositions submitted to the civilized tribes by the United States in 1865 as the basis of the negotiation of the treaties of 1866, the provisions of the treaty of 1866, the facts and circumstances attending the making of that treaty, and the contemporaneous dealings of the United States with the Creeks and Seminoles necessitate the conclusion that the cession made in the Choctaw and Chickasaw treaty of 1866 was intended as a conveyance, not of an absolute title, but only of a trust estate.

The President makes the following statement:

In view of the fact that the stipulations of the treaty of 1866 in behalf of the freedmen of these tribes have not, especially in the case of the Chickasaws, been complied with, it would seem that the United States should, in a distribution of the money, have made suitable provisions in their behalf. The Chickasaws have steadfastly refused to admit the freedmen to citizenship, as they stipulated to do in the treaty referred to, and their condition in that tribe, and in a lesser degree in the other, strongly calls for the protective intervention of Congress.

In this matter the President has certainly been misinformed. The Chickasaws never stipulated in the treaty of 1866 or in any other treaty to admit the freedmen to citizenship, and the "protective intervention of Congress" suggested by the President would, if carried out on this line, be an act of the grossest injustice. It was provided in the treaty of 1866 that, if the Choctaws and Chickasaws should elect to admit to citizenship the freedmen, certain specified arrangements should be made, and that, if they should elect not to admit them to citizenship, then certain other specified arrangements should be made. There was no promise, express or implied, by either nation to confer citizenship upon the freedmen. Nor has either of these two nations failed to comply with a single stipulation of the treaty of 1866 or of any other treaty relating to the freedmen. Nor is the condition of the freedmen in either nation such as to call for or justify any intervention by Congress on their behalf, to the prejudice of the Choctaws and Chickasaws. The Choctaws admitted their freedmen to citizenship. They were able to do this with safety, because the freedmen constituted only an insignificant minority of the population of the nation. But the Chickasaws declined to confer citizenship upon their freedmen.

It is not true that the lot of freedmen is a hard one, either in the Choctaw or in the Chickasaw Nation. On the contrary, their condition there is better than in the United States. In the United States freedom has been given to the freedmen, but nothing else has been given to them. They must buy or lease their land and pay their taxes or have no land. In the Choctaw and Chickasaw Nations every freedman uses, without paying rent or taxes, all the land he sees fit to use, and he is protected in his person and property as completely as any Indian or white man. Article 4 of the treaty contains the following provision:

And they agree, on the part of their respective nations, that all laws shall be equal in their operation upon the Choctaws and Chickasaws and negroes, and that no distinction affecting the latter shall at any time be made, and that they shall be treated with kindness and protected against injury; and they further agree that while the said freedmen, now in the Choctaw and Chickasaw nations, remain in said nations, respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and families; in cases where they do not support themselves and families by hiring, not interfering with existing improvements, without the consent of the occupant.

These promises have all been fairly kept by the Choctaws and Chickasaws.

The President seems to think that the freedmen ought to participate in the distribution of the moneys of the Choctaws and Chickasaws appropriated by the act of March 3, 1891, and seems to completely overlook the plain letter of article 3 of the treaty of 1866, in which participation "in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively," is expressly excepted from the rights proposed to be conferred upon the freedmen, and the further fact that the act of the Choctaw council admitting these freedmen to citizenship so excluded them without any objection on the part of the United States.

There is absolutely no sort of foundation for this claim of the President, but it is plainly in violation of the agreement made in this treaty of Fort Smith. These nations had the right under this treaty to incorporate these freedmen into their nations or not, but there was at no time a suggestion that they should, if adopted, be allowed to participate in the "annuities, moneys, or public domain."

The President seems to intimate that the white citizens of these nations are entitled to some sort of protection in the distribution of this money at the hands of Congress, though he does not distinctly say so. Upon this very question the Attorney-General of the United States uses this language:

The persons entitled to such distribution, the evidence necessary to establish their claims, and the manner of such distribution are all matters to be regulated by the laws of the Choctaw and Chickasaw Nations, respectively, subject doubtless to the rule that such laws must not be in conflict with the Constitution and laws of the United States.

This seems to this committee to be unquestionably the law of this case.

The next point to be considered is that of the compensation to their agents.

In speaking of this compensation (of 25 per cent of the amount collected) agreed to be paid their agents (three of their own citizens) by the Choctaws for prosecuting this claim, the President says:

If the relations of these Indians with the United States are those of a ward, Congress should protect them from such extortionate exactions. We can not assume that the expenses and services of a committee of three persons to represent this claim before Congress could justly assume such proportions. The making of such a contract seems to convey implications which I am sure are wholly unjust.

The Choctaws in their memorial say:

The Choctaw Nation did not promise excessive compensation. The nation exercised not only its guaranteed legal right in making the contract of December 24, 1889, but acted with wisdom born of experience and has many sound precedents therefor.

And support this position by the following argument:

As to the contingent fee, we respectfully state that it was not the first intention of the Choctaw Nation to employ any agents on a contingent fee to secure their rights which they honestly believed would be cheerfully acknowledged and settled on the same basis as that of their neighbors, the Creeks, Seminoles, and Cherokees. On November 5, 1889, the Choctaw council appointed commissioners at \$6 per day and mileage to attend to the leased district matter. (Copy of act herewith, Exhibit 3.)

On November 26, 1889, before the Choctaw commission had had a chance to present the claim of the Choctaw Nation to the United States commissioners at Tahlequah, where they were then treating with the Cherokees, the United States Commission, of its own motion, addressed the chief of the Choctaw Nation a letter (and the chief of the Chickasaw Nation also) stating that the United States claimed full title to the leased district and that the Commission was not authorized to negotiate for such lands. (See Exhibit 4.)

The Choctaw commissioners, though greatly discouraged by this action, called upon the United States Commission in person, and insisted that the United States Commission should negotiate with the Choctaws and Chickasaws. The Commission refused to negotiate, and the Choctaws, from other sources, learned that the honorable Secretary of the Interior had issued secret instructions to said Commission, so instructing them.

The Choctaw Commissioners returned home; a special council was called to hear their report; the Choctaws were greatly disappointed to learn that the Executive Department had decided against them, without a hearing, on a matter of such vital importance, and they believed that greatest efforts would be under the circumstances necessary to obtain justice. The Choctaws have always had peculiar difficulty in collecting anything from the United States. The Choctaw Nation were fresh from an exhausting contest with the United States in the famous "net proceeds" case.

This claim, based as it was on clear treaty rights, presented to the United States Executive Department and to Congress by innumerable petitions and memorials, many times favorably reported by the committees of both houses of Congress, and never adversely, declared by a special award of the Senate in 1859 and later on, after infinite labor and enormous expense, solemnly established by the courts of the United States Government, including that august tribunal the United States Supreme Court itself to be justly due, cost the Choctaw Nation fifty-eight years of labor and patient waiting, the life, service, and fortunes of some of its best men, and 50 per cent of the claim itself before it was ever collected.

The Choctaw Nation, in passing the act of December 24, 1889, exercised its best judgment, and explains its reasons in the act itself, to wit:

That bills had been introduced in Congress to open the leased district without compensation to the Choctaws; that the United States had set up absolute title to this land, ignoring the history and common understanding of the treaty, and had refused to negotiate with the Choctaw Nation; that the Choctaw Nation not being willing to expend what they anticipated might be a heavy draft on their annual income, needed for the ordinary expenses of the government, the Choctaw law of December 24, 1889, itself recites that "desiring to engage the services of a delegation willing to pay all expenses incurred, and whereas the Choctaw Nation wishes to support said delegation in the employment of competent counsel and a large and able corps of assistants to push the equitable rights of the Choctaw Nation upon the attention of the executive department of the United States and upon Congress in order that the rights of the nation now ignored may be recognized," the law enacts a contingent fee of one-fourth of the recovery, "it being distinctly understood that said delegation shall bear all expenses in conducting this business, and that they shall not call on or expect any appropriation whatever in this connection * * * in case of failure said delegation shall bear the loss of their expenses, labor, and time."

Another circumstance in this connection which seems worthy of note is, that there seems to have been no demand or even proposition for a fee from the agents, but, on the contrary, the offer seems to have been made by the nation and accepted by the agents. Mr. Standley, one of the agents, says in a communication to the President, and transmitted with his message, that the law fixing the fee was passed before any of the delegates were nominated, though the act seems to have received executive approval and become a law on the day of their appointment and confirmation, which was also, according to his statement, the day of the adjournment of the council. Standley also says he had no reason to believe he would be nominated as one of such agents until it was done. If these statements are true, and some of them, at least, seem to be borne out by the record, the action of the agents is certainly not properly described by the President as "extortionate exactions."

In view of the fact that this claim was recognized by Congress and its payment provided for with no unnecessary delay, if it had been promptly paid the fee would certainly have been a very large one for the services rendered and expense and risk incurred; but after their experience with the Cherokee Commission, and remembering their trouble with former claims, the Choctaw Nation seems to have had no faith that it would obtain justice "completely and without denial" or "promptly and without delay," and the committee regret to be compelled in candor to admit that the course of the Government toward the Indians in many instances justified this apprehension, and the present delay of payment for now more than a year after the law for the payment has passed strongly vindicates the wisdom of their apprehensions.

It is well known that our own citizens having claims that they believe to be just, and many of which are established by overwhelming proof, must, when they employ counsel on contingent fees, pay very large parts of their claims to have them prosecuted. This depends, of course, upon the great uncertainty of payment, no matter how just the claim may be. The most material fact, however, in this connection, in the opinion of the committee, is the fact that by the laws of the United States and the nation, this money when paid, if it ever should be, is to go into the treasury of the nation and be paid out by the authorities of the nation. No part of this money was to be paid to these agents by the Government of the United States.

Article 7 of the treaty of 1855 contains these words:

So far as may be compatible with the Constitution of the United States, and the laws made in pursuance thereof, regulating trade and the intercourse with the In-

dian tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government and full jurisdiction over person and property within their respective limits: excepting, however, all persons with their property who are not by birth, adoption, or otherwise, citizens or members of either the Choctaw or Chickasaw tribes.

Article 7, treaty of 1866, contains this language:

The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however*, such shall not in any wise interfere with or annul their present tribal organization or their respective legislatures or judiciaries, or the rights, laws, privileges or customs of the Choctaw and Chickasaw nations respectively.

And the Supreme Court in 5th Peters, 16, say, in speaking of one of the so-called civilized tribes, that "in the management of their internal concerns, they are dependent upon no power."

This contract was made more than two years ago; it was made by the council of the Choctaw nation; two councils have been elected since and have recognized and affirmed this action; the services contemplated have been rendered, and under the circumstances this committee are not prepared to say that Congress would be justified in attempting any interference, either by attempting to control this money after payment into the national treasury of the Choctaw nation or by refusing payment.

If this money was justly due these people on March 3, 1891, when appropriated, they have, by the delays of the Government, been deprived of its use for more than a year. The value of this one year's use would pay a very large part of even this 'exorbitant' fee, and if two or three years more of delay are to follow the loss of the use of the money will be quite equal to the amount of this fee, and the Indians will have had no equivalent for it, and this distrust of the Government and the wisdom of placing the burden of prosecuting this claim on the shoulders of others will have been completely vindicated.

The President says, in speaking of the act of the Choctaw council to pay the fee of 25 per cent:

Within a month after the passage of the law R. J. Ward, one of the agents, who was to divide with his associates the enormous sum to be paid by the Choctaws, presented to me an affidavit dated April 4, 1891, which is herewith submitted. It appears from his statement that the action of the Choctaw council in this matter was corruptly influenced by the execution of certain notes signed by Ward for himself and his associates in sums ranging from \$2,500 to \$15,000.

An affidavit is a statement upon oath and is entitled to more consideration than a mere unsworn statement. A charge supported by affidavit is entitled to more consideration than a charge not so supported; but the paper styled by the President an affidavit is no affidavit at all, but an Indian agent says in writing that it was "signed and acknowledged" before him. The fact that this paper was twice styled an affidavit in a communication to the President from the Secretary of the Interior perhaps accounts for the President's belief that it was entitled to the consideration due a paper which had been sworn to. This statement of Ward does not distinctly allege that this corrupt conduct was to procure the passage of the act fixing the compensation of the delegates, but the President evidently so understood it and this is a reasonable construction. This vague suggestion is all the evidence presented tending to show that the council or any of its members acted corruptly in fixing this fee.

Ward, however, subsequently made a real affidavit before Judge Parker, the Federal district judge at Fort Smith, and this was also

transmitted to the President. In this statement he distinctly says on oath that his corrupt conduct was to procure his own confirmation as one of the delegates. There seems to be no other evidence of this, though it seems to be admitted that he gave out the notes mentioned.

The one conclusion that Ward's two statements would seem to fully warrant is that he is utterly unworthy of belief and that his unsupported assertion would prove nothing.

In refutation of what the President understood to be his charge in his first statement, Standley and Harris, the other two delegates, filed their sworn statement denying any knowledge of or participation in the alleged corrupt practices, and Standley avers, in a communication to the President, that the delegates were not appointed until after the act fixing the compensation had been signed by the chief and had become law. If this is true and there is any truth at all in Ward's statement, his corrupt conduct had for its object his own confirmation, and this, if true, ought not to affect the right of the nation to receive whatever amount is due them.

As has already been set out, the Choctaws have a government of their own under treaty stipulations with the United States. Their courts were in full operation under laws enacted by themselves. They are guaranteed by solemn treaty stipulations that they shall be secure in the "unrestricted rights of self-government." If Ward has in the prosecution of personal schemes violated those laws, he is answerable to the nation in its own courts for this violation and nowhere else.

The fact that two councils have been elected and held sessions since this alleged transaction and that no one of the members charged to have been bribed was in either council, and that both have reaffirmed the act fixing the fee, would seem conclusive that this act was not corruptly passed.

Soon after the passage of the act of March 3, 1891, the Choctaws and Chickasaws prepared two forms of release; and two other forms were prepared in the Indian Office. The Choctaws and Chickasaws gave formal notice to the United States that they were ready to execute releases in either or any of these four forms, or in any other form satisfactory to the President; but the President, instead of approving or disapproving of these releases, conceived it to be within his province to approve or disapprove of the law itself.

The United States, then, by grant from the Choctaw and Chickasaw nations, hold a trust estate in the lands recently occupied by the Cheyennes and Arapahoes. The terms of the trust under which these lands are held prohibit the United States from opening the same to settlement by citizens of the United States. Congress, by the act approved March 3, 1891, appropriated the sum of \$2,991,450 to compensate the Choctaws and Chickasaws for their interest in said lands, to the end that they might become the absolute property of the United States, divested of the trust, and open to settlement like other public lands. That appropriation was made immediately available.

For a period of more than a year the executive authorities of the United States have failed to pay any part of the money so appropriated for the extinguishment of the interest of the Choctaws and Chickasaws in these lands; but meantime they have opened the land to public settlement by citizens of the United States.

Your committee, therefore, recommend the adoption of the following resolution of the House of Representatives:

Resolved, That for reasons set forth in the report of the Committee on Indian Affairs upon the President's message of February 17, 1892, upon the appropriation of March 3, 1891, for payment of the Choctaw and Chickasaw nations for their interest in the Cheyenne and Arapahoe Reservation, submitted with this resolution, it is the opinion of the House of Representatives that there is no sufficient reason for interference in the due execution of the law referred to.

APPENDIX.

1. A letter of instructions from James Madison, Secretary of State, to Robert R. Livingston, minister to France, written within nine months after the cession of Louisiana to the United States, contains the following paragraphs:

DEPARTMENT OF STATE, *January 31, 1804.*

SIR: The two last letters received from you bear date on the — and 30th September; so that we have been now four months without hearing from you. The last from me to you was dated on the 16th day of January, giving you information of the transfer of Louisiana on the 20th of December, by the French commissioner, M. Loussat, to Governor Clayborn and Gen. Wilkinson, the commissioners appointed on the part of the United States to receive it. * * * With respect to the western extent of Louisiana, M. Loussat held a language more satisfactory. He considered the Rio Bravo or Del Norte, as far as the thirtieth degree of north latitude, as its true boundary on that side. The northern boundary, we have reason to believe, was settled between France and Great Britain by commissioners appointed under the treaty of Utrecht, who separated the British and French territories west of the Lake of the Woods by the forty-ninth degree of latitude. (Am. St. Papers, Vol. 2, p. 574.)

This statement is repeated on page 575, in a subsequent letter from Mr. Madison to Mr. Livingston, dated March 31, 1804. M. Loussat was the commissioner who received the transfer of the Territory of Louisiana from Spain to France in 1800, and transferred it to the United States under the treaty of 1803.

2. James Madison, Secretary of State, in his letter of instructions of April 15, 1804, to James Monroe and Charles Pinckney, ministers extraordinary to the court of Spain, says:

No final cession is to be made to Spain of any part of the territory on this side of the Rio Bravo, but in the event of a cession to the United States of the territory east of the Perdido; and, in that event, in case of absolute necessity only, and to an extent that will not deprive the United States of any of the waters running into the Missouri or the Mississippi, or of the other waters emptying into the Gulf of Mexico, between the Mississippi and the river Colorado emptying into the bay of St. Bernard. (Am. St. Papers, Vol. 2, p. 630.)

The Bay of St. Bernard is now known as Matagorda Bay.

In a subsequent letter to the same ministers, dated July 8, 1804, and printed on the same page, Secretary Madison said:

It is to be understood that a perpetual relinquishment of the territory between the Rio Bravo and Colorado is not to be made, nor the sum of ——— dollars paid, without the entire cession of the Floridas, nor any money paid in consideration of the acknowledgment by Spain of our title to the territory between the Iberville and the Perdido.

3. In a letter from Mr. Monroe, minister extraordinary to Spain, to M. Talleyrand, a minister of the French Empire, dated Paris, November 8, 1804, he says:

Your excellency will receive within a paper containing an examination of the boundaries of Louisiana which, it is presumed, proves incontestably the doctrine above advanced, as also that the river Perdido is the ancient, and, of course, present, boundary of that province to the east, and the Rio Bravo to the west. (Am. St. Papers, Vol. 2, p. 634.)

4. In a letter from the American ministers Monroe and Pinckney to the Spanish minister Cevallos, dated January 28, 1805, they say:

By the cession of Louisiana by his majesty the Emperor of France to the United States it becomes necessary to settle its boundaries with the territories of his Catholic Majesty in that quarter. It is presumed that this subject is capable of such clear and satisfactory illustration as to leave no cause for any difference of opinion between the parties. By the treaty of April 30, 1803, between the United States and France the latter ceded to the former the said province in full sovereignty, in the same extent and with all the rights which belonged to it under the treaty of October, 1800, by which she had acquired it of Spain. That the nature and extent of the acquisition might be precisely known, the article of the treaty of St. Ildefonso making the cession is inserted in that of Paris. To a fair and just construction, therefore, of that article the United States are referred for the extent of their rights under the treaty of 1803. There is nothing to oppugn its force or detract from the import of its very clear and explicit terms. We have the honor to present to your excellency a paper on this subject which we presume proves in the most satisfactory manner that the boundaries of that province, as established by the treaties referred to, are the river Perdido to the east and the Rio Bravo to the west. The facts and principles which justify this conclusion are so satisfactory to our Government as to convince it that the United States have not a better right to the island of New Orleans, under the cession referred to, than they have to the whole district of territory which is above described. (Am. St. Papers, vol. 2, p. 637.)

In their letter of April 20, 1805, to the Spanish minister, Messrs. Monroe and Pinckney say:

By the memorial which we had the honor to present to your excellency on the 28th of January last, the epoch of the discovery of the Mississippi and of the waters which empty into it and of the Bay of St. Bernard, and of the taking possession of same and of the country dependent thereon, is proved by documents which can not be questioned. By these it is established, in respect to the Mississippi, its waters, and dependent country, as low-down the river as the Arkansas by Messieurs Joliet and Marquette from Canada as early as the year 1673, and to its mouth by the Father Henison in 1680, and by De la Salle and Joutel, who descended the river with sixty men to the ocean and named the country Louisiana, in 1682; and in respect to the Bay of St. Bernard in 1685. This was done, at those periods, in the name and under the authority of France, by acts which proclaimed her sovereignty over the whole country to other powers in a manner the most public and solemn, such as making settlements and building forts within it. Of these it is material to notice in the present inquiry two only, which were erected in the Bay of St. Bernard, on the western side of the river Colorado, by M. De la Salle, who landed there from France with two hundred and forty persons in 1685. It was on the authority of the discovery thus made and of the possession so taken that Louis XIV granted to Anthony Crozat, by letters patent bearing date in 1712, the exclusive commerce of that country, in which he defines its boundary by declaring that it comprehended all the lands, coasts, and islands which are situated in the Gulf of Mexico between Carolina on the east and Old and New Mexico on the west, with all the streams which empty into the ocean within those limits, and the interior of the country dependent on the same. Such are the facts on which the claim of France rested; such are those on which that of the United States now rests.

The principles which are applicable to the case are such as are dictated by reason and have been adopted, in practice, by European powers, in the discoveries and acquisitions which they respectively made in the New World; they are principles intelligible and at the same time founded in strict justice. The first of these is that when any European nation takes possession of any extensive seacoast, that possession is understood as extending into the interior of the country to the sources of the rivers emptying within that coast, to all their branches and the country they cover, and to give it a right in exclusion of all other nations to the same. * * * The second is that whenever one European nation makes a discovery and takes possession of any portion of that continent, and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned, the middle distance becomes such of course. The justice and propriety of this rule is too obvious to require illustration. A third rule is that whenever any European nation has thus acquired a right to any portion of territory on that continent, that right can never be diminished or affected by any other power, by virtue of purchases made, by grants, or conquests of the natives within the limits thereof. It is believed that this principle has been admitted and acted on invariably since the discovery of America, in respect to their possessions there, by all the European powers. * * *

The above are the principles which we presume are to govern the present case.

We will now proceed to apply these principles to the claim of the United States as founded on the facts above stated relative to the discovery and possession of Louisiana by France, and to designate the limit to which we presume they are justly entitled, by virtue thereof, in the quarter referred to. On the authority of the principle first above stated it is evident that, by the discovery and possession of the Mississippi, in its whole length, and the coast adjoining it, the United States are entitled to the whole country dependent on that river, its several branches, and the waters which empty into it within the limits of that coast. The extent to which this would go it is not in our power to say; but the principle being clear, dependent on plain and simple facts, it would be easy to ascertain it.

It is equally evident by the application of the second principle to the discovery made by M. de la Salle of the bay of St. Bernard, and his establishment there on the western side of the River Colorado, that the United States have a just right to a boundary founded on the middle distance between that point and the then nearest Spanish settlement, which, it is understood, was in the province of Panuco, unless that claim should be precluded on the principle first-above mentioned. To what point that would carry us it is equally out of our power to say, nor is it material, as the possession in the bay of St. Bernard, taken in connection with that of the Mississippi, has been always understood as a right to extend to the Rio Bravo, on which we now insist.

In support of this boundary we rely much on the grant of Louis XIV to Anthony Crozat in 1712. That grant, it is true, establishes no new right to the territory. The right had already accrued by the causes, and to the extent contended for, which was never abandoned afterwards, except by the treaty of 1763, which does not affect the present question. This boundary is also supported by the opinions of the best informed persons who have written on the subject with which we have become acquainted. By an extract from a work on Louisiana, written by the Colonel Chevalier de Champigny in 1773, who, being of the country, was doubtless well informed, the Rio Bravo is laid down as the western boundary of that province. This fact is again asserted, with more minuteness, in his second note to that work, in which he states that Louisiana was bounded before the treaty of 1763 to the west by the mountains of New Mexico and the Rio Bravo. In a book containing several memoirs on different subjects, published about three years since at Paris, is one entitled "A Memoir, Historical and Political, on Louisiana," by the Count de Vergennes, minister of Louis XVI, in which it is stated that Louisiana is bounded to the east by Florida and to the west by Mexico. The opinion of geographers in general confirms that of other writers. By a chart of Louisiana, published in 1762, by Don Thomas Lopez, geographer to his Catholic Majesty, it appears that he considers the Rio Bravo as the boundary of the province, as it does by that of De Lisle of the Royal Academy of Science at Paris, which was revised and republished in 1782. Others might be quoted, but it is useless to multiply them. (Am. St. Papers, vol. 2, pp. 663, 664.)

5. Mr. John Quincy Adams, Secretary of State, in his letter of March 12, 1818, to Mr. De Onis, the Spanish minister at Washington, says:

The claim of France always did extend westward to the Rio Bravo, and the only boundaries ever acknowledged by her before the cession to Spain of November 3, 1762, were those marked out in the grant from Louis XIV to Crozat. She always claimed the territory which you call Texas as being within the limits and forming a part of Louisiana, which in that grant is declared to be bounded westward by New Mexico, eastward by Carolina, and extending inward to the Illinois and to the sources of the Mississippi and of its principal branches. Mr. Cevallos says that these claims of France were never admitted nor recognized by Spain. Be it so. Neither were the claims of Spain ever acknowledged or admitted by France. The boundary was disputed and never settled; it still remains to be settled; and here is a simple statement of the grounds alleged by each of the parties in support of their claims:

ON THE PART OF THE UNITED STATES.

(1) The discovery of the Mississippi, from near its source to the ocean, by the French from Canada, in 1683.

(2) The possession taken, and establishment made, by La Salle, at the bay of St. Bernard, west of the rivers Trinity and Colorado, by authority from Louis XIV, in 1685.

(3) The charter of Louis XIV to Crozat, in 1712.

(4) The historical authority of Du Pratz and Champigny, and of the Count De Vergennes.

(5) The geographical authority of De Lisle's map, and especially that of the map of Don Thomas Lopez, geographer to the King of Spain, published in 1762. These

documents were all referred to in the letter from Messrs. Pinckney and Monroe to Mr. Cevallos, of 20th April, 1805, since which time, and in further confirmation of the same claims, the Government of the United States are enabled to refer you to the following:

- (6) A map published by Homann, at Nuremberg, in 1712.
- (7) A geographical work published in 1717, at London, entitled "Atlas Geographicus, or a Complete System of Geography, Ancient and Modern;" in which the map of Louisiana marks its extent from the Rio Bravo to the Perdido. In both these maps the fort built by La Salle is laid down on the spot now called Matagorda.
- (8) An official British map published in 1755 by Bowen, intended to point out the boundaries of the British, Spanish, and French colonies in North America.
- (9) The narrative published at Paris, of Hennepin in 1683, of Tonti in 1697, and of Joutel in 1713.
- (10) The letter from Col. La Harpe to Don Martin D'Alarconne of 8th July, 1719 (A 1, B 2).
- (11) The order from the French governor of Louisiana, De Bienville, to La Harpe of August 10, 1721 (C 3).
- (12) The geographical work of Don Antonio de Alcedo, a Spanish geographer of the highest eminence; this work and the map of Lopez, having been published after the cession of Louisiana to Spain in 1762, afford decisive evidence of what Spain herself considered as the western boundary of Louisiana when she had no interest in contesting it against another State (B 4).

ON THE PART OF SPAIN.

(1) The voyages of Ponce de Leon, Vasquez de Ayllon, Panfilo de Narvaez, Fernando de Soto, Luis Moscoso, and other Spanish travelers in the 16th century, who never made any settlement upon any of the territories in question, but who traveled, as you observe, into countries too tedious to enumerate.

(2) The establishment of the new kingdoms of Leon and Santander in 1595, and the province of Coahuila in 1600.

(3) The province of Texas founded in 1690.

Here, you will please to observe, begins the conflict with the claims of France to the western boundary of Louisiana transferred by the cession of the province to the United States. The presidios or settlements of Las Texas were, by your own statement, adverse settlements to that of La Salle who, six years before, had taken formal possession of the country in the name of and by authority of a charter from Louis XIV. They were preceded by an expedition from Mexico the year before, that is, 1689, to hunt out the French remaining of the settlement of La Salle. Now, what right had the viceroy of Mexico to hunt out the French who had formed a settlement under the sanction of their sovereign's authority? You will tell me that from the time when Santa Fe, the capital of New Mexico, was built Spain considered all the territory east and north of that province, as far as the Mississippi and the Missouri, as her property; that the whole circumference of the Gulf of Mexico was hers; and that Philip II had issued a royal order to exterminate every foreigner who should dare to penetrate to it; so that the whole question of right between the United States and Spain with regard to this boundary centers in this: the naked pretension of Spain to the whole circumference of the Gulf of Mexico, with the exterminating order of Philip II on one side; and the actual occupancy of France, by a solemn charter from Louis XIV, on the other. Well might Messrs. Pinckney and Monroe write to Mr. Cevallos, in 1805, that the claim of the United States to the boundary of the Rio Bravo was as clear as their right to the island of New Orleans. * * *

From this work of Joutel it likewise appears that the fort and colony left by La Salle at the westward of the Colorado was destroyed, not as you state by the Indians, but by the Spaniards from Mexico, who, until that time, had never had any settlement of any kind neare than Panuco, and who, by your own account, had no other right or authority for this act than the royal order of Philip II to exterminate all foreigners penetrating into the Gulf of Mexico.

The settlement of La Salle, therefore, at the head of the bay of St. Bernard, westward of the river, which he called Riviere aux Bœufs, but which you call Colorado of Texas, was not, as you have represented it, the unauthorized incursion of a private adventurer into the territories of Spain, but an establishment having every character that could sanction the formation of any European colony upon this continent, and the viceroy of Mexico had no more right to destroy it by a military force than the present viceroy would have to send an army and destroy the city of New Orleans. It was a part of Louisiana discovered by La Salle under formal and express authority from the King of France; and the royal exterminating order of Philip II was but one of the multitude of sanguinary acts which signalized the reign and name of that monarch, while the name of La Salle is entitled to stand high in the glorious rôle of the benefactors of mankind. After this statement, founded upon the most

authentic documents, the foundation of the presidio of Texas, in 1693, was, by your own showing, an unlawful encroachment upon the territories of France which, by the first of the three principles laid down by Messrs. Pinckney and Monroe at Aranjuez, and above referred to, extended, on the coast of the Gulf of Mexico, half way to the nearest Spanish settlement of Panuco, viz, to the Rio Bravo. (Am. St. Papers, vol. 4, pp. 471, 473.)

Mr. Adams also cites the following correspondence between the French and Spanish officers commanding on the western frontier of Louisiana in the years 1719 and 1721:

A 1.

Don Martin D'Alarconne to M. de la Harpe.

TRINITY RIVER, May 20, 1719.

MONSIEUR: I am very sensible of the politeness that M. de Bienville and yourself have had the goodness to show to me. The orders I have received from the King, my master, are to maintain a good understanding with the French in Louisiana; my own inclinations lead me equally to afford them all the services that depend upon me. But I am compelled to say that your arrival at the Nassonite village surprises me very much. Your governor could not be ignorant that the post you occupy belongs to my Government, and that all of the lands west of the Nassonites depend upon New Mexico. I counsel you to give advice of this to M. de Bienville, or you will force me to oblige you to abandon lands that the French have no right to occupy.

I have the honor to be, sir,

D'ALARCONNE.

B 2.

M. de la Harpe to Don Martin D'Alarconne.

NASSONITE, July 8, 1719.

MONSIEUR: The order from his Catholic Majesty to obtain a good understanding with the French of Louisiana and the kind intentions you have yourself expressed towards them accord but little with your proceedings. Permit me to inform you that M. de Bienville is perfectly informed of the limits of his Government, and is very certain that the post of Nassonite depends not upon the dominions of his Catholic Majesty. He knows also that the province of Las Texas, of which you say you are governor, is a part of Louisiana. M. de la Salle took possession in 1685, in the name of his most Christian Majesty; and since the above epoch possession has been renewed from time to time.

Respecting the post of Nassonite, I can not comprehend by what right you pretend that it forms a part of New Mexico. I beg leave to represent to you that Don Antoine du Miroir, who discovered New Mexico in 1683, never penetrated east of that province or the Rio Bravo. It was the French who first made alliances with the savage tribes in this region, and it is natural to conclude that a river that flows into the Mississippi and the lands it waters belong to the King, my master.

If you will do me the pleasure to come into this quarter, I will convince you I hold a post I know how to defend.

I have the honor to be, sir,

DE LA HARPE.

C 3.

On the 10th of August, 1721, M. de la Harpe received the following order:

"We John Baptiste de Bienville, Chevalier of the Military Order of St. Louis, and commandant-general for the king in the province of Louisiana:

"It is hereby decreed that M. de la Harpe, commandant of the bay of St. Bernard, shall embark in the packet of the *Subtile*, commanded by Beranger, with a detachment of 20 soldiers, under M. de la Belile, and shall proceed forthwith to the bay of St. Bernard belonging to this province, and take possession in the name of the king; and the west company shall plant the arms of the king in the ground, and build a fort upon whatever spot appears most advantageous for the defense of the place. If the Spaniards or any other nation have taken possession, M. de la Harpe will signify to them that they have no right to the country, it being well known that possession was taken in 1685 by De la Salle in the name of the King of France, etc.

"BIENVILLE."

(Am. St. Papers, Vol. 4, pp. 478, 479.)

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6. On the 3d day of April, 1820, Henry Clay, of Kentucky, in a speech in the House of Representatives of the United States, said :

The second resolution comprehended three propositions, the first of which was that the equivalent granted by Spain to the United States for the province of Texas was inadequate. To determine this, it was necessary to estimate the value of what we gave and of what we received. This involved an inquiry into our claim to Texas. It was not his purpose to enter at large into this subject. He presumed the spectacle would not be presented of questioning, in this branch of the Government, our title to Texas, which had been constantly maintained by the executive for more than fifteen years past, under three several administrations. He was at the same time ready and prepared to make out our title, if anyone in this House were fearless enough to controvert it. He would for the present briefly state that the man who is most familiar with the transactions of this Government, who so largely participated in the formation of the Constitution and in all that has been done under it, who, besides the eminent services that he has rendered his country, principally contributed to the acquisition of Louisiana, and who must be supposed from his various opportunities best to know its limits, declared fifteen years ago that our title to the Rio del Norte was as well founded as it was to the island of New Orleans. (Here Mr. Clay read an extract from the memoir presented in 1805 by Mr. Monroe and Mr. Pinckney to Mr. Cevallos, proving that the boundary of Louisiana extended eastward to the Perdido, and westward to the Rio del Norte, in which they say: The facts and principles, which justify this conclusion, are so satisfactory to their Government as to convince it that the United States have not a better right to the island of New Orleans, under the cession referred to, then they have to the whole district of territory thus described.) * * *

So, west of the Mississippi, La Salle, acting under France, in 1682 or 1683 first discovered that river. In 1685 he made an establishment on the Bay of St. Bernard, west of the Colorado, emptying into it. The nearest Spanish settlement was Panuco, and the Rio Del Norte, about the midway line, became the common boundary. (Ann. Cong., 1st sess., Vol 2, pp. 1726 and 1727.)

7. That the land which is included between the one hundredth and one hundred and third meridians of west longitude and the Red and Canadian rivers was a part of Louisiana is shown by sixteen European maps published during the eighteenth century, and now subject to inspection in the Congressional Library.

(1) A map published in Paris in 1703, by De Lisle, geographer of the Royal Academy, to be found in Vol. 1, No. 8, Old Maps of America.

(2) A map published at Leyden in 1704, by Louis de Hennepin, to be found in West Indise Voyagen, p. 1.

(3) A map of H. Moll, published at London in 1711.

(4) A map of H. Moll, published in London in 1715, dedicated to Lord Sommers, to be found in Old Maps of America, Vol. 1, No. 16.

(5) A map by H. Moll, published in London in 1715, to be found in Old Maps of America, Vol. 1, No. 13.

(6) A map published by Covens and Mortier, at Amsterdam, in 1718, to be found in Atlas Nouveau, Vol. 2, No. 38.

(7) A map printed in London in 1722, dedicated to William, Duke of Gloucester.

(8) A map by De Lisle, published in Amsterdam in 1722, to be found in Atlas Nouveau, Vol. 2, No. 39.

(9) A map published at Amsterdam, without date, but before 1730.

(10) A map by H. Hopple, published at London in 1733, under the patronage of the lords commissioners of trades and plantations, to be found in Old Maps of America, Vol. 1, No. 17.

(11) A map by H. Popple, published in London in 1735, to be found in American Maps, Vol. 2, No. 9.

(12) A map by De Lisle, published at Amsterdam in 1739.

(13) A map by A. G. Boehme, published in 1746.

(14) A map published in 1753, to be found in American Maps, Vol. 2, No. 10.

(15) A map published in 1774, at London, in pursuance of an act of Parliament.

(16) A map published by authority of Parliament, at London, in 1775, copied from von Staehlin's, published at St. Petersburg in 1774.

8. That the land which is included between the one hundredth and one hundred and third meridians of west longitude and the Red and Canadian rivers was a part of Louisiana is shown by a map published at Paris in 1820, by Barbé-Marbois, the French negotiator of the treaty of cession of 1803, in his History of Louisiana, to be found in the Congressional Library.

Annexed to said report of the Senate committee are accurate tracings of the seventeen maps above mentioned. The dotted lines represent the western boundary of the province of Louisiana.

Map No. 18, annexed to said report of the Senate committee, shows the form and dimensions of the lands west of the one hundredth meridian of west longitude ceded to the Choctaws by the United States on the 18th of October, 1820, which ceded lands are divided into townships on the map.

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