

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING

The correspondence in relation to the proceedings and conduct of the Choctaw commission, under the treaty of Dancing Rabbit creek.

JANUARY 30, 1844.

Read, and referred to the Committee on Indian Affairs.

IN SENATE OF THE UNITED STATES, March 8, 1844.

Ordered, That the injunction of secrecy be removed from the message of the President of the 30th of January last, transmitting certain correspondence in relation to the proceedings and conduct of the Choctaw commission, in the State of Mississippi, under the treaty of Dancing Rabbit creek; and that the said message, with the documents, be printed for the use of the Senate.

Attest:

ASBURY DICKINS, *Secretary.*

To the Senate of the United States:

I transmit a report of the War Department, prepared under a resolution of the Senate of the 4th instant.

JOHN TYLER.

WASHINGTON, January 30, 1844.

WAR DEPARTMENT, January 29, 1844.

SIR: In answer to a resolution of the Senate of the United States of the 4th instant, which you referred to this department, requesting the President of the United States "to communicate to the Senate all the correspondence in the War Department in relation to the proceedings and conduct of the Choctaw commission, now sitting in the State of Mississippi, under the Dancing Rabbit creek treaty," I have the honor to submit a report of the Commissioner of Indian Affairs, containing correct copies of all the correspondence required.

Very respectfully, your obedient servant,

J. M. PORTER.

The PRESIDENT OF THE UNITED STATES.

LIST

Descriptive of copies of Choctaw papers transmitted on a resolution of the Senate of the 4th January, 1844, by the Commissioner of Indian Affairs; to the Secretary of War, on the 27th January, 1844.

- A.—Instructions from Commissioner of Indian Affairs to Choctaw commissioners—October 24, 1842.
 B.—Messrs. Claiborne and Graves to Commissioner of Indian Affairs—December 20, 1842.
 B 1.—Enclosure in above.
 C.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—December 23, 1842.
 C 1.—Commissioner of Indian Affairs to Messrs. Claiborne and Graves, in reply to above—January 13, 1843.
 D.—Extract from a letter of J. F. H. Claiborne and Ralph Graves to Commissioner of Indian Affairs—January 5, 1843.
 E.—Commissioner of Indian Affairs to Messrs. Claiborne and Graves—January 19, 1843.
 F.—Messrs. Claiborne and Graves to Secretary of War—January 22, 1843.
 F 1.—Messrs. Kirksey and Poindexter to Messrs. Graves and Claiborne—January 16, 1843.
 F 2.—Messrs. Claiborne and Graves to Messrs. Kirksey and Poindexter—January 17, 1843.
 F 3.—Messrs. Kirksey and Poindexter to Messrs. Claiborne and Graves—January 18, 1843.
 F 4.—Charles Fisher to board of Choctaw commissioners—without date.
 F 5.—John B. Forrester and Benjamin J. Jackoway to Choctaw commissioners—January 21, 1843.
 F 6.—Messrs. Claiborne and Graves to Messrs. Kirksey and Poindexter—January 22, 1843.
 F 7.—Commissioner of Indian Affairs to Messrs. Claiborne and Graves—February 8, 1843.
 G.—Commissioner of Indian Affairs to Messrs. Claiborne and Graves—January 24, 1843.
 H.—Commissioner of Indian Affairs to Messrs. Claiborne and Graves—February 13, 1843.
 I.—Commissioner of Indian Affairs to William Tyler, Esq.—February 17, 1843.
 K.—Messrs. Claiborne and Graves to Commissioner of Indian Affairs—March 27, 1843.
 L.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—March 27, 1843.
 M.—Messrs. Graves and Tyler to Commissioner of Indian Affairs—April 1, 1843.
 N.—Messrs. Graves and Tyler to Commissioner of Indian Affairs—April 15, 1843.
 N 1.—Commissioner of Indian Affairs to Messrs. Claiborne, Graves, and Tyler—May 1, 1843.
 N 2.—Commissioner of Indian Affairs to Messrs. Claiborne, Graves, and Tyler—May 15, 1843.
 O.—Commissioner of Indian Affairs to Messrs. Claiborne, Graves, and Tyler—April 28, 1843.
 P.—Messrs. Graves and Tyler to Commissioner of Indian Affairs—April 29, 1843.
 Q.—Messrs. Graves and Tyler to Commissioner of Indian Affairs—April 29, 1843.
 R.—Messrs. Graves and Tyler to Commissioner of Indian Affairs—April 29, 1843.
 KK.—R. J. Walker to President of the United States—May 10, 1843.
 S.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—May 8, 1843.
 S 1.—Enclosure No. 1 in above.
 S 2.—Enclosure No. 2 in above.
 S 3.—Enclosure No. 3 in above.
 S 4.—Enclosure No. 4 in above.
 S 5.—Commissioner of Indian Affairs to Messrs. Claiborne, Graves, and Tyler—May 22, 1843.
 S 6.—Secretary of War to Commissioner of Indian Affairs—May 22, 1843.
 T.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—May 13, 1843.
 U.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—May 20, 1843.
 U 1.—Enclosure; resolution submitted by Mr. Claiborne, March 23, 1843.

- U 2.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—May, 1843.
- U 3.—Enclosure; suggestions by Mr. Claiborne.
- U 4.—Enclosure A.
- U 5.—Enclosure B.
- U 6.—Commissioner of Indian Affairs to Messrs. Claiborne, Graves, & Tyler—June 13, 1843.
- U 7.—Report of Commissioner of Indian Affairs to Secretary of War—March 7, 1843.
- V.—Ralph Graves to Commissioner of Indian Affairs—June 10, 1843.
- V 1.—Enclosure.
- W.—Ralph Graves, Esq., to Commissioner of Indian Affairs—June 12, 1843.
- W 1.—Commissioner of Indian Affairs to Messrs. Claiborne, Graves, and Tyler—July 6, 1843.
- X.—Commissioner of Indian Affairs to Messrs. Claiborne, Graves, and Tyler—June 17, 1843.
- X 1.—Enclosure; R. H. Grant to Commissioner of Indian Affairs—June 3, 1843.
- Y.—J. F. H. Claiborne to Secretary of War—June 22, 1843.
- Z.—J. F. H. Claiborne to Secretary of War—June 26, 1843.
- Aa.—Messrs. Claiborne and Graves to Commissioner of Indian Affairs—July 14, 1843.
- Aa 1.—Enclosures.
- Aa 2.—Commissioner of Indian Affairs to Messrs. Claiborne, Graves, and Tyler—August 14, 1843.
- Aa 3.—Enclosure; R. H. Grant to Secretary of War—July 18, 1843; and endorsement by Commissioner of Indian Affairs and Secretary of War.
- Aa 4.—Commissioner of Indian Affairs to R. H. Grant—August 14, 1843.
- Bb.—Messrs. Claiborne and Graves to Commissioner of Indian Affairs—July, 1843.
- Bb 1.—Commissioner of Indian Affairs to Messrs. Claiborne, Graves, and Tyler—August 18, 1843.
- Cc.—Messrs. Claiborne and Graves to Commissioner of Indian Affairs—August 4, 1843.
- Cc 1.—Commissioner of Indian Affairs to Messrs. Claiborne, Graves, and Tyler—August 18, 1843.
- Dd.—Messrs. Claiborne and Graves to Commissioner of Indian Affairs—August 21, 1843.
- Ee.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—August 22, 1843.
- Ff.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—August 23, 1843.
- Ff 1.—Enclosure.
- Gg.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—August 23, 1843.
- Gg 1.—Enclosure; Mr. Claiborne to Mr. Graves—August 25, 1843.
- Hh.—Commissioner of Indian Affairs to Messrs. Claiborne, Graves, and Tyler—August 29, 1843.
- Hh 1.—Enclosure; R. M. Gaines to Secretary of War—August 10, 1843.
- Hh 2.—Enclosure; R. H. Grant to R. M. Gaines—July 23, 1843.
- Hh 3.—Enclosure; R. M. Gaines to R. H. Grant—August 10, 1843.
- Hh 4.—Enclosure; Commissioner of Indian Affairs to R. M. Gaines—August 29, 1843.
- Ii.—T. J. Wood to Commissioner of Indian Affairs—September 19, 1843—and enclosures.
- Kk.—R. Graves to Commissioner of Indian Affairs—October 3, 1843.
- Kk 1.—R. Graves to Commissioner of Indian Affairs—October 4, 1843.
- Kk 2.—Acting Commissioner of Indian Affairs to Ralph Graves, Esq.—October 24, 1843.
- Kk 3.—Acting Commissioner of Indian Affairs to Ralph Graves, Esq.—October 27, 1843.
- Ll.—J. Poindexter and others to Commissioner of Indian Affairs—October 16, 1843.
- Mm.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—November 5, 1843.
- Nn.—J. B. Hancock to Commissioner of Indian Affairs—November 7, 1843.
- Oo.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—November 7, 1843.
- Pp.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—November 14, 1843—and enclosures.
- Qq.—J. F. H. Claiborne, Esq., to Secretary of War—November 23, 1843.
- Rr.—Messrs. Graves and Tyler to Commissioner of Indian Affairs—November 28, 1843—and enclosures.
- Rr 1.—J. F. H. Claiborne to Commissioner of Indian Affairs—November 23, 1843.
- Rr 2.—G. R. Fall to Secretary of War—November 24, 1843.

- Rr 3.—Enclosure in preceding ; (printed document.)
- Ss.—J. F. H. Claiborne to Commissioner of Indian Affairs—November 30, 1843—and enclosure.
- Tt.—J. F. H. Claiborne to Commissioner of Indian Affairs—November 30, 1843—and enclosures.
- Uu.—J. F. H. Claiborne to Commissioner of Indian Affairs—November 30, 1843—and enclosures.
- Vv.—J. F. H. Claiborne to Secretary of War—December 1, 1843.
- Ww.—Messrs. Graves and Tyler to Commissioner of Indian Affairs—December 4, 1843—and enclosure.
- Xx.—Messrs. Graves and Tyler to Commissioner of Indian Affairs—December 4, 1843—and enclosure.
- Yy.—Messrs. Graves and Tyler to Commissioner of Indian Affairs—December 4, 1843—and enclosure.
- Zz.—Messrs. Graves and Tyler to Commissioner of Indian Affairs—December 4, 1843.
- AA.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—December 5, 1843.
- BB.—J. B. Hancock to Secretary of War—December 7, 1843.
- CC.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—December 8, 1843.
- DD.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—December 9, 1843.
- EE.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—December 13, 1843—and extract.
- FF.—J. F. H. Claiborne, Esq., to Commissioner of Indian Affairs—December 14, 1843—and endorsement.
- GG.—J. F. H. Claiborne, Esq., to Secretary of War—December 14, 1843.
- HH.—Ralph Graves to Secretary of War—January 7, 1844—and enclosures.
- II.—General Andrew Jackson to Commissioner of Indian Affairs—January 19, 1844—and extract.

A.

WAR DEPARTMENT,

Office Indian Affairs, October 24, 1842.

GENTLEMEN: An act of Congress of the 23d August last, entitled "An act to provide for the satisfaction of claims arising under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit creek, concluded in September, one thousand eight hundred and thirty," having revived the acts of 3d March, 1837, and 22d February, 1838, and the President of the United States having, by and with the advice and consent of the Senate, appointed you commissioners to execute the several laws referred to, I proceed to communicate instructions for the discharge of the duties imposed.

The acts of 1837 and 1838, so far as they are not repealed or modified by the law of 1842, are revived by it, and the powers and duties of the commissioners are "extended to claims arising under the nineteenth article of the said treaty, and, under the supplement to the said treaty, to be examined in the same manner and with the same effect as in cases arising under the fourteenth article of the said treaty." The alterations and modifications that have been made consist chiefly in the detailed specifications of the requisites that shall belong to a valid claim; the dispensing with the services of either of the district attorneys of the State of Mississippi; the referring of the final disposition of these claims to the President of the United States, instead of to Congress; and in the reduction of the compensation of the commissioners from \$3,000 each to a sum that "shall not exceed the rate of two thousand five hundred dollars per annum"—leaving

the frame work of the commission and its general powers and duties what they were made under the laws of 1837 and 1838.

A letter from the Secretary of War, of 9th March, 1842, to the Hon. J. T. Morehead, chairman of the Committee on Indian Affairs of the Senate, which was accompanied by a report from this office to the Secretary, conveys so fully the history of the claims you are authorized to investigate, that, instead of repeating what is contained in these papers printed by order of the Senate, I transmit a copy of them to you. They, with the accompanying papers, will put you in possession of all the facts connected with your present duty. Having, by the treaty and the means thus provided, informed yourselves of the origin of the claims that shall be presented to you, of the circumstances that have since surrounded them and prevented a final disposition of them, it is necessary to refer to the laws under which you will act, and to communicate the views entertained by the department of the intention of Congress in passing them.

The first section of the act of 3d March, 1837, made it the duty of the commissioners "to meet in the State of Mississippi, at such time and place as the President shall appoint and designate, and there proceed to ascertain the name of every Choctaw Indian who was the head of an Indian family at the date of the treaty at Dancing Rabbit creek, who has not already obtained a reservation under said treaty, and who can show, by satisfactory evidence, that he or she complied, or offered to comply, with all the requisites of the fourteenth article of said treaty, to entitle him or her to a reservation under said article; and, also, the number and names of all the unmarried children of such heads of families, who formed a part of the family and were over ten years of age; and, likewise, the number and names of the children of such heads of families as were under ten years of age; and report to the President, to be by him laid before Congress, all the names of such Indians, and the different sections of land to which such heads of families were respectively entitled, together with the opinions of the commissioners, and whether any part of said lands has been sold by the Government, and the proofs applicable to each case."

In connexion with the first, the seventh section may be adverted to, which expressly negatives the idea of giving, by the proceedings under the law, any sanction to what are called contingent locations, "which have been made by George W. Martin, for the benefit of such Indians as were supposed to have been entitled to other lands, which have been sold by the United States, such contingent locations having been made without any legal authority; it being the true intent of this act to reserve to Congress the power of doing that which may appear just, when correct knowledge of all the facts is obtained." This provision refers, of course, only to the locations, and is not declaratory of any opinion as to the rights of the claimants. The 7th and 8th sections of the act of 22d February, 1838, present themselves with the foregoing—the first, as excluding the claims of such Indians or heads of Choctaw families as have removed west of the Mississippi; and the last, as directing the name of any claimant to be stricken from the list of claimants who "has attempted, or shall attempt, to substitute the child of any other Indian as and for his own, or has attempted, or shall attempt, by his testimony, to substitute, for the child of any other claimant, the child of another Indian."

The law of 23d August, 1842, re-enacts some of these provisions and changes others, leaving the 8th section of the act of 1838 in full force.

The power vested in you to examine the claims under the 19th article and the supplement was, for the first time, bestowed by the law last passed. As to those claims, you are especially instructed in a subsequent part of this communication; what immediately follows relates to another branch of your duties.

The 3d section of the act of 1842 construes the 14th article of the treaty, and prescribes the concurrence of the following requisites, as necessary to the validity of a claim under it: That the Choctaw claimant did signify his or her intention to the agent, in person, or by some individual duly authorized and specially directed thereto by said Indian, within six months from the date of the ratification of the treaty, to become a citizen of the State, and had his or her name enrolled on the register of the agent for that purpose; or if his or her name was not so enrolled, but was omitted by the agent, shall prove, to the entire satisfaction of the commissioners and the Secretary of War, that he or she did signify his or her intention as aforesaid; that said Indian, at the making of said treaty, on the 27th September, 1830, owned an improvement in the then Choctaw country, and did reside, at said time and place, upon that identical improvement, or a part of it, for the term of five years continuously next after the ratification of said treaty, (viz: from the 24th February, 1831, to the 24th February, 1836,) unless it shall be made to appear that such improvement was, before the 24th February, 1836, disposed of by the United States, and that the reservee was dispossessed by means of such disposition; that it shall be made to appear, to the entire satisfaction of said commissioners and the Secretary of War, that said Indian did not receive any other grant of land under the provisions of any other article of said treaty, and did not remove to the Choctaw country west of the Mississippi, but that he or she had continued to reside within the limits of the country ceded by the Choctaw Indians to the United States on the 27th September, 1830. These several requisites being established to the satisfaction of the commissioners, and the Secretary of War concurring therein, it shall be their duty to ascertain the quantity of land to which the Indian is entitled by the 14th article, which shall be located to him according to sectional lines, so as to embrace the improvement, or a part of it, owned by him at the date of the treaty. It is further, by this law, made the duty of the board to ascertain the quantity of land granted by said article to each child of an Indian entitled as aforesaid, according to the limitations contained in the said 14th article, and locate such quantity for said child or children, contiguous to and adjoining his, her, or their parent. But if the United States shall have disposed of any tract of land to which an Indian was entitled under the 14th article, "so that it is now impossible to give said Indian the quantity to which he was entitled, including his improvements," or "any part" of them, "or to his children, on the adjoining lands," it becomes the duty of the commissioners to "estimate the quantity to which each Indian is entitled, and allow him or her for the same a quantity of land equal to that allowed, to be taken out of any of the public lands in the States of Mississippi, Louisiana, Alabama, and Arkansas, subject to entry at private sale."

You are prohibited, by the 9th section of the law of 1842, from allowing any claim under the 14th article, if you shall be satisfied, by such evidence as you may require, that said claim had been, previous to the expiration of five years from the ratification of the treaty, assigned, either in whole or in part. In case of a partial assignment, or agreement for the transfer

thereof, the same may be allowed so far only as the original claimant was, at that date, (that is, at the termination of five years from the ratification of the treaty,) the *bona fide* proprietor thereof. There are other provisions restricting your action; but, as they relate to all the claims of which you have jurisdiction, they will be noticed after I have referred to the claims under the 19th article and the supplement.

The 3d section of the same law requires the commissioners to ascertain the Choctaws, if any, who have relinquished, or offered to relinquish, any reservations to which they were entitled under the 19th article of the treaty, or whose reservations under that article have been sold by the United States; the quantities of land to which such claimants were entitled, and the quantities which should be allowed them on extinguishment of such claims, at the rate of two-fifths of an acre for every acre of the land to which said claimants were entitled, "said lands having been estimated, under this article, at fifty cents per acre: *Provided, nevertheless,* That no claim shall be considered or allowed, by said commissioners, for or in the name or behalf of any Indian claimant whose name does not appear upon the lists or registers of claimants made by Major Armstrong, special agent for that purpose, in conjunction with the three chiefs of the three Choctaw districts, and returned to the Department of War in January, eighteen hundred and thirty-two, and who does not appear from these registers to be entitled to a reservation under said nineteenth article."

By the 5th section, the commissioners are directed "to ascertain and determine the quantity of land to which any Choctaw or other person named in the supplement to the said treaty of Dancing Rabbit creek was entitled by virtue thereof, and which such person has by any means been prevented from receiving."

An important limitation on your powers as a board will be found in the 8th section—"That nothing in this act contained shall be so construed as to authorize the said commissioners to adjudicate any claim which may be presented by a white man who may have had or now has an Indian wife or family;" and the 10th section bars "all claims under either of the articles of said treaty mentioned above, or the supplemental articles thereof, which shall not be duly presented to said commissioners, for allowance, within one year after the final passage of this act." You will give notice of your meeting, particularly informing those having claims that they must be presented on or before the 23d August, 1843, and that, if they are not, they will be absolutely barred.

The fourth section enjoins it upon you to report to the President of the United States, within two years from the time of entering upon the duties of your office, and as often as shall be required by him, your proceedings in the premises, with a full and perfect list of the names of all the Choctaws whom you "shall have determined to be entitled to reservations under this act, the quantity of land to which each shall be so entitled, the number of claims which can be located according to the provisions of the fourth section of this act, and such as cannot be located according to the provisions of the fourth section of this act," and provided that your powers and duties shall cease at the expiration of two years from the time of the first organization of your board, if not sooner terminated by the President of the United States.

It may not be amiss to remark, that the third section of the law is referred to as the fourth, in sections four and six, although not neces-

sary; for the reading of the act shows the error that from inadvertence or haste has crept into it.

The register of W. Ward, containing sixty-nine names of claimants under the 14th article of the treaty, is conclusive as to the registry of those named upon it within the six months limited by the treaty. There are, besides, eight cases of certificates granted by William Ward and his brother, Stephen Ward, who acted under him, to persons who applied to him for registry, but whose names do not appear on the register; and these certificates have been recognised by the War Department as signifying the intent of the parties under the 14th article, and as equivalent to the formal registration of their names—making an aggregate of seventy-seven. Of these seventy-seven heads of families, sixty-seven have been located to land, and these are in no particular subject to your examination, it being only necessary, before a patent issues, that they should severally prove, to the satisfaction of the Executive, their residence for five years after the ratification of the treaty upon the land so assigned them, where they have not already received a title from the Government. Ten, however, of the seventy-seven persons above referred to have not had any particular tract or tracts of land allotted to them; and these, I think, it will be your duty to investigate in reference to all the requisites prescribed in the third section of the law of 1842, except the first, as to which Ward's register or the certificates alluded to are conclusive in their favor; but they may have failed in conformity to one or more of the other requirements. The individuals who have not received their reservations you will perceive by reference to the lists, which embrace as well those located as those unlocated, to enable you to detect attempts, if any shall be made, by the same individuals or their descendants, to claim under the 19th article, or a second time under the 14th. With the same object, you will receive a list of those claimants in favor of and against whom the late board reported, into the merits of which you are not to inquire, the report of that commission being subjected to the revision of the President of the United States, by the sixth section of the law of 1842. When it shall have been reviewed, a list of those claims which shall be favorably disposed of will be furnished you, with instructions to inquire and ascertain whether any of them can now be located according to the provisions of the third section of the law lately passed. The list of approved locations by George W. Martin embraces no claims that are not upon Ward's register, or in favor of which the latter or his brother has not granted certificates. His unapproved locations, of which a list is also furnished, are those under the 14th article, which have been termed contingent, and which will form the great field of your labors. Nothing further occurs to me, in reference to the 14th article, as proper for remark in these instructions.

The third section of the law refers more generally to the 19th article of the treaty (as less important) than to the 14th. You are required to ascertain the Choctaws, if any, who have relinquished, or offered to relinquish, any reservations to which they were entitled under the 19th article, or whose reservations have been sold by the United States, and the quantities of land to which such claimants were entitled, as well as the quantities which should be allowed them on extinguishment of their claims, at the rate of two-fifths of an acre for every acre of land said claimants were entitled to, said land having been estimated under this article at fifty cents per acre, excluding all whose names do not appear upon the registers of claim-

ants made by Major Armstrong, with the three chiefs of the three Choctaw districts.

By recurring to the report from this office to the Secretary of War of 27th January, 1842, you will find a detail of the provisions by the article under consideration, and a history of the proceedings of the department to carry them out. A list of the claims under it will accompany these instructions. Of these claims, excluding those who relinquished, or offered to relinquish, 465 were registered and 347 have been located; and there remain unsatisfied 118, according to the reports, but evidence since received reduces the number of the latter to about 110 cases. Into those located, you are not required to look. The treaty as to them has been fulfilled, and the action of the Government complete, except only (where not already done) as to approval of the location, and of a sale of it. The Attorney General (Mr. Butler) gave it as his opinion that a location under the treaty, properly made, was paramount to any sale by the United States. Under this opinion, the department has decided, according to the proofs and circumstances of each case, the various claims to located reservations by the 19th article, as they have been presented, and some of them have been sold and the sales confirmed. These claims, having been satisfied, will not, of course, be preferred to your board by the reservees; and from the communications on which the law was in part founded, and their own circumstances, were not, it is to be fairly presumed, within the intent of Congress. The terms of the law are general; but the object was, as its title shows, to satisfy claims under the treaty; those located have been satisfied, and are therefore not within the purview of the statute. The list furnished, embracing the whole of the reservees under this article, will show those located as well as those unlocated, and those who have relinquished, or, according to the information of the reporter, offered to relinquish, and will afford facilities for arresting attempts at imposition by those whose names are on it, who may claim again under the same or another article.

Those unlocated, about 110 in number, will engage your attention, according to the direction of the law. Your duty, as regards them, will be much more simple than the examination of the 14th article claims. The first inquiry will be, whether the claimant is a Choctaw, and the head of a family; if so, how much land he had in cultivation, with a dwelling-house thereon, at the ratification of the treaty. These facts ascertained, the claim is established as a good one to a greater or less quantity of land, to be regulated by the number of acres the claimant had in cultivation, adding thereto, in the case of captains, not exceeding 90, who may be entitled to less than a section by cultivation, "an additional quantity of half a section, adjoining to his other reservation." There is no continued residence necessary. The title was vested in the resident cultivator immediately after the ratification of the treaty, though he could relinquish it, or lose it by omitting to take it. Of all these facts, I think the register of Major F. W. Armstrong is conclusive evidence, where it is not contradicted by other satisfactory testimony, except that there may have been relinquishments, or offers to relinquish, not noted on it. The omissions to take reservations form no part of said register, nor could they be expected to do so, from the fact of its having been made within seven months of the ratification of the treaty, its date being 7th September, 1831.

Under the supplement there are six cases for which no locations are reported, which you are also authorized and required to investigate, and to

“ascertain and determine the quantity of land to which any Choctaw, or other person named in the supplement to the said treaty of Dancing Rabbit creek, was entitled by virtue thereof, and which such person has, by any means, been prevented from receiving.” A list of these six persons is furnished, by which, on a comparison with the supplements, you will see that the locations of three of them are such as are fixed by the residence of the reservee, and those of three are what are called floats, and may be located on any unimproved and unoccupied land. These are, like those under the 19th article, absolute grants, and, like them, require no continued residence. The inquiry will be, as to the identity of the claimant with the reservee; this done, the supplement entitles the individuals, respectively; it being only further necessary, before any award of land, or certificate to each, to be assured that he or she does not come within any of the prohibitory clauses of the law, and has “no interest in the reservations which are directed and provided for under the general treaty to which this is a supplement.”

You will recollect that, by the first section of the law of 1842, “all of the powers and duties of the commissioners are hereby extended to claims under the nineteenth article of the said treaty, and under the supplement to the treaty, to be examined in the same manner, and with the same effect, as in cases arising under the fourteenth article of the said treaty.”

It is desirable that you should meet as early as may be conveniently practicable, and it was hoped that you could do so sooner than is now contemplated; but the representations made to the department, by one of the commissioners, have induced the Secretary of War to name the first day of December next as the time of your assemblage, and Garlandsville, Mississippi, as the place. If, however, you can meet sooner, it will be very gratifying to the department; and you have the power, by the first section of the law of 1838, to adjourn your sessions “to such place or places, within the State of Mississippi, as in” your “judgment the interest of the Government and the claimants may require such sessions to be held.”

You cannot be too careful in executing the law by which Congress has prescribed the requisites to a valid claim. In arriving at a just conclusion as to the first requirement under the fourteenth article, the fact of the Indian registration, Ward's list, and the additional cases in which he or his brother has given certificates, will be conclusive; but the second aspect which the claim may put on (viz: an offer to register him or herself) will call for a vigorous examination and sifting of the evidence. The claimant and his or her family ought, in every instance, if possible, to be before you. By an examination of the person, and the remarking of the height, age, and of any peculiarity of face or person, either natural or owing to accident, you may be able again to identify the individual, and to detect attempt at imposition or double claims made under the same or different articles of the treaty or supplement. Let the claimant make his or her statement without the possibility of prompting, and say where the agent (W. Ward) was when he applied to be registered; who of his family or neighbors or brother Indians accompanied him; name the persons, if any be found in company with the agent; state what was the reply of the latter, and what he did; give the names and ages of his or her children, wife or wives, &c.; by these, and other like questions that will suggest themselves as you proceed, and the subsequent examination, when practicable, of those referred to as present, the truth may be elicited.

In reference to the second requisite, that he or she owned the improvement claimed for at the date of the treaty, and resided thereon for five consecutive years, unless when dispossessed as stated in the law, it would be proper, I think, to ask the claimant who were his nearest neighbors at that time and since; in what chief's district, and upon or near what stream of water he lived—whether north, south, east, or west of it—and how far from it. The same in reference to any landmark or remarkable spot; whether the land was rich or poor; well timbered or otherwise, level or rolling; and by what designation of section, township, or range, known after it was surveyed; where he now lives, &c. By recurring, after these inquiries, to the census of the Choctaw nation, by Major F. W. Armstrong, (of which a printed copy will be furnished, and which details in many cases the localities and other peculiarities of the Indian's residence,) you can gain valuable information, which will aid you in testing the truth of the statement made; and these and similar interrogatories, and this examination, will furnish you materials for further evidence that will lead to satisfactory conclusions in your own minds.

Respecting the inquiry, whether the claimant has received any other land than that now claimed under the treaty or supplement, an examination of the papers accompanying these instructions, and the train of examination last suggested, will enable you to determine how the facts are.

The previous inquiries will aid you in ascertaining whether the Indian removed west, which is a simple matter of fact, more easy of establishment. Lists of those who are known to have emigrated will be furnished, and will be regarded to be conclusive as to all whose names are upon them; but there may be (and no doubt are) others, of whose removal west there is no record evidence. In ascertaining whether a sale of the whole or part of his claim has been made previous to the expiration of five years from the ratification of the treaty, (that is, prior to Feb. 24, 1836, by a Choctaw claimant under the 14th article, to which class of claims alone the 9th section of the law of 1842 applies,) it will be advisable to inquire of each witness, and especially of the reservee in the respective cases, not only whether he has sold, assigned, or transferred such claim, but whether he has given a power of attorney or agreement to assign, convey, or transfer, or made any contract that has conveyed, or binds him in any shape to convey or assign his land or claim to land, or certificate or other means or measure of remuneration that may be substituted by the Government or otherwise for it; and what are the names of the alienees, or purchasers, or assignees, in either case. These questions may be followed by others that the circumstances of the several cases, will suggest.

So far as they apply, these observations hold good as to claims under the 19th article and the supplement.

In conclusion, you will report to the President of the United States, from time to time, your proceedings in the premises, and, within two years from the time you enter upon the duties of your offices, make a final report to him, "with a full and perfect list of the names of all the Choctaws whom" you "shall have determined to be entitled to reservations under this act; the quantity of land to which each shall be so entitled; the number of claims which can be located according to the provisions of the" third "section of this act; and such as cannot be located according to the provisions of the" third "section of this act." These reports you are requested to make at short intervals, as cases shall be decided by you, for the action of

the Secretary of War and the President of the United States; so that the Choctaws whose claims shall be finally disposed of may be removed to their Western homes as you progress.

The treaty, in its 14th article, as has already been observed, entitled every reservee to the half section of land "for each unmarried child which is living with him, over ten years of age, and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent." The construction of the department, heretofore, has been, that the whole reservation belonged to the parent. By a recurrence to the 3d section of the act of August last, you will perceive that the commissioners are required to ascertain the quantity of land granted to each Indian child, and to locate it "for said children, contiguous to and adjoining the improvement of the parent of such child or children;" and "the President shall issue a patent for each tract of land thus located," &c. The same separation of the interests of the child from those of the parent prevails wherever the child is referred to.

This discrepancy between the interpretation of the department and the legislative provision was thought to be of sufficient importance to call for the opinion of the Attorney General. In answer to a communication on the subject, that officer has replied (since the foregoing was prepared) to the Secretary of War. Of his opinion I send you a copy. The patent is to issue in conformity to the provisions of the law of 1842; that is, to the parent for his allotment of land, and another patent or patents to the child or children; "care being taken, however, to show on the face of them that they are issued to children, independent of their father, in conformity with that act, and to fulfil the 14th article of the treaty."

You will, therefore, in your reports, separate the quantity of land which you shall determine to belong to a child or children from that of the parent, naming the former, and noting, according to the above quotation, that the land is so set apart in conformity with the act of 23d August, 1842, to fulfil the 14th article of the treaty. Whether the child or children are afterwards located on land, or certificates be issued to them, you will please to make the same entry opposite his, her, or their names, in your rolls and records, observing, at each stage of determination on your part, the direction of the Attorney General as to issuing patents, which will be founded on or follow the preceding acts and decisions of your board and the Executive, and the documents and records in which they will be registered.

You will please advise this office of the name and residence of the gentleman who shall be selected as your secretary. His compensation is fixed by the 5th section of the act of 1837 at \$1,500 per annum. For so much of your compensation as shall be due at any time, you are at liberty to draw on the Commissioner of Indian Affairs, certifying that the amount is actually due when drawn for. The same authority is given to your secretary, whose drafts will be accompanied by the certificate of the commissioners, or any two of them, that there is due to him the sum drawn for.

You will receive a list of the different papers and documents which shall go with this communication.

Very respectfully, your most obedient servant,

T. HARTLEY CRAWFORD,

Commissioner of Indian Affairs.

HON. JOHN F. H. CLAIBORNE, *Natchez, Mississippi.*

RALPH GRAVES, Esq., *Columbus, Mississippi.*

ROGER BARTON, Esq., *Holly Springs, Marshall County, Mississippi.*

B.

HOPAHKA, LEAKE COUNTY, MISSISSIPPI,

December 20, 1842.

SIR: We have the honor to inform you that, in pursuance of a notice duly circulated throughout the State, by public advertisement, we yesterday opened an office in this place. We have this day appointed Mr. Pierce Bailey, of Richmond, Virginia, secretary of the board, and he has taken the oath and entered upon the discharge of his duties. John Ellis, a citizen of the Choctaw nation west of the Mississippi, and who acted as interpreter to the former commission, presented himself as an applicant for the same station, with strong recommendations from Messrs. Armstrong and Upshaw, Choctaw and Chickasaw agents, and we have appointed him, at an annual compensation of fifteen hundred dollars, with the understanding that we will recommend an extra allowance, should the service required of him prove more laborious than we at present anticipate. A good interpreter is indispensable. There are few persons qualified for the place; and it is all important that the person selected should be a man of undoubted character. As our power to act in this matter is only incidental, but is, at the same time, absolutely necessary to carry out our trust, we hope the arrangement made will meet the approbation of the department.

The enclosed rules and regulations have been adopted, and they will be duly published in the newspapers or by handbill.

It is the intention of the commission, after having examined the claims in this section of the State, to adjourn to such other points as the public convenience may indicate.

Roger Barton, Esq., our associate commissioner, has not yet appeared here, nor have we received any communication from him. We should have been glad to have had the benefit of his experience and talents in organizing the board.

We have the honor to be, sir, most respectfully, your obedient servants,

JOHN F. H. CLAIBORNE.

RALPH GRAVES.

Hon. T. HARTLEY CRAWFORD,

*Commissioner of Indian Affairs, Washington City.**Endorsement:*

Respectfully referred to the Secretary of War, January 2, 1843.

T. HARTLEY CRAWFORD.

B 1.

To all whom it may concern :

Notice is hereby given, that the undersigned, commissioners, acting under a law of the last session of Congress entitled "An act to provide for the satisfaction of claims arising under the 14th and 19th articles of the treaty of Dancing Rabbit creek, concluded in September, 1830," approved August 23, 1842, have opened an office at Hopahka, in Leake county, in the State of Mississippi, and adopted the following rules and regulations :

First. The board will assemble every day (Sundays excepted) at their office, at 9 o'clock, A. M.

Second. Claimant's may be heard by counsel, who, in all cases, will be required to furnish a brief statement of the case, in writing.

Third. Applications must be made, in person, to the commissioners, or by written statement, setting forth the name of the claimant; the number of his or her children over and under ten years of age at the date of the treaty of Dancing Rabbit creek, and their names; the height of the claimant, and any peculiar feature or mark upon the person, which may serve to identify or distinguish the said claimant; his or her place of residence at the date of the treaty aforesaid, specifying the part of the section, township, range, and land district; with an affidavit thereto attached, made before any officer competent, under the laws of the State of Mississippi or of the United States, to administer an oath.

Fourth. Claimants and their children entitled to or applying for reservations must, in every instance, if possible, where proof of their claim is gone into, appear in person before the board.

They likewise give notice that all persons having claims under the 14th and 19th articles of the treaty aforesaid, or the supplemental articles thereof, are required, by law, to be presented to them for examination on or before the 23d of August, 1843, or they will be absolutely barred.

JOHN F. H. CLAIBORNE.
RALPH GRAVES.

ХОПАХКА, December 19, 1842.

C.

ХОПАХКА, LEAKE COUNTY, MISSISSIPPI,

December 23, 1842.

SIR: I have carefully examined the instructions transmitted to me from the Office of Indian Affairs. They are explicit as to the class of claims now under examination; but there are claims of a different class alluded to in the instructions, which may soon be presented for investigation, in relation to which our duties are not as closely defined, from the fact that you have not gone so much into detail in relation to them. I allude to claims under the 19th article of the treaty, and the supplement to the treaty, in cases where the lands were never relinquished, but were sold by Government before the reservations were located.

By the first section of the act of the 23d August last, "all the powers and duties of the commissioners are extended to claims arising under the 19th article of the treaty, and under the supplement to the treaty, to be examined in the same manner, and with the same effect, as in cases arising under the 14th article of the treaty."

The third section of the act also provides that the commissioners shall ascertain the Choctaws, "if any, who relinquished, or offered to relinquish, any reservation to which they were entitled under the 19th article of the treaty, or whose reservation under that article had been sold by the United States; and shall also determine the quantity to which such claimant was entitled, and the quantity of land which should be allowed him on extinguishment of such claim, at the rate of two-fifths of an acre for every acre of the land to which said claimant was entitled, such land having been estimated under this article at fifty cents per acre."

Our instructions refer us to the directions of the law as to the estimate of the quantity of land which should be allowed the claimant on extinguishment of his title, after ascertaining the amount to which he would have been entitled had his reservation been located.

I suppose that the cases alluded to in the third section of the law, where "the reservation had been sold by the United States," are those in which it may be inferred that the lands were abandoned by the reservees, and therefore considered as relinquished to Government; but there *are* cases, about which I have already been consulted, of a different character, the adjustment of which, in the manner prescribed by the law, according to what appears to be the most palpable construction, would seem to be unequal and oppressive.

In the cases referred to, the reservees are said to have been induced, in compliance with the wishes of Government, to go west with the first and second removals, and before the country was surveyed so as to admit of the location of their reservations, and of course before they could make any advantageous sale of them. It is well known that the country was not surveyed so as to admit of the location of all their reservations for a number of years after the treaty; that the locating agent was not, in fact, sent to make these locations until three years after that event; that the public sales commenced about the time this agent entered upon his duties; and that urgent measures had been used during the three years intervening from the date of the treaty to induce the Indians to remove west. The consequence of this course of proceeding on the part of Government, (totally unavoidable by the Indian reservee, if he had not previously sold his claim,) was the sale of his land by Government, if it happened to be good or saleable land. It could not be expected that he should be present in person at the precise time during the short interval which afforded the *only* opportunity of making his location, as he had been removed to a distance of some four hundred miles, where he was then residing, without the means of acquiring the necessary intelligence to enable him to protect his rights, and most probably without resources to enable him to attend in person, if he had been notified; nor could he have been expected to be represented by another, if he had been so unfortunate as not to have found a purchaser before his removal.

I am induced to believe, from representations made to me, that there are cases of this kind which have been lying for years awaiting some provision of Government for their adjustment; and my object in this communication is to ask whether the commissioners would be justified in giving such a latitude of construction to the *third* section of the law as to distinguish, in any manner, between reservations under the 19th article which have been relinquished, and others under the same article which the commissioners may be satisfied, by credible testimony, were never designed to be relinquished? Or whether, if the reservees are desirous of having their claims investigated by the commissioners, but are unwilling to accept the compensation of two-fifths of an acre for each acre of their reservations, prescribed for relinquished reservations, we should take any action upon them?

I have the honor to be, sir, most respectfully, your obedient servant,

JOHN F. H. CLAIBORNE.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

DEPARTMENT OF WAR,

Office Indian Affairs, January 13, 1843.

GENTLEMEN: The communication of Mr. Claiborne of 23d ultimo has been received, desiring the opinion of the department, whether "the commissioners would be justified in giving such a latitude of construction to the third section of the law as to distinguish, in any manner, between reservations under the 19th article which have been relinquished, and others under the same article which the commissioners may be satisfied, by credible testimony, were never designed to be relinquished? or whether, if the reservees are desirous of having their claims investigated by the commissioners, but are unwilling to accept the compensation of two-fifths of an acre for each acre of their reservations, prescribed for relinquished reservations, we should take any action upon them?"

If the relinquishments have been reported by the proper agents of the department, the report will be conclusive. By the fifth clause of the 19th article of the treaty of Dancing Rabbit creek it is thus provided: "But should any prefer it, or *omit* to take a reservation for the quantity he may be entitled to, the United States will, on his removing, pay fifty cents an acre, after reaching their new homes, provided that, before the first of January next, they shall adduce to the agent, or some other authorized person to be appointed, proof of his claim, and the quantity of it."

From this stipulation, if the claimant have omitted from any cause to have taken his reservation, the United States engaged to pay fifty cents an acre for the land he might have claimed if he had taken the necessary steps, but he or she cannot have land—money in that event having been substituted for it. The stipulation appears to be absolute, leaving no discretion. You will observe that those who formally relinquish and those who *omit* to take are placed on the same footing; in either case, they receive fifty cents per acre.

The law of 23d August last is in conformity to the treaty. The third section directs the commissioners to ascertain the Choctaws who have relinquished, or offered to relinquish, the lands to which they were entitled under the 19th article, or where reservations under the same were sold by the United States, and shall determine the quantity of land to which they were entitled, and the quantity to be allowed them, at the rate of two-fifths to the acre, provided that they shall not consider or allow any claim, unless the name of the claimant appears on Major Armstrong's register, returned to the Department of War in 1832, and said register shows him to be entitled.

With regard to the last branch of the inquiry, whether you shall "take any action" upon claims presented, when the applicants "are unwilling to accept the compensation of two-fifths of an acre for each acre of their reservations," the department is of opinion that the commission is not to regard their willingness or unwillingness, but to receive the claims, (for pressing which the fullest opportunity will be given consistent with the law,) and make such an award upon them as the circumstances, treaty, and law, require. The measure and mean of compensation are fixed, and the wishes of the claimants are subordinate. It may be, from the disinclination referred to, that memorials or applications will be presented to your board by the Choctaws, accompanied by a protestation against

the receipt of a particular compensation, or other surplusage of objectionable matter. Such memorials or applications ought not to be received, but the parties pressing them should be required to present a simple statement of facts, with a proffer of proofs.

The whole proceedings are to be submitted to the Secretary of War, and, if he concur in your awards, patents are to be issued, or certificates issued under the direction of the Secretary, as the cases may respectively require.

These views are expressed, after conference with the Secretary of War.

Very respectfully, yours,

T. HARTLEY CRAWFORD.

J. F. H. CLAIBORNE, Esq., }
RALPH GRAVES, Esq., } *Hopahka, Leake county, Mississippi.*

D.

Extract from a letter from John F. H. Claiborne and Ralph Graves to Commissioner of Indian Affairs, dated Hopahka, Leake county, Mississippi, January 15, 1843.

In a few days we shall forward to the department some seventy cases under the 14th article of the treaty of Dancing Rabbit creek, fully adjudicated.

E.

WAR DEPARTMENT,

Office Indian Affairs, January 19, 1843.

SIR: I have the honor to inform you, in reply to the last paragraph of your letter of 22d ultimo, that I have conversed with the Secretary of War on the subject of paying witnesses appearing before you in cases of the settlement of the business of your commission, who concurs with me in the opinion, that only such witnesses, if any, as are subpoenaed by the United States, can be paid for their attendance by the United States. Parties wishing to prove up their claims must do it at their own cost.

Very, &c.

T. HARTLEY CRAWFORD.

J. F. H. CLAIBORNE, Esq., }
RALPH GRAVES, Esq., } *Hopahka, Leake county, Mississippi.*

F.

HOPAHKA, LEAKE COUNTY, MISSISSIPPI,

January 22, 1843.

SIR: We have about eighty cases (heads of families) in which the testimony is nearly completed, and intend to forward them in a few days to the department, for final action, but which will now be delayed in consequence

of a protest filed against them, and all others which may come before the commissioners, until the investigation asked for in said "protest" can be had.

Copies of the protest and all other papers in relation thereto are herewith transmitted.

We have addressed a letter of this date to Messrs. E. B. W. Kirksey and James Poindexter, the authors of the protest, requesting them to name some day, as early as possible, to which the persons should be subpoenaed to attend before the board, whom they have requested to be summoned as witnesses on the part of the United States.

We communicate these papers to you, in order to obtain your approbation of our course in relation thereto, and to obtain from you any suggestions in reference thereto, which you may deem proper to make.

We would respectfully suggest, in order to prevent the Government from being put to unnecessary expense, if it would not be proper for the board to require of any person desiring witnesses to be summoned at the expense of the Government, that he shall make affidavit, setting forth the facts which he expects to prove by each witness, in order to show the materiality of his testimony.

We have the honor, &c.

JOHN F. H. CLAIBORNE.
RALPH GRAVES.

HON. JOHN C. SPENCER,
Secretary of War.

Copies of papers transmitted herewith.

- 1.—Protest and letter of E. B. W. Kirksey and James Poindexter to the commissioners, dated January 16, 1843, received January 17.
- 2.—Reply of commissioners to them, dated January 17.
- 3.—Letter from Messrs. Kirksey and Poindexter to the commissioners, asking further delay, of January 18.
- 4.—Letter of Charles Fisher, agent and attorney, &c., asking, on the part of the Indians, his clients, for the investigation requested by Messrs. Kirksey and Poindexter—filed January 20.
- 5.—Letter of John B. Forrester and Benjamin J. Jackoway, attorneys and agents of Indians, asking for the examinations, &c., called for by Messrs. Kirksey and Poindexter.
- 6.—Letter from commissioners Claiborne and Graves to Messrs. Kirksey and Poindexter, dated January 22, 1843, requesting them to name an early day for the investigation, &c.

THE COMMISSIONERS.

F 1.

НОРАНКА, January 16, 1843.

GENTLEMEN: We, your petitioners, respectfully demand of your honorable court to file this, our solemn protest, against any Choctaw claim growing out of the 14th article of the treaty of Dancing Rabbit creek, being granted or confirmed by your honorable body, until a full investigation can be had in each case.

We are satisfied that there are not more than one hundred heads of families entitled under said article of said treaty; and if your honors will grant writs of subpoena for witnesses, and documentary testimony, we pledge

ourselves to produce evidence which shall be fully competent to convince your honors that a very large portion of the claims which will be presented before your court, for its action on the same, are entirely unjust, and that many Indians so claiming never, in the first particular, complied with the requisitions of said treaty. In filing this protest, we are not actuated by any improper motive, but simply from a desire that justice should be done both to our Government and to the Indians; and, feeling confident that your honors are actuated by similar motives, we have adopted this course, to enable us to produce such testimony as we are now in possession of, also that which we are daily becoming possessed of.

In conclusion, we beg leave to subscribe ourselves your humble and obedient servants,

E. B. W. KIRKSEY.
JAMES POINDEXTER.

HON. RALPH GRAVES and J. F. H. CLAIBORNE,
Commissioners of the United States.

John H. Hand,	Columbus,	Mississippi.
Henry Berks,	Oktibbeha county,	do.
Jubal B. Hancock,	Lauderdale do	do.
Stephen Wood,	Washington do	do.
Reuben H. Grant,	Noxubee do	do.
Hartwell Hardaway,	do do	do.
William P Chiles,	do do	do.
James Cobb,	do do	do.
Thomas D. Wooldridge,	do do	do.
Stephen Cocke,	Columbus,	do.
Greenwood Lafloore,	Yallahusha county,	do.

To the honorable commissioners now in session at Hopahka, to investigate Choctaw Indian claims under the treaty of Dancing Rabbit creek:

We wish the above named gentlemen subpoenaed to attend your honorable court at Hopahka, on the first Monday in February next, in behalf of the United States, on said claims.

E. B. W. KIRKSEY.
JAMES POINDEXTER.

JANUARY 16, 1843.

F 2.

HOPAHKA, LEAKE COUNTY, MISSISSIPPI,

January 17, 1843.

GENTLEMEN: We have received your "protest" against any Choctaw claims growing out of the 14th article of the treaty of Dancing Rabbit creek being granted or confirmed, dated the 16th instant, with an accompanying list of witnesses whom you desire to be subpoenaed. We respectfully request that you will furnish us, in writing, the facts, or substance of them, which you expect to establish by each witness, and the character of the documentary evidence which you desire as proof in the case. We have many documents now in our possession, and those you desire may be among them.

We will forthwith subpœna the witnesses designated by you to attend before us on the day suggested by you, to wit: the first Monday in February next.

We will observe that further time will be given you to file your documentary evidence, should you not be able to procure it by that time.

Very respectfully, your obedient servants,

J. F. H. CLAIBORNE.
RALPH GRAVES.

MESSRS. E. B. W. KIRKSEY AND
JAMES POINDEXTER.

F 3.

To the honorable Ralph Graves and John F. H. Claiborne, commissioners of the United States, now in session at Hopahka :

GENTLEMEN: We acknowledge the receipt of your letter, informing us that you are ready to have the gentlemen subpœnaed we requested to attend this court, on the first Monday in February next.

It would be impossible for us to attend on that day; in fact, there would be no certainty in having all the witnesses at so early a period. We will suspend the issuing said subpœnas until further orders.

Respectfully, your obedient servants,

E. B. W. KIRKSEY.
JAMES POINDEXTER.

JANUARY 18, 1843.

F 4.

To the honorable board of commissioners, now in session at Hopahka, to investigate claims arising under the 14th article of the Choctaw treaty of 1830 :

The undersigned, acting as agent and attorney for many of the claimants, respectfully represents, that the "protest" of James Poindexter and E. B. W. Kirksey, laid before the board on the 17th instant, on the subject of the Choctaw claims, if permitted to remain on your file *without action*, is well calculated to raise unjust prejudices against the rights of the claimants, and to imply an imputation of fraud on the conduct of their agents and attorneys. The undersigned does not deny the right of any citizen to come forward and oppose these claims, but he *insists*, whenever such opposition is made, and charges of fraud presented, that an investigation should *immediately* be made of such charges, or, at least, with as little delay as possible. Although the charges in the "protest" are general and unspecific, we would, for the present, waive this objection, provided an early and speedy investigation can be had of the matter. It appears, however, there is no certainty when the trial can be had. The authors of the "protest," (who are the accusers in the case,) on presentation of their paper, asked the commissioners to assign the first Monday in February for investigation. The

board agreed to appoint the day for trial designated by themselves, and ordered subpoenas to be sent out for all the witnesses furnished on their list, when, on the annunciation of their orders to them, they withdrew their proceedings, so far as relates to the *time* of action, and address a letter to the board, saying, "*We will suspend the issuing of said subpoenas until further orders*"—thus placing the whole matter in such an attitude as to keep the charges hanging up against the claimants, without giving them an opportunity of confronting their accusers and sifting the proffered testimony. The undersigned, in behalf of his clients, *objects* to this mode of proceeding, on the following grounds: First, because, to permit men to come in and enter on record *charges of fraud* against the claimants, without at the same time fixing on a day for the trial, is not only vexatious to the accused party, but, if not designed, is yet well calculated to raise unjust prejudices against the claims, not only in the public mind, but likewise in the minds of the commissioners, and of the President of the United States, who has final action on them; and, secondly, because it is contrary to the spirit of our free institutions, that *charges* should be made against any man or set of men, without at the same time giving them an opportunity of confronting the accusers and cross-examining the witnesses.

It must be so that these *charges*, so formally made against the claimants, are either *true* or they are *false*. If they be *true*, then the same disinterested patriotism that brought them into existence should hasten the investigation to a close, in order *at once* to stop further expenses under the commission, and protect the Government from the danger of frauds. On the other hand, if they be *false*, then sheer justice to the claimants, and to their agents and attorneys, who stand implicated, *demand*s that the investigation should go *right* on, or with as little delay as possible, so that unjust suspicion may be dissipated, and the claims placed before the board on their merits alone.

The undersigned, therefore, in behalf of the claimants, most respectfully asks the board *now*, *at once*, to proceed to appoint a time for the investigation of their charges, and that they do not only summon before them all the witnesses named by James Poindexter and E. B. W. Kirksey, to give evidence in the matter, but that they also summon the said Poindexter and Kirksey to appear before the board, to declare, on their oaths, all that they may know touching the fraudulent character of these claims.

Respectfully,

CHARLES FISHER.

—
F 5.

To the honorable the board of commissioners of Choctaw claims, sitting at Hopahka :

The undersigned, counsel for a number of claimants under the 14th article of the treaty of Dancing Rabbit creek, would respectfully represent to your honorable board, that they have lately witnessed, with surprise, a proceeding *professedly* instituted for the purpose of arresting the action of the board, defeating the provisions of the law by which it was constituted, and destroying the rights of the claimants under the 14th article of the treaty.

It is hardly necessary to state that the proceeding to which they allude

is the recent presentation of Messrs. E. B. W. Kirksey and James Poindexter to the commissioners, in open court, of a written protest against any final decision or report by the board in cases under the 14th article of the treaty of Dancing Rabbit creek, containing charges of a general character against the justice of the claims, and accompanied with a request, also in writing, that the following persons, represented by said Kirksey and Poindexter as material witnesses for Government in the investigation of these claims, might be summoned before the board :

John H. Hand,	Columbus,	Mississippi.
Henry Berks,	Oktibbeha county,	do.
Jubal B. Hancock,	Lauderdale	do.
Stephen Wood,	Washington	do.
Reuben H. Grant,	Noxubee	do.
William P. Chiles,	do	do.
Hartwell Hardaway,	do	do.
James Cobb,	do	do.
Thomas D. Wooldridge,	do	do.
Stephen Cocke,	Columbus	do.
Greenwood Lafloore,	Carroll	do.

How far a protest against any final action of the board upon any claim presented for their adjudication, in accordance with the provisions of the law under which they act, containing only general statements and promises, without any specific charges or assurances, and without the affidavit accompanying its indefinite averments, should operate as an injunction upon the proceedings of the board, is a question about which the undersigned do not wish at present to express an opinion. They are aware, from a perfect knowledge of the history of the Choctaw treaty, and the claims arising under it, through the vicissitudes of a twelve years' prosecution of violated rights before the department, agents of Government, Congress, boards of commissioners, and the courts of the States, during every stage of which prosecution the cry of fraud has been loud and wide, that the present board of commissioners must necessarily feel a desire to act with the utmost deliberation, and that they will be inclined to listen to any suggestion of fraud, from whatever source it may come.

The undersigned, so far from objecting to such a course, are anxious, on all accounts, that the claims of their clients should be subject to the most rigid scrutiny; that every charge of fraud which ever has been made, or can be made, should be presented and tested before an impartial tribunal, and that the history of this treaty, the claims arising from its violation, and the injuries and sufferings of the helpless claimants, should be published to the world, with the advantage to Government of every fact which can in any degree operate as an excuse for the cruel treatment these claimants have received at her hands.

The undersigned would naturally suppose that the documents presented to the board by said Kirksey and Poindexter, accompanied by their verbal statements, that they were employed by a company to destroy all the claims under the 14th article; that one member of the company had promised to contribute to this object one thousand dollars in cash, and that they expected, if successful, to be handsomely rewarded by Government, would certainly, by the boldness and magnitude of the enterprise, be likely to produce an impression that, they and the witnesses they name are in posses-

sion of facts in relation to these claims important to be known by the board, and that they may therefore be considered material witnesses for the Government. The undersigned believing, therefore, that it may be considered important to Government, and feeling that it is equally due to the interests of their clients and to their own characters to test the charges of Messrs. Kirksey and Poindexter, and being anxious, moreover, to avail themselves of the first opportunity which has occurred in the prosecution of these claims of confronting their accusers upon wholesale charges of fraud, heretofore made in the shape of letters, memorials, and *ex parte* affidavits, for the purpose of operating at a distance to the prejudice of the claims, without a particle of evidence in their composition affecting the rights of the claimants, do most respectfully pray that your honors would comply with the request of said Kirksey and Poindexter in its fullest extent, and that the persons named by them as material witnesses for Government may be summoned before the board at as early a day as practicable, that they may be subjected to such examination as will be likely to elicit all the knowledge they possess in relation to this important matter between the Government and the Choctaw people. And the undersigned would further pray, that the said Kirksey and Poindexter may be also summoned to appear before them, as well as Samuel Stone and Erasmus L. Acre—two persons named by said Kirksey and Poindexter as feeling a deep interest in the destruction of these claims, and who may therefore be supposed to be in possession of some knowledge as to the ground of this opposition.

The undersigned, during their connexion with this prosecution, so far from ever having felt the least desire to conceal any fact in relation to these claims, have been unwearied in their efforts to induce Government, as an act of justice to their unhappy clients, to erect a tribunal for the adjudication of their claims in the country where this treaty was made and violated, where the claimants or their survivors have lived and suffered ever since, and where the witnesses reside whose testimony may be important to establish or invalidate their claims. They never did shrink, nor will they, from the most scrutinizing investigation; all they ask is, to meet their opponents on fair and honorable grounds.

The undersigned may be excused from remarking, in conclusion, that they hope to be able to satisfy your honorable board, even by the testimony of the witnesses of the Government and the most active opponents of these claims, of the following facts, to wit:

1. That the Choctaw treaty of Dancing Rabbit creek was grossly violated in its 14th fundamental article;
2. That hundreds of the Choctaw people were in consequence deprived of their just rights, whose wrongs have remained for twelve years undressed; and
3. That the combinations heretofore formed to discredit the claims, and prevent any adequate relief from Congress, although successful, have all originated from a mistaken or perverted view of the subject.

All of which is respectfully submitted.

JOHN B. FORRESTER.
BENJAMIN J. JACKOWAY.

НОРАНКА, January 21, 1843.

F 6.

To Messrs. E. B. W. Kirksey and James Poindexter, Macon, Noxubee county, Mississippi :

GENTLEMEN: Since you left here on the 18th instant, the investigation asked for by you in your "protest" and letter of the 16th instant has been urged upon us, by petitions now on file, by several of the agents and attorneys of the Indians, to be had without unnecessary delay.

Our present object in addressing you is, to request that you name some early day to which you desire the witnesses, (a list of whom you gave us,) and any others you may desire, shall be subpoenaed to attend before us, in order that the investigation you asked for may be commenced without delay.

Very respectfully,

JOHN F. H. CLAIBORNE.
RALPH GRAVES.

HOPAHKA, LEAKE COUNTY, January 22, 1843.

F 7.

DEPARTMENT OF WAR,

Office Indian Affairs, February 8, 1843.

GENTLEMEN: Your communication of the 22d ultimo, to the Secretary of War, has been referred to this office, with the several accompanying papers, viz: copies of a letter from E. B. W. Kirksey and James Poindexter, Esqs., to yourselves, dated 16th ultimo, protesting against the confirmation of any claim under the 14th article of the treaty of Dancing Rabbit creek with the Choctaws—stating that there are not one hundred good claims under said article—pledging themselves, that, if you will grant subpoenas, &c., to prove many of the claims unjust—and furnishing a list of witnesses whom they desire you to summon before you on the first Monday in February; of your reply of next day, requesting to be furnished with a statement, in writing, of the facts and the character of the documentary evidence proposed to be adduced—informing the applicants that you have many documents, and that among them may be those desired—that you will forthwith subpoena the witnesses designated to appear on the 1st of February—and that further time will be given to produce the documentary evidence, if necessary; of their answer of the 18th ultimo, saying it would be impossible for them to attend on the 1st of February—that in fact it would be uncertain whether all the witnesses would appear at so early a period, and that "we will suspend the issuing said subpoenas until further orders;" of a memorial addressed to you by Charles Fisher, Esq., as "agent and attorney for many of the claimants," setting forth that the said protest, if it remains on your files without action, is calculated to raise prejudices against the claimants, their agents and attorneys, and requesting that the board will fix a time for the hearing of the allegations aforesaid—and will summon all the witnesses named, and the said Poindexter and Kirksey, to testify in the premises; of a memorial, dated the 21st of January ultimo, by John B. Forrester and Benjamin J. Jackoway, Esqs., "counsel for a number of claimants under the 14th ar-

title," &c.; stating "that they have lately witnessed, with surprise, a proceeding *professedly* instituted for the purpose of arresting the action of the board; defeating the provisions of the law by which it was constituted, and destroying the rights of the claimants under the 14th article of the treaty"—they desire, as does Mr. Fisher, the most rigid scrutiny, and believe they can establish the violation of the treaty—that hundreds of Choctaws have been deprived of their rights—and that "the combinations heretofore formed to discredit the claims," &c., "have all originated from a mistaken or perverted view of the subject;" and of a communication from the board to Messrs. Kirksey and Poindexter, of the 22d of January ultimo, referring to the foregoing memorials, and requesting that an early day be named for the appearance of the witnesses designated, adding, "and any others you may desire shall be subpoenaed to attend before us, in order that the investigation you asked for may be commenced without delay."

These papers were handed me by the Secretary of War, for examination, and my views on the subject. After conference with the Secretary, who concurred in the opinions I expressed on the subject, a general reference of your communication was made to this office; to which this is a response.

Your proceedings are approved. In the prosecution of your duty, I would not be precise about the form in which a claim or other application may be made. Though protests ought not to be regarded as such, still, if they are coupled with an allegation of fraud, with an application for process, or the presentation of a claim, I would receive them, and act as if they contained no protest. When the communication of the 13th ultimo was made to you, in which you were told that memorials or applications might be presented to your board, "accompanied by a protestation against the receipt of particular compensation, or other surplussage of objectionable matter," and that "such memorials or applications ought not to be received, but the parties preferring them should be required to present a simple statement of facts, with a proffer of proofs," it was supposed that this form of proceeding would be confined to a few cases under the 19th article; but, as it now appears that the great body of the claims will be assailed, and the ground covered be very extensive, I am of opinion the door should be opened as wide as possible. To effect this, as much latitude as is consistent with the law under which your commission was organized, and with a faithful discharge of your duty, should be allowed, to investigate all claims, and allegations of fraud in relation thereto. A day should be fixed for the hearing, allowing to the parties litigant a reasonable time to prepare their proofs, oral and documentary—of the reasonableness of the time, you must be the judges; but I would advise you, in determining it, to be liberal. For the same reasons, I would not regard the form of application, provided it set out an intelligible exhibit of facts, but would look to the substance more. Every allegation of fraud should be examined as closely as possible, and every reasonable opportunity afforded for exposing it; taking care that such delay does not occur as to defeat the great object Congress had in view in raising the commission.

In reference to the latter branch of your suggestion and inquiry, "if it would not be proper for the board to require of any person desiring witnesses to be summoned at the expense of the Government, that he shall make affidavit, setting forth the facts which he expects to prove by each witness, in order to show the materiality of his testimony," the Secre-

tary of War and myself are of opinion that this should be done by all means; otherwise the Government may be burdened with heavy expenses for the summoning and attendance of witnesses on behalf of the United States, whose testimony would be wholly irrelevant, and the witnesses themselves incompetent. To guard more effectually against such an abuse, I would suggest the propriety of requiring the applicant to swear, further, that the proposed witness or witnesses are material, and not interested in the issue. This, it strikes me, would be proper, because you will be probably often called on for subpoenas for witnesses in cases that you have not reached or examined at all, or but partially.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

J. F. H. CLAIBORNE and RALPH GRAVES, Esqs.,
Hopahka, Leake county, Mississippi.

G.

WAR DEPARTMENT,

Office Indian Affairs, January 24, 1843.

GENTLEMEN: I have the honor to acknowledge the receipt of Mr. Claiborne's letter of 22d ultimo, in which he asks for a copy of the document referred to by your predecessors as the tabular statement accompanying their report, and calls my attention to the certificates of the secretary of the late board, in favor of two individuals, of their attendance as witnesses, who desire to know if they will be paid.

The tabular statement referred to by former commissioners is a statement in detail of their opinions on each adjudicated case, with reference to the character of the testimony on which their opinion was formed. This paper was purposely omitted to be sent to you, for the reason that it might be referred to by persons having claims to be adjudicated, who would use the information obtained from the doings of the late board in the prosecution of their claims before you, having ascertained what testimony was deemed sufficient to obtain a favorable award. It is not a document deemed to be material in the promotion of your labors, because you have been furnished with a list of the names of those persons whose claims were reported on by your predecessors, and who are the same parties indicated on the tabular statement.

That part of Mr. Claiborne's letter in relation to witnesses was answered on the 19th instant.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

MESSRS. CLAIBORNE and GRAVES,
Hopahka, Leake county, Mississippi.

H.

WAR DEPARTMENT,

Office Indian Affairs, February 13, 1843.

GENTLEMEN: I have the honor to transmit, herewith, the copy of "a list of the names of Choctaw Indians who have been paid by the United

States for the lands relinquished under the last clause of the fifth subdivision of the 19th article, of the treaty of 1830, showing the amount paid to each, the time when paid, and the chief's district to which he belonged."

The information conveyed by these papers was obtained from the office of the Second Auditor, and would have been designated on the copies of Armstrong's registers, forwarded to the commissioners on 24th November, had it been in the power of this office to have done so. The copies now sent will enable you to cause the proper entries to be made on Armstrong's registers, and, with those made by this office, will show the claims which appear to be unlocated, which must be those that would have been designated on the list which I intended to transmit with your instructions, and referred to in your letter of 31st December, but which list could not be prepared in the absence of the information now communicated.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

Messrs. CLAIBORNE and GRAVES,
Hopahka, Mississippi.

I.

DEPARTMENT OF WAR,

Office Indian Affairs, February 17, 1843.

SIR: An act of Congress of the 23d day of August last, entitled "An act to provide for the satisfaction of claims arising under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit creek, concluded in September, one thousand eight hundred and thirty," having revived the acts of 3d March, 1837, and 22d February, 1838, and the President of the United States having, by and with the advice and consent of the Senate, appointed you one of the commissioners to execute the several laws referred to, I have now the honor to enclose your commission of this date.

Two of the commissioners heretofore appointed are now sitting at Hopahka, Leake county, Mississippi, and it is of the utmost importance that you should proceed with as little delay as practicable to join them, which I respectfully urge upon you. Under less pressing circumstances, I should send you a copy of the instructions which were prepared for the board, under date of 24th October last, and forwarded (a copy to each) to the commissioners who are now in Mississippi, but the necessity for as much despatch as is in your power induces me not to wait for a copy of the communication referred to, which is long, and would occupy time; and it cannot be very material, as you will find with your associates two copies, to which you can have reference, as well as to all other documents and papers which were transmitted to them as necessary to the discharge of their duties.

You are aware, no doubt, of the general nature of the duties imposed. They require an investigation into the claims which shall be preferred to the board for reservations to land by Choctaw Indians under the 14th and 19th articles of the treaty of September, 1830, and the supplement thereto,

according to the terms prescribed in the law of 1842. The execution of the law is regarded to be of great consequence, as well in the justice which it is expected to bring to the Indian claimants, as in view of the settlement of titles to land in Mississippi, and the consequent more rapid peopling of the State.

The term during which the board can sit is limited to two years from the time of its first organization; and no claim can be allowed which is not presented before the 23d August next.

The salary of a commissioner is \$2,500 per annum, as fixed by law. The mode of payment adopted as to the two commissioners now west is to send them, through the Treasury, drafts or warrants for their compensation, monthly, as it falls due. Your salary will commence, I am instructed by the Secretary of War to say, from the day you qualify by taking the oath of office, and will be forwarded to you as stated above. I send, herewith, a form of the oath required by law, which you will please take before some judge or justice of the peace, (the former, if convenient, would be preferred,) and transmit it to this office.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

WILLIAM TYLER, Esq.,
Charles City Court-house, Virginia.

K.

HOFAHKA, MISSISSIPPI, *March, 27, 1843.*

SIR: We shall adjourn in a day or two at this place, and open an office at the Old Yazoo Village, in the county of Neshoba, on the 3d day of April.

Our address will be, Herbert's Post Office, Neshoba county, Mississippi, *via* Charleston, South Carolina, and Livingston, Alabama. The Hon. William Tyler, of Virginia, arrived yesterday, and has taken his seat at the board.

We have taken the testimony in some two hundred and fifty odd cases, (besides transacting much other business,) and shall probably proceed to adjudicate them early in May.

We have the honor to be, sir, most respectfully, your obedient servants,

JOHN F. H. CLAIBORNE

RALPH GRAVES.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

L.

HOFAHKA, MISSISSIPPI, *March 27, 1843.*

SIR: As we are about to adjourn here, I beg to call your attention to the duty performed by our secretary, P. Bayly, Esq., in bringing out the public documents intended for this board.

His expenses coming out by the route he travelled were heavy, and he had to pay a considerable sum extra for the transportation of the documents:

Is it not usual to allow agents thus sent out compensation for their traveling expenses and other incidental expenses?

If so, I beg to recommend Mr. Bayly's claim to your consideration. He will forward it as soon as I am advised of your views on the subject.

He is a most admirable officer, and discharges his duties promptly and ably.

I have the honor to be, most respectfully, your obedient servant,
JOHN F. H. CLAIBORNE.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

M.

HOPAKKA, LEAKE COUNTY, MISSISSIPPI,
April 1, 1843.

SIR: We have the honor to inform you that we have to-day adjourned at this place, to meet at the Yazoo Old Village, in Neshoba county, Mississippi, on the 3d instant. Our colleague, Mr. Claiborne, left on the morning of the 28th ultimo, on a visit to his family.

The board proposes for the next two or three months not to examine testimony in any new cases, but to go from point to point, convenient to the claimants, merely to receive such claims as may be presented, and have them docketed and filed.

The board has come to this determination for several reasons: 1st, to enable the claimants to file their claims before the 23d of August next; and, 2d, to enable them to make a crop this year, as, by this course, they will not be required necessarily to be absent from home more than two days perhaps during the cropping season.

We have the honor to be, very respectfully, your obedient servants,
RALPH GRAVES.
WILLIAM TYLER.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs, Washington City.

N.

YAZOO OLD VILLAGE,
Neshoba County, Mississippi, April 15, 1843.

SIR: We have the honor to submit the following points of difficulty, which it will become necessary for us to settle in the adjudication of the cases now before us, and respectfully solicit the views of the department in relation to them:

Under the 14th article of the treaty with the Choctaws, is the parent entitled to the whole grant, embracing his section, the half and quarter sections given on account of his children; or is he entitled *only* to his own section, and the children to their half and quarter sections, respectively?

The first is in accordance with the opinion of Secretary Cass, and upon

which the action of the department heretofore has been based; the latter seems to be the interpretation of Congress in the act of August last. Attorney General Legare declines to express any preference for either of these interpretations, and leaves the matter for judicial exposition.

The following questions and suggestions will show the necessity which the commissioners are under of adopting one or the other of these constructions of the treaty :

In many of the cases which have been presented to the commissioners, the parents or heads of families, before the expiration of five years, have removed west, even after signifying their intention to become citizens of the States, leaving some of their wives and children in the ceded country. Do the children get any lands in these cases or not?

There are cases where the children have gone west within the five years, leaving the parents behind. Does that portion of land allowed on their account become forfeited or not?

The interpretation of the treaty by Congress, it seems to us, would avoid these difficulties.

Again, in many cases there are adopted children, constituting at least one-fourth of the children now in the country. They being children of the wives by former marriages, or of female relations, upon whose deaths the maternal kindred (especially the uncles, who, by the Indian customs, are regarded as the natural guardians) adopt the children in their families, and treat them with even more favor than their own. The maternal uncles possess the right of custody, to the exclusion of the father, and invariably exercise it. This last class, who, with their families, constitute perhaps one-half of the present Choctaw families in the ceded country, are left entirely destitute under the construction of the treaty by Secretary Cass, and would, under the construction of the Legislature, be provided for. These children cannot be the heirs of the head of the family. The laws of Mississippi, which were extended in 1829 (before the date of the treaty) to the persons and property of the Choctaws, (see Howard and Hutchison, p. 76,) do not make them heirs; so that, if the construction of Secretary Cass be adopted, they could never have received any benefit under this provision of the treaty, or received any thing from their foster parents, except by will or by deed—two extremely improbable events to occur among savages. The interpretation of Congress would perhaps save them from a condition of vagrancy to which that of Secretary Cass would inevitably consign them.

We would also remark, that at least one-third of the heads of families are now dead—made no wills of course, and made no deeds we presume, for the benefit of any Choctaw.

These are difficulties growing out of either construction of the treaty, and in the execution of the treaty itself, as you will perceive by the following supposed cases, the circumstances of which do actually exist in many of the cases before us.

Suppose the parent's section, embracing his improvement, has been sold by the Government, and the adjoining, out of which the children are to have locations made, are unsold: must we award scrip to the parent and make the locations for the children? Then, suppose the adjoining sections have been sold, and the parent's unsold: what shall we do in this case? Suppose a small portion, say one-eighth of the land of either, be sold, the residue unsold: must we award scrip for the whole claim, or for a part only? Or, that one child's portion only is sold: shall we locate for the other children?

Suppose there be some five or six heads of families claiming the same section, (this is a common case :) which shall have preference? Let it be A; then, are the adjoining lands to be located (if unsold) for the children of A, or for the other heads of families? Suppose both may want the land or scrip: how shall we adjust this controversy? Did Congress design to furnish a remedy for many of these difficulties, or is further legislation necessary?

If the construction given to the treaty by Congress be the right one, (and it seems most equitable,) then, in some cases, the parents would have lands located for them, when their children would receive scrip and the children lands.

Should not this state of things be remedied?

We would also state that the Indians manifest the greatest repugnance to removing west—will not talk of it with any patience; and it is the impression they would sooner abandon their claim than be urged on this subject. Their white friends will, for certain benefits, keep up a feeling of opposition among them to removal; hence, all efforts on the part of Government to get them to remove will be unprofitable, until all of the cases (not a part) before the commissioners are finally disposed of. Their agents and white friends will then have no longer any inducement to oppose their removal west. Then, and not until then, will Government succeed in getting off even a hundred. We would doubt the policy of urging on them the question of removal at this time; it cannot succeed, and would only produce unkind feelings on their part against the Government. In three or four years from now the Indians will be glad to go west, and then Government can do something towards removing them. We would respectfully suggest that the commissioners be not required to adjudicate any cases until the testimony in all of them is completed.

With sentiments of profound respect, we have the honor to be, sir, your obedient servants,

WILLIAM TYLER.
RALPH GRAVES.

HON. T. HARTLEY CRAWFORD,
Comm'r of Indian Affairs, Washington City.

N 1.

WAR DEPARTMENT,
Office Indian Affairs, May 1, 1843.

GENTLEMEN: I have received the letter of Messrs. Tyler and Graves, of date 15th ultimo, and answer the suggestion at the close of it, reserving the several inquiries for a separate reply.

The suggestion referred to is in these words:

"We would also state that the Indians manifest the greatest repugnance to removing west—will not talk of it with any patience; and it is the impression they would sooner abandon their claim than be urged on this subject. Their white friends will, for certain benefits, keep up a feeling of opposition among them to removal; hence, all efforts on the part of Government to get them to remove will be unprofitable, until all of the cases (not a part) before the commissioners are finally disposed of. Their agents

and white friends will then have no longer any inducements to oppose their removal west. Then, and not until then, will Government succeed in getting off even a hundred. We would doubt the policy of urging on them the question of removal at this time; it cannot succeed, and would only produce unkind feelings on their part against the Government. In three or four years from now the Indians will be glad to go west, and then Government can do something towards removing them."

"We would respectfully suggest that the commissioners be not required to adjudicate any cases until the testimony in all of them is completed."

The line of policy heretofore pursued and known to the people of Mississippi, has been different from the one you advise. One and the great object of the commission, was to do what was just and right under the circumstances, as regards the Choctaws and our own Government; and, next, it was desirable to the State, and promotive of the best interests of the Indians, that they should emigrate as soon as consists with a proper examination and decision of their claims; after which, it is considered there can be no possible or just advantage in their remaining in Mississippi, except when they shall receive land and become permanent residents.

Your instructions of 24th October last requested you to report to the President of the United States, from time to time, and at short intervals, such cases as you should decide, for the final action of the Secretary of War and President, "so that the Choctaws whose claims shall be finally disposed of may be removed to their Western homes as you progress."

These instructions are based as well upon an opinion that the interests of all parties required this course, as upon what was supposed to be the intention of Congress in giving the commission. By the fourth section of the law of 23d August, 1842, the commissioners are required to report within two years, "and as often as shall be required by the President of the United States," &c.; indicating, as it seems to me, very clearly, that the several reports were expected to be returned as soon as decisions should be made, by which the despatch of the whole business would be expedited, and the Choctaws removed by piecemeal. With the same views, doubtless, the report of the former board of commissioners, instead of being continued under the control of Congress, was referred, by the 6th section of the same law, to the President of the United States, under whose direction that branch of the business, after a most laborious examination of much detail, is about being closed, and the results transmitted to Mississippi.

In further confirmation of the design of Congress, a law was passed at the last session, and on the 3d of March, appropriating \$67,490 out of \$154,090 asked by the department, for the removal of the Choctaws in Mississippi, and subsisting them for a year after their removal. This appropriation may be looked at in two aspects. 1st. It shows that Congress expected that a removal would take place during this year, otherwise no appropriation would be necessary until the next Congress assembled, 2d. That it was expected that only a part of the Choctaws would be emigrated during 1843, and therefore the estimate was cut down.

The views of the department were known, and a contract has been actually entered into for the transportation of those Choctaws whose claims might be disposed of.

It may be supposed that there would be a propriety in making decisions on all the cases at once, lest there should be a choice of lands in favor of

those to whom they shall be awarded, if your reports are acted on separately. This cannot happen as to those claiming before you under the 14th and 19th articles, for their locations must embrace their respective residences, and of course they are fixed; and under the supplement, where alone there are any unsatisfied floating claims, there remain but six, of which locations have not been reported.

The course taken was, moreover, presented before the department by the Representatives from Mississippi, who have no doubt communicated to their constituents the line of policy adopted. Under all these circumstances, a departure from the instructions heretofore given would be injudicious, and subject the department to the charge of disregarding the implied injunctions of Congress. We may fail, as you think we will, in emigrating these Indians before their claims are *all* finally settled; but if the effort is made, and after every proper exertion it proves unsuccessful, we shall have done our duty, and consequently be free from just imputation.

This communication is made after the fullest consideration by the Secretary of War as well as myself.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

Hon. Messrs. J. F. H. CLAIBORNE, }
WILLIAM TYLER, } *Herbert's P. O., Neshoba Co., Miss.*
RALPH GRAVES, }

N 2.

WAR DEPARTMENT,

Office Indian Affairs, May 15, 1843.

GENTLEMEN: A letter from Messrs. Tyler and Graves, dated 15th ultimo, and received here the 29th ultimo, was answered under date of 1st instant, in relation to their suggestion of making their decisions after the testimony in all of the cases is taken; and I now proceed to answer it further, in reply to several inquiries they make.

The first inquiry: Is the parent entitled to the whole of the land given for himself and children under the 14th article of the treaty; or is he entitled only to his own section, and the children to theirs, respectively?

First. The parent is entitled to his section for himself. After mature deliberation and consultation between the late Secretary of War and myself; it was determined that the certificate for scrip should issue for the children over ten years, in this form: "That the said A B" (the parent) "is entitled for the said unmarried child" (or for the said two or more unmarried children, as the case may be) "over ten years of age, that was" (or were) "living with him" (or her) "at the date of said treaty," &c.; and as to the children under ten years of age, in this form: "That the said child" (or children) "under ten years of age, is" (or are) "entitled to so much land," &c.

This decision as to the scrip form will be an efficient guide in framing your decrees, which I advise you to follow in your awards, whether of land or scrip. It is, you will observe, in exact accordance with the language of the treaty, which gives the land in the 14th article *for* the children.

over ten years of age, and to the children under ten years, and is not inconsistent with the 3d section of the law, which says, "and in like manner shall the commissioners aforesaid ascertain the quantity of land granted by said article to each child of said Indian, according to the limitations contained in said article, and with said quantity, for said children, contiguous to and adjoining the improvement of the parent of such child or children; and the President shall issue a patent for each tract of land thus located to said Indian child if living, and if not, to the heirs and legal representatives of such Indian child." This clause affords the key to the construction of the whole act. The rights of the parent and children are to be fixed by the limitations of the 14th article. The opinion of the department before the law of 1842 was passed was, that the parent was entitled to the whole of the land; but, since that time, the construction stated has been adopted as to all cases that were reported by Messrs. Murray and Vroom, and those you shall decide and report.

If the head of the family removed to the west before the five years expired, in my opinion, the right of himself and family under the 14th article is gone; so is the provision of the treaty, and so are the words of the law. If, however, the head of the family died in possession, and that possession was continued by his widow and children for the five years, they would be entitled; for it was the act of God that intervened, and they ought not to suffer from it. If the children removed west, or from the homestead, or died before the five years had elapsed, either of these circumstances, or all of them, occurring in a family or families, would not lessen the right of the parties; for if the children were living with their parents at the date of the treaty, the rights would be then consummated and vested, and could not be altered afterwards, if the registration was properly made, and the head of the family continued the possession for five years.

I was of opinion that no allowance could be made for adopted children; but the late Secretary overruled me, and directed "that all who are reported to have been actually members of a Choctaw family, adopted into it as children, and for whom the head of the family provided, are to be regarded as children according to the well-known usages of the Indians; but if they appear to be orphans, or to be returned as children of other families, they cannot be included among the family into which they are adopted."

The law provides for the cases of deceased Choctaws, by requiring that land shall be given or scrip issue, as the case may be, to their heirs and legal representatives.

If the whole of the parents' improvement is sold, the entire right to land under the 14th article is gone, although there may be vacant land adjoining, sufficient to fill the children's claims—and scrip, in my judgment, should be awarded for the whole. So, if the adjoining lands are sold, and the improvements remain unsold, there must be land enough unsold, embracing as indispensable the improvement of the parent or a part of it, to cover the whole claim, to entitle to land; otherwise, scrip must be awarded for the whole claim. There would, it is thought, be a part awarded in land and a part in scrip, but the entire right, parents and children, be denied in one or the other. These remarks are made of those cases where no locations have been made for the Indians. Where locations have been made, I am of opinion that a sale by the United States of any part of the location will deprive the several claimants thereof of any right to land, and throw them upon scrip.

When there are several claimants to the same section of land, by improvements, I would recommend that you should divide it into as many portions as possible, giving to each a part of his improvement, which will bring him within the law; and if there is adjoining unsold land sufficient to fill all the claims, award land; if there is adjoining unsold land to satisfy only one claimant, or two or three or more claimants, but not all, the lots might be drawn; or if they cannot agree to this or some other mode of adjustment, the oldest persons and occupants ought to have it, and the rest receive scrip. If there should not be adjoining land unsold sufficient to satisfy a large claimant or claimants, (for the extent of the claims will vary according to the number of the family of children,) he or they would be, of course, out of the question. So, if there should be several of this kind, and the drawing of lots or preference, on account of length of occupancy, be confined to those who could by possibility be accommodated with land. If there should not be unsold land to fill any one claim, it follows that all must take scrip.

These views, except the last, are taken chiefly from a report made by me to the late Secretary of War, which, with the exception as to adopted children already referred to, and one other not material to note here, was approved by him.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

HON. MESSRS. J. F. H. CLAIBORNE.

WILLIAM TYLER.

RALPH GRAVES.

O.

WAR DEPARTMENT,
Office Indian Affairs, April 28, 1843.

GENTLEMEN: I have been informed that a number of cases, in which testimony was taken by Messrs. Claiborne and Graves before Mr. Tyler was appointed a commissioner, and became a member of your board, will be taken up for adjudication early in May next, and that an opinion is entertained that these cases ought to be disposed of and reported upon by the two commissioners who took the testimony, without the assistance of their associate, who was not present when the evidence was adduced.

I apprehend that difficulty may arise out of such a course, and that it will deprive the public and the parties interested of the benefit which I presume was a leading object with Congress in fixing the number of the board at three, viz: that there should be a positive decision in every case. If two gentlemen alone sit in deciding, and they should be divided, the claim falls, which places it in a position of disadvantage that it ought not to occupy.

The Secretary of War being absent from the seat of Government, on a visit to Pennsylvania, I have had a conference with the President of the United States this morning on the subject, who is of opinion that the full board of the three commissioners should sit in making decisions and reports upon the cases referred to. He does not perceive why the commis-

sioner who was not present when the testimony was taken should not be entirely competent to the discharge of this duty; the evidence can be examined by him, and a conclusion arrived at with as much certainty as if he had participated in the taking of it; particularly, as he will have the benefit of conversing and consulting with his brethren, who were in session from the organization of the commission.

I have therefore to request, with the decided concurrence of the President, that the cases alluded to, with the testimony taken in each of them, may be examined by the entire board of three commissioners, and such decisions made and reported as may result from their joint deliberations.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

Hon. Messrs. J. F. H. CLAIBORNE,
RALPH GRAVES,
WILLIAM TYLER, }

Herbert's P. O., Neshoba Co., Miss.

P.

YAZOO OLD VILLAGE,

Neshoba County, Mississippi, April 29, 1843.

SIR: We have the honor to acknowledge the receipt of your letter of the 31st March last, in which you forward us an additional list of claimants to that contained in your letter of that date; also, transmitting us the proof in the cases for the examination and decision of the Choctaw commissioners.

Very respectfully, your obedient servants,

RALPH GRAVES.
WILLIAM TYLER.

Hon. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

Q.

YAZOO OLD VILLAGE,

Neshoba County, Mississippi, April 29, 1843.

SIR: We have the honor to acknowledge the receipt of your letter of 31st March last, in which you give us a list of certain Choctaw claimants, under the 14th article of the treaty of 1830, acted upon by the former board of commissioners, who failed to designate the tracts of land upon which the claimant lived at the date of the treaty. You desire us to obtain proof of the then residences of these claimants.

We have the honor to be, very respectfully, your obedient servants,

RALPH GRAVES.
WILLIAM TYLER.

Hon. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

R.

YAZOO OLD VILLAGE,

Neshoba County, Mississippi, April 29, 1843.

SIR: We have the honor to acknowledge the receipt of your letter of the 10th instant.

You enclose us a list of Choctaw claimants, reported to the department by Messrs. Murray and Vroom, under the 14th article. You desire us to ascertain which of these claimants relinquished or offered to relinquish any reservation to which he was entitled, and to report the result to your department.

We will speedily take steps to ascertain the facts in the cases, and report the result to your office.

We are, with great respect, your obedient servants,

RALPH GRAVES.
WILLIAM TYLER.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

S.

HERBERT'S POST OFFICE,

Neshoba County, Mississippi, May 8, 1843.

SIR: I have the honor to report to you that I am again at my post, in the discharge of my official duties. I deem it necessary to report myself thus formally, as I perceive you have been notified of my absence, and that your communications are therefore addressed exclusively to my colleagues.

On the 27th of March, Mr. Graves and myself concluded all the business submitted to us at Hopahka, and addressed you letter No. 1, herewith enclosed. On the same day we entered an order on the journal, of which I send you a copy herewith, and in pursuance of that order the accompanying notice was inserted in the leading newspapers of this State.

It was distinctly arranged between Mr. Graves and myself, that the duty of receiving applications, or, in other words, of docketing claims, should be confided to the secretary, as had been done by the former board. It is a mere clerical duty, requiring, as you know, the production of no evidence, and no particular form, being a simple notice of a claim, and a demand for trial at a future day, when the proofs are to be submitted. You will readily perceive that such an application may be made and verified before a justice of the peace, and brought or sent to the secretary to be filed, just as suits are docketed by our clerks, and in conformity with the usage of all courts and of similar commissions. This is the view I have taken of this matter, especially since the Government has provided for the subsistence of the Indians. If required to be in attendance on the board at this informal and preliminary stage of the proceeding, they must necessarily be fed. If they remain on the ground until their claims are ready for trial, weeks may perhaps intervene; or, if they return home after filing these applications, they must travel back a second time to the

board when their cases are taken up. My view, in which I doubt not your better judgment and experience will concur, would require a Choctaw only to be present when the board has begun to *examine* cases, by taking testimony, and thus great expense for subsistence may be avoided, and to the claimant the vexation and inconvenience of a double journey.

With these impressions, and with a positive arrangement with Mr. Graves, notorious to all around, that the board would *not* meet until the first of May, and that the secretary only would repair to this place to receive and file applications or notices of claims; I left, on the 28th March, for the first time since my appointment, on a visit to my family, though only two and a half days' travel from home. The board would have adjourned on that day until the 1st of May, in pursuance of agreement, but my friend, Mr. Tyler, had just arrived, greatly fatigued by his journey, and he preferred remaining at Hopahka a few days, and the office was kept open to transact any business that might incidentally arise. Nothing however was done, as the journals show; and on the 1st day of April adjourned, and letter No. 2, of which I enclose a copy, was addressed to you.

I am satisfied, when Mr. Tyler signed this letter, he was not apprized of, or at least did not recur to, our last order, and the notice based thereon, which bound us to assemble here on the 1st of *May, for the adjudication* of the two hundred and fifty cases examined at Hopahka. Nor could he (being then new in the intricate duties of his office) have seen how much the course suggested in this letter (No. 2) would obstruct the adjustment of these claims, so desirable to the department and to the people of Mississippi; nor could he have reflected on the censure, mistrust, and complaint, that this sudden change of action, after public notice to the contrary, would occasion; and that no notice of this change was given to me, nor did I even hear of it, or the reasons for it, until my arrival here a few days ago.

I however advert to all this, not to censure or complain, but for the purpose of explaining, that, if absent, it was in pursuance of a positive official arrangement with Mr. Graves; and that, in conformity with this arrangement, I came to this place on the 2d instant, about the time appointed for the board to assemble; for it was never contemplated, after adjourning at Hopahka, that it would organize *until* the 1st instant.

My object in accepting the office conferred by the President was to accomplish, as speedily as practicable, the benevolent views of Government in relation to these unfortunate yet interesting people, and thus contribute to their early removal west—the only means by which they may be preserved from rapid demoralization and ultimate extinction. Their removal has long been a primary object in this State, and my course, since 1829, in our Legislature, has identified me with this policy. Finding, when I first arrived at Hopahka, that certain advisers of the Indians were opposed to their emigration, I resolved to exert every means in my power to carry out your views. Mr. McRae, the emigrating agent, addressed the Indians in council, and, in reply, their legal advisers prepared a very elaborate and able answer, positively refusing on their part to emigrate in any contingency—an answer which, I am bound to concede, reflected the then existing sentiments of their clients. I immediately set to work on Colonel Cobb, (the most influential and wealthy man of his tribe,) who had previously adopted me as his son, according to the ancient usages of his people; I caused him secretly to assemble, at his own house, at night, every

captain upon whom he could rely ; and I met them, without the knowledge of any one but Mr. McRae and our interpreter, who may be fully depended on. They were, to a man, violently opposed to emigration, and had adopted the views of the written answer prepared for them ; but, after a full review of the object and policy of the Government, I prevailed on them to agree to reject this answer, and to give a qualified assent to the proposition of the agent, which they did the next day. I suggested a substitute for this answer, verbally, which Colonel Cobb next day delivered. Mr. McRae has sent you a literal copy, and I enclose a more free translation from my pen. Up to this moment, the secret of this change of action on the part of the Indians has not been unmasked, and I have organized matters in such a way that I can at any time *privately* convene the head men of the Cobb Indians who reside west of Pearl river, and are the most intelligent and influential of the tribe. I shall set to work to acquire a similar influence here—an influence to be created more readily, because I am recognised as a native of their own land, a friend of their just rights, and their old warriors served under my father during the Creek campaigns.

I wish, sir, to impress it upon you that the Choctaws have been universally (under improper influences) averse to emigration. They constitute the anti-treaty and anti-Lafloore party. Their traditions, religious prejudices, personal views, and the advice of interested persons for years back, all combine to strengthen this opposition ; and to counteract it, strong influences must be brought to bear. I soon perceived it was indispensable to secure their confidence ; and I am now persuaded, with the aid of Mr. McRae—a gentleman of fine talents and address, of high personal character and popularity, and a most efficient agent—we shall be able to effect your views in regard to emigration.

But, to accomplish this, the early adjustment of their business, on the basis contemplated by law, is indispensable. Whether the course proposed to be pursued by the board in their letter of the 1st of April is likely to facilitate your views, you can best determine. I beg leave most respectfully to suggest the plan I think best calculated to accomplish the views of the department, after having surveyed the whole ground in person, and minutely observed every movement :

1. The duty of receiving applications, or filing notice of claims for future examination, should be confided to the secretary, so that the board may occupy itself with more important business. These Choctaws are represented by attorneys, who will prepare the applications, have them duly sworn to, and sent or delivered to the secretary to be filed, thus dispensing with the attendance of the party until the examination of cases and the taking of testimony shall be commenced ; and then, if the application be unfounded, and the claim not sustained, it will of course be rejected.

2. Instead of migrating from point to point, the board should establish one permanent central office, central to the great body of the Indians, where all claimants would attend in person, with their families and their witnesses. At the point thus established, the agent could locate his depot of provisions, and be able to make his arrangements on the most economical scale. But, if we continue moving from point to point, at short intervals, it will be impossible for him to make such arrangements. He will be compelled to purchase supplies, on short notice, in the vicinage of the points thus selected, and combinations will be formed to raise prices, and

thus thousands of dollars will be lost to the Government. No place more central, convenient, and healthy than this can be selected; and here, I think, we should be ordered to remain permanently.

3. We should be required to adjudicate a case *as soon as it is examined*, thus letting the judgment follow the evidence; so that, as fast as we confirm a case, it may be sent to be acted on by the department, and the scrip be transmitted to Mr. McRae for the claimant. These unlettered people consider they have been badly used; they have become distrustful and suspicious, and require some *tangible* evidence of the good intentions of Government—some positive proof that they *are* to be indemnified—before they will turn their eyes to the west.

I feel bound to say that, if we be constantly moving; if the Indian be encouraged to plant and make crops; if we postpone adjudication or the examination of cases, and devote months to the mere performance of what our clerk may perform, not one-third of the business confided to us will be transacted before the term to which the commission is limited expires. I had hoped, by bringing this intricate business to a close within or before the expiration of the term, not only to accomplish the favorite policy of my State and of the department, and especially of the important arm of it directed by yourself; to establish some reputation for myself; to preserve the remnant of this unhappy people; but also to add to the strength and popularity of the administration in Mississippi at this important juncture.

My colleagues contemplate proceeding to Garlandville, forty-five miles distant, on the 15th instant, to docket claims, and of course to postpone adjudication or the examination of cases; but, if my suggestions elicit your approval, as I am bound to believe they will, I trust you will direct us to reassemble here immediately, and make this our permanent location. I do not think Mr. Tyler would consent to go there, had he not committed himself before my arrival, and before I could submit these views to him. This point is so central—so much the *nucleus* of the whole Indian population, in the very heart of their ancient towns—that all these applications may be filed, and the Indians brought here, without inconvenience.

I am happy to inform you that the major part of the attorneys for the Choctaws have changed their ground, and seem now disposed to co-operate with the agents of the department, as to emigrating the Indians.

I take great pleasure, too, in saying that Mr. Tyler (first suggested by me to the President) is exceedingly well received, and he has won universal confidence and esteem among all the conflicting interests and parties around us.

General Anderson has arrived here. I anticipate much from his talents, energy, and high character. He and Mr. McRae have seen and fully concur in the views of this letter. My address will continue to be at this post office.

I have the honor to be, with great respect, your most obedient servant,

JOHN F. H. CLAIBORNE,

President Board Choctaw Commissioners.

HON. T. HARTLEY CRAWFORD,

Commissioner of Indian Affairs.

Endorsement by the Commissioner.

Respectfully referred to the Secretary of War.—May 19, 1843.

T. HARTLEY CRAWFORD.

S 1.

HOPAKKA, LEAKE COUNTY, MISSISSIPPI,

March 27, 1843.

SIR: We shall adjourn, in a few days, at this place, and open an office at the Yazoo Old Village, in the county of Neshoba, on the 3d day of April. Our address will be, Herbert's Post Office, Neshoba county, Mississippi, via Charleston, South Carolina, and Livingston, Alabama. The Hon. William Tyler, of Virginia, arrived yesterday, and took his seat at the board. We have taken the testimony in some two hundred and fifty odd cases, (besides transacting much other business,) and shall probably proceed to adjudicate them early in May.

JOHN F. H. CLAIBORNE.
RALPH GRAVES.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

S 2.

HOPAKKA, LEAKE COUNTY, MISSISSIPPI,

April 1, 1843.

SIR: We have the honor to inform you, that we have, to-day, adjourned at this place, to meet at the Yazoo Old Village, in Neshoba county, Mississippi, on the 3d instant. Our colleague, Mr. Claiborne, left on the morning of the 28th ultimo, on a visit to his family.

The board propose, for the next two or three months, not to examine testimony in any new cases, but to go from point to point convenient to the claimants, merely to receive such claims as may be prosecuted, and have them docketed and filed. The board has come to this determination for several reasons—1st, to enable the claimants to file their claims before the 23d August next; and, secondly, to enable them to make a crop this year, as, by this course, they will not be required necessarily to be absent from home more than two days, perhaps, during the cropping season.

RALPH GRAVES.
WILLIAM TYLER.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

KK.

JACKSON, *May 10, 1843.*

DEAR SIR: Since my arrival here, reports have reached me that great frauds are now being perpetrated upon the Government and the commissioners under the act of Congress for the adjustment of the Choctaw claims. These reports are, that it will be attempted to prove that there are eight thousand Indians now in Mississippi entitled to claims, whereas it is alleged that the real number is not near so great. I know nothing of the

truth or falsehood of these reports, nor have I any means of ascertaining the facts. Indeed, I do not know, except by rumor, who are the holders of these claims, or what is the nature of the contract between them and the Indians. It is due, however, in my opinion, as an act of justice, as well to the Government as to the individuals implicated in these reports, that they should be investigated immediately. Permit me, then, to suggest the appointment forthwith of some agent of undoubted firmness and integrity, with instructions to proceed immediately to this State, and take an accurate census of all the Indians, and identify them with those presenting claims, so as to prevent any fraud or imposition, if any should be attempted, and if not, to put an end to reports so injurious to the reputation of the holders of these claims.

Yours, with the highest respect,

R. J. WALKER.

His Excellency JOHN TYLER,
President of the United States.

S 3.

Ordered, That an office be opened at the Old Yazoo Village, at the late residence of Colonel James Elliott, in the county of Neshoba, on Monday, the 3d day of April next, to continue open until the 15th of May, when and where all persons concerned can file their claims under the 14th and 19th articles of the treaty of Dancing Rabbit creek and the supplement thereto. An office will be opened at Garlandville, in the county of Jasper, on the 17th of May, for a like purpose.

All claims should be filed as early as practicable, as, by the terms of the act of Congress, they will be absolutely barred after the 23d of August next.

The board of commissioners will proceed, on or about the 1st of May, at the Yazoo Old Village aforesaid, to adjudicate the cases in which testimony has been taken heretofore.

Entered upon the journal, 27th March, 1843.

S 4.

BOARD OF CHOCTAW COMMISSIONERS,

Hopahka, March 27, 1843.

Ordered, That an office be opened at the Yazoo Village, at the late residence of Colonel James Elliott, in the county of Neshoba, on Monday, the 3d day of April next, to continue open until the 15th May, when and where all persons concerned can file their claims under the 14th and 19th articles of the treaty of Dancing Rabbit creek and the supplement thereto. An office will be opened at Garlandville, in the county of Jasper, on the 17th day of May, for a like purpose.

All claims should be filed as early as practicable, as, by the terms of the act of Congress, they will be absolutely barred after the 23d of August next.

The board of commissioners will proceed, on or about the 1st day of May, at the Yazoo Village aforesaid, to adjudicate the cases in which testimony has been taken heretofore.

By order :

P. BAYLEY, *Secretary.*

APRIL 8, 1843.

S 5.

WAR DEPARTMENT,

Office Indian Affairs, May 22, 1843.

GENTLEMEN: A communication was received from two of your board, (Messrs. Graves and Tyler,) dated 1st April last, informing the department that the board had adjourned at Hopahka, to meet at the Yazoo Village, in Neshoba county, on the 3d, and proposed, "for the next two or three months, not to examine testimony in any new cases, but to go from point to point, convenient to claimants, merely to receive such claims as may be presented, and have them docketed and filed." This course the board think advisable, to enable the claimants to file their claims before the 23d August next, as well as to enable them to make a crop this year, as, by this course, they will not be required necessarily to be absent from home more than two days, perhaps, during the cropping season. This letter was answered on the 18th April, and the course suggested approved. Since, (viz: on 19th instant,) a letter has been received from Mr. Claiborne, dated 8th instant, in which a different plan of proceeding is suggested as more judicious: He is of opinion that the receipt, docketing, and filing of claims may be very well confided to your secretary, as they will be prepared generally by counsel, who, having put them into form, will forward them to the secretary, in the absence of the party claimant, whose presence is unnecessary until the examination of the cases and the testimony in them is commenced. While this branch of the business is doing by the secretary, he thinks the board should establish itself at some great central point, than which, in his judgment, none is better than Herbert's Post Office, where they should proceed to adjudicate each case as soon as it is examined, and forward the decisions, as soon after made and as rapidly as practicable. For his opinions many reasons are given, which it is unnecessary to detail.

This discrepancy of view between the gentlemen composing the board of Choctaw commissioners, and the importance of communicating the opinion of the department, in the judgment that its head might form on the subject, induced me to refer the several communications herein recited to the Secretary of War, a copy of whose opinion, of this date, I now enclose.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

HON. J. F. H. CLAIBORNE, }
 WILLIAM TYLER, }
 RALPH GRAVES, }

Herbert's P. O., Neshoba Co., Miss.

S 6.

WAR DEPARTMENT, *May 22, 1843.*

DEAR SIR: I have read the letter of Mr. Claiborne and the notice issued by Messrs. Graves and Tyler. I have heretofore expressed an opinion that the cases ought to be decided as they are heard, and before any of the circumstances attending them can slip the memory; and hence, *the sun should never go down* upon an undecided case in which the testimony has been heard.

The commissioners had better fix upon some central place in which to hold their sessions, and there proceed to hear and decide cases as they are brought forward; and let their secretary or clerk receive claims, in order to let them in within the time provided by law.

Yours, truly,

J. M. PORTER.

T. H. CRAWFORD, Esq.

 T.

HERBERT'S POST OFFICE,

Neshoba County, Mississippi, May 13, 1843.

SIR: I had the honor to address you, at length, a few days since, on the propriety of our establishing a permanent office, with a view to the accommodation of the disbursing agent. By the enclosed paper, you will perceive my objects more fully stated, and they have been adopted by the board.

Mr. Tyler, very much to my regret, left to-day for Virginia, where he is imperatively called by private business. He will present you a few cases upon which we have rendered judgments—cases examined by Mr. Graves and myself at Hopahka, and which are nearly similar in their character to those that remain for adjudication. The most of the cases now on file are suspended, on account of Mr. Graves's difficulty on points of construction, stated in our letter sent by Mr. Tyler; and, also, in consequence of his insisting that we are bound, under the enclosed notice, to suspend the adjudication of cases, and proceed to Garlandville, to receive and file notices of claims or applications of claimants—a business that our secretary might well attend to, while we progressed with the important work of adjudicating cases examined months ago. In the order herewith transmitted, we agreed to open an office at Garlandville for the filing of claims, but, in the last clause, we notified the parties concerned that the board of commissioners would commence on the 1st of May adjudicating the claims examined at Hopahka. By this notice, I considered the board bound to remain here; and this course would have enabled us to transmit you several hundred cases in a few weeks.

My colleague, however, thinks otherwise. We have determined, therefore, to open an office at Garlandville, and, as the duty to be performed is a mere clerk's duty, I shall devote most of the interval until we reassemble here to association with the leading Choctaws, to remove, if possible, their objections to emigration.

Mr. Tyler has fully informed himself of our business, and I beg to refer

you to him for his views of these claims, and the character and disposition of the Indians in reference to emigration.

I have the honor to be, with high respect, your most obedient servant,

JOHN F. H. CLAIBORNE,

President Board of Choctaw Commissioners.

HON. T. HARTLEY CRAWFORD,

Commissioner of Indian Affairs.

T 1.

BOARD OF CHOCTAW COMMISSIONERS,

Hopahka, March 27, 1843.

Ordered, That an office be opened at the Old Yazoo Village, at the late residence of Colonel James Elliott, in the county of Neshoba, on Monday, the 3d day of April next, to continue open until the 15th day of May, when and where all persons concerned can file their claims under the 14th and 19th articles of the treaty of Dancing Rabbit creek and the supplement thereto. An office will be opened at Garlandsville, in the county of Jasper, on the 17th May, for a like purpose.

All claims should be filed as early as practicable, as, by the terms of the act of Congress, they will be absolutely barred after the 23d of August next.

The board of commissioners will proceed, on or about the 1st of May, at the Yazoo Village aforesaid, to adjudicate the cases in which testimony has been taken heretofore.

By order:

P. BAYLEY, *Secretary.*

APRIL 13, 1843.

T 2.

Whereas the practice of itinerating from point to point has been found, by experience, not to contribute to the despatch of the business of this commission: and whereas the Government of the United States has provided by law for the subsistence of the Indians during their attendance on this board in the prosecution of their claims, and has appointed an agent for that purpose, and for the enrolment of the Indians for emigration, who is ordered to attend on this board, and with whom it is expected by the Secretary of War and Commissioner of Indian Affairs this board shall co-operate, and aid, as far as may be, in executing the objects of his agency, viz: the subsistence and emigration of the Indians as rapidly as their claims can be adjudicated; and, in order the better to enable said agent to carry out the views of the department upon the most economical scale, and to have sufficient time for the purchase and concentration of the supplies necessary, which have chiefly to be drawn from the Mississippi river, and thus avoid combinations to raise the price of provisions, which are likely to be formed where the agent has to purchase on short notice, in country neighborhoods, it is desirable that this board should open a suitable permanent office, as central to the Indians and as convenient to the river mar-

kets as practicable, having due regard to health and mail facilities, and to its eligibility as a point where the Indians may rendezvous for emigration: and whereas it is inexpedient to designate any village or county town for the location of such office, on account of the difficulty of controlling the Indians and restraining them from intoxication, thereby retarding the business of this board—an object which should be kept in view, not only for the sake of humanity, but from a due respect to the recognised and benevolent policy of the President of the United States and the Indian department, whose efforts to reform and ameliorate the condition of the Indians, and to cut them off from all access to spirituous liquors, surpassed those of any preceding administration, and deserve the gratitude of mankind: Therefore,

Resolved, That this board adjourn at Garlandsville on the 3d day of June, to reassemble at this place on the first Monday thereof, for the examination and adjudication of claims and other business; whence it will adjourn, on a day hereafter to be designated, to meet and hold its sessions permanently at the house of Logan Harper, in the county of Leake, on the main eastern stage route, one mile from Hopahka post office, that being the point most central to the Indians and convenient to the river, furnishing daily mail facilities, noted for its health, and most eligible as the point from which the Indians may be transported to Vicksburg for emigration.

U.

HERBERT'S POST OFFICE,
Neshoba County, Mississippi, May 20, 1843.

SIR: I have just had the honor of reading your letter of the 28th ultimo, in which you say: "I have been informed that a number of cases, in which testimony was taken by Messrs. Claiborne and Graves before Mr. Tyler was appointed a commissioner and became a member of your board, will be taken up for adjudication early in May next, and that an opinion is entertained that these cases ought to be disposed of and reported upon by the two commissioners who took the testimony, without the assistance of their associate, who was not present when the evidence was adduced."

I beg leave, most respectfully, to suggest that the information thus given to you was erroneous. No such proposition was ever made to the board, by the Choctaws or by their attorneys, nor by any member of the board. The cases alluded to were all examined at Hopahka, and all the parties interested were represented by the Hon. S. S. Prentiss, the Hon. John B. Forrester, and the Hon. John J. Guion, gentlemen of the highest personal and professional distinction in this State, the two former well known in Congress, and the last now a Senator in our Legislature, and equally distinguished as a judge and as a lawyer. I am authorized by these gentlemen to say, and I declare upon my own own authority, that they never entertained such a suggestion themselves, and never heard it suggested by any one else. On the contrary, it was a matter of congratulation with *every one* when Mr. Tyler arrived. The *parties*, relying upon their ability to make good their claims, were anxious to have the weight of his name

and character; and I was equally pleased, not only because I had first suggested his appointment, but because I had become satisfied that without his aid and co-operation the business of the commission would be never closed, and the whole concern become ridiculous and detestable.

I deny, therefore, broadly, flatly, and unqualifiedly, that such a proposition was ever made; and if the information was communicated to you officially, or by any person connected with me by an official relation, I must respectfully request you, in justice to myself and to other parties concerned, to inform me. The information was evidently communicated with no honest or honorable design; and it furnishes sufficient cause, and indeed imperatively calls on me, to place before you a detailed statement of our proceedings up to this date, and the circumstances that have embarrassed our action. This detail shall be based upon our records, and will show, that if this commission has accomplished scarcely any thing in five months; if it has settled no principles to regulate the decision of cases; if it has made no report; if it has exerted no moral influence towards accomplishing the emigration of the Indians, so long the favorite object of our Legislature and of our General Government; if, in fact, it has lost the confidence of the Choctaws and the respect of the public—it has been by no fault of mine, and by no want of exertion on my part to carry out the views of the President, of the department, and of Congress. Nor can the slightest censure be attached to my excellent colleague, William Tyler, Esq., who arrived at Hopahka just as we had closed the testimony, and was compelled to leave about the time we commenced the work of adjudication. He left behind him the most favorable impressions with all classes and parties.

I have no doubt that the information communicated to you was predicated on a resolution submitted by me to the board, on the 23d of March, before Mr. Tyler's arrival, (of which I enclose a copy,) and more particularly on the fourth point in the resolution. The object of this resolution was to *compel* my colleague, Mr. Graves, to proceed with the business of the commission. We had then on file ample proof that the protest of Kirksey and Poindexter was a mere bugaboo, conjured up for the most mercenary objects; and there was no reason why we should not proceed to adjudicate the seventy cases that were ready to be adjudicated on the 17th January, when that protest was filed. My colleague opposed the motion, however, (notwithstanding he had been ready to adjudicate and report some seventy cases on the 15th January last, as you will see by reference to our letter of that date to you, in his handwriting,) on the ground that the third commissioner had not arrived. No adjudication was therefore entered upon. After Mr. Tyler arrived, Mr. Graves felt a delicacy, he said, in adjudicating, because we were living at the house of Colonel Forrester, an attorney for the Choctaws—the only place at Hopahka where we could be comfortable, and a gentleman whose high sense of honor as well as characteristic modesty were sufficient guarantees that he would not, as he never did, approach us on the subject, even if we *could* be biased by such influences. Thus adjudication was a third time delayed. It was then agreed (not for the purpose of ruling off Mr. Tyler, but in order that he might have time to recover from his fatigue, and inform himself of the business) to adjourn from the 27th March to the 1st of May, when we were to meet at the Yazoo Village, and *adjudicate* the cases examined at Hopahka. Public notice was given of this intention,

and on the day appointed the parties concerned were in attendance. Mr. Graves again threw every obstacle in the way, suspended almost every case, upon points of construction that have been long since settled, and insisted that we were bound to *suspend adjudication*, and repair to Garlandsville to *docket* claims. Thus again our business is suspended, and I with difficulty dissuaded the Hon. Mr. Prentiss from withdrawing all his Hopahka cases, (some two hundred and seventy,) and commencing actions of ejectment in our courts against the citizens who purchased and occupy these Choctaw lands—a measure that would produce the most violent excitement here against the commission, and the administration by whose favor it exists and with which it is identified; and which, by recovering for the Indians land, and not scrip, would fix them here permanently, and thus defeat the cherished policy of Mississippi—a policy which I am identified with, and to accomplish which is the only possible motive that could have induced me to remain in a commission which is losing all claim to respect or confidence.

In a day or two I will transmit you the statement alluded to, based on our records. As you conferred with the President on the subject of your letter, I have to ask, as a personal favor and an act of justice, that you submit this letter to him also, *denying* that it was ever proposed to exclude the third commissioner.

I have the honor to be, most respectfully, your obedient servant,

J. F. H. CLAIBORNE.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

U 1.

Resolution submitted by Mr. Claiborne on the 23d March.

Whereas, on Wednesday, the 22d instant, a resolution appended to and forming part and parcel of a statement, submitted and now on file, concerning the transactions of this board, was offered, in the words following, to wit :

“*Resolved*, That this board proceed forthwith to examine, adjudicate, and, at as early a day as practicable, report upon the cases that were under examination and advisement on the 17th January, but were suspended in consequence of the protest of Poindexter and Kirksey.”

And whereas the said resolution having been negatived by the vote of Ralph Graves, Esq., and it being expedient that it should be reconsidered and adopted, in order that this board may proceed, without further delay, to discharge its duties, with due regard to all parties, to what is believed to be the desire of the proper authorities at Washington, and in the true spirit and intent of the act of Congress constituting this board, and for the following reasons, to wit :

1. That, having no official notification of the appointment of a third commissioner, and no intelligence from the gentleman reported to have been appointed, there is no sufficient reason why business of any kind should be suspended until his arrival.

2. That, if appointed, the period of his arrival may be protracted for weeks.

3. That if he arrives, from the fact that he has not examined the testimony, or one of the numerous documents connected with the subject, he would either, in all probability, decline any action in the premises, or require one or [two] months for an examination of them.

4. That, *in strict law*, the parties litigant (*viz*: the United States and the claimants) would have a right to object to the rendition of a judgment by a commissioner who was not only not present when many of the cases were tried, but who was not in office at the time; and thus additional delay, injurious to public and individual interests, would be occasioned.

5. That this board, by the terms of the act of Congress under which it is constituted, is just as competent now to proceed, and it is just as obligatory on it so to do, as if its complement were complete.

6. That it is required to "report at short intervals," by the instructions of the department.

7. That the parties on both sides have a right to demand a final verdict.

8. That the *main* requisite necessary to constitute a 14th article claim is the fact of registry or signification of intention to be registered for the five years' stay. That this board has already, after argument in open court, argued as to what does constitute such a registry or signification of intention; and that the questions now to be settled are, chiefly, questions of details and of evidence, to arise during an examination and review of the testimony.

9. That the two points of difficulty suggested by Mr. Graves as cause for delay, and which are quoted in the statement filed by me yesterday, have been decided by the Department of War as far back as 1833, by the letters of the Hon. Lewis Cass and John Robb, acting Secretary, to George W. Martin, and which letters are on file in this office; and therefore that these points furnish no good reason for delay of judgment.

10. That this board is essentially, and to all intents and purposes, a judicial body, a court of record, of extensive powers and jurisdiction; and it is *required* to construe the treaty and laws, and questions arising out of the evidence, for itself, and enter judgment in every case where unity of opinion can be had.

11. That, in the event of a difference of opinion on any case or number of cases, the members of this board, when two only are in attendance, should report the facts, with their separate opinions thereon, to the supervising power at Washington, to whom the prerogative of final action has been confided.

12. That this board cannot, with due respect to itself or to its own powers and responsibilities, properly call on any department of the Government for a rule of action to regulate its decision upon cases examined exclusively by itself.

13. That there is no more propriety in a call by this board upon the authorities at Washington for their construction of the treaty and laws, so as to decide and adjudge the cases that have been or may be examined by this board in pursuance of the powers conferred upon it by the acts of Congress, than there would be in a call by the circuit judges of the United States upon the Supreme Court, before the rendition of judgment, both being under the same *obligation* to render judgment of the right of appeal lying to the superior tribunal.

14. That this board being a court of original jurisdiction, *specially charged* with the examination and decision of all unadjusted claims under

the 14th and 19th articles of the treaty of Dancing Rabbit creek, communications, from any source whatever, affecting their judgment upon any such claim examined by it, are to be regarded not as mandatory, but *advisory* merely.

15. That the judgments of this board not being final, but subject to review and reversal by a superior power of recognised ability and paramount responsibility, is an additional and cogent reason why its action should not be delayed.

16. That it is obligatory on the commissioners now present, in view of the interests of the Government, of the claimants, of the people of Mississippi, and of the known desire of the Department of War, to report as promptly as practicable upon cases upon which they can agree, without waiting for the uncertain contingency of the arrival of another commissioner, *whose aid and co-operation*, though HIGHLY DESIRABLE, are not *indispensable* to a correct judgment, and will not justify a suspension of business.

For these reasons, the reconsideration of the resolution of the 22d instant is removed.

(J) Mr. Graves objected.

NOTE.—It will be seen that all this occurred *before* Mr. Tyler arrived; after he had arrived, by common consent, the business of adjudication was postponed near a month, to have his co-operation.

Endorsement by the Commissioner of Indian Affairs.

Respectfully referred to the Secretary of War, with a request that he will lay the letter and its enclosure before the President of the United States, as desired by Mr. Claiborne.

T. HARTLEY CRAWFORD.

JUNE, 1843.

These discrepancies are unfortunate. Let a letter be written, advising vigilance, concert, and harmony.

J. TYLER.

JUNE 7, 1843.

U 2.

HERBERT'S POST OFFICE,

Neshoba County, Mississippi, May, 1843.

SIR: As I doubt not the commission of which I am a member has suffered in the estimation of the department by its dilatory course, and as I perceive, from your letter of a recent date, that a covert attempt has been made to induce the belief, at Washington, that a disposition had appeared here to exclude the third commissioner, I know not how I can better vindicate myself than by submitting to you, and through you to the President and the Secretary of War, the accompanying official papers.

Every allegation therein contained is supported by the records of the board.

I beg leave distinctly to express my conviction, that, if I had enjoyed the aid of Mr. Tyler during the first stages of our proceedings, half the business we are expected to perform would now have been concluded, and the commission would have reflected no discredit, on the administration.

I have the honor to be, most respectfully, your obedient servant,
 JOHN F. H. CLAIBORNE,
President Board Choctaw Commissioners.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

Endorsement by Commissioner of Indian Affairs.

Respectfully referred to the Secretary of War, with a request that he will lay the same before the President of the United States.

T. H. CRAWFORD.

JUNE 5, 1843.

U 3.

Suggestions by Mr. Claiborne,

As to the proper construction to be given to that part of the 3d section of the act of the 23d August, 1842, which provides that it must be shown that the Indian improvement was disposed of by the United States before the 24th February, 1836, and that the reservee was dispossessed by means of such disposition; made in reply to *Mr. Graves's* position, that a dispossession of an Indian by a white man, driving him off *before* the sales, or by pre-emption, does not amount to such a dispossession as the act of Congress contemplates, and that the Indian in such cases is not excused from the obligation of five years' continuous residence.

In the consideration of every question arising under the treaty between the Choctaws and the United States, and of the laws that have been enacted to carry out its provisions, that rule of construction should obtain which is most favorable to the Choctaws: 1st. Because it is so provided by the 18th article of the treaty itself. 2d. Because, by any other rule, *the valuable consideration* which was intended to be secured to the Indians, for the sale of a country worth ten times the purchase money actually stipulated for, would fail, and such failure would amount to a violation of the treaty. The propriety of this rule of construction is too palpable to require illustration.

Taking this for granted, and indeed as the only basis for the interpretation of treaties made between civilized and savage nations, let us consider that part of the 3d section of the act of 1842 which provides that, in certain cases, it must be made to appear that the Indian improvement was, before the 24th February, 1836, "disposed of by the United States, and that the reservee was dispossessed by means of such disposition."

The object of the 14th article was to provide an additional consideration to the Indian, for the sale of his country. The very title of the act of Congress, providing for the "*satisfaction*" of Indian claims under the treaty,

shows that it was passed with the view of providing for the Indian a broader and more liberal "satisfaction" than he could obtain by proceedings at law. If a mere technical and special pleading, pettifogging and *pie-poudre* interpretation be adopted, it is obvious that the law is useless, because the Indian may seek his remedy, equally favorable, and far more speedy and pacific, in our courts of justice. But such is not the rule the Government desires to adopt, and therefore it created the commission, where unsatisfied and ignorant claimants were invited to appear, without the apprehension of finding themselves circumvented by forms, technicalities, or specialties, but were to be placed at once upon the broad platform of the treaty, and be shielded by its spirit. Mr. Graves's view is directly hostile to this. He contends, that unless an Indian has been dispossessed by an actual sale by the United States, *at public outcry*, it does not amount to such a disposition of the land as the act contemplates. Dispossession, by a pre-emptor, or by an intruder settling in the nation, contrary to the provision of the treaty, does not release the Indian from the condition of five years' residence.

Such an interpretation is neither sustained by the language of the treaty, by the custom of nations in the interpretation of such treaties, by the rule provided by this treaty for its own interpretation, nor by the habits and character of the Indians, or the humane policy of the United States. The *act* must be construed with reference to the *treaty* and its objects. The treaty, when it imposed the obligation of five years' continuous residence on the 14th article claimant, also provided a guarantee, on the part of the United States, that his residence should be peaceable and undisturbed; that he should be protected from intrusion or violence, on the part of the United States or any of its citizens. If he performed his part of the condition as far as he could, having due regard to his peace and personal safety, his faith was perfectly kept, and his claim, so far as that condition went, perfected. Nor could he be required, by any invention of law, to jeopard his peace or safety, at any time, to retain possession of his premises. In every such case before us, it is clearly in proof that the Indian was driven off either by violence or by threats; by men who said they wished to cultivate the field; that they intended to buy it at the land sales; that the Indians had already been paid too much for the country, and must clear out. It is in proof that their fences were torn down, their crops ploughed up; that they were driven off without compensation; that they offered no resistance, but left in deep distress, complaining of oppression and the bad faith of the whites.

It will be conceded, I presume, that the Indian was only bound to keep possession so long as he could do so peaceably. But the adjudications in Tennessee (see Yergus's reports) have gone still further. There the courts have decided, that should the Indian be induced, *even by stratagem*, to remove from his improvement, that it amounted to such a dispossession as entitled him to set up his claim; and many have been, under such circumstances, recognised and confirmed, and that, too, under treaties and conditions analogous to those now being considered. And, to the same extent, I lay down the principle as applicable to these cases. But there is another point of view. Ours is a Government representing the highest state of civilized man, and therefore equally answerable under treaties for acts which they do not prevent as for those which emanate from their authority. Especially may this be assumed in the relations established by this treaty,

between the Indians on one side and the Government on the other, the respective condition of utter helplessness and absolute power being in direct contrast. That, therefore, which it is stipulated the Indian must do, he is only required to do upon the condition of protection by the United States. The condition is a *qualified* condition on the part of the Indian; unqualified on the part of the United States. The United States specially provided, in the 18th article, that no white person should settle within the ceded limits, nor the lands be sold before the Indians should remove. The Indians treated with the United States *upon this condition*, confiding in its will and its power to protect them while performing the conditions they voluntarily imposed on themselves to secure their rights under the 14th article. The Indian treated not at his own risk—not in reference to the form of title to lands, or the manner of bestowing them by the United States upon its own citizens, but in reference to the pledge and the power of the United States to protect him. If, therefore, the United States, with the view of gorging its Treasury, surveyed the Indian territory, tacitly *invited* settlers into it, and omitted to restrain them from intruding upon the Indians, it was in fact an unqualified *disposition of the land by the Government*: because the omission of the Government to restrain its citizens was a palpable infraction of the treaty, and releases the Indian from the condition of residence. The general policy that has obtained in this Government would in fact have rendered it *impossible* for the Indian to comply with his condition without the direct interposition of the authority of the Government, and he is therefore, on this ground, excused for its non-performance. I refer to that universal (and wise) permission by the Government to all its citizens to settle upon any territory which it has acquired, whether surveyed or not, and which privilege is now claimed and exercised as matter of right, not to be restrained—a claim repeatedly sanctioned by pre-emption laws, temporary and permanent. This privilege existed in its full force at the date of the treaty, and the Government must have been aware that its citizens would crowd into the country the moment it became public that a treaty had been concluded. Such was the case, and no effort was made to restrain its citizens from intruding on the improvements of the Indians.

This, of itself, then, was such a virtual disposition of the land as no Choc-taw could resist or prevent. The act of the Indian was to be peaceful and voluntary; but the omission, and, in fact, *consent* of the Government to the settlement of the territory by its citizens prevented him from performing it. The act of Congress never contemplated acts of violence on his part; he was to perform his condition peaceably, because he was dependent on Government. It is therefore not competent for this commission to set up such a construction as will presume the fiction that the relations of the parties had been reversed—that the Government had become helpless and the Indian powerful; but they must be believed now as they were then. The *obligation* of protection never ceased for an instant, although, when it *practically failed*, it was (in the only sense in which the act of Congress can be reasonably construed) such a "*disposition*" of the land as defeated the possession of the Indian, and therefore violated the treaty.

This construction of the law has obtained with the Government itself, for the reason that the act was not made to overrule the treaty, but to carry it out, and to provide "*satisfaction*" for injuries inflicted by the neglect of the Government. It would be in bad faith to presume any thing else. The

whole basis of legislation upon this subject is the treaty itself. And the proviso in the 18th article, providing that in all cases of well-founded doubt the construction shall be most favorable to the Choctaws, applies directly to the several acts of Congress. It is therefore clear that any Indian who has been dispossessed by a white man, whether by violence, by pre-emption, by stratagem, by threats, or by sale at public outcry by the United States, is absolved from the condition of five years' continuous residence on the improvement he occupied at the date of the treaty.

To this may be added, also, most truly, that the history of the progress and termination of the treaty, and the conduct of Ward, the agent of the Government, give additional equity to the claim of the Indian. This has been felt by the Government very strongly, and exerted a due influence upon Congress to induce the revival of the commission, with the two-fold object, 1st, of satisfying the just claim of the Indian, and removing him to his home in the West; 2d, of quieting titles in Mississippi, and relieving us of a population not desirable, and with which we can never become socially or politically identified.

If the United States could be sued, these Indian claims could not be registered in a court of law; and therefore, in a spirit of justice and magnanimity, Congress, at the instance of the department charged with the Indian concerns, created this tribunal for the express purpose of rendering satisfaction to the honest claimant, and to place him where it was intended by the treaty he should stand. In this connexion it may be proper to remark, that the 14th article alone effected the treaty, as is fully in evidence; and the provision of the 18th article, relative to its liberal construction. These articles, in order to give them due weight with the Indians, were more broadly construed on the treaty ground, by the Secretary of War, than I construe them.

All the difficulties growing out of this treaty spring from the neglect of the Government in permitting the Indian to be dispossessed—a neglect of which it was at the time conscious; for it made an effort to prevent intrusion by military force, and by instructions to the district attorney, but found its efforts ineffectual, and abandoned them—and by the conduct of the agent, Ward, in refusing to permit the Indian to perform the very initiatory act necessary to constitute a 14th article claim. From these two causes spring the wrongs of which the Indians complain; and, in good faith and equity, all that the Government has now to do is to indemnify the honest claimant, as speedily as may be, under the scanty provisions of the act of 1842. If he had not been dispossessed, and had been permitted to perform the condition of five years' residence peaceably, his land, in many instances, would have brought \$20, and even \$30, per acre. Now, it [will] not average \$1 25; and the scrip, from the amount issued, must depreciate below that minimum. All that we have to do, however, is carry out the spirit of the law, and preserve, by our decisions, the faith of the Government and the rule of construction presented by the treaty. In any other view, we set up the odious principle, that a nation may take advantage of its own wrong, and encumber a helpless people with restrictions and conditions they can never perform. The justice of the opposite position consists in two principles: the one, that nations, no more than individuals, shall profit by their own wrongs; the other, that nothing shall be done the tendency of which is to impair or destroy the right of a single individual, without being followed by ample redress and in-

demnity. These two principles have the sanction of all mankind; they are founded on the immutable principles of justice, and no Government can depart from them without a stain upon its character.

The unhappy condition of these people—the very period to which their claims have been protracted—is of itself an appeal to the liberality of our Government. For twelve years these children of the forest have wept over the loss of their country and the individual injuries inflicted upon them. They stand now with their gyves upon their wrists, while they stretch forth their hands to grasp that broken instrument called a treaty. In the name of humanity, then, of honor and of good faith, let them have justice. Let us act as the agents of an enlightened and benevolent Government, and not as miserable alms-house purveyors; as judges, requiring *strict proof* in establishing a claim, but construing the treaty and the law on liberal terms.

JOHN F. H. CLAIBORNE.

YAZOO VILLAGE, MISSISSIPPI, *May* 10, 1843.

U 4.

[A.]

Statement submitted by Mr. Claiborne, at Hopahka, on the 22d March, 1843, in reply to a paper filed by Mr. Graves on a previous day.*

The board of commissioners appointed to investigate and adjudge the unsettled claims arising out of the treaty of Dancing Rabbit creek commenced its session at this place on the 19th of December, 1842, two of the commissioners (viz: Ralph Graves and John F. H. Claiborne) being in attendance. It was mutually understood between them, in pursuance of what they believed to be the desire of the War Department, and for reasons *personal to themselves*, that it would be expedient and proper to make a report at the earliest possible day. They had no doubts of their competency or obligations to do so. They proceeded, *with this understanding*, to collect testimony; and, on the 28th of December, they addressed letters to the registers of the land offices at Columbus and Jackson, in the State of Mississippi, requiring information as to what lands claimed by the Choctaws had been sold by Government, and requesting this information "at the earliest possible day." "Our first report," says the letter, "will be expected *soon*, but cannot be forwarded *until* we obtain the information asked of you."

The board continued to examine cases and collect testimony, but its anxiety to *report* upon the cases examined, and its vexation at not receiving the information expected from Columbus, were matters of notoriety, and are susceptible of ample proof. And on the 14th of January, 1843, with the knowledge and concurrence of my colleague, I addressed the following letter to the register at Columbus:

* This paper will be found to contain a full detail of the proceedings of the Choctaw commissioners, from their first meeting down to the 22d of March, and from that date, being the proceedings of the board down to the 15th of May.

HOTANKA, January 14, 1843.

DEAR SIR: On the 28th ultimo, my colleague and myself addressed you a letter, requesting some information which we are authorized to ask for at your office, and which we must have *before we can report* to the Secretary of War, for the final supervision of the President. Not having heard from you, I am led to fear that our letter failed to reach you, and therefore send you an abridged copy of the same, with an earnest request to have the information supplied to us at the *earliest* possible moment, *as we have now some sixty odd cases suspended for the want of it.*

Very respectfully, your friend and servant,

JOHN F. H. CLAIBORNE.

Major W. DOWSING,

Receiver Land Office, Columbus, Mississippi.

On the 15th of January, a joint letter (*but written by my colleague*) on the subject of our salaries was addressed to the distinguished and able officer who directs the bureau of Indian Affairs, the Hon. T. Hartley Crawford, and concludes as follows:

"In a few days we shall forward to the department some seventy cases under the 14th article of the treaty of Dancing Rabbit creek, FULLY ADJUDICATED."

This language would seem to be *conclusive* as to what the board was at that time prepared to do. If any "difficulties of construction," any scruples to proceed in the absence of a third commissioner, any necessity for disturbing the order of the docket, and hunting about for easy cases, existed at that time, they were never communicated to me nor to counsel; none were entertained *by me*, or suggested *to me*, by my colleague; and we jointly and severally manifested and *expressed* great anxiety to *report*, not only in justice to the parties litigant, but to make a demonstration of our industry and ability at the War Department, for reasons personal to ourselves. These are matters of fact, about which there can be no controversy.

On the 13th of January, the Hon. S. S. Prentiss, counsel for the claimants, delivered an argument of great ability before the board; and, upon consultation, my colleague and myself agreed that his views as to the requisites necessary to constitute a good and valid claim under the 14th article were correct and conclusive; and on the 15th of January, the very same day on which my colleague notified Mr. Crawford that "in a few days we shall send on some seventy cases, *fully adjudicated*," I commenced writing a report, based upon the requisitions of the treaty, the acts of Congress, and the testimony taken before the board.*

This document being thus sketched off, I submitted it to Mr. Graves, in the presence of the secretary of the board, and requested him to make any corrections, to strike out or add to it, as he might deem advisable. It was read to him, word by word; he sat by, pen in hand, suggested one or two verbal alterations, and expressed his willingness to sign it when ready for his signature. My colleague will doubtless recollect that the distinguished counsel for the claimants had remained several days, to await the action of the board; that he, (my colleague,) in parenthesis, notified that gentleman of his assent to this report; and that, being thus informed of the

* This report is herewith transmitted.

action of the board at its contemplated early report, he deemed it unnecessary to his clients to remain here longer. These are *facts* which my colleague must remember, and are matters of notoriety at this place. I insist upon it, then, that this board had *commenced* the adjudication of some seventy cases tried before it, progressing regularly through the docket from No. 1; that a tabular statement, based on the testimony, and showing the names and number of the claimants and their children, the lands allotted to them, &c., was in preparation, under the immediate direction of my colleague, and in his handwriting; that the cardinal principles to govern our action on these claims had been discussed and agreed upon; and that, but for an interruption, (*viz*: the protest,) we should actually have reported in less than a week, or, as my colleague remarks in his official letter to Mr. Crawford, "in a very few days."

Where, *then*, I pause to ask, were the difficulties of construction, the doubts and conflicting principles, that have been recently sprung upon us? Where, *then*, the necessity for the attendance of another commissioner? Where, *then*, the suggestions for delay? If they, or any of them, had existed, then surely the clear! vigilant!! and discriminating!!! mind of my colleague would have detected them, and he would not have notified Mr. Crawford that, "*in a few days*, we shall send on some seventy cases, *fully adjudicated.*"

Up to the 17th of January, the board has examined 67 cases, and, according to the letter of my colleague, would have adjudicated them in "a few days;" but on that day Kirksey and Poindexter filed their protest, (alleging frauds in general against the claims, without specifications,) which the board agreed to entertain, and the report and entering up of judgment in which it was then engaged were of course suspended.

It is unnecessary to trace the history of this protest. It terminated on the 15th of March, by the imposition of fines upon the parties that had occasioned so much expense to the Government, injury to the claimants, and inconvenience to this board.

This matter being thus disposed of, the presumption was reasonable that the commissioners would forthwith resume the particular duty on which they had been engaged when the protest was filed, to wit: the examination of the 67 cases tried up to the 17th of January, and the rendition of judgment thereon.

But it was *then* suggested by my colleague, informally, that he entertained objections to proceed to enter judgment upon the claims that had been examined by the board, or any of them, owing to the absence of the third commissioner; and to two points of construction growing out of the treaty, upon which he alleged he had difficulty, and desired instructions from the department. These points, as I understood them, were:

First. If the section whereon the claimant resided at the date of the treaty, or a part thereof, embracing claimant's improvement, has been sold by Government, and the adjoining sections are not sold, shall the board make locations for the children of claimant on the adjoining unsold lands, or allow them scrip?

Second. Where there are two or more families residing upon the same section, which has never been sold by the Government, which head of the family shall be entitled to the section embracing the improvement? And what lands will the other family or families be entitled to? Must they be located on adjoining lands, or receive scrip?

These points were suggested then by my colleague, as presenting reasons for a suspension of judgment; but I differed in opinion from him, considering that the points are met by several letters from the Hon. Lewis Cass, then Secretary of War, viz ;

1st, letter to G. W. Martin, dated October 11, 1833; 2d, letter to G. W. Martin, dated September 3, 1833; 3d, letter to G. W. Martin, dated June 26, 1833; 4th, letter from John Robb, acting Secretary of War—all of which are on file in the office of the commissioners, and accompany the report of the Secretary of War, ordered to be printed by the Senate, on the 11th of April, 1834.

It being generally understood that my colleague objected to enter upon any adjudication of the cases, on the 18th March the following application was presented to the board, and filed among its records :

НОРАНКА, *March 18, 1843.*

The undersigned, attorneys for many of the Choctaws whose claims have been investigated by your board, respectfully represent that the evidence, in a number of said claims, beginning with case No. 1, is completed, and they are ready for the judgment of the board. The interests of the claimants require that judgment should be rendered in such cases as have been completed with as little delay as possible. Your petitioners therefore ask, as a matter of right, that your honorable board will proceed to render judgment in such cases, where the evidence has been completed, and in which there is no obstacle to the final judgment of the board.

JOHN B. FORESTER,
PRENTISS & GUION,

Attorneys for Choctaw Claimants.

HON. JOHN F. H. CLAIBORNE and RALPH GRAVES.

Acknowledging the propriety and justice of this application, I expressed myself, in conference with my colleague and in open court, ready to grant it. For several days previous, he was apprized of my disposition to render judgment on the cases examined, and that no difficulties of construction, of competency, or on account of the absence of a third person, existed in my mind. On the very day, (and only a short time before the aforesaid application was filed,) I had read to him a written argument, (afterwards thrown into the form of a resolution, and offered on the 23d of March, a copy of which was forwarded to the department a few days since,) showing our competency and obligation to proceed. My colleague dissented, and repeated the reasons why we should not proceed without additional instructions, and until the arrival of another commissioner. Broadly differing in opinion, we entered our office, and I announced to counsel that there was a difference of opinion between the commissioners on the subject of their application, and that the board would adjourn over until the 20th instant to consider it. My colleague must concede that the various delays that have occurred since the 15th of March, when the proceedings on the protest were closed, have been caused by no doubts on my part, but were assented to out of courtesy to him.

After the adjournment, the application was elaborately though informally discussed by my colleague and counsel; and on the 20th March, to remove the difficulties of Mr. Graves, the counsel for claimants submitted the following proposition :

НОРАНКА, *March 20, 1843.*

The undersigned propose to modify their application of Saturday last, as follows, to wit: That the commissioners shall take up for further investigation the cases which have been presented, and in which the evidence is complete, and still proceed to enter judgment in and report upon such cases, to the number of fifty or sixty, as shall present no difficulty arising out of the construction of the treaty and acts of Congress, and in which the present commissioners shall agree in their opinions, passing over, for further consideration hereafter, cases in which difficult points of construction shall arise, upon which they have not and cannot agree.

JOHN B. FORESTER,
PRENTISS & GUION,
Attorneys for Choctaws.

Immediately after the reading of this document, I inquired of my colleague, if he *waved* the objections he had urged, to proceed in the absence of the other commissioner? He answered in the negative, and I then filed the following paper, which I incorporate with and make a part of this statement :

НОРАНКА, *March 20, 1843.*

MEMORANDUM.—Ralph Graves, Esq., commissioner, &c., having frequently intimated to me and to others his objection to proceeding to the adjudication of the cases examined by the board in the absence of a third commissioner, and having repeated the same to me in conference on the 17th and 18th and 19th instant, and submitted the same view to me in writing on the 19th instant, distinctly setting forth that it might be considered disrespectful to the third commissioner, and certainly indelicate, improper, and inexpedient, on many accounts, to proceed to final action on any case until the arrival of the said third commissioner; as the suggestions made to me by him, and his objections to proceeding under the circumstances, have already become public and a matter of argument, and as it is notorious that little or no business has been transacted by the board for several days, owing to the said objections of the said commissioner, and the said objections having therefore all the weight and publicity of a motion made in open court; as he has suggested that the said third commissioner may be daily expected, and therefore that the delay cannot be material, *I will not*, by overruling his objections, expose myself to imputation or attack, or to censure by implication or *inuendo*, now or hereafter, open or clandestine, preconcerted or otherwise, from any quarter whatever. I will not be forced into an invidious attitude towards the third commissioner, to whom it is alleged it will be disrespectful to proceed farther until he arrives. I will not, by insisting on immediate action, overrule the suggestions of Mr. Graves, who has repeatedly declared to me his conviction, that there should be another commissioner in attendance. He has urged that these claims involve an immense amount of the public property; that charges of fraud are hanging over them, or many of them; that attacks

upon this commission have been threatened; that great principles are to be agreed on, that will govern the decision of these cases; that it is prudent, especially in our first adjudications, to have a full board, to give weight to our deliberations, and shield us from all attack; and he has presented these, and many other reasons of a peculiar and more private character, to me, united with a question of personal delicacy, directly put to me, *whether I would deem it respectful to the other commissioner to proceed when he may be daily expected.* These objections do not arise out of any intrinsic difficulties in the cases themselves, or out of constructions of the treaty or the laws. They all present but one point—the necessity, in the view of Mr. Graves, the *absolute necessity, of the presence of another commissioner, before this board proceeds one step further.* No modification of the motions or applications of counsel applicable to the cases can change the character of this objection. It turns, as has been stated, only on one point, and leaves but one inference, and no motion of counsel can affect or weaken it. Its essential character cannot be changed, unless by absolute and unqualified waiver and disclaimer of the party suggesting it. I regret that the objection was ever made, or that this question of personal delicacy was ever presented to me, inasmuch as I believe that this board is just as competent to proceed to final adjudication of all cases before it, as if its complement was complete. But anxious as I am, and have been throughout, to proceed with the public business, as much as I regret the delay which has already taken place, caused by no fault of mine, I will place it in the power of no man to allege, here or elsewhere, that the action of this board was forced on by me, that I overruled all suggestions for reasonable delay, and insisted on proceeding, when Mr. Graves, from motives of caution, of protection, and of respect for the new commissioner, urged the expediency of a short suspension. I will not hold myself up as a target, when the party objecting covers himself with a shield. Under these circumstances, bearing in mind the frequency and the emphasis with which these objections have been urged upon me by Mr. Graves, and the publicity attached to them—regretting that the question was ever raised, and the inconvenience to the parties it may occasion, I feel, that from a due regard to the delicacy of my position, and to my own self-respect, I am bound to assent to the suggestions of Mr. Graves, and decline any adjudication of cases until the arrival of another commissioner.*

JOHN F. H. CLAIBORNE.

Having read this "memorandum," an informal conversation, productive of no results, occurred; and I then announced that nothing remained but to take the testimony in the few cases on hand, and suspend business until the new commissioner arrived, or sufficient notice could be given to the parties, so as to enter upon the investigation of new claims at other points.

My colleague, however, agreed upon suggestions made him by counsel, to consider their last application, and on the 21st instant he submitted a written statement of his views. In this paper Mr. Graves *first* repeats his objection to proceed with the adjudication, generally, until the arrival of the new commissioner. 2d. He consents to take up a few cases of a simple character, passing from No. 1 to No. 250 on the docket in pursuit

* Two days afterwards I announced, in writing, that if Mr. Graves would follow up his objection to proceed without a third commissioner with a *motion* for delay, I would vote for delay.

of such. 3d. He declares that he has not reviewed the testimony in any case since it has been taken; that he has only a vague recollection of it; that he has never examined the acts of Congress in reference to the cases, and for no other purpose, "save only for a few moments, a day or two ago!"* 4th. He affirms that the *public business* will not suffer by a suspension of judgment until the new commissioner arrives, because, having completed the testimony here, the commissioners "should proceed without a day's delay to the next point, and give the claimants there an opportunity of being heard or of having their claims filed."

I shall consider these points in their order:

1st. If my colleague opposes the rendition of judgment until a commissioner arrives, let him submit his motion to that effect. He refused to entertain the application filed by counsel for the Choctaws on the 15th March, on two distinct grounds, viz: 1st. His difficulties of construction. 2d. His repugnance to proceed without a full board. The first objection was removed by the modified proposition of counsel, to select a handful of cases out of the 250 tried; but this modification does not affect or remove his *second* objection. The same great points necessary to constitute *one* good claim under the 14th article are necessary to the *whole* of the claims of that description, and the same principles apply to them all—the only discrepancies between them growing out of questions of details, and not of law. If a contrary assumption be entertained, then I affirm that it cannot be ascertained what cases are exempt from difficulty until the adjudication be commenced by an examination of the testimony; and that examination cannot be made by counsel, but must be made by the commissioners themselves. How, then, are we to make this examination, to ascertain what cases present no difficulties, without making a general review of the testimony taken, and of the law applicable to the cases? Such a review of the law and the testimony would of itself be an adjudication, as far as it went, upon *all the cases*; and how can this be had without conflicting with my colleague's main objection, the absence of the third commissioner? My colleague declares *that he has never looked at the law or the testimony*. Granting this, how is he to decide what cases are or are not free from difficulties, without commencing an adjudication? The mere review and collating of the testimony is one step in the process of adjudication, and my colleague has repeatedly declared that "great principles are at stake, and he was unwilling to proceed without a full board."

2d. Mr. Graves states that he has not examined either the law or the evidence applicable to the cases. Is not my colleague in error here? Does he not remember that early in January we commenced the work of re-examination; that we devoted the whole of the 13th day of that month to the subject, specially adjourning for that purpose; that a tabular statement was in preparation; that a report had been agreed upon; and that on the 15th January he notified the department that "in a few days we shall forward some seventy cases, fully adjudicated?"

These are plain *facts*; but what more? The report included *all* the cases tried up to that time, in which the evidence had been perfected, from No. 1 to No. 70. There was no discrimination, because not more than 70 cases had been tried; and *all these*, according to my colleague's letter,

* Yet, as far back as the 15th January, we were actually adjudicating, requiring not only a review of the testimony and an acquaintance with the laws, and my colleague informs Mr. Crawford that "in a few days we shall send on 70 cases, fully adjudicated."

were to be "fully adjudicated in a few days." Why, then, discriminate now? If we could adjudicate "in a few days" the first 70 cases *then*, why cannot we decide upon those same 70 cases now? We have had the benefit of three months' experience, and volumes of additional evidence have been accumulated. If the matter was so clear *then*, in the first 70 cases, that judgment could be rendered upon them *all*, what forbids judgment at this time? If "difficulties of construction" exist *now*, they existed *then*. If repugnance to settle "great principles," in the absence of a full board, exist *now*, why not then? And if we could adjudicate "70 cases" *then* "in a few days," why not *now*?

Indeed, I suggest that some of the cases in the aforesaid limit have already been substantially adjudicated, by the concurrence of my colleague in a report which, in the general principles laid down, embraces all those cases.*

We had begun to scrutinize the testimony, with the view to the rendition of judgment—we had communicated our intention to counsel and to the department—we had publicly assented to the general views of an able argument now on file. Nothing then was said about the *necessity* of a full board before judgment could be had. This board felt its competency and its obligation to proceed with the public business, without regard to *who* might or might not be appointed to fill the vacancy, without pausing for imaginary obstacles, growing out of mere verbal constructions, and without waiting for the uncertain arrival of a third person, of necessity unacquainted with the subject, to "settle great principles." I consider the proceeding on the part of this board, just adverted to, as an inchoate proceeding—a *quasi* adjudication, *res judicator* in its nature, and binding as far as it went—a full recognition of competency and obligation to enter judgment in the cases *consecutively*, and a concession not to be controverted that these 70 cases *rest on the same principles*. That proceeding, "that full adjudication," which would have been completed "in a few days," was suspended in consequence of a protest, alleging fraud in general against the claims. That protest and the matters arising out of it have been quashed, and this board stands, in relation to the cases then under advisement, precisely as it stood when that protest was filed. It should resume the work at the point where it then stopped. Upon this basis, recognising principles once solemnly agreed upon, progressing regularly through the docket, and not commencing *de novo* a long chase after cases "without difficulties," I am willing to proceed, and shall submit a motion to that effect.

Fourth. In respect to my colleague's suggestion, that "*the public business would not suffer by delaying judgment even upon all the cases, because we could and ought to proceed, without the loss of a day, (after completing the testimony here,) to the next point; and commence receiving applications for claims,*" I have to remark—1st, that more than a month ago I suggested to my colleague, in the presence of two distinguished gentlemen, the propriety of our immediately *advertising* the time and place for registering the remaining claims; 2d, that no such proceeding, embracing claims scattered over an extensive country, can be properly com-

* A few days ago, Mr. Prentiss, attorney for the Choctaws, affirmed, in a public speech, that Mr. Graves had notified him that he had agreed to my report on the cases, and they would all be sent on with the report.

menced without sufficient notice in the public journals, for which purpose I shall submit a motion.

But my colleague speaks of the "public business." If by these terms he means to say that the "business" of the *Government* cannot suffer by "a delay of judgment," I differ with him. The interests of the Government *do* require that the claims growing out of a treaty made more than twelve years ago, and which every year entail a heavy expense on the Federal Treasury, and a vast accumulation of business on the War Department, should be adjusted. The act of Congress contemplates and the department expects their *speedy arrangement*.

If by "public business" Mr. Graves means the *State of Mississippi*, I differ with him; for, until judgment either one way or the other is rendered in these cases, we shall have in our interior a population of 8,000 souls, contributing little to the public wealth; our citizens be harassed with vexatious and expensive litigation; emigration to Mississippi discouraged; the hardy settler, his country's best defence, in doubt as to the title of his property; and real estate in all the Choctaw counties depreciating in consequence of this uncertainty of tenure. The last act of Congress was passed specially to obviate these evils, and to protect the purchaser of the public domain. It fully protects his rights, and proposes to pay off the dispossessed Choctaw in scrip. To carry out these objects, the law provided that *two* commissioners were fully competent to examine testimony and render judgment *in all cases*, difficult or otherwise. Nothing is said *in the act* of "great principles," "third commissioners," "easy cases," or "difficult constructions."

If by "public business" Mr. Graves means that the interests of the *claimants* will not suffer by this indefinite suspension of judgment, I differ with him. This commission was established to ascertain the *rights* of the Choctaws under the treaty of 1830. We were sent here to be vigilant, indeed, but not saturated with *suspensions* of fraud, to be squeezed out like water from a sponge at every pressure. Everlasting suspicion is as liable to superinduce error as perpetual apathy. We were not sent to *deny* justice or to protract investigations to unnecessary extremes; but we were sent to do *justice to the Indian*. It is due to the benevolent objects of the law, to humanity, to the dignity and faith of the Government, that claims growing out of the stipulations of a treaty, *made with the strong arm*, and against the will of one party, should be adjusted.* Had *we* claims springing out of a treaty with England, for instance, how long would *we* submit to such a postponement of *our* rights? Would not the spirits of Americans take fire at the outrage? Would we not lay down fortune, honor, and life itself, and, like our revolutionary fathers, in the face of confiscation, imprisonment, and the whole apparatus of despotism, stake every thing on the assertion of a principle? I feel persuaded such would be the course adopted by a vast majority of our countrymen; and shall *we*, by delaying or denying judgment, act upon different principles with the remnant, the miserable *debris*, of a people entirely in our power?—a people not enemies, not aliens, not swindlers, but proverbial for their honesty,

* It is clearly in evidence before the board, that a large majority of the Choctaws were opposed to the treaty, and those who signed it were only induced to do so by the insertion of the 14th article, and the liberal construction given to it by Major Eaton, Secretary of War, in a speech to the Choctaw people.

born upon the sacred soil of this noble State, who worship the same Great Spirit that we worship, under the same skies and stars—a people over whom we have thrown our shield, and are bound to protect, by every sentiment of honor, justice, and humanity—a people whom no threats, no persuasions, no rewards, no oppressions, have been able separate from the soil out of which they believe they were created, and on whose bosom they are willing to perish. For twelve years they have thus continued to live. Their rights, if any exist, have been denied to them. They have been subjected to the laws of the white man, without enjoying his privileges; annoyed with suits for violating statutes of which they never heard; taxed, but not voting; working on roads they never use; growing poorer every day, by contact with a shrewder race; looked down upon as too inferior for intermarriage or social intercourse; circumscribed by the action of the Government to a limited and barren section of a territory whose fertile valleys they once possessed; gleaning a precarious subsistence from the forest and from desultory labor; too often enduring the pangs of hunger in this land of abundance, with no fixed habitations, and scarcely a conception of the paradise of *home*; in sight of the school house, and within the sound of the church-going bell, yet strangers alike to instruction and to the holy promises of our Heavenly Father. Shall these unfortunate people, after twelve years of broken faith and of hope deferred, be still further disappointed by the refusal of the board to decide their claims? Powerless, poor, illiterate, ever ready to defend *us* in war, but incapable of defending *themselves* in peace, orphans in the eye of the law, mere infants in business, is it not time to act definitively and without delay upon their rights? The generous people of Mississippi—the enlightened officers of that Federal Government whose agents we are—will answer in the affirmative. Such, I am sure, is the opinion of the distinguished republican and philanthropist who has just been installed, by the wise selection of the President, in the Department of War. And I feel persuaded this board will deem it a duty to proceed at once to the adjudication of the claims, sustaining the good and rejecting the fraudulent.

With these views, I submit two resolutions:

1. *Resolved*, That this board proceed forthwith to examine, adjudicate, and, at as early a day as practicable, report upon the cases that were under examination and advisement on the 17th of January, but were suspended in consequence of the protest of Poindexter and Kirksey.
2. *Resolved*, That this board proceed to fix upon the time and place when and where claimants under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit creek may present their applications, and that *due and sufficient* notice of the same be given in the newspapers, taking into consideration the number of the parties, the extent of the country through which they are dispersed, the magnitude of the claims, the possibility of fraud, and the precedents established in similar cases.

[*NOTE*.—Mr. Graves objected to these resolutions.]

From the preceding statement, it will be seen—

1. That, early in January, we were about sending 70 cases to the department, adjudicated and reported upon.
2. That this was prevented by the protest filed on the 17th of January.
3. That this protest, being quashed on the 13th of March, Mr. Graves, for the first time, stated his objections.

4. That when the third commissioner arrived, Mr. Graves still had difficulties that prevented adjudication.

It was agreed, therefore, to meet at the Old Yazoo Village on the first Monday in May, to render judgments on the cases in which testimony had been taken at Hopahka. Public notice thereof was given, and the parties were generally in attendance. After some delays, the business was commenced. Days were exhausted, and nothing accomplished, although certain "difficulties of construction" had occurred to Mr. Graves as far back as the 15th of March, which, unless removed, would effectually bar all adjudication. They still existed in his mind when we met at the Yazoo Village. New doubts and new points were suggested; a disposition even to postpone all the judgments to an indefinite period was manifested by him; and he finally insisted that, instead of remaining to adjudicate the cases tried at Hopahka, as we were solemnly pledged to do, we should break up, and go to Garlandville, and do the clerk's duty of *docketing* claims.

Thus, sir, we stand. We are to meet again at the Yazoo Village on the 5th of June. Whether Mr. Graves will then consent to recommence adjudication, and if he should, how fruitless will be the undertaking, may be best determined by his past course in the board. I confess I see but little encouragement to persevere, little prospect of concluding even one-half the business we are expected to transact within the limit of the act of Congress. If the proper energy had been evinced, if the cases had been transmitted rapidly for the action of the department, if the board could have been induced to decide upon *something*, if it had exercised its united moral influence to promote the policy of the Government and of the State, instead of suggesting obstacles and difficulties, I doubt not that a large body of the Cobb or Hopahka Choctaws might have been emigrated this fall. As things stand, however, every one is discouraged—the agents of the department, the legislators of the State, who have long regarded this commission as the main instrument of emigration, and the Choctaws themselves. My colleague has openly scouted the idea of emigrating the Indians; but I assure you, sir, no Mississippian, no man identified with this State, its views, and its interests, and exercising a shadow of influence over its people, will make such a concession. We believe the Choctaws can be emigrated; that it is the wish of the President and of the department to emigrate them; and that, if this commission had done its duty, many of them would now be enrolled for that purpose.

I will not disguise from you, sir, that the commission has lost the confidence and the respect of the public. It adds nothing to the popularity of the administration or the reputation of the department, but, on the contrary, detracts from both. It might not be exactly proper that I should acquit myself of any of the odium and ridicule attached to its acts at this time, before the public; but I trust the department will find in this paper an ample vindication of *my* course and conduct.

I have the honor to be, with high respect, your most obedient servant,

JOHN F. H. CLAIBORNE,

President Board of Choctaw Commissioners.

HERBERT'S POST OFFICE,

Neshoba County, Mississippi, May 20, 1843.

U 5.

[B.]

Report of the Board of Choctaw Commissioners to the Secretary of War.

[This is the document referred to in the statement drawn up by Mr. Claiborne, and approved by Mr. Graves, to be forwarded, with some seventy cases, to the War Department, early in January, but suspended first in consequence of the protest of Poindexter and Kirksey, and afterwards on account of doubts, objections, and difficulties, suggested by Mr. Graves. See statement A.]

HOПАНКА, MISSISSIPPI, *January* —, 1843.

SIR: The undersigned, commissioners appointed under the act of the last session of Congress, entitled "An act to provide for the satisfaction of claims arising under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit creek, concluded in December, 1830," have the honor to report:

That, in pursuance of notice duly published in the newspapers of this State, they met at this place on the 19th of December, 1842, opened an office, and entered at once upon the execution of the duties confided to them, by the appointment of a secretary and an interpreter, and the adoption and publication of the following rules:

"1. The board will assemble every day (Sundays excepted) at its office, at 9 o'clock, A. M.

"2. Claimants may be heard by counsel, who, in all cases, will be required to furnish a brief statement of the case, in writing.

"3. Applications must be made in person to the commissioners, or by written statement, setting forth the name of the claimant, the number of his or her children over and under ten years of age at the date of the treaty of Dancing Rabbit creek, and their names, the height of the claimant, and any peculiar feature or mark upon the person, which may serve to identify or distinguish the said claimant, his or her place of residence at the date of the treaty aforesaid, specifying the part of the section, township, range, and land district, with an affidavit attached, made before any officer competent, under the laws of the State of Mississippi or of the United States, to administer an oath.

"4. Claimants and their children entitled to or applying for reservations must in every instance, if possible, where proof of their claim is gone into, appear in person before the board."

These rules have been strictly adhered to, and will enable the department at one view to comprehend the character of the testimony that accompanies each case herewith submitted.

The board has deemed it essential *in every instance to establish* the following points:

1. That the claimant was the head of a Choctaw family at the date of the treaty of Dancing Rabbit creek, or the representative or heir of such head of a family.

2. That the claimant had at that time an improvement within the country ceded by the treaty, and resided upon it, and has never removed to the Western or Choctaw Territories since.

3. That claimant, either in person or through another individual, signi-

fied to the agent of the United States, or some person authorized by him, either at the agency or at some public council or gathering of the nation, within six months after the ratification of the treaty, his intention to be registered for the five years' stay.

4. That he intended to reside, and did reside, on said improvement for five years from the consummation of the treaty, unless where he was dispossessed by a white man, or his land was sold by Government, or he was intimidated and induced to leave by threats, misrepresentation, or persuasion.

5. That claimant received no other grant of land under any other article of the treaty, nor applied for any, nor any portion of the annuity dispensed at Benjamin Lafloore's in August, 1831.

6. That claimant never, within five years after the ratification of the treaty, made any binding contract for the sale or transfer of his land, scrip, or other compensation, to be awarded him by Government, in satisfaction of his claim.

7. Identification of claimant, or his representatives or heirs, number of children, &c.

Keeping these cardinal points in view, the commissioners have, in every instance, subjected the parties to a minute and rigorous examination, and have taken down the evidence *verbatim*, one reducing it to the form of depositions, which were immediately compared with the notes of the other, read in open court, and subscribed and sworn to by the party. It is no more than just that the commissioners should say, familiar as they are with proceedings in courts of justice; they have never known testimony submitted with less apparent attempt at prevarication, and so few contradictions and discrepancies elicited by the ordeal of cross-examination.

It will be perceived that *all the cases* transmitted with this report fall within the provisions of the 14th article of the treaty of Dancing Rabbit creek, requiring those who wished to take the benefit of that article "to signify their intention to the agent within six months after the ratification of the treaty," &c.

These cases may be divided into three classes, viz :

1. Where the signification of intention was made by the Indian himself to the agent in person.

2. Where the signification of intention was made to the agent, in behalf of the Indian, by some person duly requested and empowered for that purpose.

3. Where the Indians applied to the agent in numbers, and attempted "to signify their intention" and to be registered, but were refused by the agent.

All the cases accompanying this report are embraced in the *two last classes*.

In the second class the commissioners have required proof of an actual presentation to the agent, for registry, of the name of the applicant, by some person duly empowered for that purpose.

In most of the cases falling within *this* division, written *lists* of the names of those who wish to signify their intention and avail themselves of the benefit of the 14th article were made out, by direction of the agent, and sent in and delivered to him by the *light horsemen* or runners of the several captains, or by some other person selected for the purpose. The number of the children accompanied the names of the applicants, respectively.

In all these cases the commissioners consider the proof of "signification of intention" to be as fully made out as if the application had been made in each case personally by the claimant himself. These *lists* were made out under the agent's instructions, by the direction and in the presence of each Indian, whose name was placed upon them, and carefully conveyed and delivered to said agent, within the six months prescribed, as lists of those who wished to be registered for the benefit of the 14th article. The commissioners have no hesitation in deciding that in all these cases the requisition of "signification of intention" was fully and literally complied with.

The *third* class of cases is one which at first view might seem not to come strictly and literally within the provisions of the 14th article, but which appears to be fully embraced within its spirit, and entirely covered by the *act* organizing this commission. The treaty requires that the Indian desirous of availing himself of the benefit of the 14th article shall be permitted to do so "by signifying his intention to the agent within six months after the ratification of this treaty," &c. It appears in evidence before the commissioners, by the general depositions as well as by the testimony in the cases alluded to, that Ward, the agent appointed by the Government to receive this "signification of intention," became, from some cause or other, opposed to the Indians availing themselves of the 14th article, and exceedingly desirous that they should all go west. After having registered a few names, he began, both by threats and persuasions, to *discourage* any further applications. At length, he *openly refused* to register the names of those who applied to him at the agency, but told them to collect at Benjamin Lafloore's at the time appointed for the annuity, and he would then and there attend to their applications. As this was within the six months designated, and as the occasion and place were of great public resort, it became generally known and understood among the Indians that the agent had *appointed* that time and place for receiving the "signification of intention," and to register the names of those who had determined to stay in the country, and avail themselves of the provisions of the 14th article.

Accordingly, and in pursuance of the invitation of the agent, large numbers collected at Lafloore's, at the time of the annuity, for the express and publicly announced object of "signifying their intention," and having their names registered for the five years' stay. Others sent in their names upon lists, prepared by the directions of Ward, and placed in the hands of persons authorized and appointed to deliver them to Ward for registry.

The numbers assembled at Lafloore's, and waiting their turn to be registered, being very great, but few could get access to Ward's presence at a time. At length, after taking down the names of several of the applicants, and receiving several of the lists sent in, Ward declared to the Choctaws "that there were too many of them; if they wanted land, they must go west, and he would register no more," &c. This *refusal* of the agent to receive any more applications was repeated several times, with much emphasis and excitement, to those who were present in the room, until, finding it useless to press the matter any further, they withdrew, and informed those who were in the other apartments and outside of the building of the agent's refusal to receive any more applications or register any more names, some saying he was "drunk," some that he was "on a spree," and others that he was "mad;" and it has been clearly proved that he was a man habitually intemperate; that, on the occasion referred to, he had his

brandy on the table, and seemed to be considerably excited. The greatest dissatisfaction was evinced by those who had come to be registered, as the rumor ran through the crowd that Ward would register no more. They complained bitterly of the injustice and bad faith of the agent, and most of them retired immediately to their homes, refusing to participate in the annuity, saying "they had not gone there to receive any portion of it, and expressed a determination never to leave the country, but to hold on to their lands if possible." It is further in proof before the board, that Ward, on many *other* occasions, refused to register the names of applicants, telling them "he had received orders from the Government not to register any more, and if they wanted land they must go west."

Under this state of facts, the question has presented itself, whether the attendance of the applicants at Lafloore's, in conformity with the instructions of the agent, their attempt then and there to be registered, and the public refusal of said agent further to register or notice their applications, constitute a sufficient "*signification of intention*" under the 14th article, or bring the claimants within the benefit of the provisions of the several acts of Congress from which this commission derives its authority.

The 14th article requires no particular mode of "signification of intention;" the object of the requisition was simply that the Indian should, within six months, make up his mind and determine whether he would move west, or remain in the country and become a citizen. At the time of the treaty the tribe was divided on this point: a portion were willing to sell and remove west; another portion, probably a majority, were willing to sell, but *not to remove*. They were willing to dissolve the community of property, by which they held a *common* interest in their territory, and to take in lieu thereof a complete fee simple title to a *specific* portion. It was to provide for this latter class that the 14th article was inserted; without it, the treaty could not have been concluded. It was the insertion of this article mainly, with the supplementary provisions, and the broad construction given to them on the ground in a public speech of Major Eaton, then Secretary of War, that enabled the commissioners at Dancing Rabbit creek to effect the treaty.

The existence of the *intention* to remain and take the benefit of the 14th article is the *substantial thing aimed at* by the requisition, that the Indian should "signify his intention to the agent within six months," &c. The *manner* in which this "signification" should be made is not prescribed, nor is it material; whether in person or by agent, by words or by signs, it would seem to amount to the same thing. It is true, the agent prescribed a registry of the names, as the proper mode; but when he *refused* any longer to register, and drove away the applicants, it may well be questioned whether such conduct on his part did not, in strict law, exempt the applicants from the obligation of any further action in the premises. They had repaired to the agent, in pursuance of his own directions, for the purpose of being registered under the 14th article. They publicly and frequently expressed the object of their gathering; the agent was fully apprized of that object; he became angry at the number of the applicants, and announced to them, through those who had obtained access to him, that "*he would receive no more of their applications.*" The Indians had done all in their power to do; they had assembled, on the invitation of the agent, at the time and place appointed; the agent refused to act, and drove them away, by avowing *his positive determination* to take *no further notice of*

their applications. What more could the applicants do? After a general refusal, it was useless to pass particular cases. The claimants had "signified their intentions," as far as was in their power, or, in the language of the act of Congress, had "*offered to signify*;" they had gone to Lafloore's, upon the invitation of the agent, to be registered; the agent, had refused to act. If they were not registered, it was the fault of the Government, not their fault. The neglect and refusal of the agent was, in law, the neglect and refusal of the principal. If the "signification of intention" was not sufficient, its insufficiency was caused by the action of the Government, through its agent; for the commissioners have no doubt that every name embraced in this class of cases was entitled to be registered, and would have been duly registered but for the obstinate refusal of the agent, Ward.

It is a clear principle of law as well as common sense, that the non-performance of a condition cannot be pleaded by the party who has himself prevented its performance. In the present case, the claimants did all which could have been reasonably expected of them in complying with the requisitions of the treaty. They signified their intention to the agent by going to the agency, and afterwards to Lafloore's, for the avowed purpose of being registered. They crowded around the house, filled the rooms, and pressed into the agent's apartment, until he grew angry, and *refused* to receive any more of their applications; and they then retired, under the firm belief that they had done every thing in their power to "*signify their intention.*"

The commissioners would have little difficulty in deciding, even under a strict and technical construction of the clause of the treaty involved, either that these claimants *had* "signified their intentions" to the agent, as required by the terms of the 14th article, *or* were legally absolved from any further obligation to do so by *the acts of the agent.*

But the commissioners do not think it necessary for them to rely upon this view of the matter *only* to sustain the conclusions to which they have arrived. The act of 1837, which organized the first board of commissioners under the treaty, *directed* the board to investigate and report the case of every Indian, head of a family, "who had not already obtained a reservation under said treaty, and who can show that he or she *complied, or offered to comply,* with all the requisites of the 14th article of said treaty, to entitle him or her to a reservation under said article," &c.

The act of 1842, constituting the present commission, provides, that "when the said commissioners shall have ascertained that any Choctaw has complied, *or offered to comply,* with all the requisites of the 14th article of said treaty, to entitle him to any reservations under that article"—"which requisites are as follows: That said Choctaw Indian did signify his or her intention," &c.

It is clear, from the phraseology of both these acts, that jurisdiction was intended to be given, and relief afforded, in cases where the requisites of the 14th article had not been *strictly*, in point of fact, complied with, but where the Indian had done all that could *reasonably* be expected of him; that is, where he had "*offered to comply,*" but had been prevented by the Government itself, or by its agent.

The language of the first act is: "Who can show, by satisfactory evidence, that he or she complied, *or offered to comply,* with all the requisites," &c.

The language of the last act is, that "when the said commissioners

shall have ascertained that any Choctaw has complied, or OFFERED to comply, with all the requisites of the 14th article," &c.

Now, it is clear that these laws give the commissioners power to adjudicate in favor of claims, not only in cases of *actual* compliance with the requisites of the 14th article, but also in cases where the Indians *offered* to comply; for such are the express terms of the acts referred to.

There is another class of cases, besides those under consideration, which are recognised in a subsequent part of the 3d section of the act as valid, notwithstanding a non-compliance with the condition of five years' residence, the most important condition in the 14th article. When the United States has sold the land within the five years, and the Indian has been in consequence evicted, he is excused for the non-performance of this requisite condition; but even *without* this provision in the law, he would have been excused on general principles. If the action of the Government, in selling the Indian's improvements, absolves him from the performance of the condition of five years' residence, the commissioners cannot but conclude, by parity of reasoning, that the refusal of the agent to register any more names dispensed with any further necessity of applying for registry.

The commissioners have no hesitation in deciding that, in all the cases accompanying this report, and embraced in the class under consideration, the claimants "signified their intention" within the *equitable* meaning and spirit of the 14th article; and, if they do not come within its *literal* terms, they certainly fall within the *literal* terms of the act; for, if the action of the Indians did not constitute in these cases an *actual* "signification of intention" to take the benefit of the 14th article, none can deny that it was *an offer* to comply with this requisite.

There are some cases where the Indians were on their way to the agent, for the purpose of being registered, after Ward's public refusal to register any more, and who turned back, on meeting their people coming from Lafloore's with the information of his said refusal, considering it useless to go any further. These cases undoubtedly fall within the principle of the others, and are equitably entitled to the same consideration. The parties thus situated would, in every instance yet before the board, have reached the place appointed by Ward to receive their applications in time, but for the accredited, generally received, well grounded and established report, that he, the agent, had said "there were too many, and he would register no more."

In every case belonging to the class under consideration, the commissioners have required *strict proof* that the claimant went to Lafloore's for the purpose of being registered for the five years' stay, and left on account of Ward's refusal to register him; also, that he received no part of the annuity, and participated in no way in the acts of those who were going west. In *other* words, the commissioners have required in these cases full proof that the claimant, within six months after the ratification of the treaty, expressed an intention to remain and take the benefit of the 14th article, and "signified," or "*offered* to signify, such intention to the agent," by all reasonable means in his power.

If the commissioners entertained any reasonable doubts (which they do not) as to the correctness of their conclusions, they would still feel warranted in the construction they have put upon the requisitions of the 14th article, by considerations arising out of the character and condition of the claimants. The great object in construing contracts, whether public or

private, is to get at the *intention* of the parties. This treaty is a contract between the United States and the Choctaws. The main point is to ascertain the understanding or intention with which they made the contract. It should be remembered that the instrument was drawn by the whites, and in their language. It is to be presumed that it reads most favorably for them. The superiority of the whites in knowledge, sagacity, and the use of their own language, must necessarily lead us to conclude that the rights of the United States are better secured and more strongly protected in this instrument than the rights of the Indians. The rules of legal construction, then, as well as the dictates of justice and equity, would prompt, in all cases of doubt, a construction favorable to the weaker and more ignorant party. Indeed, so conscious were the framers of the treaty of the propriety of equalizing in some degree the two parties, that they incorporated, as a rule of construction, in the 18th article of the treaty itself, the very principle alluded to. The language used is as follows: "And, further, it is agreed, that in the construction of this treaty, whenever well-founded doubt shall arise, it shall be construed *most favorably towards the Choctaws.*" This is not a mere idle provision, but a rule of construction, to be resorted to in construing the treaty, in all cases where reasonable doubt arises. It is recognised as such by the high court of errors and appeals in this State, in the case of *Newman vs. Harris*, 4th Howard, 559, and this board deems itself no less bound by it than any other tribunal.

The commissioners, however, have not felt at liberty to look at the equities arising under the treaty, or to have reference in their decisions to the advantages which the United States have obtained, by the operation of this treaty, over an ignorant people, always true to them in war, and who have for twelve years patiently waited for the settlement of their claims, becoming poorer every day by contact with the white man, distrustful of the race, but still reposing faith in the good intentions of the Government, and its ability to do them justice. We have restricted ourselves to the obvious meaning and intent of the treaty itself, and to the very letter of the law, and entered judgment accordingly.

Sixty cases, all embraced under the 14th article, are herewith transmitted.

NOTE.—This report was designed to be accompanied with a tabular statement (which was in preparation) showing at one view the name of the party, number and age of children, and the lands allotted them.

U 6.

OFFICE INDIAN AFFAIRS, *June 13, 1843.*

GENTLEMEN: Enclosed you will receive a copy of a report made by me on the 7th day of March last, to the Secretary of War, relative to the several claims under the Choctaw treaty of 1830, which have been acted upon by the former board of commissioners, consisting of Messrs. Murray and Vroom.

The principles laid down in it are those by which the cases before you under the 14th article should, in the opinion of the department, be decided, and those also under the 19th article, so far as the principles apply to them, under the treaty and law; and it may be useful, or at least:

desirable, to place the views of the department before your board. The Secretary of War, you will observe, has, with one or two modifications, concurred in this report; and the President of the United States has also approved of lists of those entitled to land or scrip, prepared and submitted according to the principles settled by said report, of which lists I this day send copies to the enrolling and emigrating agent, J. J. McRae, Esq., with the scrip awarded, &c., so as to expedite, as far as may be practicable, the business of emigrating the Choctaws in Mississippi. The preparation of the requisite papers, preceded as it necessarily was by the most laborious investigations of detail, occupied a long period, as only one person could advantageously be engaged on them at one time.

The Secretary of War and the President of the United States have observed, with extreme pain, the difference of opinion between two of the commissioners, and with still more regret that that difference appears to have involved some feeling. Both are now absent from the seat of Government; but the President (who left after the Secretary) on Thursday last instructed me, before his departure, in these words: "The commissioners should be written to, advising forbearance for each other's opinions, great vigilance in the whole matter, and when differences exist a reference to the department.—J. T." In a note on a different communication, he says: "These discrepancies are unfortunate; let a letter be written, advising vigilance and concert and harmony."

I do not know better how to convey to the board than the President has done, in these short memoranda, my sense of what (and it is said with all respect) is due from each of you to the other, to your respective positions, to the Indians, the State of Mississippi, and the General Government. Your commission is one of great moment, in all its parts. The period will soon terminate within which claims can be presented; differences of opinion are to be expected to arise between intelligent gentlemen in the investigation of laws and deductions from facts; and a little forbearance and reasoning together will generally adjust the matter; if not, the opinion of the board of commissioners will settle the case, one way or the other, for report to the Secretary of War.

In obeying the order of the President, I trust it will be seen I but perform a delicate duty; and it is one that I cannot avoid.

Very respectfully,

T. HARTLEY CRAWFORD.

Messrs. J. F. H. CLAIBORNE,
RALPH GRAVES,
WILLIAM TYLER.

U 7.

WAR DEPARTMENT,
Office Indian Affairs, March 7, 1843.

SIR: I have the honor, herewith, to submit in tabular form a revision of the decisions of Messrs. Murray and Vroom, commissioners, appointed under the provisions of the act of 3d March, 1837, to adjust the claims to reservations of land under the fourteenth article of the treaty of 1830, with

the Choctaw Indians; and, in connexion therewith, beg leave to submit a few brief observations in relation to this revision.

In examining the legal provisions in relation to the adjustment of these claims, it appears that the act of the 3d of March, 1837, in designating the powers of these commissioners, for the appointment of whom it provides, restricts these powers, so far as the claims to reservations are concerned, to mere inquiry, "to ascertain the name of every Choctaw Indian, who was the head of an Indian family at the date of the treaty at Dancing Rabbit creek, who has not already obtained a reservation under said treaty, and who can show by satisfactory evidence that he or she complied, or offered to comply, with all the requisites of the fourteenth article of said treaty; and, also, the number and names of all the unmarried children of such heads of families who formed a part of the family and were over ten years of age, and likewise the number and names of the children of such heads of families as were under ten years of age; and report to the President, to be by him laid before Congress, all the names of such Indians, and the different sections of land to which such heads of families were respectively entitled, together with the opinions of the commissioners, and whether any part of said lands have been sold by the Government, and the proofs applicable to each case." In the seventh section of this act, after refusing to recognise the contingent locations made by George W. Martin for the benefit of these Indians, it is expressly declared as "the true intent of this act to reserve to Congress the power of doing that which may appear just, when a correct knowledge of all the facts is obtained." The act of the 22d of February, 1838, does not increase the powers of the commissioners on this point; consequently, Congress still retains the power of final action in their own hand, until by the passage of the act of the 23d of August, 1842, it is provided, (sixth section,) "that, if the President of the United States shall approve and confirm the determination of the commissioners heretofore appointed to investigate the claims existing under the fourteenth article of the said treaty of Dancing Rabbit creek, in any case, he shall cause to be delivered to the claimant, if he be a Choctaw Indian, his legal representatives or heirs, certificates, as provided by the fourth (should be third) section of this act, for the quantity of land to which such claimants shall appear by such determination to have been entitled, in full satisfaction and discharge of such claim; provided such determination was made by adhering in every instance to the requisites contained in the fourth (third) section of this act; and provided, also, that said claims, nor either of them, cannot now be located according to the provisions of the fourth (third) section of this act." By this section, the President is only authorized to approve and confirm the decisions of the commissioners heretofore appointed, and can do so only in those cases in which a strict compliance with the requisites of the 3d section of said law is found; in other words, none of the decisions of the commissioners based upon equitable considerations shall be consummated, but those which show a full and literal compliance with the provisions of the treaty, except where a compliance with those provisions was prevented by the acts of the Government. I am therefore of opinion that no power exists to consummate any claim which may have been rejected by the commissioners, although it may appear upon revision that the claimants had fully complied with the requirements of the treaty and of the law. Such cases

should, in my opinion, be submitted to the present board, for their decision and report.

The provisions of the third section of this act of 23d August, 1842, with one or two exceptions, are not inconsistent with those of the fourteenth article of the treaty of 1830 with the Choctaws, but are rather a rigid legislative exposition or construction of those provisions. The fourteenth article provides that "*each Choctaw head of a family*," who is desirous to remain and become a citizen of the States, shall be permitted to do so, &c. This expression "*each Choctaw head of a family*" has heretofore been construed to mean each head of a Choctaw family, whether that head was a white or red man, provided his family belong to the Choctaw nation. This construction is certainly not in accordance with the language of the treaty, nor with the terms used by Congress in the act of 1837, under which the commissioners were appointed. The first section of the act of 1837 authorized the commissioners "to ascertain the name of *every Choctaw Indian* who was the *head of an Indian family* at the date of the treaty," &c., and the eighth section of the act of 1842 expressly excludes "any claim which may be presented by a *white man*, who may have had or now has an Indian wife or family." But the last section recited, as well as the 9th of the law of August, 1842, you are of opinion, does not apply to the decisions reported by Messrs. Murray and Vroom. There is no doubt which is the true construction. It is the usage of Indians to provide, in any general arrangements, for every head of a family identified with them by marriage; and the provision for or in right of the children would seem to show very clearly what was meant—not a man of Choctaw blood who had a household, but an individual who, in interest and affection, liability to the penalties of its laws and customs, and right to participate in tried benefits, was a member of the great Choctaw family. This opinion is fortified by the fact, that, in the 19th article, where a kindred provision of land is made for another class, the words employed are, "one section to each head of a family." The purpose was to make provision for Choctaw families, through their heads resident in the nation, and members of the Indian community. But it is unnecessary to decide this question. The construction heretofore adopted, excluding the 8th section of the law of 1842 from operation on the decisions under consideration, will prevail as to them; and future decisions will be governed by the provisions of the said section.

If a reservee had two or more wives, with one of whom he resided, and only occasionally visited the others, he and the latter would be severally entitled, under an opinion of the Attorney General. (Attorney General's Opinions, page 1416.)

The second requirement is, that the claimant should have had an improvement, at the *date* of the treaty, on which he continued to reside for five consecutive years from the *ratification* of the treaty, unless sooner dispossessed of his improvements by any disposition made of the land by the United States. This is a modification of the provisions of the treaty, which only promised the grant upon condition of five years' continued occupancy, while by this provision they may obtain the grant without the fulfilment of that condition, in those cases, and those only, where the United States, by disposing of the land, have prevented a compliance by the Indian with that provision. The modification was necessary; for the treaty is a contract, certain conditions of which are binding upon each of

the parties, except in those cases where the one party may have been prevented by the other from fulfilling those conditions; and that hinderance is justly considered as a waiver of those conditions. Where a reservee died in possession within the five years, and it was continued for the required period by his widow and heirs, or either of them, it amounts, in my opinion, to a compliance with the requisites of the treaty and law. So, when a reservee was in possession at ratification of treaty, and in 1838, without evidence of intermediate possession, continued residence may be fairly inferred where there is no contradictory evidence.

The next requirement of this section, to entitle the claimants to the benefits of the act, is, "that the Indian did not receive any other grant of land under any other article of the treaty." The claimants under the supplement are by the treaty expressly excluded from any "interest in the reservations which are directed and provided for under the general treaty;" and although there is no express provision in the treaty that claimants under the 19th article shall not be entitled to the benefits of the 14th article, yet, as the treaty requires that the reservations granted by both these articles shall be so located as to include the improvements of the claimant, it is obvious that they cannot have reservations under both articles. Besides, the whole scope of the treaty is, as it should be, prohibitory of an Indian receiving under two articles of the treaty. The titles by which the land shall be held under the 14th are different from those granted by the 19th article and the supplement. The residence of five years applies to the former, and not to either of the latter. The law is therefore consistent with the treaty.

It is found impossible with certainty to determine, from the *names* of the Indians, whether the persons who have received the benefits of the 19th article are the same with those applying under the 14th article, from the great similarity of many of the names, and the different modes adopted by different persons in attempting to write down the peculiar sounds of those names. Different Indians, moreover, frequently bear the same name; and, again, in giving in their names, they sometimes omit the first and at others the last syllable or syllables. From this it is evident that the only way with probable certainty to determine the identity of the claimants under the different articles is to ascertain precisely the location of their improvements; and even this may err, as they frequently settle in groups or villages of several families in a cluster. For these reasons, I have made no particular report of such cases, but have merely noted in red ink, under the name of the reservee, the names similar or identical of those who have obtained or been entered for reservations under the 19th article, and the references given. I would therefore recommend, that the agent who shall be authorized to locate the Indians shall determine whether there are claims under two articles or not, and, wherever he so finds, make the proper correction and report the facts, so that the department may withhold or issue certificates, as the circumstances shall require.

The last requirement of the 3d section is, "that it shall be made to appear, to the satisfaction of the commissioners and of the Secretary of War, that said Indian did not remove to the Choctaw country west of the Mississippi river, but he or she had continued to reside within the limits of the country ceded by the Choctaw Indians," &c. This restriction could only have been intended to apply to those who had removed to the west, before completing the five years' residence required by the treaty; for if

they occupied the five years they are promised, by the treaty, a grant in fee simple; and these rights, which have become vested under the provisions of the treaty, can neither be abrogated nor impaired by any subsequent provisions of law, which I am bound to suppose Congress did not intend.

I do not consider that any deduction should be made for those children who emigrated to the west before the expiration of the five years, when the claims of their parents may be allowed; for when it is shown that those children were single and living with their parents at the date of the treaty, the right, whatever it may be, is complete. It is respectfully submitted, under the language of the treaty, that allowance should be made for children who were single and living with their parents at the date of the treaty, but who have removed from the homestead before the expiration of the five years. A different opinion is entertained as to those who had been married before the treaty, and had been separated from their partners, either by death or any other cause, and who had returned to the home of their parents, and were at the date of the treaty living with those parents; these persons cannot be reckoned as children. Where a child died after the ratification of the treaty, the right, in my judgment, is not varied, for the grant was for or to children then living with the head of the family.

From the foregoing views it will appear, that, to entitle claimants to the benefits of the treaty, it has been considered necessary that they should show:

1. That they were heads of families at the date of the treaty;
2. That they had at that time an improvement upon which they then resided, and upon which they continued to reside for five years after the ratification of the treaty—that is, to the 24th of February, 1836—unless the United States should sooner have disposed of the land, including their improvements, and the claimants were dispossessed in consequence of such disposition; and
3. That the claimants, either in person or by an agent duly authorized, signified to the agent of the Government, within six months after the ratification of the treaty, their intention of remaining and becoming citizens of the State.

The witnesses brought forward to prove the requirements are principally, from necessity, Indians, as none others could be informed of the facts; and, from a careful examination of the testimony, it is evident that those witnesses, generally, were animated by a sincere desire to tell the truth. Their ideas of the lapse of time seemed vague, but, from the occurrence of particular events, and by counting the number of crops made, their testimony, generally speaking, is pretty conclusive. The treaty of Doak's Stand, which was concluded about ten years before the one now under consideration, enabled them to designate, with much certainty, the children over and those under ten years of age, by pointing out those which were born before and those after the date of the first treaty.

The agent of the Government, Colonel Ward, unfortunately, so managed his business, that it is left almost entirely to oral testimony to prove the names of those who applied for registration within the six months, and the signification of their intention to remain and become citizens of the States. That he kept a book, about foolscap size, containing two or three quires of paper, and which was almost filled with names of persons registered, is proved; and it is also proved, that this book was afterwards par-

tially torn up, and used as shaving paper—was left out in the weather, and finally was sent to one of the Folsoms; after which, nothing more was heard of it. It is also proved that many applied personally to Ward to be registered, who refused, on the ground that he had received orders from the department not to register any more; that councils of the Indians were held, at which it was determined by those present that they would remain and take lands under the 14th article; that lists were made out, at some of those councils, of the persons present, which were presented to Ward by delegates selected for that purpose; that he registered a part of one of the lists, and refused to register any more, and declined looking at other lists altogether; that at those councils, where there was no person present who could write, sticks were cut, one representing each head of a family, a shorter stick attached for each young man, and notches cut representing the females and children; that delegates were appointed out of each neighborhood to take these sticks to the agent, and tell him the names of the persons represented by them, the members of their families, &c.; and that, when the bundles of sticks were presented by those delegates, he threw them away. In all these cases, where it is shown that the claimants, in any of these ways, either in person or by delegate, signified or endeavored to signify their intention of remaining, the commissioners have deemed it a virtual compliance with that provision of the treaty, and in that opinion of the commissioners I concur. Many of these applications were made to Ward at the time of the payment of an annuity in the summer of 1831, at Lafloore's, which, upon examination, is found to be within the six months after the ratification of the treaty.

Claims are made by many persons for adopted children, under the custom, well known as common among all the Indian tribes, of adopting persons into their families, who, after such adoption, are always regarded as members of the family, enjoying equal rights and privileges with those of the same station who were born in the family. Some of these adopted children are stepchildren, and in such cases I think the claim for them should be allowed; others, however, are nephews or nieces, grandchildren, brothers and sisters, and sometimes children who are not blood relations; in all of which cases I am of opinion that the claims should not be allowed, as it was evidently the intention of the treaty and of Congress to restrict the right to the actual issue of the heads of families claimants, provision having been made for orphans by the 6th section of the 19th article of the treaty. The 8th section of the act of the 22d of February, 1838, moreover, declares a forfeiture of all right against those who attempt to substitute the child of any other Indian for his own, or who shall attempt by his testimony to make any such substitution.

The proof of the location of the improvements of the claimants is probably the best that could, under all the circumstances, be obtained. It is generally the testimony of well-informed and suitable persons, who have been selected and sent out by the attorneys of the claimants, under the guidance of Indians, who were well acquainted with the locations of the places of residence of the parties. These guides pointed out to the agents the place where the improvements of the claimants were or had been; the agent noted down the name of the claimant who had resided there, and, after examining the surveyor's marks, would enter opposite the name the tract on which the improvement of the party was situated. Both guides and agents have testified before the commissioners—the former, that they

faithfully pointed out the improvements of the claimants named; and the latter, that they had carefully examined the bearing and corner marks, and correctly reported the locations. Precision and correctness in this point is material, because the rights of the parties, where they left their improvements before the expiration of the five years, have to be determined by the sales of the lands included in their improvements; and, further, because from the sales of these lands must be determined whether the claimants shall receive land or scrip. In many of the cases, the locations of the improvements are not given, and a list of those cases, with the names of the witnesses, attorneys, &c., should be sent to the present board, that they may ascertain the locations, in order that a final determination may be had, whether patents for the land or scrip must be issued.

The commissioners, in presenting their report, divided the claims into six divisions, viz: No. 1, Captain Samuel Cobb's company; No. 2, Capt. James Picken's company; No. 3, Capt Wee-shock she-ho-ma's company; No. 4, Capt. Anthony Turnbull's company; No. 5, Capt. Chi-she-ho-ma's company; and No. 6, miscellaneous and unfinished claims. Each of these divisions is subdivided into three classes, as far as necessary, viz: Class No. 1, claims approved; No. 2, claims rejected; No. 3, claims recommended to the favorable action of Congress, for various reasons, where all the requirements of the treaty have not been complied with. These divisions and classes have been preserved in making out this report, and the classification will indicate the decision of the commissioners, while the result of the present investigation is briefly given in the appropriate column.

The cases appear to have been numbered as they were presented for the action of the commissioners, but those numbers are much scattered through the various divisions and classes. The commissioners have numbered each class of each division with a new series of numbers, which have been omitted in this report; and while the general numbers of the commissioners are preserved, a new series of numbers has been adopted, in place of those of the classes, consecutively, through all the cases, as they appear on the tabular statements.

It happens in some cases that part only of the land was sold by the United States. Can the residue be awarded to the Choctaw reservee? I am of opinion, that when the lands have been located for the reservee, and any part of the location has been sold, he is entitled to scrip only; and, first, when his claim has not been located, and the improvements of the reservee remain unsold by the United States, he may have land for his claim, if there be sufficient quantity vacant adjoining; second, that when there is not a sufficient quantity, he must take scrip; third, that where any part of the improvements are unsold by the United States, the claim should be satisfied either in land or scrip, on the principles laid down in the first and second propositions; and, fourth, where the entire improvements are sold, although there may be sufficient land adjoining to satisfy the claim, he must take scrip.

All of which is most respectfully submitted.

I have the honor to be, very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

Hon. J. C. SPENCER,
Secretary of War.

WAR DEPARTMENT, *March 8, 1843.*

The above report, being in the main the result of consultations with me, by the Commissioner of Indian Affairs, is approved, with the following exceptions:

I differ from the Commissioner as to the claims of white men, heads of Indian families. Without deciding whether such persons are or are not entitled under the treaty, yet looking to the words of the act of 1837, which authorized the commission, and directed them to investigate the claims of "every Choctaw Indian who was the head of an Indian family," I must decide that they had no authority to inquire into the claims of any other person, and of course that there is no authority to approve their report in favor of citizens.

As to the meaning of the word "children," in the treaty, I am of opinion that all who are reported to have been actually members of a Choctaw family, adopted into it as children, and for whom the head of the family provided, are to be regarded as children, according to the well-known usages of the Indians; but if they appear to be orphans, or to be returned as children of other families, they cannot be included among the family into which they are adopted.

Lists of the claims to be approved, and of those to be rejected, according to the principles of this report, as above modified, will be made out, of this date, and submitted to me, to be recommended to the President, for his sanction.

J. C. SPENCER.

V.

YAZOO OLD VILLAGE,

Neshoba County, Mississippi, June 10, 1843.

SIR: Your letter of the 22d ultimo, (covering the opinion of the Secretary of War,) in answer to a communication from my colleague, Mr. Claiborne, of the 8th May, was read by me yesterday. It seems that the contents of your letter, and the opinion of the Secretary of War, were alluded to by Mr. McRae, the enrolling agent, in a public address to the Indians, before I knew of the existence of either.

Until I read your communication of the 22d ultimo, I was not aware that there was any discrepancy in the views of the commissioners, in relation to the course to be adopted after they adjourned at Hopahka, of which Mr. Tyler and myself apprized the department in our letter of the 1st of April.

In justice to Mr. Tyler and myself, I now enclose copies of resolutions adopted *unanimously* by a full board on the 27th of March last, showing the course the commissioners then thought most prudent to adopt; as also a copy of the orders based on these resolutions, and ordered to be published in the newspapers. Mr. Tyler and myself, in our letter of the 1st April, intended only to assign the reasons for the course which has been adopted, and of which public notice had been given.

It is due to Mr. Tyler for me to add, that his two colleagues had agreed upon the course pointed out by these resolutions a day or two before he appeared and took his seat at the board.

There is now a discrepancy in the views of Mr. Claiborne and myself, as to the proper location for the commissioners. From the resolution, a

copy of which is enclosed, adopted on the 11th May last, it will appear in some short time, I presume, the commissioners are to hold their sessions permanently at Hopahka, or near it. The great centre point seems no longer to be at or near Herbert's Post Office.

Colonel Claiborne introduced and urged this last resolution (now published in the newspapers) as one, and to which, for the sake of harmony, I gave a reluctant assent. My objection to it [was] (and still is) the returning to the neighborhood of Hopahka. Hopahka is the private residence of Colonel Forester, who is more extensively engaged as agent for the Indians than any other man in Mississippi. His near neighbor, Mr. Logan Harper, is the only white person in several miles around, at whose house any person can be accommodated.

If it be necessary at all to be on the stage road from Columbus to Jackson, I greatly prefer Louisville, which is more convenient to the Indians to be examined, and whose citizens I understand are willing to pledge themselves that no spirituous liquors shall be sold to the Indians, and where (a most important consideration with me) there will be disinterested spectators of all that is done before the commissioners.

All the Indians west of Pearl river had their cases examined last winter, while the commissioners were at Hopahka. Those whose cases are now to be examined are east of Pearl river, and our present location is more central to them than any other place where it is probable accommodations can be procured.

The principal objection which I have to it, however, is, that it is a private residence, where probably no persons will attend and witness the proceedings of the commissioners, and of those who come before them, but those who are interested.

Very respectfully, your obedient servant,

RALPH GRAVES.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

V 1.

HOPAHKA, LEAKE COUNTY, MISS.,
Monday Morning, March 27, 1843.

The board met, pursuant to adjournment.

Present : Commissioners Claiborne, Graves, and Tyler.

The following resolutions were ordered to be entered on the journal :

1. *Resolved*, That this board will take testimony in no case after the adjournment at this place, and will open their office, until notice to the contrary is given, only for the purpose of enabling those who claim under the 14th and 19th articles of the treaty of Dancing Rabbit creek, and the supplement to the said treaty, to file their claims, and have them docketed before the 23d of August next; after which, the claims, by the act of Congress, will be absolutely barred "if not presented."

2. *Resolved*, That, after the 1st of May next, the commissioners will take up the cases now before the board, in which the testimony is completed, and adjudicate the same as speedily as their other indispensable business will allow them.

3: *Resolved*, That when the board adjourns at this place, (Hopahka,) it shall adjourn to meet at the late residence of James Elliott, near the Old Yazoo Village, in Neshoba county, Mississippi, on Monday, the 3d of April next, and remain in session there until the 15th of May, when it shall then adjourn there to meet on the 17th of that month at Garlands-ville, in Jasper county, Mississippi.

Ordered, That an office be opened at the Old Yazoo Village, or the late residence of Colonel James Elliott, in the county of Neshoba, on Monday, the 3d day of April next, to continue open until the 15th of May, when and where all persons concerned can file their claims, under the 14th and 19th articles of the treaty of Dancing Rabbit creek and the supplement thereto. An office will be opened at Garlandsville, in the county of Jasper, on the 17th of May, for a like purpose.

All claims should be filed as early as possible, as by the terms of the act of Congress they will be absolutely barred after the 23d August next.

The board of commissioners will proceed, on or about the 1st of May, to adjudicate the cases in which testimony has been taken heretofore.

Ordered, That the Secretary have the foregoing notice published in the newspapers printed in the towns of Jackson, Columbus, and Paulding, Mississippi, (five insertions.)

BOARD OF CHOCTAW COMMISSIONERS,

May 11, 1843.

Present: Commissioners Claiborne and Graves.

Ordered, That this board adjourn at Garlandsville on the 3d day of June, to reassemble at the Old Yazoo Village, in the county of Neshoba, on the first Monday in June, for the examination and adjudication of claims and other business; whence it will adjourn, on a day to be hereafter designated, to meet and hold its sessions permanently at the house of Logan Harper, in the county of Leake, on the Robinson road, one mile from Hopahka Post Office.

W.

YAZOO OLD VILLAGE, June 12, 1843.

Sir: The board of Choctaw commissioners has been engaged, since its return (on the 5th instant) to this place, in rendering judgments in the cases tried at Hopahka, having finally disposed of the protest filed against the claims by Messrs. Kirksey and Poindexter. After being compelled to fine the protesters, and some of the witnesses whom they had desired to be subpoenaed, for disobeying the process of the board, the commissioners succeeded in procuring their testimony in May last. They failed to sustain the protest.

The board has rendered about one hundred judgments, and is able to proceed much faster than their secretary. It is also engaged in taking testimony in new cases.

There are some 715 claims filed since the adjournment of the board at Hopahka, with proof of location of each claimant, and perhaps there are

some 300 more to be filed; the cases will average about $2\frac{1}{2}$ sections each. The proof of location is not furnished yet in all of the cases tried at Hopahka, and was furnished in but few cases until one or two months after the cases in other respects were completed.

The principles being settled in the cases, the board, for the future, will be able to proceed comparatively with speed.

The law and instructions of department require the commissioners to make no allowance in the cases where the claimant has entirely sold his interest before the 24th February, 1836; and when he has made a partial sale, to make no allowance for that part which he has sold. The statements in the cases tried at Hopahka were drawn by counsel.

In the cases generally, the claimant states that, previous to the expiration of five years from the date of the treaty, he had made no contract for the sale, and *which he considered binding*, &c. There are no explanatory words added. Is not this in fact an admission that he had made a contract, but that he did not consider it binding on him? Is he, an ignorant savage, a judge of the force of his legal obligations? I shall guard, as far as I can, for the future, against this form of expression.

It is notorious, in this country, that there were many persons trading with the Indians in 1835, making contracts, &c. It is rumored that many of these contracts are of record in the proper counties in this State. Should not this fact be ascertained by the commissioners? Should they not appoint an agent to procure this and all other evidence in behalf of the Government? I have been anxious for the appointment of such an officer for some time, but have not yet got one appointed. Would it be too late to procure this evidence after the commissioners have forwarded their judgments to the department? The claimants are required to be examined, and disclose any fraud which may exist in their claims. Should not their agents be required to [give] testimony also? Upon what principles ought they to be excused, for they are better informed as to the true character of the claim than the ignorant Indian?

If any commissioner believe any individual can give important information, is he bound to state, under oath or otherwise, what particular facts he expects that person to prove, before he can have him subpoenaed? Ought not the testimony of witnesses before the commissioners to be reduced to writing, in the form of depositions or affidavits, and be signed by them, or will the mere private memoranda of each commissioner be sufficient? Ought the secretary or the commissioners to write out the affidavits or depositions?

The views of the department on all these points are respectfully requested.

Very respectfully, your obedient servant,

RALPH GRAVES.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

P. S. Without any unforeseen cause of delay, I think the business of the commission can be brought to a close in 12 or 14 months.

OFFICE INDIAN AFFAIRS, July 6, 1843.

GENTLEMEN: I received a communication, under date of 12th June last, from Ralph Graves, Esq., informing me that the Choctaw commissioners "have rendered about one hundred judgments," and are engaged in taking testimony in new cases. This is gratifying intelligence, as well as the opinion expressed that "the board for the future will be able to proceed comparatively with speed."

Some inquiries are put by Mr. Graves, the answers to which, as they will be for the use of the board, are addressed to it.

1st. "The claimant states that, previous to the expiration of five years from the date of the treaty, he had made a contract for the sale, &c., *which he considered binding, &c.* There are no explanatory words added. Is not this, in fact, an admission that he had made a contract, but that he did not consider it binding on him? Is he, an ignorant savage, a judge of the force of his legal obligations?"

The 9th section of the law of 23d August, 1842, prohibiting the allowance of any claim under the 14th article of the treaty, "if the said commissioners shall be satisfied by such proof as they may furnish that said claim had been, previous to the expiration of five years from the ratification of said treaty, assigned, either in whole or in part; and in case of a partial assignment or agreement for an assignment thereof, the same shall be allowed so far only as the original Indian claimant was at that date the bona fide proprietor thereof." The law is very plain. The commissioners are the judges whether the assignment or conveyance, or agreement to assign or convey, was of such legal force and virtue as to bind the reservee; his opinion as to its validity is of no consequence. The commissioners are to take evidence in relation to such sales, or agreement to sell; to lay down the rules by which such evidence shall be procured; and, when examined and considered, to decide and report whether, in their judgment, such sale, or agreement to sell, exists. The allegation of the party that he had made no contract for the sale, &c., *which he considered binding, &c.*, is, in my opinion, an admission that a contract was made.

2d. "It is notorious in this country that there were many persons trading with the Indians in 1835—making contracts, &c. It is rumored that many of the contracts are of record in the proper counties in this State. Should not this fact be ascertained by the commissioners? Should they not appoint an agent to procure this and all other evidence in behalf of the Government?"

Undoubtedly it is the duty of the commissioners to ascertain by all proper means, in every case submitted, whether a sale has been made by the reservee; and, as one of the effective means, an agent should be appointed to have an examination made of the records in each county in which reservations are situated; to see whether contracts for their sale have been recorded, and to solicit evidence of any other description, for the consideration and information of the board.

3d. "Would it be too late to procure this evidence after the commissioners have forwarded their judgment to the department?"

All the evidence in such case should be procured and acted on by the board before they make up and forward their judgments on it; otherwise it is manifest they will not be deciding and reporting on the whole case, but

upon a partial view of it, on one side or the other, and their labors will be comparatively useless to the department; for the latter, if a new aspect is given to a case by the introduction of testimony not before the commission, must form an opinion *de novo*, which, you will observe, is not contemplated by the 3d section of the law of August, 1842; it, you will perceive, requires "that all and each of the above requisites shall be made clearly to appear to their [the commissioners] satisfaction, and the Secretary of War shall concur therein;" plainly requiring that the commissioners shall express an opinion upon a view of the whole ground in every case.

4th. The next inquiry is, "Whether the agents of parties should not be required to testify?" I know of no principle on which they might be excused, except the legal ground of attorneys not only being excused from disclosing their clients' secrets, but not being permitted, if willing, to do so. This, however, even in courts, is confined to disclosures made to the attorney by his client; the protection does not extend to the withholding of facts of which the attorney may not have acquired the knowledge from his client. But the cases before you are investigated not so much by strict legal rules as according to your discretion, "on such proof as they [you] may furnish."

The great object is to arrive at the truth, and a single narration from the Indian reservee himself will often disclose it; and yet such a course no one would think of resorting to in legal controversies (out of chancery) between our own citizens.

5th. "If any commissioner believes any individual can give important information, is he bound to state, under oath or otherwise, what particular facts he expects that person to prove, before he can have him subpoenaed?"

The rules the board have furnished for its government may settle the answer to this inquiry, or may not. On general principles, I should think it would be altogether unnecessary that one of the board of commissioners should make an affidavit of the facts he supposed a witness would prove, preparatory to subpoenaing him. The commissioners fill high offices, under oath; and a simple expression of an opinion that A B could give material testimony, coming from one of the commissioners, should be followed by the issuing of a subpoena. At the same time, I would recommend, as a matter of courtesy, and preliminary, that the facts expected to be proved should be freely communicated to his associates.

6th. "Ought not the testimony of witnesses before the commissioners to be reduced to writing, in the form of depositions or affidavits, and signed by them?"

I think so; the Secretary of War cannot otherwise well revise the opinions of the commissioners. Full compends of the testimony might answer; but then any gentleman is liable to misconstrue the meaning of a witness, and, putting his own construction on his language, to convey a different meaning from that intended. To such an objection an affidavit, which ought to be as short as consists with intelligibility, would not be liable. The affidavits that the parties furnish to sustain these claims they will themselves prepare, or cause to be prepared, of course. Those on behalf of the Government, it seems to me, the board should cause to be prepared, as they may find convenient or necessary.

I believe I have answered all the inquiries put.

Very respectfully,

T. HARTLEY CRAWFORD.

HON. J. F. H. CLAIBORNE,
RALPH GRAVES,
WILLIAM TYLER,

} Herbert's P. O., Neshoba County, Miss.

X.

DEPARTMENT OF WAR,
Office Indian Affairs, June 17, 1843.

GENTLEMEN: I received a letter, written under date of 3d instant, at Macon, Mississippi, from R. H. Grant Esq.

The President and Secretary being both absent, I have, after much reflection and consideration, determined to forward a copy of the letter mentioned to your board, and respectfully to urge upon you the necessity which the information imposes, of the greatest vigilance to guard against the frauds which Mr. Grant says are attempted to be practised on the United States; and, in the discharge of this highly important duty, you have the power by law to employ such agent or agents as you shall deem necessary, to exhibit the whole truth, and do justice to the claimants as well as the Government, especially the latter, for it is only on the Government that frauds, if they be meditated, can be practised at this stage of the business. In selecting agents, industry and capacity to discover, and integrity to resist the designs that are said to be entertained, should not only belong to them, but should, in public estimation, be accorded to them, so as to enable you, by the information they shall furnish, to decide justly, as I am confident you will, if fully informed; and besides this, the first object, to satisfy the public mind, which is another object, second only to the first.

As soon as either the President or the Secretary of War returns, I will lay Mr. Grant's communication before him, and take his direction in the premises, and, in the mean time, make this communication to you, as the step most judicious that, under the circumstances, occurs to me.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

HON. J. F. H. CLAIBORNE,
RALPH GRAVES,
WILLIAM TYLER,

} Herbert's P. O., Neshoba Co., Miss.

X 1.

MACON, MISSISSIPPI, June 3, 1843.

SIR: I have taken the liberty of suggesting to you the progress of the board of commissioners to adjust the Choctaw claims under the late law; and in doing so I am only taking on myself a privilege, as a citizen of this Government, to guard her from one of the most enormous frauds that has been attempted to be practised on her. The commissioners have no chance to protect the Government; they have no testimony *but the Indians, and do not know where to obtain it*. If some efficient person were appointed to collect testimony, and the Government had counsel before the board, much might be saved—between two and three millions of dollars. Would it not be to the interest of the Government to expend a few thousand dollars to save that sum. You are apprized, from the books in your office, that I am a large purchaser in the 19th article claims, and some few of the 14th article. I have travelled much among those Indians, to ascertain all valid claims, for the purpose of purchasing, from the date of the

treaty until 1836, and examined into all those cases that I had presented to me by the Indians. I found but few that were entitled, and few to complain that injustice had been done them by the Government, until 1835, when Charles Fisher came amongst them. I travelled amongst them after 1835, and found an entirely different story after Fisher had been amongst them. They all made out statements of good claims, and complained of bad treatment by the Government. The fact is, there are not two cases in one hundred that are entitled to land; and to sustain this assertion, in the fall of 1835, when locations were made for a portion of those claims, Greenwood Lafloore, who was a treaty chief of the Choctaw nation, made a speech in the town of Columbus, and in that speech pronounced them all frauds. *The Legislature of Mississippi, that winter, drew up resolutions from testimony before them, and pronounced them all frauds, without a dissenting voice.* When the land sales came on in 1835, in Columbus, the agents of the Indians put down opposition by giving the settlers a certificate, that they should hold their land at \$1 25 per acre. Now, sir, examine your office, you will find, by Armstrong's returns of the census of the nation, that there were 19,000 and upwards, and something over 3,000 heads of families; 15,000 emigrated west, leaving 4,400; amongst that number were some sixty families, of about 600 in number, that stayed, that did not make a part of the number now claiming land, having been otherwise provided for. This would leave about 3,800 souls now in Mississippi. Under the present arrangement, these 3,800 will produce about 2,000 heads of families, and the 15,000 that emigrated will not make more than 1,200 heads of families; and in the place of 3,800 in number, there will be over 8,000.

Those Indians that remain never intended to recognise the treaty, and denied it until after the expiration of six months from its ratification; and I may add that, with few exceptions, none would have ever pretended to have signified their intention to remain five years, had not white men instructed them to do so. If the Government will pay me to collect testimony, and employ such counsel as I would select, for \$20,000, in collecting witnesses and sustaining them, and employing counsel, the United States would have saved \$2,500,000, which, under the present arrangement, she will lose, for it will be impossible for the commissioners to arrive at any rebutting testimony, unless asserted in some way. A set of agents, sharpers, with Indians to testify, and no one to rebut it, it will be a necessary consequence that all will pass. I would be willing to undertake for the Government, on the advance of a sufficiency to pay the necessary expenses, and leave (for my services) to the liberality of Congress, after I had rendered the service, to say what it is worth; and for my capacity to discharge this trust, I would refer you to the Hon. W. Tyler, who has been amongst us as commissioner. Should my suggestions meet your views, and you will take trouble to lay them before the President or Secretary of War, and in the event of its meeting their approbation, I would suggest the propriety of *suspending issuing any scrip on those reported, and that they be remanded for further investigation.* Believing, as I do, that those cases are mostly frauds, and the Indians not to be benefited in any event, I am anxious that the Government should be protected against those frauds, and, after the cases are settled, extend a liberal hand to them, after their removal, not at the control of any person but themselves. I cannot believe that the Government will be satisfied to suffer such an immense loss for a little

expense to protect her interests. I have freely given my opinion and belief what could be saved to Government ; and if employed, I will prove the facts as stated. Should some more efficient person be preferred, I would cheerfully yield any pretensions I may have, and should be glad to see some one better qualified to discharge the trust. My wish is, that it should be done. I would cheerfully undertake it with my own responsibility if I had the means to carry it out without asking the assistance of the Government. But the expense and trouble to an individual would be enormous, and but a trifle to her ; and she is to be benefited, and not the individual. I have been lengthy, and could write more, but shall leave the subject.

I am, respectfully, your obedient servant,

R. H. GRANT.

HON. T. H. CRAWFORD.

Y.

HERBERT'S P. O., MISSISSIPPI, June 22, 1843.

DEAR SIR: I have heretofore expressed my conviction (and I refer to the documents forwarded to the Indian Office) of the incompetency of my colleague, Mr. Graves, for his station, and that the public business would suffer by his continuance here.

If, however, it should not be your pleasure to recommend his dismissal or withdrawal, and the President should choose to continue him, I must beg of you to suggest to William Tyler, Esq., the propriety and expediency of his return to the commission, as I am unwilling to share its responsibilities alone with Mr. Graves.

I have the honor to be, most respectfully, your friend and servant,

JOHN F. H. CLAIBORNE.

HON. SECRETARY OF WAR.

Endorsement by Secretary of War.

JULY 10, 1843.

Wrote to W. Tyler, Esq., to proceed forthwith to Mississippi, to expedite matters.

J. M. P.

Z.

HERBERT'S POST OFFICE,

Neshoba County, Mississippi, June 26, 1843.

SIR: I have the honor to transmit you a statement from the secretary of the board of Choctaw commissioners, which will show, at one view, the state of our business.

Many of these cases were tried early in December, and none later than March.

Not one of them is suspended on suspicion or allegation of fraud, nor do the parties desire or design submitting additional evidence. But they are suspended on points of law and difficulties of construction that exist in the mind of Mr. Graves.

I have had no difficulty in making up my opinions on any case ; and had I entertained such difficulties, they would have been immediately removed by the able, comprehensive, and very satisfactory letter of Mr. Crawford, of the 15th of May, received here on the 5th instant—a letter perfectly conclusive, it seems to me, on all the litigative points, but which still leaves the mind of my colleague uncertain and undetermined.

All the business we have done might have been transacted, under an *efficient* organization of the board, in three months.

The *applications* referred to in the statement do not consume a moment's time. They are mere notices of claims written out, and presented, without reading, to the secretary, to be filed. The taking of testimony and rendering judgments is the only business for the board, and you will perceive at once that we are literally doing nothing. There will probably be 250 more applications filed, making some 965 cases yet to try ; and from the time it has occupied in trying the 256 Hopahka cases, and rendering judgment on only 182 of them, you will at once see that, unless there be a change, we shall never complete one-half the business.

I feel bound, in self-justification, and from a due regard to my official and personal reputation, to state that this delay of the public business has not been occasioned by me. And I add my conviction, that, under the present organization of the board, not one-half of the cases will be examined, and consequently the Indians will not emigrate—thus baffling and defeating the main object of the Legislature of this State, in memorializing Congress for the establishing of this commission. The whole affair will be an abortion, costing the Government thousands of dollars, and ending in discredit and injury to the administration and to all concerned.

I have the honor to be, with very great respect, your most obedient servant,

JOHN F. H. CLAIBORNE,
President Board Choctaw Commissioners.

Hon. J. M. PORTER,
Secretary of War.

NOTE.—The statement referred to by Mr. Claiborne was not received with his letter in Indian Office.

Aa.

BOARD OF CHOCTAW COMMISSIONERS,
Old Yuzoo Village, July 14, 1843.

SIR : We received, a few days since, your letter of the 17th ultimo, enclosing a communication from Reuben H. Grant, of Macon, in this State.

We have the honor herewith to send you a transcript of our journals, by which you will perceive that the said Grant has refused to testify, either in a specific case or generally, touching the frauds which he alleged to exist.

The board, having no officer in attendance who could take said Grant into custody for his contempt, was reduced to the necessity of issuing an attachment against him, which will be placed in the hands of the marshal.

We transmit three affidavits of the said Grant, made at different periods.

The board contemplate the appointment of an agent to collect testimony,

&c., and will probably offer the appointment to the Hon. Thomas J. Word, late member of Congress from this State, and a gentleman of the highest character.

We have the honor to be, most respectfully, your obedient servants,
 JOHN F. H. CLAIBORNE.
 RALPH GRAVES.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

P. S.—We likewise transmit the application of the Hon. Charles Fisher, attorney for Choctaw claimants, and the opinion of Mr. Claiborne (in which Mr. Graves concurred) on Mr. Grant's motion to be excused.

—
 Aa 1.

TUESDAY MORNING, *July 11, 1843.*

Present: Commissioners Claiborne and Graves.

Charles Fisher, attorney for Ta-nump-ish-ubbee, a Choctaw claimant, whose case was introduced, and continued on the 23d June, for further testimony, gave notice that he was now ready for trial, and presented an application, in writing, for a summons for Reuben H. Grant, as a witness in the case.

The board took no formal action on the application, but ordered it to be filed. On the suggestion of Commissioner Claiborne, (who stated that he considered General Grant an important witness in behalf of the United States,) a subpoena was issued, requiring his attendance on the board on Wednesday morning, the 12th instant.

A true copy from the journal.

P. BAYLY, *Secretary.*

WEDNESDAY MORNING, *July 12, 1843.*

The board met this morning. Present: Commissioners Claiborne and Graves.

Charles Fisher, attorney for Ta-nump-ish-ubbee, whose case was continued on the 23d June last, for further investigation, gave notice to the board that he was now ready to proceed with his case, and presented the claimant.

Reuben H. Grant, a witness on behalf of the United States, who had been summoned before the board this day, appeared in court, and asked to be excused from giving testimony for the present, and until he could collect other testimony in connexion with it. Mr. Claiborne delivered his opinion in writing, refusing the application of said Grant, in which Mr. Graves concurred. It was therefore ordered, that the said Grant be now required to testify, and to answer such interrogatories as might be put to him. Upon which, he peremptorily refused to be qualified or examined. Whereupon, Mr. Claiborne moved the board that a fine be imposed upon the said Grant, for his contempt of the laws of the United States and the authority of this board.

It is therefore ordered, that a fine of five hundred dollars be entered against Reuben H. Grant, of Noxubee county, Mississippi, for his contempt of the authority of this board, in refusing, in open court, to-day, to be sworn and to testify before the commissioners, against the claim of the Choctaw In-

dians, but especially in the case of Ta-nump-ish-ubbee. There being no officer present who could take the said Grant into custody, it is ordered that an attachment issue against the said Reuben H. Grant, directed to the marshal of the northern district of Mississippi, so that he be brought before the commissioners forthwith. (Attachment issued.)

A true copy from the journal.

P. BAYLY, *Secretary.*

Opinion of Mr. Claiborne on the application of Reuben H. Grant to be excused from giving testimony at the Old Yazoo Village, the 12th July, 1843.

I have every disposition to indulge Mr. Grant, but I cannot perceive the force or the propriety of his application for delay. He is an old citizen of this State, and has been for many years, by his own showing, engaged in speculating in Choctaw claims. As far back as the year 1834, he made the affidavit, hereunto appended, (marked A,) published in Bell's report from the Committee of Indian Affairs to the House of Representatives. On the 22d February last, he made the deposition (marked B) before the present board; and again, on the 5th May, the accompanying deposition, (marked C.) On the 3d day of June, in a letter to the Commissioner of Indian Affairs, he charged the existence of enormous frauds, avowed his ability to expose them, and proffered, for a fee of \$20,000, to save the Government from a loss of two and a half millions. He has since transmitted to "The Mississippian" a communication of the same tenor. He is therefore, it may be presumed, well informed upon the subject-matter, and there is no reason why his disclosures should be longer postponed. The public interest requires an immediate development; and he does injustice to the position in which he has voluntarily placed himself, to his own intelligence, his responsibility, and personal character, in asking to be excused from testifying. His testimony is, by his own showing, material to the United States; not only material, but of *vital* importance; and all that he can disclose, to enable the commissioners to detect frauds practised, or about to be practised, he must *now* disclose. Delays in such contingencies are dangerous. Death may intervene, or the fraud be perpetrated before measures can be taken to expose it. It is an unheard-of thing for a witness who knows of the existence of frauds, and has avowed his ability to expose them, to ask to be excused from testifying. If he has papers to refer to, or subsequent developments to make, this may be done; but he must answer such questions as may be propounded to him now, as far as he can. His evidence is especially necessary in the case of Ta-nump-ish-ubbee. He specially refers to a conversation with this claimant, in his deposition marked C. The case is a most important one. Ta-nump-ish-ubbee is the captain of the Bogue Chittos. He was one of six deputies appointed by them at a council, just before the last annuity at Lafloore's, to proceed there, at the head of the band, and apply to Ward to register them for the five years' stay. It is in proof, by all the Bogue Chittos who have been examined, that he actually repaired to the place appointed; personally, and in the presence of his co-deputies, apprized Ward of the object of his journey; and was prevented from applying for the five years' stay for himself and others by Ward's refusal to proceed with the registration. But Mr. Grant's deposition (C) proves just the reverse of this. The case of said Ta-nump-ish-

ubbee was presented to this board on the 23d of June. My colleague gave it a critical and protracted examination, at the conclusion of which I desired a continuance of the case until additional proof could be obtained from the said Grant and Greenwood Lafoore, to whom Grant refers in his aforesaid deposition.

The case of Ta-nump-ish-ubbee is not only important of itself, but it affects many others. He is an important witness for many of his warriors, who were at the Kin-tauga council; and until his case is fully investigated, until the suspicion of fraud raised against him by Mr. Grant's deposition be removed, I doubt the propriety of receiving him as a witness. These Bogue Chitto cases are being rapidly examined, and recent instructions from the department require that they should be adjudicated as fast as the proofs are completed. Few of them can be, in my judgment, properly adjudicated as long as the case of Ta-nump-ish-ubbee stands over. Yesterday, his attorney, Charles Fisher, Esq., (in a paper marked D,) gave notice that he was prepared to present the said case again, and that Reuben H. Grant was on the ground. My chief motive for desiring the continuance of the case was therefore removed; and, at my suggestion, a subpoena issued, requiring Mr. Grant's attendance on the board this day, as a witness in behalf of the United States. If either the attorney of the Choctaw claimants or Mr. Grant can show, by affidavit, according to the rule of this board, that there are other material witnesses, final action in the case shall still be postponed. But this will not excuse the board from demanding all the testimony now that can be had. The importance of this particular case, justice to a numerous body of claimants to a great extent ignorant of their rights, and a due regard to the instructions of the department, render further delay inexpedient. If [he] knows of other material witnesses, let their names be given to the board, and it will exert all its powers to obtain their testimony.

There are other reasons, of a more delicate and personal nature, why this examination should now take place. When Mr. Grant was before the board on the 5th May, with a fine impending over him for disobedience to its mandates, he prayed a remission of that fine before he should be required to testify. Two of the commissioners concurred in his prayer, and they have been singled out and denounced in the public press, by an individual residing often in Grant's family, for improper and censurable lenity. The whole commission has been reflected on for abstaining from a cross-examination of Grant on that occasion—a proceeding then thought unnecessary, as he had alleged no fraud but in *one* case, which was then not before the board. The officers assailed may well hold in contempt such malignant assaults, whether through the press or in the mouth of vagrant rumor; but all public bodies owe a certain respect to public opinion; and now, when an important witness is on the ground, and a claim designated by him as fraudulent is ready for examination, respect for public opinion, for justice, and for right, demand that there should be no longer delay. It is due alike to the country, to the commission, to the witness himself, and to the claimant, against whom this allegation of fraud, if it be untrue, should no longer be permitted to exist. Impressions have been sought to be made in various ways, openly and clandestinely, that these claims are fraudulent, and that this board is incompetent to detect the frauds. A protest to that effect, attended with great inconvenience to the board and expense to the United States, occupied our attention for many weeks, but

was finally quashed without the development of a single fraud, and by the declaration of the party, and the witnesses, subpoenaed at his instance, in behalf of the United States, that they knew of no frauds. Subsequently, numerous publications have been made in a certain quarter, reiterating these charges, and designed to show the incompetency of this board. Mr. Grant himself solemnly charged the existence of these frauds, in his recent letter to the Commissioner of Indian Affairs. It is therefore our duty to proceed forthwith, in behalf of the United States, to examine the witness. His application to be excused is refused, and he will be qualified accordingly.

JOHN F. H. CLAIBORNE.

[A.]

THE STATE OF MISSISSIPPI, *Lowndes County* :

We, Reuben H. Grant and Jefferson Clements, having been called upon to state what we knew in relation to the conduct and capacity of Colonel William Ward, late agent for the registration of certain Indians or Choc-taws, under the fourteenth article of the treaty of Dancing Rabbit creek, for citizenship and land, state as follows, to wit : We have been frequently present when the Indians made application to the agent, Colonel Ward, to register themselves to take citizenship and receive land under the provisions of the fourteenth article of the treaty of Dancing Rabbit creek, and before the expiration of six months after the ratification of said treaty, and have known the agent, Colonel Ward, to *refuse and reject a good number* of applicants, saying "that they might go west of the Mississippi river;" that it would be better for them. Being requested, we further state that the agent, Colonel Ward, was *frequently incapable* of attending to business, from *intoxication*, and, when not intoxicated, was so *negligent and careless* that any person who wished books and papers did pretty much as they pleased with them; and that said agent was much opposed to Indians availing themselves of the advantages of the fourteenth article of the treaty aforesaid.

REUBEN H. GRANT.
JEFFERSON CLEMENTS.

Sworn to and subscribed before me, December 23, 1834.

JOHN H. MORRIS,
Justice of the Peace for said County.

I, George W. Martin, locating agent, do hereby certify that the foregoing is a true and correct copy of the original deposition of Reuben H. Grant and Jefferson Clements, on file in my office.

GEORGE W. MARTIN.

СНОСЧУМА, *December 29, 1834.*

(See *Bell's report*, Ho. of Reps., Doc. No. 663, page 48.)

[B.]

The deposition of General Reuben H. Grant, a free white citizen of the county of Noxubee, and State of Mississippi, taken before the commissioners appointed under the act of Congress of 23d August, 1842, entitled "An act to provide for the satisfaction of claims arising under the 14th article

of the treaty of Dancing Rabbit creek, concluded in September, 1830," at their office, at Hopahka, in Leake county, in said State of Mississippi. The said deponent, being first duly sworn on the Holy Evangelists of Almighty God, deposes and says :

That he is interested in the cases arising under said treaty, and which perhaps may come before this board, for their investigation and adjudication.

He does not know that he has any interest in the cases which have been already before the board; but that the testimony, he presumes, will be much the same in all the cases, and is therefore unwilling to testify for or against any claim, in consequence of his interest in the general matter, believing he is not a competent witness, and submits to the decision of this board.

R. H. GRANT.

Taken before us at Hopahka, the 22d of February, 1843.

RALPH GRAVES.

J. F. H. CLAIBORNE.

[C.]

Interrogatories propounded by the commissioners appointed under the act of Congress of 23d August, 1842, to adjust claims arising under the treaty of Dancing Rabbit creek, with the Choctaw tribe of Indians, dated in September, 1830, to Reuben H. Grant, of Noxubee county, Mississippi, a witness on behalf of the Government of the United States, now appearing to answer to a scire facias, requiring him to show cause why a fine imposed by the board of commissioners, on the 15th day of March last, be not final :

The said Reuben H. Grant is now required to testify in behalf of the Government, and truly to answer the following interrogatories :

1st interrogatory. Have you any interest whatever, as claimant, agent of claimant, or otherwise, in any claim under the 14th and 19th articles of the treaty of Dancing Rabbit creek, or in any of the claims under the supplement of said treaty, which have been presented, or may be presented, for the consideration of this board? If any, state how you are interested, and in what claims.

2d interrogatory. Do you know of any fraud committed, or attempted to be committed, upon the Government of the United States, by any Indian, or class of Indians, or their agents, in cases of such claims?

3d interrogatory. Do you know, or have you heard, of any Indian or claimant who has ever removed to the Choctaw country west of the Mississippi, and has since returned to the country ceded by the said treaty of 1830, and is now residing here? If you do, tell all you know or have heard on the subject; give the name of the Indian or claimant, and describe him so particularly, if you can, that the commissioners may be able to recognise him, should he come (or has been) before them in person; and if any such person be dead, give his name and the names of his family and relations, so that a claim in behalf of his heirs may be detected.

4th interrogatory. Do you know of any Choctaw Indian or other person who has attempted to get a claim allowed by the Choctaw commissioners on this board, which claim is fraudulent, or unfounded in any manner?

5th interrogatory. Do you know of any white man whom you suspect will attempt to set up a claim before this board, whose claim you know or believe to be unfounded and fraudulent? If you do, give a particular description of the Choctaw or claimant, his heirs or relations, and of the character of the claim, so that the claimant may be detected, if presented; or when presented.

6th interrogatory. Do you know of any Indian claimant, under the 14th article of said treaty, who, previous to the expiration of five years from the ratification of the treaty, (the 24th February, 1836,) had made any assignment, either in whole or in part, of his claim? If you do, give the name of the claimant, the parties with whom he may have made any such contract, and the time of contracting, as near as you can.

The foregoing interrogatories were submitted to the said Reuben H. Grant in open court, this 5th day of May, 1843, at the Yazoo Old Village, Neshoba county, Mississippi, and his answers thereto are hereto appended.

RALPH GRAVES.

J. F. H. CLAIBORNE.

WILLIAM TYLER.

Answers of Reuben H. Grant to certain interrogatories propounded to him by the commissioners appointed under the act of Congress of the 23d August, 1842.

Answer to the 1st. I have—to wit: 27 families claiming under the 14th article of the treaty, jointly with Thomas D. Wooldridge, and also Betsey Beans, Jesse Beans, and one child of John McGilbry. I have also an interest under the 19th article of the treaty, but do not expect to present any before this board. The names of the claimants are as follows: Cum-ne-ah-ho-ka, No-qua-tub-bee, Char-far-ho-na, War-ker, Jon-ar-tub-by, Me-he-j-to-na, She-mi-ha, Al-o-mah, Is-to-ni-a, Im-ar-tub-bee, Me-he-j-to-na, Sucky Hogan, Polly Hogan, Te-a-cub-by, Pis-i-ga-tub-by, Ah-no-le-ha, An-o-wich-a, To-ta, Al-o-mi-jah, Jim-ar-ka-a, Tarmby-yo-e-ha-ta, To-ta-ho-ya, Jqn-ar-lub-bee, Lar-po-kee, Too-ga-loo, Samuel McGhee. The above claimants have not been presented to the board. I have no other interest.

Answer to the 2d. I do not.

Answer to the 3d. I do not know one Indian who has returned from the west of Mississippi. I have heard from rumor that there were a great many who had returned; but who they are, and where there are, I cannot say.

Answer to the 4th. I do not.

Answer to the 5th. I do not. As to myself, I will state that I was doing business in the Choctaw nation previous to and at the time of the treaty of Dancing Rabbit creek. I was a close observer during the six months after the ratification of said treaty. I was with Colonel Ward at the agency a great portion of the time; and, as well as I can recollect, not more than one hundred applications by Choctaws were made, during my attendance with Ward, for registration. I recollect that there were several of the number rejected by Colonel Ward. Who they were I do not recollect.

My intercourse with the half breeds of the Choctaws was frequent. They complained to me of the Choctaws' ignorance, and that they would not register their names, and still they would not remove west. I do not know of one Choctaw rejected by the agent who remains east of the Mis-

Mississippi. I never heard any complaints of the Choctaws under the 14th article of the treaty, but by a few families, until Colonel Charles Fisher, in the year 1834 or 1835, was understood to be amongst the Choctaws then remaining in the country, contracting with said Choctaws; which contracts were thought then by me to be unfounded. I advised several of my friends, who spoke to me about Colonel Fisher's contracts with the Choctaws, not to purchase any of said contracts, as I believed then that they never could be established. I was much amongst the Choctaws, for the purchase of land under the treaty, but found no Choctaw that is now presented, from their statements to me, to be entitled.

I recollect going to see Captain Ta-nump-ish-ubbee, who thought he was entitled to land. He stated to me that he had never signified his intention to the agent within the six months; that he was discouraged by the chief, Greenwood Lafloore, and concluded to go west, and got as far as the Mississippi river, and returned. With these facts, I am firmly of the belief that, from the number of claimants now registered, and from what I learn will be registered, ninety claims out of every hundred are frauds upon the Government.

Answer to the 6th. I do; and here make an exhibit of their names by offering their deeds. I believe there are a great number given by a number of Choctaws, similar to those now exhibited, to Charles Fisher, D. W. Wright, John Johnson, sr., and W. M. Gwin; and believe most of them are on record where the lands are located.

Sworn to and subscribed before us, at the Yazoo Old Village, Neshoba county, Mississippi, the 5th day of May, 1843.

RALPH GRAVES.
J. F. H. CLAIBORNE.
WILLIAM TYLER.

[D.]

JULY 11, 1843.

A paper has, within a few days past, been placed on your files, purporting to be a copy of a letter from Reuben H. Grant, of this State, to the Commissioner of Indian Affairs at Washington city, containing charges of fraud against the claimants whose cases are now under investigation before your board, accompanied by certain professed statements of facts, and an assurance that, if the writer should be appointed an agent to expose these frauds, with an allowance of \$20,000, he could save to the Government the enormous sum of two and a half millions of dollars. It is also stated, in this letter, that the position, engagements, and associations of the writer, for the first seven years immediately succeeding the treaty, were such as to afford him the best opportunity of knowing the true character of all the claims under the treaty; from which it is reasonable to suppose that he must possess at least as much knowledge of any frauds connected with the claims under the 14th article as any member of the community.

In view of these grave charges, affecting not only the validity of the claims, but the character of all those engaged in prosecuting them as agents and counsel of the Indians—charges which have so important a bearing on the interest of the Government, and which, although made directly to the department, can only be examined by your board, to which they have been referred for that purpose—I respectfully not only ask; but, as counsel for

some particular claimants, whose claims have been directly attacked by said Grant, in a deposition lately made before the board, and which claims are now under investigation, DEMAND that said Reuben H. Grant be forthwith summoned before the board, as witness for the Government in the case of Ta-nump-ish-ubbee, who is now ready for trial, and whose case has been inferentially declared by said Grant, in his said deposition, to be fraudulent and void.

I also inform the board that the said Reuben H. Grant is now on the ground. It is reported that he intends to leave this place in the course of the day.

Very respectfully,

CHARLES FISHER.

To the Hon. BOARD OF COMMISSIONERS, &c.

The preceding letter and enclosures were referred on the day of the receipt of them in Indian Office, as appears by the following copy of an endorsement on the letter :

Respectfully referred to the Secretary of War, and to be laid before him immediately on his return to the seat of Government.

T. HARTLEY CRAWFORD.

JULY 31, 1843.

Aa 2.

WAR DEPARTMENT,
Office Indian Affairs, August 14, 1843.

GENTLEMEN: The communication of Messrs. Claiborne and Graves, of the 14th ultimo, acknowledging my letter of 17th June, and transmitting certain papers having reference to the subject of a letter addressed to this department by General R. H. Grant, of Mississippi, on the 3d June, came duly to hand, but during the absence of the Secretary of War from the seat of Government. Deeming the matter of sufficient importance to submit to that officer, and as a communication from General R. H. Grant upon the same subject, to the Secretary of War, was also received on the same day, I delayed answering the letter of Messrs. Claiborne and Graves until the return of the Secretary. Both communications, with accompanying papers, have been perused by him, and returned to me with an endorsement on that of General Grant, as follows:

"The commissioners have the right to think and act for themselves, and are the best judges of the mode in which they will conduct their business. This subject is one properly within their sphere, and the department will not feel itself justified in saying to the commissioners how they ought to exercise their judgment in relation to it."

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

Messrs. CLAIBORNE, GRAVES, and TYLER,

Herbert's P. O., Neshoba County, Miss.

Aa 3.

MACON, July 18, 1848.

STR : The board of commissioners subpoenaed me to give in testimony before them in February last. I accordingly repaired to Hopahka, where the board was in session, and it was then and there agreed upon, between the commissioners and myself, that I should attend at the Yazoo Old Town to give in my testimony.

In a few days after I left Hopahka I was again subpoenaed to attend at the latter place. The subpoena was served on me on Monday evening, and required my attendance at Hopahka (the distance of seventy-five miles) by the next morning. I failed to attend at the time appointed, because of the impossibility to do so, and also because of the previous agreement that I should attend at the Yazoo Old Town. For failing to do so I was fined one hundred and fifty dollars. In the mean time, I had repaired to the Yazoo Old Town, in compliance with the agreement and my pledge; and then a scire facias was served on me, requiring me to show cause why the fine should not be made final and absolute. I appeared, gave sufficient reasons for my absence and non-compliance, and the fine was remitted. But, previous to the remission, the commissioners propounded six interrogatories for me to answer. They were promptly answered. Since then, my testimony has been assailed by the agents of the Indians. The object of this sudden and unexpected hostility to me was to impugn my testimony, by permitting the evidence of a large number of Indians to be introduced, and thus conclude the examination without further testimony and inquiry, and to hurry on to the department the claims, and have scrip immediately issued. Thus it was that I was to be forced to give in my testimony at Hopahka, and to be deprived of the privilege of having witnesses subpoenaed to sustain my evidence; and, by such a one-sided and ex parte proceeding, a clear and direct fraud was to be committed against the Government, and a gross and serious injury done to my reputation. Against such injustice, both to myself and the Government, I have and do now most earnestly and solemnly protest. Not long since, I wrote to the Hon. T. H. Crawford upon this subject, and requested him to submit it to your consideration. In that letter I stated that the Government could save one or two millions of dollars by expending twenty thousand dollars to engage the service of counsel, and agents to represent her interest before the board. I also volunteered my services to attend to procuring testimony; at that time I did not know that it was the province of the commissioners to employ such counsel and agents. At this time all of the agents of the Indians are arrayed against me. They hope and expect to consummate their schemes of speculation by crushing me. I claim the privilege of introducing witnesses to sustain my testimony. I appeal to your honor to vindicate that privilege; to protect me in the right, and to extend to me the means of effecting that purpose. I have written to the commissioners, and furnished them with the names of the witnesses whose testimony I desired; the enclosed is a copy of that letter. Whether the commissioners will comply with my request I know not. It is to you I look to have this right protected, and to require the commissioners to compel the witnesses referred to to testify, and to have the issuance of scrip suspended until the witnesses have testified, and a full and fair exposition is made in the case, before the commissioners make their final decision. This is due in justice to myself

and the Government, and I am confident that the testimony which I wish to introduce will close the investigation. The cause of the assaults upon my reputation will be palpable to you when I inform you that, in my answer to the fifth interrogatory, I said that it was my belief that ninety out of every hundred of the cases were frauds upon the Government. In this opinion I am not singular. By reference to the journals of their State Legislature, page 112, you will find that the Legislature, in 1836, by a unanimous vote, pronounced all the claims fraudulent; and that vote stands upon the record, as permanent and perpetual proof of the light in which said claims are regarded in this State. The Legislature acted and decided according to the testimony which was before them. Is not the declaration of a sovereign State, that all of them are fraudulent, sufficient to convince the board (when they refuse to permit me to sustain my testimony by witnesses) that they are not only not discharging their duty to the Government with fidelity and fairness, but subjecting themselves to suspicion as to the motives which influence them to refuse the privilege of introducing testimony upon a matter of so much importance. A few days since I received an invitation from one of the commissioners, through a private and confidential letter, to visit the board. I did so, and found that much prejudice and unfriendly feeling prevailed with the agents of the Indians against me. When I was on the eve of leaving there for my home, the board being then in session, I was subpoenaed to give evidence the next morning, at 8 o'clock. Unwilling to be detained, I went before the commissioners, and requested that they would then take my testimony. They refused to do so. After the board was adjourned, I learned that a large mass of claims was to be forced through, on the testimony of a number of Indians, who are introduced to effect the evidence given in by me. Such a course would be an act of unwarranted, injustice to me, and of violence to the interests of Government. On receiving such intelligence, I called upon Colonel Graves, one of the commissioners, and requested the examination of me as a witness should be postponed until I could procure the testimony of others to sustain mine; he had no objection to that course. I also called upon Colonel Claiborne, who gave me no satisfaction. I sent a friend the next morning to him, stating that I thought the interest of the Government, as well as a due and proper respect to my reputation, required that the time for taking my testimony should be postponed; and also disavowed any intention either to wound his feelings or offer a contempt to his court. The colonel answered, through the messenger, with his respects to me, and a request that I should make my application before the board, stating that it would not take long to do it. Accordingly, I repaired to the board, and made my application for a postponement of the time for my examination, and for subpoenas to be issued for such witnesses as I might have to sustain my testimony. Whereupon, Colonel Claiborne presented and read a long written argument, setting forth reasons why I should testify forthwith. Such a course must strike you as unprecedented, and evincing more than ordinary interest in the claims in question. Had such arguments been prepared, read, and urged, by the agents for the Indians, I would not have thought it improper, or been the least surprised. But such a document, coming from such a source, astonished me beyond measure. It was fraught with ideas so novel and collateral to the issue, and with arguments so favorable to the representatives of the Indians, that it was clear to all who heard it that the paramount object was to hurry on my examination, bring

in numbers of Indians to rebut my testimony, hasten, without deliberation and mature investigation, a decision, and thus to prejudice the interests of the Government, by partiality and favor to those upon whom rests the burden of establishing the truth and justice of their claim. The board decided that I should testify forthwith. In justice to myself, I refused to comply, and was fined \$1,000. I have thus been minute and particular in stating my grounds of complaint. I now reiterate that, for \$20,000 appropriated for the employment of agents, as before stated, the Government would save at least \$2,000,000, which, at this time, threatens to be a total loss. But I could not consent to act in that capacity, so long as Colonel Claiborne continues in the board, as I have strong reasons to believe that his feelings and interest are enlisted in the success of the claims. In this opinion I am not alone; it is very prevalent and generally believed, except by those whose interests are immediately identified with his. Should you aid me in compelling the attendance of witnesses upon the board, I can save the Government a large amount, which, under existing circumstances, must be inevitably sacrificed; and also vindicate my position, and sustain the charge of fraud, in the eyes of the Government and the people. Some of the witnesses whom I wish subpoenaed are interested in the result of the claim, and it may be necessary to adopt some mode of proceeding to compel an entire discovery of the facts. The department will better understand the course to be pursued, to effect the end. Efforts doubtless will be made to prejudice the department against me, and thereby to close the eyes of the department and the country against the serious injury which impends. If your honor will have all proceedings upon those claims enjoined until a full and perfect disclosure can be had of the witnesses, and will facilitate by your official powers my request to compel the attendance of witnesses, immense good will result to the Government, infamous frauds will be prevented, whilst justice will be done to one who, in protecting his own rights and defending his own reputation, seeks to protect the interest and promote the welfare of his Government.

Very respectfully,

R. H. GRANT.

Hon. J. M. PORTER, *Secretary of War.*

Endorsement by Commissioner of Indian Affairs.

JULY 31, 1843.

To be submitted to the Secretary of War on his return, with the letters of Messrs. Claiborne and Graves on same subject.

T. HARTLEY CRAWFORD.

Endorsement by the Secretary of War.

WAR DEPARTMENT, *August 14, 1843.*

The commissioners have the right to think and act for themselves, and are the best judges of the mode in which they will conduct their business. This subject is one properly within their sphere, and the department will not feel itself justified in saying to the commissioners how they ought to exercise their judgment in relation to it.

J. M. PORTER.

The undersigned, Reuben H. Grant, sheweth unto your honors, that in order to sustain the answer of him, the said Grant, to the sixth interrogatory in his former evidence before you in relation to the existence of older contracts, and that no injustice be done to the public interest or individuals concerned, that the following gentlemen be caused to come before you, to testify and answer the following questions, viz :

1st. Have you made any contracts with any of the Choctaws for their lands, either in part or in whole, previous to the 24th of February, 1836? If so, state the name of the Indians.

2d. Do you know of any other person or persons who have made contracts with any of said Indians previous to the 24th of February, 1836? If you do, give their names and the name of the Indians.

Witness's names.

Charles Fisher	Benjamin J. Jackoway	Henry Dickenson
John Johnson, sen.	John Dyass	William M. Lewis
William M. Gwin	Jekebud Kelly	Robert Jemerson, jr.
Daniel W. Wright	Halsey Hugh Harrison	John Davis
A. F. Young	Hugh McDonald	Stephen Cocke
Robert Weir	Jesse Clement	A. N. Jones
Andrew Hayes	John S. Smith	S. J. Gholson,

This request, if complied with, will tend much to do justice; and the evidence of these gentlemen will show to what extent those old contracts do exist.

Respectfully, yours, &c.

R. H. GRANT.

I request a commission to issue, directed [to the] commissioners at the Choctaw agency, to take the testimony of William Armstrong, to answer the following interrogatories :

1st. Were you engaged in taking the census of the Choctaws, immediately previous to the 24th August, 1831?

2d. At what time was the taking of the census completed?

3d. What number of Choctaws registered their names, or claimed to have done so, at that time?

4th. Do you know of any Indians that were refused by Colonel Ward to register their names? If you do, give their names.

5th. Did you hear any Indians complain that they had been refused by Colonel Ward to register their names? If you did, give their names.

6th. Was any person engaged in taking the census? If so, who were they, and where do they reside?

7th. Who interpreted for you and others in taking the census? Where do they reside?

8th. Do you recollect seeing the register about 24th of August, 1831? If you did, how many names were on it at that time as heads of families?

9th. Did you hear of any portion of the Choctaws refusing to acknowledge the treaty, and deny the country had been sold, who refused to give the number of their family? If you do, state their names and residence.

10th. When you were engaged in taking the census, were not the Indians in the habit of telling you what they intended to do as regards the 14th and 19th articles of the treaty? If there had been a large number refused by the agent, from your intercourse, would you not have known the number?

I want a commission to issue to take the deposition of James Millard, of Maryland, William Colquhoun, of Virginia, to answer the same interrogatories propounded to Colonel Armstrong. Also, I wish subpoenas to issue for the following gentlemen, to be brought before your board to testify, to wit: William Windham, of Newton City, Mississippi; Henry Beakes, of Choctaw county, Mississippi; Stephen Ward, of Washington county, Mississippi.

Respectfully, yours, &c.

R. H. GRANT.

Hon. J. F. H. CLAIBORNE, RALPH GRAVES, WILLIAM TYLER,	}	<i>Commissioners to investigate Choctaw Claims, &c.</i>
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Aa 4.

WAR DEPARTMENT,

Office Indian Affairs, August 14, 1843.

SIR: Your letter of 18th ultimo, to the Secretary of War, came to hand during his absence from the seat of Government. It was submitted to him upon his return, and has been referred to this office, with an endorsement by him, of which the following is a copy:

“The commissioners have the right to think and act for themselves, and are the best judges of the mode in which they will conduct their business. This subject is one properly within their sphere, and the department will not feel itself justified in saying to the commissioners how they ought to exercise their judgment in relation to it.”

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

General R. H. GRANT, *Macon, Miss.*

Bb.

BOARD OF CHOCTAW COMMISSIONERS,

Old Yazoo Village, Mississippi, July —, 1843.

SIR: We have the honor of transmitting you, herewith, one hundred and ninety-eight cases, fully acted upon, seven of which were cases of the former board, returned for our final action; the residue (to wit: one hundred and ninety-one) are cases tried at Hopahka.

We transmit, also, a tabular statement of these cases.

Fifty cases, examined at Hopahka, are continued, for various reasons: some for further testimony, others on account of our not knowing what lands were located by the department for claimants presented to the former board. You will please direct to be sent to us the locations of each, so we may know what judgment to render, whether for land or scrip.

We some time since forwarded transcripts of affidavits, depositions, &c.,

taken by this board at Hopahka, and we now send all the remaining evidence taken at that place.

Below will be found an epitome of the cases tried at Hopahka.

We have the honor to be, with great respect, your most obedient servants,

JOHN F. H. CLAIBORNE.
RALPH GRAVES.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

Judgments in favor of claimants, presented to the present board	-	182
Judgments in cases presented to the former board, and returned to us	-	7
Judgments transmitted by William Tyler, Esq.	- - -	15
Cases tried at Hopahka, and rejected	- - -	9
Cases tried at Hopahka, continued	- - -	50
		263

Bb 1.

WAR DEPARTMENT,
Office Indian Affairs, August 18, 1843.

GENTLEMEN: Your favor of July —, 1843, has been received, and with it the proof in 190 claims adjudicated by you, and 8 of the cases returned by Messrs. Murray and Vroom, which were referred for your action; the papers in No. 165, which you state is suspended, not being transmitted. Also, the judgments in 198 cases, including that in No. 165, suspended, as above stated. Also, a list of cases adjudicated, a list of depositions, and the depositions mentioned in that list; a tabular statement of the cases, minutes of evidence taken by Commissioner Claiborne, and the copy of the evidence taken by Commissioner Graves. The eight cases of Murray and Vroom, above mentioned, are: No. 82, Jeremiah Carney; No. 115, Melingeliah; No. 98, David Bell; No. 56, Oontantubbee; No. 47, Achaia; No. 111, Hortona; No. 107, Afaliahoka; and No. 112, Hobatishubbee. No. 82 does not appear to be included in your report.

I have also to acknowledge the receipt of cases Nos. 1, 2, 3, 5, 6, 14, 17, 16, 23, 25, 31, and 32; a list of those cases, and the judgments on them, with your letter of the 12th May last, accompanied by the general depositions mentioned in list therewith; also, your two letters of the 15th May last, with the papers mentioned as therein enclosed. I have also received by the hands of General A. Anderson, of Tennessee, the evidence of your decisions on the claim of Emalubbee, No. 48, and Hotickah, No. 114, reported by Messrs. Murray and Vroom, and heretofore referred for your consideration.

The list of locations made for the claims allowed by Messrs. Murray and Vroom, and confirmed by the decision of this department, is now in hands, and, as soon as made out, will be sent to you.

I am, &c.

T. HARTLEY CRAWFORD.

MESSRS. CLAIBORNE, GRAVES, and TYLER,
Choctaw Commissioners, Herbert's P. O., Neshoba County, Miss.

Cc:

BOARD OF CHOCTAW COMMISSIONERS,

Old Yazoo Village, August 4, 1843.

SIR: We have appointed the Hon. Thomas J. Word, of Ripley, Tippah county, Mississippi, late a Representative in Congress from this State, agent to collect testimony in behalf of the United States, and he has this day qualified and entered upon his duties.

Mr. Word is a lawyer of established reputation, a man of unimpeached character, admirably adapted to this responsible trust; and in selecting him we have been mainly influenced by your recommendation to employ a man of the highest character.

He accepts this appointment at our earnest request, and leaves a lucrative practice to do so. We have fixed his salary at the rate of twenty-five hundred dollars per annum. As his expenses will be considerable, and commence from this moment, we respectfully suggest the propriety of remitting him a draft for a month's salary in advance.

We have the honor to be, most respectfully, &c.

JOHN F. H. CLAIBORNE.
RALPH GRAVES.

HON. T. HARTLEY CRAWFORD,

Commissioner of Indian Affairs.

Endorsement by the Commissioner of Indian Affairs.

AUGUST 17, 1843.

Respectfully referred to the Secretary of War. I think the selection a very good one, and anticipate very good results from Mr. Word's acceptance of the place. He is a gentleman of high character, and will command public confidence.

T. HARTLEY CRAWFORD.

WAR DEPARTMENT, *August 17, 1843.*

The Commissioner of Indian Affairs will write to the Choctaw commissioners, approving of the appointment of Mr. Word as a judicious measure, and the selection that of a very acceptable gentleman.

J. M. PORTER.

Cc 1.

WAR DEPARTMENT,

Office Indian Affairs, August 18, 1843.

GENTLEMEN: The letter of Messrs. Claiborne and Graves of the 4th instant, in which they inform the department of the appointment by them of Hon. Thomas J. Word special agent to collect testimony in behalf of the United States, has been received. Immediately upon its receipt here, I referred it to the Secretary of War, with an endorsement as follows:

"I think the selection a very good one, and anticipate very good results from Mr. Word's acceptance of the place. He is a gentleman of high character, and will command public confidence."

The Secretary has returned the letter, with directions as follows :

"The Commissioner of Indian Affairs will write to the Choctaw commissioners, approving of the appointment of Mr. Word as a judicious measure and the selection that of a very acceptable gentleman."

You will regard the order of the Secretary, as carried out by the above imbodiment in this letter.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

Messrs. CLAIBORNE, GRAVES, and TYLER,

Herbert's Post Office, Neshoba County, Mississippi.

Dd.

BOARD OF CHOCTAW COMMISSIONERS, YAZOO OLD VILLAGE,
Neshoba County, Mississippi, August 21, 1843.

SIR: In the following cases, tried before the former board of commissioners, and since sent to this board to procure proof of certain points, we report that, in the cases, viz :

231. Uttubbee, or Histubbee;

254. Kish-a-mus-tubbee, *alias* Kush-to-mabbee, &c.;

252. Stan-cha, or Sti-ma-ya, *alias* Koncha;

the tracts of land on which said several claimants, at the date of the treaty of Dancing Rabbit creek, will be shown by the following enclosed depositions or affidavits of N. N. Daniels, on the 29th of June, 1843, before Robert James, a justice of the peace, and on the 12th August, 1843.

In the case, No. 216, of Ite-ma-la, whether she was a 19th article claimant, see deposition of John Ellis, Captains Ok-lah-bee, and Red-post-oak, now enclosed.

In the case of Posh-a-mus-tubbee, No. 235, we refer to the deposition enclosed, of Yo-ko-no-la, and To-tubbee, two Choctaws.

No. 223, of Tappa-nonchia, in explanation of the difficulty stated by the department, we refer to all evidence now enclosed, which has been furnished us by parties on that point, viz :

Affidavit of N. N. Daniels and Ichabod Kelly, and Mush-a-la-cah, of 30th June last, made before Robert James, Esq., a justice of the peace for the county of Jasper, and the affidavits of John Dyess and H. L. Martin, taken before the board 19th August, 1843.

We have the honor to be, very respectfully, your obedient servants,

JOHN F. H. CLAIBORNE.

RALPH GRAVES.

Hon. T. HARTLEY CRAWFORD,

Commissioner of Indian Affairs.

Ee.

HERBERT'S POST OFFICE, MISSISSIPPI,

August 22, 1843.

SIR : A rumor has just reached my ear, that Reuben H. Grant, a speculator in Indian and pre-emption claims, (who has heretofore professed much friendship for me, and continued so to do until his conduct in reference to the business of this commission compelled me to take a stand to enforce his appearance before us,) has filed charges against me at the department.

If this be so, I respectfully request a copy of the same, and invite the most rigid, prompt, and sifting scrutiny into my official conduct. I defy calumny itself even to distort my acts.

I have heretofore, in my communications to the department, charitably spared Mr. Grant from animadversion, but, if it be true that he has assailed me, I will show, by the strongest testimony, that he is unworthy of credit.

Please address me at *Natchez*.

I have the honor to be, with very great respect, your most obedient servant,

JOHN F. H. CLAIBORNE.

HON. T. HARTLEY CRAWFORD,

Commissioner of Indian Affairs.

Ff.

BOARD OF CHOCTAW COMMISSIONERS,

Old Yazoo Village, August 23, 1843.

SIR : On the 14th July we informed you that Reuben H. Grant had been subpoenaed to appear before this board as a witness in behalf of the United States; that he had refused to be qualified, and left, in open contempt of the board; and that, having no officer in attendance to take him into custody, we had issued an attachment against him. The attachment was addressed to the marshal of the northern district of Mississippi, on the 12th July, but that officer is absent, as we learn, on business, and no deputy could be found to attend to it; and thus the matter stands at present.

On the 4th instant we notified you of the appointment of the Hon. Thomas J. Word, as agent to collect testimony in behalf of the United States. On the 16th instant he made a report to this board, a copy of which is herewith transmitted.

In order to enable Mr. Word to procure all the testimony that can be had, we have made the subpoenas returnable to the third Monday of November, at Hillsborough, Scott county, when it is presumed most, if not all, of the witnesses will be in attendance.

Until that examination can be had, we beg to suggest the expediency of deferring final action, and the issuing of scrip upon any of the cases transmitted by this board heretofore, and which it is now about to transmit to the department.

The board will adjourn from this point to Hillsborough, on or before the 26th instant, and will take a recess until the first Monday in November.

We have the honor to be, most respectfully, your obedient servants,

JOHN F. H. CLAIBORNE.

RALPH GRAVES.

HON. T. HARTLEY CRAWFORD,

Commissioner of Indian Affairs.

Ff 1.

YAZOO OLD VILLAGE,

Neshoba County, Mississippi, August 16, 1843.

GENTLEMEN: The undersigned begs leave to report to your board—

1st. Copies of three deeds, found on record in the county of Kemper: one marked A, made by Opie Sketona, *alias* Little Leader; another marked B, made by Ta-wam-tucha, and the third marked C, made by An-o-ka-chub-see.

2d. A certificate of the probate clerk, Leake county, marked D, which I have received through General Reuben H. Grant, of Noxubee county, by letter.

This certificate shows a transfer by one hundred and fifty-eight persons, judging from the names, mostly Choctaw Indians, of "*one-half of all the lands which they are entitled to under the 14th article of the treaty of Dancing Rabbit creek.*"

These contracts appear to have been made with various persons. The three deeds, of which copies are first above reported, marked A, B, and C, were made to Daniel Gwin, John C. Whittett, Moses Lewis, and Christopher C. Soett, and convey the entire interest of the grantors. Twenty-nine of the persons mentioned in the certificate secondly above reported, marked D, convey one-half of their lands to Edward Gwin, of Carroll county, Tennessee; and sixty-two of those persons convey one-half of their lands to Charles Fisher, William M. Gwin, Alexander F. Young, and Daniel W. Wright; and sixty-seven convey one-half of their lands to William M. Gwin and Charles Fisher.

The various ways of spelling and different modes of pronouncing the same Indian name render it difficult to determine whether the persons mentioned in the papers herewith reported are some of those whose claims have been examined by your board, or some of those whose claims are yet to be examined, or whether they are not of both classes. I have considered it proper to report them, however, in order that you may, by comparison or otherwise, ascertain whether their claims are yet to be examined. If any of them should be claimants whose claims have been examined by your board, it may not be too late to give the proof which these papers afford such direction as to reach the cases to which it may be applicable. These papers show that many of the Indians sold their lands, some in whole and some in part, before the expiration of five years from the ratification of the treaty. They also disclose the names of persons to whom the Indians sold. The names of other persons to whom the Indians are supposed to have sold their lands, or an interest in them, are given in the testimony of Colonel George W. Martin, taken before a committee of Congress, and reported to the House of Representatives by Mr. Bell, 11th May, 1836. A copy of a contract for the purchase of lands from the Choctaw Indians was furnished the former board of commissioners by Colonel Fisher, and by the board sent up to the President with their report. The deposition of E-mol-ah-tubbee, a Choctaw claimant, taken by your board on the 6th of July last, states that a contract was made between him and Colonel Fisher, about eight and a half years ago, for one-half of his lands, and that he supposes the said contract is still in the hands of Colonel Fisher, and that the claimant considers himself bound by it. Under these circumstances,

I deem it incumbent on me to report the names of the following persons, to wit: Charles Fisher, William M. Gwin, Alexander F. Young, Daniel W. Wright, A. A. Halsey, John Johnson, sr., and John C. Whitsett, and to move your board for a *subpœna duces tecum*, on the part of the United States, requiring the persons above named to produce before this board all such deeds, contracts, agreements, or assignments, as they or any of them may have in their possession, made by any Choctaw Indian before the expiration of five years from the ratification of the treaty of Dancing Rabbit creek; to wit: before the 14th day of February, 1838, and more particularly such contracts, agreements, or deeds, as they or any of them may have made before that date, with the Choctaw Indians mentioned in the certificate herewith reported, marked D. I also report the names of the following persons, whose testimony I deem important to the United States, to wit: Hugh McDonald, Jesse Clements, Benjamin A. McIlvain, Benjamin J. Jackoway, Hugh Harrison, John B. Forester, Greenwood Lafloore, John J. Smith, and Stephen Cocke; and I move the court for a *subpœna*, on the part of the United States, to take their testimony on all the cases yet to be examined by your board. I have suggested no time at which to make these *subpœnas* returnable, for the reason that the witnesses are scattered over the State, and some of them reside without its limits. Many of them, however, are now at this place. Those who are expected to produce papers may require some time, as the papers may not be with them here. If it be the intention of the board to take a recess, the *subpœnas* might issue now, and be executed on such as are here, and made returnable on a day after the meeting of the board again.

All of which is respectfully submitted.

T. J. WORD, *Agent, &c.*

To the BOARD OF COMMISSIONERS, &c.

Gg.

HERBERT'S POST OFFICE, MISSISSIPPI,

August 25, 1843.

SIR: It is perhaps my duty to enclose you a copy of a letter addressed by me to my colleague, R. Graves, Esq.

I have the honor to be, with very high respect, your most obedient servant,

JOHN F. H. CLAIBORNE.

HON. T. HARTLEY CRAWFORD,

Commissioner of Indian Affairs.

Gg 1.

OLD YAZOO VILLAGE,

Office of Choctaw Commissioners, August 25, 1843.

SIR: I have carefully examined the cases numbered as follows: 270, 259, 262, 263, 260, 264, 265, 266, 268, 272, 273, 271, 258, 257, 269, 267,

388, 280, 297, 283, 281, 287, 288, 289, 293, 296, 291, 292, 294, 295, 286, 299, 300, 302, 304, 305, 303, 306, 307, 310, 308, 309, 322, 321, 315, 317, 318, 229, 330, 327, 328, 331, 334, 335, 336, 340, 350, 301, 279, 359, 277, 325, 314, 337, 341, 338, 326, 324, 320, 278, 316, 323, 275, 312, 280, 346, 345, 344, 343, 358.

These are the cases of that portion of the Choctaws known as Bogue Chittos, and who are now and at date of treaty were headed by Ta-nump-ish-ubbee. They are endorsed by you, after examination of the proofs, as good and valid claims under the 14th article of the treaty of Dancing Rabbit creek, and have been sent to me by you for my approval; so that judgment in their favor may be entered up. To expedite the business of the board, and to enable it to adjourn, as has been agreed upon, between this and the 26th instant, I have permitted the secretary to record most of the judgments that accompany the cases approved by you, hoping that I might be able, before the day fixed for our adjournment came on, to arrive at the same conclusions at which you have arrived, and feel justified in uniting with you in *signing* the judgments. I am deeply impressed with the general equity of these Indian claims; I feel for them a sympathy I have never been ashamed to avow, but I cannot conscientiously, at this time pass these particular claims. I regret I cannot act with you, but my scruples are insuperable. I have exerted myself in vain to bring my mind to your conclusions, and am therefore compelled to suspend all the cases numbered as aforesaid until further investigation can be had. You have already been apprized of the grounds upon which these scruples are by me entertained, but, to be explicit, I will repeat them.

On the 23d of June, the case of Ta-nump-ish-ubbee, the leading man of the Bogue Chittos, was presented for trial. You gave it a minute examination, and it was then at my suggestion continued until Reuben H. Grant, of Noxubee county, could be personally examined in the case, he having in his deposition of the 5th of May last, before this board, designated this case as fraudulent and unfounded. I was anxious also to procure the testimony of Greenwood Lafloore, who had been referred to by said Grant, in his said deposition. The case was on this suggestion laid over, and, subsequently, a commission issued to take Lafloore's testimony.

On the 6th day of July, a letter was received from the Commissioner of Indian Affairs, dated 17th June, enclosing a communication to him from said Grant, dated Macon, Mississippi, June 3, alleging that the great majority of the Choctaw claims are fraudulent, and that, with proper co-operation on the part of this board, (especially if the department would appoint him an agent with a fee of \$20,000,) he could expose them, and thus save to the Government some two and a half millions.

On the 11th July, Grant came to this place, and Charles Fisher, Esq., attorney for said Ta-nump-ish-ubbee, gave notice that he was ready to present the case a second time, and applied for a subpoena for said Grant, it being known that the said case had been continued over from the 23d June, at my suggestion, expressly for the purpose of giving to the United States the benefit of Grant's testimony against the claim. The board took no action on this application of counsel, but ordered a subpoena, of its own accord; with the view of protecting the United States against imposition in this particular case, and generally from the gigantic fraud imputed by said Grant. On the 12th July, Grant appeared before the board, and desired to be excused from testifying; whereupon, I read a written opinion, (now on

file,) showing why he could not be excused, in which opinion you were understood to concur, and to which I now refer as part and parcel of this showing. But Grant refused to be qualified, and left, in open contempt of the board; on the same day, a fine of \$500 was imposed upon him, and an attachment issued, directed to the marshal of the northern district of Mississippi, which attachment was sent by mail, addressed to him at Columbus. But no return upon the same has yet been made; and I therefore feel constrained still to act upon the principle laid down by me in my aforesaid opinion, to wit: "Few of them" (Bogue Chitto cases) "can be, in my judgment, properly adjudicated, so long as the case of Ta-nump-ish-ubbee stands over." And stand over it must, so far as I have a voice, until the testimony of Grant can be had, or is successfully impeached. The interests of the United States and my views of duty as a commissioner allow me to adopt no other course.

But, again: The board, anxious to do every thing in its power to detect frauds, if any existed, and to make its judgments conform to the acts of Congress as well as with the provisions of the treaty, on the 18th day of July appointed the honorable Thomas J. Word agent to collect testimony in behalf of the United States; and on the 16th instant he filed a report, suggesting the propriety of issuing *subpœnas duces tecum* and ordinary *subpœnas*, for a number of persons, as witnesses in behalf of the United States. These *subpœnas* have been issued and made returnable on the third Monday in November next; and, until a full and thorough investigation can be had, I cannot consent to render judgment in any case depending on the evidence of the said Ta-nump-ish-ubbee, or in any wise connected with him. And this I hold to be the case with *all* the Bogue Chitto claims; for it is in evidence, that at the general council on Kintauga creek, just before the annuity at Lafloore's, he was appointed at the head of six deputies to represent the Bogue Chittos; he was confessedly at the head of the band, and the spokesman and leader upon whom they chiefly relied. He has been directly impeached by Grant, in his aforesaid deposition; and until Grant can be brought before this board, and his testimony successfully controverted, suspicion must in some degree rest on all the cases represented, either directly or indirectly, by the said Ta-nump-ish-ubbee. This seems hard and oppressive; but in a great claim, such as this, we cannot observe too much caution.

The board has exhibited a like, indeed a greater rigor, in other cases. More than two months ago, it transmitted to the department over two hundred cases under the fourteenth article of the treaty, fully adjudicated. But since the receipt of Mr. Word's report, showing the probable existence of testimony that was not supposed to exist when those adjudications were made, I prepared a letter, (which received your signature,) on the 23d instant, to the Commissioner of Indian Affairs, in which the following suggestion was made:

"Until that examination can be had, we beg to suggest the expediency of deferring final action, and the issuing of scrip, upon any of the cases transmitted by the board heretofore, and those which it is now about to transmit to the department."

Now, this course, precautionary on our part, operates in this instance with more severity than the course adopted in relation to the Bogue Chittos; yet it was considered essential to the ends of justice.

The *latter* cannot have been adjudicated. The former have been

fully adjudicated, judgments recorded, and the cases long since sent on for the final supervision of the higher authorities at Washington. No charge or implication of fraud exists against them, that I am apprized of; and it is held by some that they are now beyond our jurisdiction. But I hold that every case transmitted by us is liable to be suspended until the moment that the scrip issued upon it is actually paid out; and it may be questioned whether cases tried by the former board, and sent back by the department to this board, are not affected in the same manner by the discovery and production of new testimony? This, however, will be settled by the able jurists who direct the War and Indian Departments of the Government.

If we are prohibited by the harsh and technical provisions of the act of Congress from considering these claims in a broader and more equitable light, as our sympathies would suggest, it is certainly our duty to take the widest latitude in defending the United States against frauds, if any there be.

With these convictions—regretting again that I cannot concur with you, and sanction your endorsement of the cases above specified—I feel constrained to withhold my approval or action upon them until after the investigation to be had on the third Monday in November.

I remain your obedient servant,

JOHN F. H. CLAIBORNE.

RALPH GRAVES, Esq., *Commissioner*.

P. S. In signing some judgments in favor of Muzza-lushah claims the other day, I inadvertently placed my signature to a Bogue Chitto claim recorded among them, (the case of Ah-took-ah-lah, No. 358, proved up by Ta-nump-ish-ubbee;) a case that I could not by possibility, or with any sort of consistency, at this time approve.

I have had the error noted on the margin of the record, and directed the clerk to set it aside among the suspended cases.

BOARD OF CHOCTAW COMMISSIONERS,

August 25, 1843.

I certify that the within is a true copy of the original filed in this office.

P. BAYLY, *Secretary*.

Hh.

WAR DEPARTMENT,

Office Indian Affairs, August 29, 1843.

GENTLEMEN: I herewith enclose for your information copies of the following-described papers, viz: a letter from General R. H. Grant to R. M. Gaines, Esq., U. S. district attorney, Mississippi, in reference to the claims pending before your board, with his reply thereto; a letter from R. M. Gaines, Esq., to the Hon. Secretary of War, presenting the questions contained in General Grant's letter; and the reply of this office, to which Mr. Gaines's letter was referred.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

MESSRS. CLAIBORNE, GRAVES, and TYLER,

Choctaw Commissioners, Herbert's P. O., Neshoba Co., Miss.

Hh 1.

DISTRICT ATTORNEY'S OFFICE,

Natchez, August 10, 1843.

DEAR SIR: I enclose a letter lately received from General R. H. Grant, in reference to the claims pending before the board of commissioners appointed under the act of Congress of August 23, 1842, for the satisfaction of claims under the 14th and 19th articles of the treaty of Dancing Rabbit creek, and also a copy of my reply. I have very little doubt that many, if not all the claims, were contracted to be sold within the five years specified in the ninth section of the act; but whether it can be sufficiently proved by legal evidence I do not know; nor am I prepared to say whether a bill in chancery in the name of the United States could be sustained to enjoin the commissioners from proceeding until a discovery could be had from the parties interested. I am inclined to think that such a bill would lie; but it is altogether an anomalous question. You will perceive that the proviso to the second section negatives the "employment or pay of either of the district attorneys" of this State.

Very respectfully, yours, &c.

R. M. GAINES, *U. S. Attorney.*

HON. JAMES M. POTTER, *Secretary of War.*

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Hh 2.

MACON, MISSISSIPPI, *July 23, 1843.*

DEAR SIR: Is there no process to compel witnesses to testify before the board of commissioners to investigate claims under the 14th article of the treaty of Dancing Rabbit creek, who claim to be interested in these claims? Where is the testimony given before the Legislature in 1836, which caused that body to pronounce them frauds? Can it not be had, or the names of those witnesses? I have demanded of the board to have several gentlemen summoned, to prove that most of the Choctaws had sold their claims, in part or whole, before the 24th of February, 1836? Is there no way to compel them to answer, although interested in the claims? If this testimony could be compelled, the commission would close in two weeks, and the Government save two or three millions of dollars. If this investigation was in a State court or the United States court, I know some process could issue to compel them to testify, but this court is a kind of non-descript. I do not know how it should be managed, whether a bill of discovery would reach it or not. I apply to you, as an officer of the Government, to institute such process as will effect this object. I have been compelled to testify myself, and my testimony has been assailed, because I dared say I believe that ninety out of every hundred cases are frauds. I have only reiterated what our Legislature did by their resolutions. I am bound to sustain myself before the world, and, in doing so, I will relieve the Government of a horde of vultures who are preying upon the Government and the Indians. Will you, as an officer of the Government, give your aid, by compelling the testimony of the following-named gentlemen, to wit: Charles Fisher, John Johnson, sr., Daniel W. Wright, William

M. Gwin, A. F. Young, Robert Weir, Andrew Hayes, Benjamin J. Jack-
 oway, John Dyass, Ichabod Kelly, Halsey Hugh McDonald, Jesse Clements,
 Hugh Harrison, John J. Smith, Henry Dickinson, William M. Lewis,
 Robert Jemerson, jr., James T. Harrison, John Davis, Stephen Cocke, A. N.
 Jones, S. J. Gholson, W. W. Humphreys, L. N. Hach, and John M. Grant.
 These men will prove that most of the claimants did sell their claims pre-
 vious to the 24th of February, 1836, and, according to the law creating the
 board, the cases thus proven cannot be entertained by the board. I wish
 the following question put to each of them, and such other questions as
 the board may propound—1st, Have you made any contracts with Choc-
 taws for their lands, either in part or whole, that have been or may be
 presented to this board previous to the 24th of February, 1836? if you
 have, give the names of the Indians; or do you know of any other person
 or persons that have made any such contracts with said Indians previous
 to the 24th of February, 1836? if you do, give the name of the person or
 persons and the Indians.

Your compliance will much oblige your humble servant.

R. H. GRANT.

R. M. GAINES, Esq.

Hh 3.

NATCHEZ, August 10, 1843.

DEAR SIR: Your letter of the 23d ultimo is received. The act of Con-
 gress organizing the board of commissioners would seem to put a nega-
 tive upon any interference by the district attorney. I will, however, for-
 ward your letter to the Secretary of War, and it will afford me pleasure
 to execute his instructions. I will only remark that, if I am not mistaken,
 you stated, in a publication you made not long since, that the contracts for
 the sale of the claims of the Indians were on record in the several counties
 where the lands lie, and copies from these records would be evidence. I
 am unable to inform you where you can get the evidence given before the
 Legislature. I never saw but one copy, and if that was a correct one, it
 affords very little evidence on the subject. I do not recollect in whose
 hands it was.

Very respectfully, yours, &c.

R. M. GAINES,
United States Attorney.

General R. H. GRANT,
Macon, Mississippi.

Hh 4:

DEPARTMENT OF WAR,
Office Indian Affairs, August 29, 1843.

SIR: Your communication of the 10th instant to the Secretary of War,
 enclosing a letter from General R. H. Grant to you of the 23d ultimo, and
 a copy of your reply thereto under same date, has been referred to thi
 office.

The part of the letter which seems to call for any reply from the depart-
 8

ment relates to alleged frauds respecting Choctaw claims to reservations under the treaty of Dancing Rabbit creek, and to the power and mode of compelling individuals to testify of them.

It is the most anxious desire of the department that every allegation of fraud should be examined with the most searching scrutiny; that every opportunity should be given, and every proper means used, to ferret out all wrongs; and every effort made to redress whatever of injustice has arisen out of the treaty of 1830 or otherwise. In addition to any other frauds that may be discovered, Congress intended, by the law of 1842, to destroy the efficacy of any sale, agreement to sell, or any other bargain for the transfer of Choctaw reservations, before the five years, under the 14th article of the treaty, had expired. Purchases and sales could not be made without some evidence of their existence. The records of the counties in which the lands are situated, and the testimony of witnesses, ought to show how this is. The power to employ an agent or agents to collect testimony for the United States is expressly conferred by the 3d section of the act of 1838, revived by the law of 1842; and the commissioners, in virtue thereof, have appointed, as the office is advised by letter from them of the 4th instant, the Hon. Thomas J. Word. The means, then, of acquiring information they possess, and were doubtless using advantageously.

As to the appeal made to compel the attendance of witnesses, and to constrain them when present to testify, it appears to me there can be no difficulty. By the 6th section of the act of March, 1837, the power "to summon, and cause to come before them, such witnesses as they may deem necessary, and to have them examined on oath," is conferred. This authority extends the whole length and breadth of Mr. Grant's appeal. It is more clearly, but not more fully, bestowed by the 3d article of the law of 1838. The 2d section of the act of 1842 confirms, though unnecessarily, the power to compel the attendance of witnesses. Mr. Grant, or any other gentleman who desires the presence of witnesses, and will make a proper and legal application for process to the board of Choctaw commissioners, will doubtless be gratified, and the witnesses be forced to be forthcoming. This done, the giving of testimony can, by the sections of the law of 1837 and 1838 referred to, and I believe (as a necessary incident to the power expressly conferred) by the law of 1842, be compelled, precisely as it is done by courts of record, that is, under the penalty of fine and imprisonment for disobedience to the order to answer.

The means are therefore abundantly provided for reaching the truth, and I cannot suppose there is any indisposition to apply them on the part of those in whom they are vested.

The 2d section of the act of 1842 does seem to interdict the employment of either of the district attorneys of Mississippi, by or under the authority of the commission—to which therefore, in conclusion, General Grant, and all others having claims to sustain or opposition to make to claims, are respectfully referred, as a board created by law, with full powers to investigate and decide in the first instance the several cases submitted to them.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

R. M. GAINES, Esq.,

District Attorney U. S., Natchez, Miss.

ii.

HOPIAKA, LEAKE COUNTY, MISSISSIPPI,

September 19, 1843.

SIR: On the 16th of August last, I had the honor to submit a report to the board of commissioners, then in session at Yazoo Old Village, under the act of Congress of the 23d of August, 1842, for the satisfaction of Choctaw claims under the treaty of Dancing Rabbit creek. Accompanying that report was a certificate of the probate clerk of the county of Leake, marked in that report Exhibit D, giving the names of one hundred and fifty-eight persons, (Indians,) who were represented in said certificate as having sold one-half of all the lands which they were "entitled to under the 14th article of the treaty of Dancing Rabbit creek."

Since the adjournment of the board, I have examined the probate clerk's offices in the counties of Leake and Attala in person, and have found on record in these counties various instruments, in writing, purporting to have been made by various Choctaw Indians, with a number of white men, before the expiration of the five years mentioned in the 14th article of the treaty. Having now procured copies of these instruments, in writing, and the board of commissioners not being in session, I beg leave, herewith, to report to you a document marked Exhibit A, including: *First.* A copy of a power of attorney, taken by William M. Gwin and Charles Fisher, from the Choctaw Indians. *Second.* A defeasance or instrument, made by said Gwin, on the 24th of December, 1834, by which he promises to prosecute the Indian business at his own expense; and, if unsuccessful, this instrument assures the Choctaws that they shall not be at any cost or expense. This instrument was kept by Colonel Cobb, one of the chiefs, a headman of the nation; and through the politeness of Colonel John B. Forester, and his influence with Colonel Cobb, I have been permitted to examine this instrument, and to take a copy thereof. *Third.* A copy of an instrument, dated December, 1834, executed by sixty-seven Choctaw Indians to William M. Gwin and Charles Fisher. This instrument has no day of date, but I presume it was made on the 24th of December, 1834, as that made by Gwin, and left with Colonel Cobb, bears date on that day. This instrument is singular in its provisions. It seems in one part to confer a power, in another to convey one-half the lands to which the parties making are entitled, and in another it contains a penalty. It is also possible that the parties understood this instrument to be similar in its provisions to that left with Colonel Cobb by Dr. Gwin; but your better judgment will enable you to put the proper construction on the instrument. *Fourth.* A copy of an instrument made by one hundred and eleven Choctaws on 19th July, 1835, to Charles Fisher, William M. Gwin, Alexander F. Young, and Daniel W. Wright. This instrument confers a power, and has a penalty to convey, when the claims shall be adjusted. It also purports to have been made by heads of families, when in fact the signatures themselves show that some of them were not heads of families. *Fifth.* A copy of an instrument purporting to have been made by twenty-nine Choctaw Indians to Edward Gwin on the 17th and 18th of December, 1835. This instrument confers a power and agrees to give one-half the land secured, and also contains an agreement to sell the other half. And *sixth.* A copy of an instrument purporting to be made by nineteen Choctaw Indians on the 22d December, 1835, to Angus McIntyre. This instrument sets out with a penalty. It

also contains a power to McIntyre to act for the Indians, and binds him to perform services for them. It also contains an agreement to sell, and leaves it optional with the Indians to pay money for the services to be rendered, or to convey one-half of their lands. I understood that McIntyre had left the country and abandoned the business of the Indians, and I believe it to be true that he has done so. All the instruments mentioned in this exhibit (except that made by Gwin to the Indians) are of record in the county of Leake, and are the same (except the contract with McIntyre, which I had not then found) referred to in my report of the 16th of August last. It will also be observed, that the number of Indians given in the contract with Fisher, Gwin, Young, and Wright, in this report, is one hundred and eleven, and that in my previous report it was stated at sixty-seven. This difference arises, I suppose, from some mistake in recording the instrument, as the number in the clerk's book is sixty-seven, and the number in the original contract, from which this copy is drawn; (by the permission of Judge Wright,) is one hundred and eleven, as you will perceive by counting them.

I also report herewith a document marked Exhibit B, which covers copies of sundry instruments found on record in the county of Attala. Some of these instruments purport to be deeds, and others to be bonds, with penalties to make deeds. These instruments differ in some respects from those found in Leake county, and particularly in this: that but one name appears to these contracts, while those in Leake have a large number of names to the same contract. There appear to be twelve instruments or contracts on record in Attala county, and of these only one (to wit: that of Pierce Durant) mentions the 14th article of the treaty, and some of them mention other articles. I thought it best, however, to report them. The contracts Nos. 9, 10, and 11, purport to be made by Pierce Durant, and mention the 14th article of the treaty. Durant is now here, and I have conversed with him on the subject. He denies the validity of his contract with Trimble, (No. 9.) He makes an affidavit to that effect, herewith reported, marked Exhibit C, accompanied by the affidavit of his son, George Durant. Trimble is dead, and I have not had it in my power to take the deposition of Purdom; one of the subscribing witnesses.

It may be proper to state some reason why I report to your department, instead of waiting until the board meets again. At the time of my report to the board (August 16) I had not seen the contracts themselves, but only the clerk's certificates. I could not determine, from the means furnished me by the clerk's certificates, whether they were Choctaws whose claims had been tried, or not; nor can I now determine whether the names herewith reported are Indians whose claims have been tried, or ought to be tried, having no list of the names tried, or to be tried, by the present board. The commissioners, in transmitting my report, suggested to the department "to suspend further action on the cases then before the department," in order to allow me further time to make examinations and to collect testimony. Having procured the contracts themselves, referred to in my former report, I deemed it my duty to send them up immediately, that no delay, by my action, may be thrown in the way of your decision, and thereby retard or prevent the emigration of the Indians. The department, on inspection, will be able to determine whether these instruments amount to an assignment, or agreement for an assignment, contrary to the 9th section of the act of Congress. I have thought it the more necessary

to send these contracts to the department, because, from the best investigation I have been thus far able to make, I feel confident that if any fraud exists, in the transaction of this business, it is to be found in these contracts. I have not a doubt that it was always the "bona fide" intention of the Indians who are now here to remain, and avail themselves of the provisions of the 14th article of the treaty. It affords me great pleasure to state, in this report, however; that a different spirit now begins to prevail amongst the Indians; and they are now beginning to act in earnest on the subject of emigration. I have, for the last three days, attended a council of the Indians near this place. This council was called by Colonel Cobb, and was numerously attended by his people. Cobb is looked upon as the wisest and most influential of the Choctaws now in Mississippi. They decided with great unanimity to emigrate as soon as their business is disposed of. If, therefore, any delay shall be caused by any construction put on my former report, it would be a source of regret to me, and of great injury to all parties, as it is so much the interest of the Government, the people of Mississippi, and the Indians themselves, that they shall emigrate.

The names herewith reported are almost, if not entirely, of the Cobb Indians. These, I think, are all the contracts that will be found made by the Choctaws of Cobb's clan. Their claims, I understand, have been principally tried, either by the present or former board. These contracts cannot affect the claims tried by the former board, and it will be in the power of the department to determine, by comparing the names, whether any cases before them should be suspended, if, indeed, the cases be open for further proof, after the decision upon them by the board.

I have found some difficulty in my own mind as to the proper construction of these contracts. Upon examining the report of Messrs. Vroom and Murray, at page 18, I find it stated, that Colonel Fisher had furnished the former board with a copy of these contracts, and that board had determined it had nothing to do with the contracts. I have also been informed by the present board that no copy of the contracts sent up by Colonel Fisher had been furnished to this board by the department. Thus, I find, whilst the department is in possession of a copy of these contracts, no construction has been placed upon them, or, if it has, no information has been given of that construction. In the absence, therefore, of any construction, I have been left to my own interpretation of the law. And whilst I am not prepared to say that these instruments are such contracts as would make a forfeiture under the 9th section of the law, yet they are writings made in relation to lands claimed under the 14th article of the treaty; they seem principally to be contracts by which the Choctaws employ agents and attorneys to prosecute their claims, and to obtain for them the benefits secured by the 14th article of the treaty. As an agent to collect testimony on the part of the United States, I have deemed it not improper to submit these contracts to the department in the recess of the board.

The rule I have applied to these instruments of writing, in determining whether they are contracts in the meaning of the law, is this: are they such agreements or contracts as would enable the vendee or bargainee to dispossess the vender or bargainer by legal process, and thereby prevent him from complying with the requisitions of the treaty, to remain five years? Tried by this rule, I have no hesitation in saying that none of these contracts confer that power, except the contract of Pierce Durant, which is attacked by the affidavit of himself and son, and the contract with William

M. Gwin and Charles Fisher, of September, 1834, which, by the strict rules of construction, would perhaps give that power to the vendors, unless, by its connexion with the defeasance or instrument made by Gwin, and supposed to be of the same date, its effect is explained away.

All of which is respectfully submitted.

T. J. WORD, *Agent, &c.*

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

EXHIBIT A.

Copy of power of attorney from Indians to Gwin, and his obligation, left with Colonel Cobb.

STATE OF MISSISSIPPI, ss :

Know all men by these presents, that we, the subscribing Choctaw citizens of the State of Mississippi, for divers good causes and considerations as hereunto showing, have constituted and appointed, and do by these presents constitute and appoint, our friends Charles Fisher and William M. Gwin, or either of them, our lawful attorney, for us and in our names to make application to the Congress of the United States, or to the proper authorities of the Government, to obtain for us the lands to which either of us may be entitled under the provisions of the treaty of Dancing Rabbit creek, and more especially under the 14th article thereof; and, as soon as it can be done, to sue out and to procure for us the patents, in fee simple titles, to which each of us may be respectively entitled, and generally to do and perform for us in the premises whatever the laws and regulations of the Government may require to be done, in as full and ample a manner as we ourselves could do, were we personally present, acting and doing for ourselves.

In witness whereof, we have hereunto set our hands and affixed our seals to this our irrevocable power of attorney.

Copy of Gwin's obligation, written on the back of the within copy of power of attorney, and left with Colonel Cobb.

The within is the power of attorney which the undersigned has taken of such Choctaws as have empowered him to present their claims to the Congress of the United States, for lands which they claim under the 14th article of the treaty of Dancing Rabbit creek, and have obligated myself to collect testimony, to defray all expenses for any evidence that is necessary to be got, to procure some one or more suitable persons to go to Washington city to present the evidence before Congress and the proper departments of Government, and, in fact, put myself to all the trouble and expense that may be necessary to secure their titles; and, if I fail in getting titles, I am to be the sole loser, the Indians to pay no expenses; and if I succeed, I am to have one-half of the land; and, where there are floating sections, I

am to exchange those lands adjoining the residences of the Indians, acre for acre, for those that are located at a distance from the residences, or pay them \$1 25 per acre for their one-half of these lands thus located.

Given under my hand and seal, this 24th December, 1834.

WILLIAM M. GWIN. [SEAL.]

Witness : SAMUEL COBB.

SAMUEL McCANN.

WILLIAM COBB.

Copy of contract with Charles Fisher and William M. Gwin, on record in the county of Leake, dated December, 1834, recorded June 6, 1837.

THE STATE OF MISSISSIPPI, ss :

This article of agreement, contract, and covenant, entered into this _____ day of December, 1834, between the subscribing Choctaw citizens of the State of Mississippi of the one part, and William M. Gwin and Charles Fisher of the other part, witnesseth : That whereas, by virtue of the 14th article of the treaty of Dancing Rabbit creek, entered into in the month of September, 1830, between the Choctaw nation of Indians and the United States, and in the 14th article of that treaty, it is provided and stipulated that each Choctaw head of a family shall be entitled to one section of land for him or herself, and a half section on account of each unmarried child over ten years of age, and a quarter section on account of each child under ten years of age : and whereas, to obtain the benefit of the provisions of said treaty, it was agreed that all who wished to avail themselves of it should, within six months of the ratification of the treaty, signify to the agent the intention of becoming citizens of the State and taking land : and whereas it now appears that, although the subscribers, in one form or other, actually made a tender of registration according to the requisitions of the treaty, yet their names do not appear on the book of the agent, and, consequently, they will all be deprived of their lands, and ejected from their possessions, unless prompt means be taken to have their lands secured to them by some legislation on the part of Congress : and we, the Choctaw subscribers hereunto, knowing ourselves to be incompetent in person to make the application, and to sustain and support our just and equitable rights, either before the Congress of the United States or any officer who may come charged with this business, have therefore, and do hereby, contract and agree with William M. Gwin, of Mississippi, and Charles Fisher, of North Carolina, to undertake our business for us and in our behalf, to attend to the lands for us, on the following terms and conditions :

1st. William M. Gwin and Charles Fisher, on their part, are to make out the case, collect all the evidence necessary, and support it ; prepare the same, and submit it to the President of the United States, or to Congress, or to any officer who may be charged to act in this matter, and generally to do and transact all that may appear to them proper and necessary to obtain for us the land to which each of us, the subscribers, are entitled to under the treaty, and of which we have thus far been deprived by the neglect or mistakes of the late agent or his deputies ; and to this end, if they deem it necessary, one or the other of them shall visit Washington city, as our agent or attorney, to urge our claims.

In consideration of these services, much of which have already been rendered in the collection of evidence to sustain our claims, and in measures already taken by them to have our lands located and reserved from sale, all of which have cost them much labor and fatigue, and also considerable sums of money, in going on to Washington city to obtain the order, or other expenses connected with the transaction; and in consideration of the further sums paid out for us and our benefit, the receipt whereof is hereby acknowledged, and of the sums yet to be expended by them in attending to our interests, we, the subscribing Choctaws, now being citizens of the State of Mississippi, do hereby bargain, sell, and convey, grant, demise, and transfer, to William M. Gwin and Charles Fisher, their heirs and assigns, the one undivided half part or moiety of all the lands which we and each of us are entitled to receive, either in law or equity, under the before-mentioned treaty, and which may hereafter be secured to us, or to either of us, by any act of Congress or decision of any other department of Government, and to have and to hold to the said William M. Gwin and Charles Fisher, and to their heirs, and to the proper use and benefits of them and their heirs in fee simple forever, and for the purpose of avoiding any and all difficulties between ourselves and the said William M. Gwin and Charles Fisher, and moreover to prevent the necessity of scattering our families further apart than is now the case, desirous as we are to live in settlements and convenient to each other:

2d. We do hereby agree, that when either of us shall have lands located in our names, at spots inconvenient of distance from our friends and our settlements, to exchange the same, acre for acre, with said Gwin and Fisher, for other lands which may be near our Choctaw friends; and in case we, or either of us, do not like the exchange proposed by the said Gwin and Fisher, then we agree to receive from them the cash for our one-half part or moiety of the land, at the Government price of \$1 25 per acre; and on the payment thereof, we bind ourselves to execute a proper and sufficient title to them. And know all men by these presents, that we, and each of us, jointly and severally, are held and firmly bound, unto the said Gwin and Fisher, their heirs and assigns, in the penal sum of ten thousand dollars for each, in case either of us may refuse to make title to the half; to which payment, well and truly to be made, we bind ourselves and our heirs, jointly and severally. The condition of this obligation is such, that, whereas we have agreed and contracted to convey to William M. Gwin and Charles Fisher, for reasons heretofore set forth, the one-half part of all the land we may acquire as claimed under the treaty of Dancing Rabbit creek: now, in case we, and each of us, perform this obligation truly and in good faith on our part, then the above obligation to be null and void, otherwise to remain in full force and virtue.

In witness whereof, we have hereunto set our sign, marked, and affixed our seals, this —— day of December, 1834.

Ire-tibbee,	his + mark, seal.
Joho-me heka,	his + mark, seal.
Eh-hago,	his + mark, seal.
Ele-hora,	his + mark, seal.
Eoucke-hona,	his + mark, seal.
Neckachur-Kenee,	his + mark, seal.
Montubba,	his + mark, seal.
Law-na,	his + mark, seal.
M-ko-teno,	his + mark, seal.
Now-la,	his + mark, seal.
Mush-a tubbee,	his + mark, seal.
Tobias Ward,	his + mark, seal.

Sophia Ward,	her + mark, seal.
Hachubbee,	his + mark, seal.
Nicholas Hampton,	his + mark, seal.
Eho-chubbee,	his + mark, seal.
Albirta,	his + mark, seal.
Pa-artehee,	his + mark, seal.
Facha,	her + mark, seal.
Man-hega,	her + mark, seal.
Per-nia,	his + mark, seal.
Levi Jones,	his + mark, seal.
Ona hega,	his + mark, seal.
Eli-holo,	his + mark, seal.
Anotamliä,	his + mark, seal.
She-mayer,	her + mark, seal.
In-wis,	his + mark, seal.
Yar-ho-ka;	his + mark, seal.
Olbiga,	his + mark, seal.
Hoy-e-ga,	his + mark, seal.
Spancheza,	his + mark, seal.
Eleck-pre-hune,	his + mark, seal.
Ah-she-le-treé,	his + mark, seal.
Tomabe-mibbee,	his + mark, seal.
Hay-kye,	his + mark, seal.
Te-he-ge,	her + mark, seal.
Pertubbas,	his + mark, seal.
White Honce,	his + mark, seal.
Seckatubbee,	his + mark, seal.
Joh-a-yo,	her + mark, seal.
Ish-o-men-ta,	his + mark, seal.
Beata,	his + mark, seal.
Pay-a-ta,	his + mark, seal.
Ona,	his + mark, seal.
Palasa,	his + mark, seal.
Ca-tuh-na,	her + mark, seal.
Bah-tutter,	his + mark, seal.
Temi-ye-lo,	his + mark, seal.
Jeh-le-he-to-ma,	his + mark, seal.
Me-hi-lena,	her + mark, seal.
On-a-ho-seyo,	her + mark, seal.
Pa-lo-ta-mo,	his + mark, seal.
Ema-a-chubben,	his + mark, seal.
Ke-shocahis-hema,	his + mark, seal.
Tusk-ka-na-be,	his + mark, seal.
Hocha,	his + mark, seal.
Nutaire-tubbee,	his + mark, seal.
Lomer,	his + mark, seal.
Chas. Talaba,	his + mark, seal.
Kirk-ko-a-he,	his + mark, seal.
Ish-tinn-aha,	her + mark, seal.
Can-she-tubbee,	his + mark, seal.
Stu-peze,	her + mark, seal.
Elizabeth,	her + mark, seal.
Hobekee,	her + mark, seal.
Aochubbee,	his + mark, seal.
Ano-lita,	his + mark, seal.

All the above names, from Levi Jones to Ire-tibbee, throughout the list, are signed, sealed, and delivered, in presence of—

SAMUEL McCANN.

Received for record, June 6, 1837.

J. C. ARNELL, *Clerk.*

Copy of contract with Charles Fisher, William M. Gwin, Alexander F. Young, and Daniel W. Wright, on record in Leake county, dated July 19, 1835, and recorded June 6, 1837.

STATE OF MISSISSIPPI, *Leake County, ss:*

Whereas we, the undersigned, natives and heads of Choctaw families residing in said State, have been deprived of the benefits intended to be secured to us by a treaty entered into by the United States with the Choctaw tribe of Indians at Dancing Rabbit creek, in September, one thousand eight hundred and thirty; and whereas it is known to many of us personally, and to all from information, that we have been prevented from enjoying the benefits granted to us by said treaty, partly by our own ignorance, but chiefly by the irregular habits, carelessness, and negligence of the agent, Colonel Ward, whose duty it was to attend to our interest in that respect; and whereas Charles Fisher, of North Carolina, and William M. Gwin, Alexander F. Young, and Daniel W. Wright, of Mississippi, have agreed to undertake, at their own proper costs and charges, to procure for us the benefits intended to be given by the treaty aforesaid: Now, therefore, know all men by these presents, that, for and in consideration of the foregoing premises, and of moneys already expended by said Fisher, Gwin, Young, and Wright, and which hereafter may be expended by them, in this State, at the city of Washington or elsewhere, in the prosecution of our rights; and also in consideration of the counsel given us and time spent by said Fisher, Gwin, Young, and Wright, for securing our claims under the treaty aforesaid; and for the further consideration of one dollar to each of us in hand paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, we, the undersigned, do, each of us, severally, bind ourselves, our heirs, executors, administrators, and assigns, unto the said Charles Fisher, William M. Gwin, Alexander F. Young, and Daniel W. Wright, their respective heirs, executors, administrators, and assigns, in the sum of ten thousand dollars, with the following provisions, viz: This bond to be void as to all of us who may fail in establishing our claims and obtaining the land intended to be granted to us by the treaty aforesaid, and also as to all of us who shall succeed in obtaining land so intended, as aforesaid, to be granted to us, and who shall forthwith, as soon as locations shall have been made, convey, in fee simple, to said Fisher, Gwin, Young, and Wright, one-half of said land so granted by virtue of said treaty; but this bond to be in full force against each of us who shall obtain land as aforesaid, and shall neglect or refuse to make conveyances as aforesaid; and provided, further, that each and all of us who are in the possession of fields and houses shall, in dividing our lands with said Fisher, Gwin, Young, and Wright, retain such fields and houses as our portions of said land; and it is further agreed by each of us, in consideration of the foregoing premises, that the said Charles Fisher, William M. Gwin, Alexander F. Young, and Daniel W. Wright, or either of them, shall be our attorney or attorneys, to attend, with the officer or officers who may be appointed by the Government of the United States, to the locating of the lands that may be appropriated to us by virtue of the treaty aforesaid.

Given under our hands and seals, this nineteenth of July, A. D. one thousand eight hundred and thirty-five, (1835.)

Pe-she-lo-lubbac, for himself, wife, and two children under 10 years,	his + mark, seal.
Co-na-cha—wife, and one child over 10, and four under 10 years,	his + mark, seal.
Etta-hop-ca,	his + mark, seal.
Jesse Nelson—wife, one child over 10 years, one under,	his + mark, seal.
Op-po-cana and wife,	his + mark, seal.
Shelata—wife, two children under 10 years,	his + mark, seal.
Ke-na-men-tibbee—wife, one child over 10 years, two under,	his + mark, seal.
Oke-li-ubbee—wife, four children over 10 years, two under,	his + mark, seal.
Ibba-pase—wife, four children over 10 years,	his + mark, seal.
Nack-a-sha—wife,	his + mark, seal.
Kim-ane-tubbee—wife,	his + mark, seal.
Ishata—wife, two children under 10 years,	his + mark, seal.
Yum-mo-nubbee—wife,	his + mark, seal.
Chic-ca sha—wife,	his + mark, seal.
Kota—wife, one child under 10 years,	his + mark, seal.
Same, for his mother, who is sick, (Im-mish te-yu,)	his + mark, seal.
Te-sho-le-mitta—wife, one child over 10 years, three under—two —,	his + mark, seal.
Me-ha-tubbee—wife, two children over 10 years, two under,	his + mark, seal.
Pem filla—wife, two children over 10 years, one under,	his + mark, seal.
Yack-cume-me-tubbee—wife,	his + mark, seal.
Me-he-o-che-a—wife,	his + mark, seal.
Neh-to-nubbee—wife,	his + mark, seal.
Ise-no-na tebbe,	his + mark, seal.
Ich-al-un-ache—wife, two children over 10 years,	his + mark, seal.
Ah-bee—wife, one child over 10 years, one under,	his + mark, seal.
Nack-am-me-ho-tibbee—wife, one child under 10 years,	his + mark, seal.
Je-co-ma—wife, two children over 10 years, one under—two — by wife,	his + mark, seal.
Stim-mo-ho-yo—wife,	his + mark, seal.
A-che-a—three children over 10 years,	his + mark, seal.
Pisea-he-ka—one child over 10 years,	his + mark, seal.
Rayburn—boy and girl, (Term.,)	his + mark, seal.
En-ne-le—one child over 10 years,	his + mark, seal.
Atto-che—wife, one child under 10 years,	his + mark, seal.
Halla—wife,	his + mark, seal.
Talla-tear-na—five children over 10 years,	his + mark, seal.
To-nah—two children over 10 years,	his + mark, seal.
Hal-sta-na, (the old chief)—one child over 10 years,	his + mark, seal.
Utto-che—wife, four children over 10 years, one under,	his + mark, seal.
Lee-ock-hema,	his + mark, seal.
George,	his + mark, seal.
Che-na—one child over 10 years,	his + mark, seal.
Yow-a—2 children over 10 years,	his + mark, seal.
Alla-le-ka—one child over 10 years,	his + mark, seal.
Ka-le-ho-na—five children over 10 years,	his + mark, seal.
Yuk-ka-tim-na—one child under 10 years,	his + mark, seal.
O-chap-pak—wife,	his + mark, seal.
Ona-chubbee—wife, one child under 10 years,	his + mark, seal.
No-na-co-ye,	his + mark, seal.
Sta cubbee—wife, two children under 10 years,	his + mark, seal.
Sphia-ho-na—one child under 10 years,	his + mark, seal.
Up-pasa—one child over 10 years,	his + mark, seal.
Im-machoka—two children over 10 years, one under,	his + mark, seal.
To-nubbee—wife, two children under 10 years,	his + mark, seal.
To-a-nee-tubbee—wife, two children under, two over, 10 years,	his + mark, seal.
J. A. Tubbee—wife, two children over, one under, 10 years,	his + mark, seal.
Pis-a-ton-tubbee and sister, both over ten years,	his + mark, seal.
Ne-wa-na-tubbee—wife,	his + mark, seal.
Hyitta—wife, four children under 10 years,	his + mark, seal.
Eyo-munna, (woman)—one child over 10 years,	her + mark, seal.
Yo-ke-na, (woman)—two children over 10 years,	her + mark, seal.

Apa-bo-ka, (woman)—two children over 10 years,	her + mark, seal.
Ala-ahma, (woman)—two children over 10 years,	her + mark, seal.
Wakatubbee,	his + mark, seal.
Te-ko-ga—wife, one child under 10 years,	his + mark, seal.
Ma-ha-ma-tubbee—wife, one child over 10 years,	his + mark, seal.
Staka—wife, four children over 10 years,	his + mark, seal.
Chuffa-ta-nubbee—wife, seven children over 10 years,	his + mark, seal.
Fin-nubbee—wife, one child under 10 years,	his + mark, seal.
Eno-wa, (woman)—two children over 10 years,	her + mark, seal.
Neck-a-ya-tubbee—wife, one child over 10 years,	his + mark, seal.
Tunapish-ta-ya—wife, two children under 10 years,	his + mark, seal.
Tun-pina—wife, three children over 10 years,	his + mark, seal;
Sho-tah—wife,	his + mark, seal.
Onatubbee—wife, three children over 10 years, one under,	his + mark, seal.
Stil-lo boba—wife, one child under 10 years,	his + mark, seal.
Les-ma-ka—wife, two children over 10 years, one under,	his + mark, seal.
Munta—wife, two children over 10 years,	his + mark, seal.
Cun naa-honah—two children over 10 years	his + mark, seal.
El-mi-o-ka, (woman)—three children over 10 years,	her + mark, seal.
Oke-la-maka, (woman)—one child over 10 years,	her + mark, seal.
Ib-ba-no-tubbee—wife, one child over, one under, 10 years,	his + mark, seal.
Pa-he-ly-o—five children over 10 years, one under,	his + mark, seal.
Te-she—wife, two children over, two under, 10 years,	his + mark, seal.
Eyo-ho-ba—one child over 10 years,	his + mark, seal.
Ish-ohona—one child over, two under, 10 years,	his + mark, seal.
Ca-pola—wife, one child under 10 years,	his + mark, seal.
To-koka, (woman)—two children under 10 years,	her + mark, seal.
Yokata—wife, three children over 10 years, one under,	his + mark, seal.
Elun-tubbee—wife, one child under 10 years,	his + mark, seal.
Tik-ba-ha-tonah, (woman)—two children under 10 years,	her + mark, seal.
Tim-mah, (woman)—one child over 10 years,	her + mark, seal.
A-ta-hubbee—wife, two children over, two under, 10 years	his + mark, seal.
A-cish-tau-ya—wife,	his + mark, seal.
Te-chah—wife,	his + mark, seal.
Sa-fa-ta—wife, four children over 10 years, two under,	his + mark, seal.
Pis-tak-cha—wife,	his + mark, seal.
Oke-to-ka—wife,	his + mark, seal.
To-hika—wife, two children over 10 years, two under,	his + mark, seal.
Ema-sam-ba—wife, four children over 10 years,	his + mark, seal.
Ecu-nubbee—wife, one child under 10 years,	his + mark, seal.
E-millee, (woman)—four children over, four under, 10 years,	her + mark, seal.
She-ho-ka—one child over, one under, 10 years,	her + mark, seal.
Chi-ham-ba—wife,	his + mark, seal.
Pis-sa-ma-chin-tubbee,	his + mark, seal.
Ish-to-a-nim-ta,	his + mark, seal.
Nook-wea—wife, two children under 10 years,	his + mark, seal.
Hee-che-fo—wife, three children under 10 years,	his + mark, seal.
Wa-cha, (widow)—one child under, two over, 10 years,	her + mark, seal.
Im-wa-ya-hek-ta—seven children over, eight under, 10 years,	his + mark, seal.
Te-he-bin-ga—wife, two children over 10 years,	his + mark, seal.
O-nan-tubbee—wife,	his + mark, seal.

In presence of—

SAMUEL McCANN.

W. C. COBB.

Copy of a contract with Edward Gwin, on record in Leake county, dated the 17th and 18th days of December, 1835, and recorded the 6th June, 1837.

Know all men by these presents, that we, the undersigned, have employed Edward Gwin, of Carroll county, Tennessee, as our lawful agent, to attend to our claims of land which we claim under the treaty of Danc-

ing Rabbit creek, of the fourteenth article of said treaty, and also all the claims that we are entitled to under that treaty; and the said Gwin is authorized hereby, and empowered, to collect testimony and substantiate the said claims, and to make locations of the same in our names. And, in consideration of his services rendered, and to be rendered, we do hereby bind ourselves to make him a title, in fee simple, to the one-half of all the claims he may substantiate and locate for us, in our names. We do furthermore authorize him to locate and prosecute for titles any and all claims that may be covered with other claims previously located, or when the land may have been sold by the Government; and for all claims thus sustained and located we agree that the said Gwin shall have one undivided half of said lands, at one dollar and twenty-five cents per acre, or we will take other lands in lieu of one-half of said lands as may be near our present residences, acre for acre, as may suit our convenience; and that, to the said Gwin, in all such changes, titles, in fee simple, are to be made, so soon as the five years that entitle us to the land has expired; and in case we should prefer to receive one dollar and twenty-five cents per acre for such land as may have been lost by previous locations, or where the lands have been sold by the United States, the said Gwin is to pay us in cash, when we can make him a title, in fee simple, for the same.

In testimony whereof, we have hereunto set our hands and seals, this 17th and 18th days of December, 1835.

El-ce-ne,	his + mark, seal.
Dennis Impson,	his + mark, seal.
Tish eh,	his + mark, seal.
He-kalintubbee,	his + mark, seal.
Tu-le-wetunee,	her + mark, seal.
Emocketunnee,	his + mark, seal.
Wam-pe se-ock-tee,	his + mark, seal.
Hatinah,	his + mark, seal.
Lucy McCann,	her + mark, seal.
Tish-o-she letah,	his + mark, seal.
Eu-ker-cha,	his + mark, seal.
Elah-no-mo-hubbee,	his + mark, seal.
Phi-le-ti-ah	his + mark, seal.
Emah-ho-tonelo,	his + mark, seal.
Tah-he-ga,	his + mark, seal.
Emeh-shee-shea,	his + mark, seal.
Pis-took-cha,	his + mark, seal.
Apus-fa-mo-ha,	his + mark, seal.
Pi-set-ish-tah-ya,	his + mark, seal.
Hobah-lish-ya,	his + mark, seal.
Ak-cha-folee,	his + mark, seal.
Ah-bew-a-tubbee,	his + mark, seal.
Tish-ho-mah,	his + mark, seal.
To-kah,	his + mark, seal.
List-man,	his + mark, seal.
Etah-hebbee,	his + mark, seal.
Chahla-tubbee,	his + mark, seal.
Tom-mich-yah,	his + mark, seal.

Witness: SAMUEL McCANN.

Copy of contract with Angus McIntyre, on record in Leake county, dated 22d day of December, 1835, execution proved 30th December, 1835, and filed for record and recorded October 12, 1837.

Know all men by these presents, that we, whose names are hereunto subscribed, are held and firmly [bound] unto Angus McIntyre, of the county of Kemper, and State of Mississippi, in the just and full sum of ten thousand dollars each, to be paid by us jointly and severally, for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, and every and each of our heirs, executors, and administrators, and assigns, firmly by these presents, sealed with our seals, and dated this twenty-second day of December, one thousand eight hundred and thirty-five. The condition of the above obligation is such, that whereas the above-bound parties have, this day and date above written, commissioned, authorized, deputed, and empowered the said Angus McIntyre, our true and lawful agent and attorney, to make locations of the land to which we are entitled under the fourteenth article of the late Choctaw treaty of Dancing Rabbit creek, and under the late instructions from the War Department, they will be permitted to locate on lands of par value and equal quantity, in lieu of these lands taken from under them by the General Government, and which they have been deprived of by the neglect of the Government officers, and to do and perform all other things necessary to be done and performed, in order to secure to them the benefits of the said article of said treaty. Now, if the said Angus McIntyre, as agent and attorney, shall well and truly perform the commission which he has been deputed with, then the above boundens are to pay and satisfy him the above obligation, or to give to him one undivided half of the lands in fee simple, and defend the right of it which may be secured to them, if the said agent shall prefer it; or, in case the heads of the families wish to unite and locate together, a certain number of sections shall be located to them, in equal quantities to their undivided half, for them to settle upon. And it is considered, by and between the aforesaid parties, that if the Indians should not be satisfied with the undivided half of the lands located on, with a certain number of sections located to them in a body, then the agent is to have the right of paying to them, to each head of a family, one dollar and twenty-five cents per acre for the remaining one-half of the land so located, or have it laid out for them, under the fourteenth article of said treaty; and the Indians cannot, in any case, sell or transfer any part or parcel of the lands so located to any person whatever but to the said agent; and, in case these conditions are performed in good faith, then the above obligations are to be void; otherwise, to remain in full force and virtue.

Given under our hands and seals, this 22d day of December, 1835.

Hela-pambee,	his + mark, seal.
John, or Tus-kala,	his + mark, seal.
Che-ce,	his + mark, seal.
Ishte-oneh,	his + mark, seal.
Ya-catch-a-le,	his + mark, seal.
Bernabi,	his + mark, seal.
Bamatubby, or Banateabber,	his + mark, seal.
Ho cah-tubba,	his + mark, seal.
Ban-a tubbee,	his + mark, seal.

In presence of—

JAMES HARRIS.
JOHN L. MILLS.

Me-hetah-itcah,
Attut-temah,

his + mark, seal.
his + mark, seal.

Puck-kawle-he-ke, or Puck-kawly,
Eligu-cubbee, or Niscubbee,
La-pamba,
Hijah cahtubbee,
Ing-cenach uneh,
Abarza'ti-ya,
La-ha-tibbee,

his + mark, seal.
his + mark, seal.
his + mark, seal.
his + mark, seal.
his + mark, seal.
his + mark, seal.
his + mark, seal.

In presence of—

LEVI J. CASTOR.
JASPER FORD.

EXHIBIT B.

Copies of contracts.

No. 1.

Know all men by these presents, that I, Charles Durant, of the county of Attala, of the State of Mississippi, for and in consideration of the sum of five thousand four hundred dollars, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto William L. Trimble, of Helena county, in the State aforesaid, the following-described tracts of land, to wit: the south half of the northwest quarter of section thirty-six, of township fourteen, of range four east, in the Columbus land district. The said Trimble to have and to hold the aforesaid parcel of land, to him and to his heirs, forever.

In testimony of which, I, the said Charles Durant, have hereunto set my hand and seal, on the thirteenth day of January, 1835.

CHARLES DURANT, his + mark. [SEAL.]

L. H. ASKEIS.
W. DAVIS.
R. L. WALTON.

N. B. Proved by subscribing witnesses, and received for record June 8, and recorded June 9, 1836.

No. 2.

STATE OF MISSISSIPPI, *Madison County* :

Know all men by these presents, that I, Lewis Wilson, of the State and county aforesaid, and a native of the Choctaw nation, am held and firmly bound unto James C. Cheate, of the State and county aforesaid, in the just and full sum of one thousand dollars, which payment, well and truly to be made and done, I bind myself, my heirs, and assigns, firmly by these presents.

Sealed with my seal, and dated the 30th day of November, 1831.

The condition of the above obligation is, such bound Lewis Wilson shall well and truly make, or cause to be made, unto the said James C. Cheate, a good and lawful right and title to a certain tract or parcel of land, containing one hundred and sixty acres, lying and being in the Choctaw

nation, on a creek called and known by the name of Sena-ashe, it being the plantation and premises whereon the said Lewis Wilson now lives, and a lot of land allowed to him by the Government of the United States, by the late treaty held with said Choctaw nation; thus in that case, the above obligation to be void, and of none effect, or otherwise to remain in full force and power of the law.

LEWIS WILSON, his + mark. [SEAL.]

Signed in presence of—

PRESLY WILLIAMS.

DAVID T. WILLIAMS.

Proved by subscribing witnesses, and recorded, 13th January, 1836.

—
No. 3.

Know all men by these presents, that I, Wash-a-sha-ha-homa-tribbee, an Indian of the Choctaw nation west, in consideration of the sum of five hundred dollars to me in hand paid, by Josiah S. Derk and Thomas Myers, of the same place, the receipt whereof I do hereby acknowledge, have bargained, sold, and conveyed, and by these presents do bargain, sell, and convey, unto Josiah S. Derk and Thomas Myers, and to their heirs and assigns, forever, all of our and each of our right, title, interest, estate, claim, dower, and demand, both in law and in equity, and as well in possession as expectancy, of and to a reservation of four hundred acres of land, situated in township fourteen, range seven east; the west half of section seventeen, and the west half of the northeast quarter of said section, whereon one dwelling-house stood at the time of the treaty of Dancing Rabbit creek, in the county of Attala, and State of Mississippi, which said reservation of four hundred acres was granted to said Wash-a-sha-ha-homa-tribbee, by a provision of said treaty, concluded between the United States Government and said Choctaw nation of Indians, together with all the privileges and advantages secured to said Wash-a-sha-ha-homa-tribbee by the provision of said treaty. And I, the said Wash-a-sha-ha-homa-tribbee, do hereby appoint the said Josiah S. Derk and Thomas Myers my attorneys, for me and in my name to act for and receive from the United States Government (or such officer as may be appointed for the purpose) all such deeds, patents, and writing, as may be necessary, to said Derk and Myers, to secure to them the fee simple title to said tract of land, and to do all lawful acts required for effecting the provisions of said treaty, as fully as I could, were I personally present.

In witness whereof, the parties to these presents have hereunto set our hands and seals, this twenty-third day of January, one thousand eight hundred and thirty-five. Interpreted and explained for

WASH-A-SHA-HA-HOMA-TRIBBEE, his + mark.

Delivered in presence of—

P. MCKINLEY.

N. MARSHALL.

N. B. Acknowledged by the person executing the deed, and recorded, 19th of December, 1835.

No. 4.

I, Lewis Durant, jr., of the county of Attala, in the State of Mississippi, do bind myself to convey to William L. Trimble the south half of section eighteen, township fourteen, range five east, so soon as my title to the land is confirmed by the Government of the United States, in consideration of the sum of one thousand dollars, to me in hand paid, before the sealing and delivery of these presents.

Given under my hand and seal, this 17th day of August, 1835.

LEWIS DURANT, JR. [SEAL.]

Test: N. A. PURDOM.
L. H. ASKEW.

N. B. Proved by subscribing witnesses.

Received for record 12th, and recorded 17th November 1835.

No. 5.

THE STATE OF MISSISSIPPI, *Attala County, ss:*

This 23d of September, 1832, John Cooper, of the Choctaw nation, and Elizabeth his wife, both personally appeared before me, J. J. Thompson, an acting justice of the peace of said county, and, being examined, said: That they have received two hundred dollars from Ezekiel Wallace, in full for their cultivation claim, it being 160 acres of land.

JOHN COOPER.

ELIZABETH COOPER, her + mark.

Signed in presence of—

J. J. THOMPSON, *Justice of the Peace.*

N. B. Recorded 22d August, 1835.

No. 6.

I, Lewis Durant, jr., of the county of Attala, in the State of Mississippi, do bind myself to convey to William L. Trimble the sixth half of section eighteen, to the same as No. 4, above given.

N. B. This is a duplicate of No. 4, as above copied; proved by subscribing witnesses.

Received for record 6th February, and recorded 6th April, 1836.

No. 7.

THE STATE OF MISSISSIPPI, *Attala County, ss:*

Know all men by these presents, that Teleware, an Indian woman, of the Choctaw nation, in the county of Attala, and State of Mississippi, in consideration of one hundred and fifty dollars to her in hand paid, by

Thomas H. Rogers, of the same place, the receipt whereof we do hereby acknowledge, have bargained, sold, and conveyed, and by these presents do bargain, sell, and convey, unto the said Thomas H. Rogers, and to his heirs and assigns, forever, all my right, title, and interest, and estate, claim, dowry, and demand, both in law and equity, and as well in possession as expectancy, of and to reservation of eighty acres of land, or an eighth of land, situate and lying on Hurricane creek, township fifteen, range seven east, section twenty-six; the west half of the northeast quarter, in Attala county—said reservation was granted her by the 17th article of the late treaty made between the Choctaw Indians and the United States—together with all powers and advantages secured to said Teleware, an Indian woman, by the provisions of the late treaty as aforesaid, by the said Teleware, an Indian woman, do hereby appoint the said Thomas H. Rogers my lawful attorney, for me, to do in my name, to act for and receive for me, and settle with the Government, or such officer as may be to settle with, to be appointed for the purpose; the said reservation of land, and all such deeds, patents, and writing, as may be necessary to said T. H. Rogers, the fee simple title to said tract of land, and to do all lawful acts required for executing the premises, as fully as I could were I personally present myself.

In witness whereof, the parties to these presents have hereunto set our hands and seals, this 3d day of April, 1835.

TELEWARE, her + mark.

Test: ELI W. CROWDER.

N. B. Recorded 23d April, 1835.

—
No. 8.

Know all men by these presents, that I, Teleware, a woman of the Choctaw tribe of Indians, of the county of Attala, and State of Mississippi: whereas I, the said Teleware, through Joseph Jones, of said county, linguist or lincaster and interpreter, some time in the autumn of the year one thousand eight hundred and thirty-three of the Christian era, and before I had made my contract with Ezekiel Wallace in relation to any land whatever, bargained and sold, for and in consideration of the sum of one hundred and fifty dollars, to Thomas H. Rogers, in fee simple, all my right, title, and interest, in and to the west half of the northeast half of section number twenty-six, in township fifteen, of range seven east, which land was restored to me by the treaty of Dancing Rabbit creek: and whereas, at the time of said bargain and sale, I put the said Thomas H. Rogers in possession of the said land, who has held possession, by himself and his tenants, ever since: and whereas the said Thomas H. Rogers punctually paid me the one hundred dollars aforesaid, at the time and in the manner agreed upon: and whereas, for the sake of further assurance of title, and for and in consideration of fifty dollars more, gratuitously offered, given, and paid to me by the said Thomas H. Rogers, I executed a deed of conveyance for the said land, in fee simple, to said Thomas H. Rogers, bearing date the third or eighth day of April, one thousand eight hundred and thirty-five; and which said deed, in its import and character, is fully explained and interpreted to me by Eli W. Crowder, linguist or lincaster and interpreter: and whereas the said deed of conveyance also contained a power of attorney:

from me to the said Thomas H. Rogers, for me and in my name to do all things necessary to perfect title to the said land, for the use and behoof of himself, in fee simple: and whereas the said Thomas H. Rogers hath already, as my attorney and as aforesaid, done and committed some acts and deeds in that behalf: and whereas the said Thomas H. Rogers, for divers good causes and reasons, requests still further assurance to himself in fee simple of title to the land aforesaid: Now, therefore,

Know all men by these presents, that I, the said Teleware, for and in consideration of the matters and things above related, by way of further assurance of title asked aforesaid, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Thomas H. Rogers, his heirs and assigns, forever, all my right, title, and interest, which I now have or ever had, in and to the land aforesaid, to have and to hold the land unto the said Thomas H. Rogers, his heirs and assigns, forever, to and for his and their own proper benefit and behoof forever, together with all and singular the appurtenances and privileges thereunto belonging or in any wise appertaining; and I do hereby ratify and confirm all the acts and deeds of the said Thomas H. Rogers, which he may already have done and committed as my attorney as aforesaid; and I hereby, affirming the power of attorney as aforesaid, still authorize and empower the said Thomas H. Rogers, as my attorney, to do whatever other acts and things, either in my own name or his, or both, that may be necessary for perfecting in himself a title in fee simple to the land aforesaid.

In testimony whereof, I have hereunto put my hand and seal, this third day of November, one thousand eight hundred and thirty-five.

TELEWARE, her + mark.

Signed, sealed, and delivered, in the presence of—
JESSE CHEATE, his + mark.

N. B. The figures and letters 3d or 3th interlined, and 24 obliterated, before signing.

Acknowledged by the party, received for record, and recorded, 17th November, 1835.

—
No. 9.

Know all men by these presents, that I, Pierce Durant, of the county of Attala, in the State of Mississippi, am held and firmly bound to William L. Trimble, of the county of Helena, in said State, in the penal sum of six thousand dollars, of which payment, well and truly to be made to the said Trimble, his heirs, &c., I bind myself, my heirs, executors, administrators, jointly and severally, and firmly, by these presents, sealed with my seal, and dated the 17th day of August, A. D. 1835. The condition of the obligation is such, that shows the above-bound Pierce Durant has, on this day, bargained and sold to the said Trimble, for the valuable consideration of the sum of five thousand one hundred and twenty dollars, to him in hand paid, before the ensealing and delivery of these presents, the receipt of which is hereby acknowledged, the south half of section twenty-four and the north half of section twenty-five, in township fifteen, of range five east,

lying in the county of Attala, in the Columbus land district ; which said land, together with the residue of the tract of land now claimed and possessed by the said Durant, and on which he now resides, was granted to him by the provisions of the 14th article of the treaty of Dancing Rabbit creek : Now, if the said Pierce Durant shall make to the said Trimble a good and sufficient title to the foregoing-described land, so soon as his title to the land shall be made good and confirmed by the Government of the United States, then this obligation to be void, else to remain in full force.

PIERCE DURANT, his † mark.

Test : W. A. PURDOM.
L. H. ASKEW.

N. B. Proved by subscribing witnesses. Received for record 6th February, and recorded 6th April, 1836.

—
No. 10.

This is a duplicate of No. 9, above copied. Proved by subscribing witnesses ; received for record and recorded November 17, 1835.

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No. 11.

THE STATE OF MISSISSIPPI, *Attala County, ss :*

Know all men by these presents, that I, Pierce Durant, a citizen of the Choctaw nation, residing in said country and State, am held and firmly bound to Thomas Galloway, of the same place, in the just and full sum of four thousand eight hundred dollars, lawful money of the United States, to which payment, well and truly to be made to the said Thomas Galloway, his heirs or assigns, I bind myself, my heirs, my executors, and administrators, jointly and severally, firmly by these presents, sealed with my seal, and dated this twenty-ninth day of January, one thousand eight hundred and thirty-six. The condition of the above obligation is such, that whereas the above-bound Pierce Durant has this day bargained and sold, and by these presents does bargain and sell, for the consideration of two thousand and four hundred dollars, (one hundred of which is now in hand paid,) to the said Thomas Galloway, his heirs and assigns, all the following-described tract or parcel of land, lying in the Columbus land district, and known and designated on the maps of the official service as the north half of section twenty-four, in township fifteen, of range five east, containing three hundred and twenty acres of land, be the same more or less. The conditions of the sale are, that the said Thomas Galloway pays one hundred dollars before the ensealing and delivery of these presents, the receipt of which is hereby acknowledged, as aforesaid, by the said Pierce Durant ; and, further, the said Pierce Durant agrees to make or cause to be made to the said Thomas Galloway, or his legal representatives, a good and sufficient deed, with clause of general warranty, of the aforementioned tract or parcel of land, as soon as his (the said Pierce Durant's) title is confirmed by the Government of the United

States, under the following provisions, viz : The said Thomas Gallaway, at the making of the deed aforesaid, shall pay seven hundred dollars, and give his two promissory notes, one due one year from the date, and the other due two years from the date of said deed ; and the said notes shall be for the sum of eight hundred dollars each, and have, either as endorsers or joint makers, good and sufficient security. And the said Pierce Durant does hereby covenant and agree, that, in case he should fail in procuring a title to the aforesaid land from the United States within the space of two years, that he refund to the said Thomas Gallaway, his heirs or assigns, the aforesaid one hundred dollars, with interest on the said sum at ten per centum per annum, from the date of these presents. And, further, I, the said Pierce Durant, do hereby bind myself, my heirs, executors, and administrators, to fulfil and execute all the above-mentioned covenants and agreements, to the said Thomas Gallaway, his heirs and assigns, forever. Now, therefore, if the said Pierce Durant, or his heirs, executors, or administrators, fulfil the requisitions and agreements aforesaid, within the time prescribed in these presents, then this obligation to be void, otherwise to remain in full force and virtue in law and equity.

PIERCE DURANT, his + mark. [SEAL.]

Signed, sealed, and delivered, in presence of—

H. J. MUNSEN.

GEORGE DURANT.

Acknowledged by the party ; received for record 19th and recorded 25th February, 1836.

No. 12.

This indenture, made this fifth day of January, one thousand eight hundred and thirty-three, between Washsheltibbee, a citizen of the Choctaw nation, in the State of Mississippi, and within the extended limits of Madison county, of the one part, and Moses Walters, of the State and county aforesaid, of the second part, witnesseth : That the said Washsheltibbee, for and in consideration of the sum of five hundred dollars, to him in hand paid, at and before the signing and sealing of these presents, the payment of which is hereby acknowledged, and himself fully satisfied, content, and paid, hath granted, bargained, sold, enfeoffed, and released, and confirmed, and by these presents does hereby grant, bargain, sell, enfeoff, and release, and confirm, unto the said Moses Walters, his heirs, administrators, and assigns, from all that tract or parcel of land which was allowed to the said Washsheltibbee, as a reservation, in an article of the late treaty concluded with the Choctaw Indians, made and confirmed at Dancing Rabbit creek, situate, lying, and being on the waters of the Big Black, near the Natchez road, and the same whereon the said Washsheltibbee resided at the time of making the said treaty, and now resides, containing four hundred acres of land, to be located agreeably to the articles of said treaty, allowing each captain three hundred and twenty acres, and also eighty acres for his improvements—making, in the whole, four hundred acres ; to have and to hold all the aforesaid reservation and premises, unto the said Moses Walters, his heirs, executors, administrators, and assigns, forever ; and I, the said Washsheltibbee, do hereby covenant and agree to warrant and

forever defend the aforesaid reservation of land and premises, unto the aforesaid Moses Walters, his heirs, executors, and assigns, forever. In witness whereof, I, the said Washsheltibbee, have hereunto set my hand and affixed my seal, the day and date first above written.

WASHSHELTIBBEE, his + mark. [SEAL.]

Signed, sealed, and delivered, in presence of—

JOSHUA WILLIAMS.

L. M. LANHON.

Furthermore, I, the said Washsheltibbee, have also made, constituted, and appointed, and by these presents do hereby make, constitute, and appoint, Andrew C. Walters my true and lawful attorney, for me, and in my place, room, and stead, to do any thing and every thing necessary to be done hereafter, in procuring and obtaining consent of the President of the United States for a legal sale and disposition of said reservation of land, and procuring and obtaining a grant in fee simple for said land, in case the same may be required; or, in case the foregoing deed of conveyance shall hereafter be considered insufficient, to make or cause to be made unto the said Moses Walters, his heirs and assigns, a good and efficient right and warranty title unto the said reservation of land, in as full and ample a manner as I myself might or could do, were I personally present at the doing thereof; hereby ratifying and confirming whatsoever my said attorney shall do or cause to be done, in and about the premises aforesaid, in as full and ample a manner as I could do were I personally present. In witness whereof, I have hereunto set my hand and affixed my seal, this the fifth day of January, one thousand eight hundred and thirty-three.

WASHSHELTIBBEE, his + mark. [SEAL.]

Attest: JOSHUA WILLIAMS.

L. M. LANHON.

N. B. Acknowledged by the party, and received for record, April 2, 1833.

EXHIBIT C.

STATE OF MISSISSIPPI, *Leake County, ss:*

Personally appeared before me, Joseph Hodges, an acting justice of the peace in and for said county, Pierce Durant, who, being sworn, says: That some time in the year 1834 or 1835 he applied to William L. Trimble for advice and assistance to get his land, claimed under the 14th article of the Choctaw treaty of Dancing Rabbit creek, reserved from sale; that said Trimble undertook to assist him in having a conditional reservation of said land made for his benefit; that said Trimble accordingly prepared some papers, and sent deponent to Chocchuma with them, to present them to the locating agent, Colonel Mesters, who informed him he would, on the presentation of said papers, reserve his land from sale; that, on his way to Chocchuma, deponent and his father, Lewis Durant, who was with him, met Colonel Greenwood Lafloore, who examined the papers, and told him they would not answer the purpose of enabling him to get his land restored; and that he then returned home, obtained the numbers of his land, and

again started for Chocchuma, where he made application, and succeeded in getting his land restored without again applying to said Trimble for assistance.

Deponent further states, that he was informed, some time after, that said Trimble had a bond, deed, or other title paper, executed by him to said Trimble, conveying or agreeing to convey to said Trimble a part of his land; but deponent states that he has no knowledge whatever of ever having sold or agreed to sell or convey to said Trimble any part of his land. Deponent states that said Trimble never stated to him that he would charge for his assistance in getting his land restored, and never, to the knowledge of deponent, spoke to him about purchasing any part of his land; and deponent believes that if said Trimble ever obtained his signature to any bond, deed, or other title paper, by which he conveyed or agreed to convey to him any part of his land, he did it by presenting a paper which he represented to deponent it was necessary for him to sign, in order to get his land reserved from sale. Deponent states that he never received any money or other consideration from said Trimble for the pretended purchase of part of his land, and that said Trimble never performed any services for said deponent, except as hereinbefore stated, which proved to be of no use to him.

PIERCE DURANT, his + mark.

Subscribed and sworn to, this 19th day of September, 1843, before me.

JOSEPH HODGES,
Justice of the Peace.

STATE OF MISSISSIPPI, *Leake County, ss :*

This day personally appeared before me, Joseph Hodges, an acting justice of the peace in and for said county, George Durant, who, being sworn, says: That he remembers when his father, Pierce Durant, heard that William L. Trimble had a conveyance or an agreement for a conveyance of part of his land, and that he then heard his father declare that he had no knowledge of ever having executed to said Trimble any instrument of writing for that purpose, and had never agreed to do so. Deponent states that he accompanied his father on his second visit to Chocchuma, his grandfather, Lewis Durant, having accompanied him on his first trip, which was unsuccessful, and that on his second visit his father succeeded in getting his land reserved from sale. Deponent does not believe that his father ever knowingly signed any paper by which he conveyed or agreed to convey any part of his land to said Trimble; nor does he believe that he ever received any money or other consideration from said Trimble for any pretended purchase.

GEORGE DURANT.

Subscribed and sworn to, this 19th day of September, 1843, before me.

JOSEPH HODGES,
Justice of the Peace.

Kk.

WASHINGTON CITY, October 3, 1843.

SIR: I perceive, from some letters on file in your department, that Mr. Claiborne, my colleague on the Choctaw commission, has preferred and insinuated charges against me. My colleague has said what he knows to be false, and has wilfully misrepresented my views and course as a commissioner. Out of his own mouth and by other evidence will I convict him.

I am determined to place myself right before the department. I therefore respectfully request that you will furnish me with copies of his letters, and any evidence which he or any other person may have furnished in support of *any* charge against me.

Very respectfully, your obedient servant,

RALPH GRAVES.

HON. T. HARTLEY CRAWFORD,

Commissioner of Indian Affairs.

Endorsement.

OFFICE INDIAN AFFAIRS, October 24, 1843.

Respectfully referred to the Secretary of War. The letters of Mr. Claiborne are public, and on the files of this department. It is therefore right and proper, in my opinion, that Mr. Graves should be furnished with copies of them. If they had been of a private character, of course Mr. G. could not properly ask for them. The opinion of the Secretary of War is respectfully requested. Mr. Graves has seen these letters in the office of Indian Affairs.

SAMUEL HUMES PORTER,

Acting Commissioner.

WAR DEPARTMENT, October 24, 1843.

Let the copies be furnished of all official letters.

J. M. PORTER.

Kk 1.

WASHINGTON CITY, October 4, 1843.

SIR: I see on the records of your department a letter addressed to the Choctaw commissioners, bearing date the 13th of June last, enclosing a copy of a report from you to the Secretary of War of the 7th of March, in relation to the cases tried before Commissioners Vroom and Murray; and in which letter, by direction of the President, you express regret and pain at the differences, (in which there seems to be some feeling,) as your state, existing between two of the commissioners, &c.

I have seen the report above alluded to, filed, as I believe, with the secretary of the board, by my colleague, Mr. Claiborne; but the letter I be-

lieve was suppressed, for I have never seen it, or a copy of it, until to-day, on the records in your department.

I would be much obliged to you if you will furnish me with a copy of that letter.

Yours, respectfully,

RALPH GRAVES.

HON. T. HARTLEY CRAWFORD.

Kk 2.

OFFICE INDIAN AFFAIRS, *October 24, 1843.*

SIR: I enclose, herewith, in compliance with your request of the 4th instant, a copy of a communication from this office of 13th June last, addressed to the Choctaw commissioners, transmitting a copy of a report made by this office to the Secretary of War on 7th March last, relative to the claims acted upon by Messrs. Murray and Vroom.

Very respectfully,

S. H. PORTER,
Acting Commissioner.

RALPH GRAVES, Esq.,
Now in Washington.

Kk 3.

OFFICE INDIAN AFFAIRS, *October 27, 1843.*

SIR: The accompanying copies of letters addressed to this department by Hon. J. F. H. Claiborne, of the board of Choctaw commissioners, have been taken from the originals on files of this office, and are transmitted to you in compliance with your request of 3d instant. They are as follows:

Copy of letter of 8th May, 1843.

Copy of letter of 13th May, 1843, and its enclosures.

Copy of letter of May, (date not stated,) and its enclosures.

Copy of letter of 22d June, 1843.

Copy of letter of 26th June, 1843, (enclosure not received in Indian Office.)

Very respectfully,

S. H. PORTER,
Acting Commissioner.

RALPH GRAVES, Esq.,
Now in Washington City, D. C.

Ll.

MISSISSIPPI, *October 16, 1843.*

SIR: Having learned that an attempt has probably been made to create a prejudice in your department against Colonel Ralph Graves, one of the commissioners appointed by the Government for the settlement of the In-

dian claims under the treaty with the Choctaws, we take the liberty of assuring you of the high estimation in which we ourselves and the public generally of this State hold Colonel Graves's character for firm and unimpeachable integrity, and his acknowledged capacity for the discharge of the duties of the office which he holds.

With sentiments of high consideration, we are, very respectfully, your obedient servants,

E. B. W. Kirksey,
 A. B. Wooldridge,
 V. M. Murphy,
 William H. Smith,
 James C. Rupert,
 George H. Foote,
 Henry Gray,
 J. M. Maxcey,
 Charles W. Allen,
 H. N. Spooner,
 G. K. D. McLalland,
 John M. Smith,
 John Davis,
 R. W. Bumfuss,
 J. D. Wellborn,
 John Bross,
 R. Ruff,
 Morris Skinner,
 John W. Bross,
 W. A. Schoolar,
 S. Badger,
 W. F. Nabes,
 Jonathan B. Badger,
 John J. Shelton,
 R. B. Walker,
 E. W. Ferris,
 W. J. Ferris,
 Peter Milton,
 George M. Mosely,

James Poindexter,
 A. W. Dubrey,
 H. Dent,
 R. H. Mosely,
 E. H. Joiner,
 R. C. Thornton,
 Reuben H. Grant,
 Samuel K. McIlhery,
 R. S. Farrar,
 E. M. Ladle,
 John Hardeman,
 Jos. H. Frith,
 Zebulon P. Davis,
 Joseph Bell,
 James Bryson,
 James Murray,
 J. J. Beauchamp,
 C. B. Hinson,
 J. S. Homles,
 John B. Roberts,
 Daniel P. Young,
 William Doozah,
 Daniel A. Epepes,
 John S. Purdy,
 John M. Grant,
 R. U. Bright,
 Charles Boman,
 William B. Smith,
 R. S. Keenan.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

Mm.

OFFICE OF CHOCTAW COMMISSIONERS,
Hillsborough, Scott Co., Mississippi, November 5, 1843.

SIR: I have arrived here, prepared to meet my colleagues and resume the duties of the commission on the 6th instant, according to appointment.

Great excitement exists in this State, from a report in circulation that certain agents of the Choctaws have proceeded to Washington, with the view of obtaining by misrepresentations a decision of certain questions affecting their contracts, thus anticipating and forestalling the action of the board.

Prior to the adjournment of the board at Yazoo Village, we had reason to believe from the report of our agent, Mr. Ward, that illegal and fraudulent contracts had been made with the Indians, affecting the cases to be examined as well as those that we had examined and passed; and on the 23d of August, in a communication to you, we suggested "the expediency of deferring final action *and the issuing of scrip* upon any of the cases transmitted by the board heretofore, and upon those which it is now about to transmit," until we could further investigate the matter.

The board adjourned on the 26th of August; and, from the disclosures that have since been made, I have no doubt that a large majority of the cases tried at Hopahka and elsewhere are fraudulent; that nine-tenths of these Indians made contracts with William M. Gwin and others within the five years; that new contracts upon the same basis and principle, and equally as oppressive upon the Indian, have subsequently been made by one John B. Forester, (who pretends that they have been made since the five years,) but that Gwin and others, the makers of the original contracts, are claiming under him, and expect to divide the profits; that the whole is a scheme to evade the law and defraud the Government.

I would also suggest that all the Indians examined swore positively that they had never assigned or transferred, or agreed to assign or transfer, the whole or any part of their rights; that evidence will be forthcoming to show that they have made such assignments with two or three different sets of spectators; and that this must affect materially their testimony on all other points, and especially on the material point of application for registration, where their testimony is in direct conflict with the testimony of Colonel William Ward, late Choctaw agent, taken before a committee of the Legislature of this State in 1836.

I believe, sir, that the board has been deceived in numerous cases by drilled witnesses, and that our proposed investigation will disclose the most monstrous frauds. I make these statements in my official capacity, and request you to communicate them to the President and the Secretary of War. I doubt not the Legislature of Mississippi, upon the disclosures that are to be made, will apply to Congress for the repeal of the law of 1842, or a material modification of it.

The Indians may all be emigrated without paying out a dollar of scrip; and, when emigrated, the few claims that will be found to be just; and so reported by the board, can be paid off in money, under the supervision of the Choctaw agent west; and this, or some such modification in the law, should be made.

I have the honor to be, with high respect, your obedient servant;

JOHN F. H. CLAIBORNE,

Commissioner, &c.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

P. S. Not one dollar of the scrip, if paid out here, or to any but some authorized agent of Government, such as Colonel Armstrong, will ever reach the Indian.

Endorsement.

NOVEMBER 17, 1843.—Respectfully referred to the Secretary of War:
T. HARTLEY CRAWFORD.

Nn.

DALEVILLE, LAUDERDALE Co., MISSISSIPPI,

November 17, 1843.

DEAR SIR: I have occasionally attended the sessions of the Choctaw commissioners; and, from what I have seen and learned there and elsewhere, I am satisfied a most stupendous fraud is attempted to be practised on the Government, by persons claiming under the 14th article of Dancing Rabbit treaty; and if their schemes (the claimants') are consummated, I have no doubt the Government will lose millions. These plans can only be defeated by ferreting out testimony (from the early settlers of this country, who have mixed with the Choctaws) of such character as will enable the United States to counteract these frauds, by placing such testimony before the commissioners at as early a date as possible.

I have lived among the Choctaws about twenty years, speak their language well enough to do ordinary business with them, and have it in my power to collect such testimony as would, in my opinion, save the Government from half a million to one million and a half of dollars. My acquaintance with most or all those persons who had much intercourse with the Indians (Choctaws) in 1831, and up to 1837, and even to this date, would give me an advantage over any person (white person) in this country in ferreting out and placing testimony on behalf of the United States before the board of commissioners; and I propose, if the Government will pay me for my time and expenses, that I will be the means of saving it thousands, if not millions. I know some things, of my own knowledge, which I will make known to the board in time to save the Government something.

You can think of this subject; and, if you choose, can have me appointed an agent to collect and place before the board testimony of the character I have mentioned. If appointed, I would have much travelling to do—perhaps have to visit the Choctaws in the west; and it would be expensive; I would expect a salary sufficient to pay for my services and remunerate me for my expenses.

I refer you to Hon. Jacob Thompson and Hon. W. W. Payne, to inquire concerning me.

I wrote to Hon. R. J. Walker, on this subject, last week.

Very respectfully,

J. B. HANCOCK.

HON. T. HARTLEY CRAWFORD,

Commissioner of Indian Affairs, Washington, D. C.

Endorsement.

DECEMBER 22, 1843.—Respectfully referred to the Secretary of War.

T. HARTLEY CRAWFORD.

Oo.

OFFICE CHOCTAW COMMISSIONERS,

Hillsborough, Scott Co., Mississippi, November 7, 1843.

SIR: It is currently reported here that certain interested persons are endeavoring to induce the department to believe that the Hopahka cases do

not fall within the provisions of the 9th section of the act of 1842, as all the contracts have been made subsequent to the expiration of the five years; and, upon this showing, that they are asking for the scrip.

It is my duty, as an officer of the Government appointed to investigate these claims, to notify you that this representation, if any such has been made, is false. All those Indians contracted, within the five years ensuing the ratification of the last treaty, with William M. Gwin, Charles Fisher & Co., who represented themselves as the agents of General Jackson, as I am credibly informed. It is true, in order to evade the aforesaid 9th section, new instruments have been executed by those Indians, to John B. Forester and others, to Hugh McDonald, and Jesse Clements, but the original contracts are still in existence; Gwin, Fisher, & Co., are claiming under them; and Forester is pledged to enforce those old contracts in the division of the spoils. This understanding has been had with Forester. He has made the same agreement with Colonel Alexander Young, one of the original partners, as Young informed me this day. Judge Wright and others, who have not had, as yet, the same understanding with Forester, are threatening to get out an injunction to stay the payment of the scrip, if it shall have been paid out on these Hopahka cases.

These are facts, sir, susceptible of proof in a court of justice. They are facts I propose to show in our forthcoming investigation. Forester boasts that he has already secured 30,000 acres of the land patented to the Indians; and if the department authorizes the payment of scrip, the Indians are so drilled, so deceived, and so frightened, they will immediately endorse the whole of it over to Forester, a heavy portion of which is to be paid out to Gwin & Co., under the old contracts.

I urge it upon the department to recommend a revision of the law as to land and scrip. The contracts made with the Indians are all fraudulent. No court of equity will enforce them. Land is of little use to the Indian. It is not convertible into cash, and it fixes him to the soil, when the policy is to emigrate him. He cannot cultivate it. The moment he receives his patent, some cormorant speculator claims one-half of it under these fraudulent contracts, and the residue is soon lost by improvidence or sold for taxes. If you issue scrip, payable to him, and assignable by him, you still leave him in the power of the speculator. He will endorse it over the instant it is paid into his hands, and thus be robbed of one-half or the whole of his indemnity. Why not have the law so altered as to fund the amount due to those Indians whose claims shall be allowed by the board and sanctioned by the department, paying them only the interest after they shall have been emigrated, nothing while they remain? This would induce them all to emigrate; indeed, many are anxious now to go. They have been frightened into it with threats of prosecution for bigamy, sabbath-breaking, exercising criminal jurisdiction, &c., contrary to our statute of 1829—threats made by Forester, who opposed their emigration until your instructions to Mr. McRae (prohibiting payment of scrip until they emigrated) came out. These Indians are all improvident, habitually intemperate, and incapable of managing their affairs. The mode I suggest you know how to consider or appreciate; but I assure you, under the present plan, those unfortunate beings will be stripped without remorse, and without a shadow of justice.

A most stupendous fraud is on foot—I affirm it on my personal and official responsibility—I am capable of demonstrating it. If the scrip is authorized to

be paid, previous to the contemplated investigation of the board, an investigation prompted by yourself, when you enclosed the charges made by General Grant, these speculators, fattened upon the spoils of the ignorant and impoverished Indian, will have achieved all they desire, and our future proceedings will be a farce. We have appointed an agent to collect testimony; testimony has been collected; numerous witnesses have been summoned; the public has been notified of our proposed investigation, and I must most respectfully protest against the covert attempt of men (who contrived to have their cases passed by perjured witnesses, and to deceive the board) to procure the payment of the scrip upon a false statement of facts at the department. If these be frauds, *here* they were perpetrated; *here* are the parties; *here* the witnesses; *here* a tribunal appointed to detect them.

I know, sir, your anxious desire to protect the interests of the Government, and at the same time do justice to the unfortunate Indian; and this must be my excuse for writing to you again. I admit that I have been deceived. The Hopahka cases should never have been sent on. When I discovered my error, I advised the department to suspend them all. I took this step, and have, since the adjournment of the board, continued my investigations in the face of a bitter opposition, in defiance of powerful men, at the risk of reputation, it may be at the hazard of life. But I am discharging a solemn duty, and atoning for an official error. My deliberate opinion is, that not one dollar of scrip should be now issued or paid out.

My colleagues have probably been detained by inclement weather, or this letter should be presented to them.

I have the honor to be, with profound respect, your most obedient servant,

JOHN F. H. CLAIBORNE.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

Endorsement by the Commissioner of Indian Affairs.

DECEMBER 1, 1843.—Respectfully referred to the Secretary of War.

T. HARTLEY CRAWFORD.

Pp.

HILLSBOROUGH, *November 14, 1843.*

SIR: On the 5th of May last I informed you, that with the view of carrying out your views and the policy of my State, in emigrating the Indians, I had set about acquiring a personal influence over the leading men, and had caused myself to be adopted as the son of Captain Cobb, the most influential man in the nation. I explained to you that it was necessary to do so in order to counteract successfully the selfish views of agents, who have always promised that they should not be emigrated, and who, even in their contracts made as far back as 1837, bound themselves to locate these Indians *all in a body*, promising Cobb that he should resume his

former powers and jurisdiction. My influence over the Indians became very great, and but for me they would never have attended the council at Yazoo Village. For the aid I rendered towards the emigration of the Indians I refer to the correspondence of J. J. McRae, emigrating agent, with you, from Hophaka, Vicksburg, and Yazoo Village.

It was my intention at the Yazoo Village, at the council aforesaid, to have exhorted the Indians to immediate emigration. But I discovered there that there was a project on foot to make them endorse over their scrip prior to emigration, or to sign an instrument to deliver one-half of it when they went west, and to pay any charges certain speculators might have against them out of the other half, and also to reap a profit from the Government out of the emigration itself; and I refused to talk to the Indians, and avowed my intention to warn them not to endorse over a dollar of their scrip to any one; that Congress intended it for them, and not for the white man.

When Gwin and Forester learned this, they ran off their Indians to Hophaka, told them I would not do their business for them, and endeavored to persuade Cobb that I had sought to defraud him. The board adjourned about this time, and it was previously understood that I would go by Cobb's on my route home. The night I was expected at Cobb's, as you will see by Cobb's statement, two white men, Gordon and Parker, the former a partner and agent of Gwin's in a small way, and the latter a tool of Forester's, and who were disappointed in not getting scrip, went to Cobb's armed, with the view of taking my life. I fortunately changed my route. Gwin stated at the Yazoo council, to Colonel Alexander Young, and others interested, "that they would get their scrip in three hours but for Colonel Claiborne." Yes, sir, I prevented this most infamous design. I incurred all the responsibility, and for this have been traduced, and even my life threatened.

Several months ago Colonel Cobb applied to me to secure four small negroes and some other property to his children, and insisted on my being his trustee, as he was the old friend of my father. He insisted on this, and I became his trustee, the deed being of record, and Forester (an attorney at law and his counsel) and the United States interpreters being witnesses. Even this matter these cormorant speculators have seized upon. You will perceive that these men resorted to the most infamous steps to intimidate this honest but ignorant man, and to induce him to force his people to endorse over their scrip, or to sign papers binding themselves to do so after they went west—have even threatened him with the penitentiary. You have no idea, sir, of the gross corruption that is at work. I am resolved to expose it, if I have to lay all the facts before Congress, and attend there in person. Unless the law is changed, and the indemnity allowed to the Indian funded, he will be stripped of every thing. If this be done, the agents of Government can emigrate them without difficulty.

I am prepared, with documentary proof, to show all I have communicated to you. If any scrip has been issued upon the cases tried by this board, I entreat you, sir, in the name of justice and of humanity, to order your agent here to suspend it. Those cases have been decided on perjured testimony. I have communicated these views to several members of Congress; for, at the hazard of my life, this fraud shall not be consummated. I intend to furnish my documents to the members from this State. I believe, sir, it would greatly comport with the public interests to

direct me to attend in person at the department, and on the Commissioner of Indian Affairs.

I have the honor to be, most respectfully, your obedient servant,
JOHN F. H. CLAIBORNE,
United States Commissioner.

P. S. Since 27th August, when the board adjourned, I have received no communication from the department. My colleagues are still detained on the way, I presume by low water.

Answers of Samuel Cobb to interrogatories propounded to him, 12th September, 1843, by John Johnston, through Elias, an interpreter.

Answers to interrogatories.

1st. I did inform Colonel Claiborne that I had allotted to my first wife, and children by her, a fair portion of my property, and desired him to secure the residue to the children of my present wife.

2d. I frequently requested him to have the residue of my property secured to the children of my second wife, and to become the trustee, as I had confidence in him, as he had always given me good advice.

3d. I did give him a list of the property I wished secured to those children at my house, and went to Colonel Forester's with my wife, at Colonel Claiborne's request, who told me that he would get Colonel Forester's aid in drawing up the paper.

4th. Colonel Forester was present when Colonel Claiborne made the paper: it was read over and interpreted by John Ellis. Colonel Forester said it was all right. I then signed it, and Colonel Forester also signed it.

5th. Colonel Forester was my lawyer and adviser at that time.

6th. Colonel Claiborne never did abuse Colonel Forester to me at any time, or try in any way to prejudice me against him.

7th. Colonel Claiborne did frequently tell me that it would have been better if none of my people had ever signed a paper; that it was the gift of the bad, not of the good spirit; that he had nothing to do with what me and my people had done, but advised me to make no more papers, and to keep in my own hands whatever the Government might give me.

8th. Colonel Claiborne did often tell me he had no interest in my claims; that he wanted none; that his office would prevent his having any; and that he advised me as a friend of my people and as an officer of the Government.

9th. Colonel Claiborne did frequently tell me that my people one day had to leave; that they were making nothing in Leake, and that if I staid in that country I had better settle down on the bay than stay where I was, and where the white men were so thick.

10th. Colonel Forester did often promise me and my people that he would buy a large tract of land in Leake, or some other county, and that me and my people should stay in the county, and that I should be principal chief.

11th. Doctor Gwin, when he came to my house, some years ago, to make contracts, said that General Jackson had sent him as agent, and that we

should not emigrate west ; that he would give us one-half of all the lands we were entitled to.

12th. I sent We-shock-she-ho-ma privately from Colonel Forester's council, on Pearl river, to Colonel Claiborne, at Yazoo Old Town, and when he returned he told me that Colonel Claiborne said myself and headmen must all come up to the big council at Yazoo, to hear McRae talk ; and if I could not come, that he and McRae would meet us all at another place, and talk to us.

13th. When we got to Yazoo Old Town, Colonel Claiborne told me and my warriors to go and hear McRae talk ; that he was my friend, and the son of my great father ; that we must listen well to what he said, and then shake him by the hand ; which we did.

14th. Colonel Forester had a long talk written for me to deliver to McRae, (when he first came to Hopahka,) refusing to listen to the talk of the Government, and telling how badly we had been treated ; that talk was read over to me, and would have been made but for Colonel Claiborne. He told me to get my headmen together that night at my house ; we met, and Colonel Claiborne met and gave us a long talk, through John Ellis, in which he told us not to oppose the wishes of the Government or our great father ; after which, I refused to give the talk Colonel Forester had prepared, and delivered the talk Colonel Claiborne advised me to give.

15th. I asked Colonel Claiborne, the last time I saw him, to loan me twenty-five dollars to buy provisions ; he told me he had loaned two hundred dollars to Colonel Forester, and had no more. He sent an order by Colonel Forester for twenty-five dollars. I got the order, and Colonel Forester paid me the amount.

16th. Colonel Claiborne always told me that he never would accept of any land, money, or scrip, from an Indian.

17th. I desired Colonel Claiborne, when he was drawing my deed, that I wanted him to secure part of my land in the same way. He stated that he could not do so, because he was a commissioner, and could have nothing to do with Indian lands, but that Colonel Forester could do it for me if I wished it.

These are the answers given by Colonel Samuel Cobb to the interrogatories, herewith filed, propounded by the undersigned, through Elias, an Indian interpreter, familiar with both English and Choctaw. Cobb stated, moreover, that he went to Yazoo to hear McRae expressly at Claiborne's request ; that, after shaking hands with McRae and Claiborne, he returned to his camp, intending to return next morning to see Claiborne, in whom he had much confidence ; but the next morning Forester would not allow him to return, saying " that Claiborne *would not act* ; that Claiborne would not do their business," and hurried and rushed them home.

In a day or two after he got home, Cobb said that one Bill Gordon and one Parker came to his house, and inquired for Claiborne, and wished to stay all night. He declined to let them stay. They said they wanted to kill Claiborne, and had come there to kill him, expecting he would be there. They then went off and fired off their guns, alarming him and his family, telling one of them that she would have to be taken to jail if she refused to make a certain statement. " Shortly afterwards," said Cobb, " these same two men came back to my house. Gordon said he was a justice of the peace, and was bound to see the law enforced ; he told me I

was charged with stealing a yearling, with bigamy, with working on Sunday, and with lending a gun to kill an Indian on a charge of witchcraft; that they would send me to the penitentiary unless I would agree to go west; and if I would, he would suspend the warrant against me for twelve months, which would give me time to get away. I then," says Cobb, "applied to my counsel, Colonel Forester, for relief against their threats; but he said that it was the law, and there was no relief, and he could do nothing. Thus alarmed for liberty and property, I consented to hold a council, and stated to the people my situation; and we all agreed to go, if they would pay the scrip or money into our hands, and settle our land claims. My agent (Forester) never told me the nature of the scrip. I know nothing of our rights. They never told me the danger of signing away our scrip. I am harassed with these men. I am tired of them. My heart hurts me. I want to get away from them. I have a great deal more to say to you, but you have not time to hear me. Tell my son (Colonel Claiborne) I love him; that I have been mightily scared, but that I shall go to see him. Forester wants me to sign another paper about my property."

JOHN JOHNSTON, Sr.

ELIAS, *Interpreter*, his + mark.

Personally appeared before me, the undersigned, a justice of the peace in and for the county of Scott, and State of Mississippi, John Johnston, sr., and Elias, a Choctaw, and made oath that they, of their own free will, visited Samuel Cobb, in Leake county, on the 12th instant, and put to him the seventeen interrogatories hereunto attached, the said Johnston being familiar with the Choctaw language, and the said Elias speaking it perfectly, and being also familiar with the English tongue; and that the said Cobb gave substantially and in effect, as they verily believe, the foregoing answers to the interrogatories, one after the other, and then made substantially, but in stronger terms, the above statement. And, further, that he seemed greatly distressed.

JOHN JOHNSTON, Sr.

ELIAS, *Interpreter*, his + mark.

Sworn to and subscribed before me, this 13th September, 1843.

ABNER LOCK, *J. P.*

A true copy from the original.

P. BAYLY, *Secretary*.

Endorsements.

Respectfully referred to the Secretary of War, November 28, 1843.

T. HARTLEY CRAWFORD.

Let the agent be ordered to issue no scrip until specially ordered so to do from the department.

J. M. PORTER.

WAR DEPARTMENT, *November 30, 1843.*

Above order communicated to J. J. McRae, Esq., on 1st December, 1843; addressed to him at Vicksburg, duplicate to Hillsborough, and triplicate to Paulding, Mississippi.

Qq.

HILLSBOROUGH, MISSISSIPPI,

November 23, 1843.

SIR: You will no doubt be officially informed, by the two other commissioners, of the course they have deemed it advisable to adopt on the representations made by an attorney for the speculators.

I will either proceed to Washington or send on my defence from Natchez, until which I beg you, in justice to me and to the country, to suspend any opinion.

I have the honor to be, most respectfully, your obedient servant,
J. F. H. CLAIBORNE.

The SECRETARY OF WAR.

Rr.

LOUISVILLE, MISSISSIPPI, November 28, 1843.

SIR: We have the honor to enclose you the following proceedings which took place before the board of commissioners on the 20th instant, for your advisement, consisting of a protest against the sitting of our colleague, John F. H. Claiborne, Esq., filed by S. S. Prentiss, Esq., attorney in behalf of a portion of the Choctaws, upon the ground that he had prejudged the cases, and the proof in support thereof; also, a protest of said member against the protest, &c.

Having no power ourselves, and consequently no wish to express any opinion as to the matters of the protest, and Mr. Claiborne declining to retire from his seat until the action of the proper department could be had thereon, we were compelled to adjourn, and refer the whole subject matter to your department.

We propose to meet again on the 4th Monday in December, as we presume we can hear from you by that time.

We sincerely regret that Mr. Claiborne would not withdraw from the board; as we understood at one time he had done, until the charges against him could be examined into and acted upon by the proper department at Washington.

Had he withdrawn, as we think he ought to have done, his colleagues, who stand unimpeached, could have proceeded with the business of the commission without any delay, and *without any* inconvenience to the witnesses then in attendance, or to the claimants, many of whom were in waiting, for the examination and trial of *their* cases. Mr. Claiborne could have had an opportunity of cross-examining the witnesses, by appearing as prosecutor in behalf of the Government, or of giving his own deposition.

We enclose, also, a copy of a certificate of a number of gentlemen as to the correctness of the statement contained in the letter of the board to Commissioner Claiborne, of the 22d instant, voluntarily tendered to us.

If you desire that the two unimpeached members of the board should proceed with the business of the commission, until final action can be had upon the protest, we can be actively engaged upon a few days' notice.

Address us at this place, as we propose to meet hereafter at this place,

and to remain until the testimony and evidence in behalf of all the claimants shall be obtained.

We have the honor to be, very respectfully, your obedient servants,
RALPH GRAVES.
WILLIAM TYLER.

HON. T. HARTLEY CRAWFORD.

HILLSBOROUGH, SCOTT COUNTY, MISSISSIPPI,

November 20, 1843.

The board of Choctaw commissioners, having adjourned at the Yazoo Old Village on the 25th of August last, to meet at this place on the 6th day of November instant, did not convene until to-day; when

There were present :

Commissioners Claiborne, Graves, and Tyler.

Thomas J. Word, Esq., agent in behalf of the United States, submitted the within report and exhibit to the board, accompanied with sundry documents; which were ordered to be filed.

The following preamble and resolution were submitted by Commissioner Claiborne, upon which the board took no action for the present :

Whereas the controversy about to be opened before the board in relation to the Choctaw claims, their validity or illegality, and the frauds alleged to have been practised under them, is one of very serious consequence and great magnitude to the United States and the people and State of Mississippi, and the defence will call for great skill, diligence, and care, as well as for full and exact information on the part of those appointed to protect the rights and interests of the United States, and will require the exaction of the strictest proof at every step in the deduction of the claimants' title, whose ground must be examined inch by inch, and every document offered subjected to the severest test of the technical rules of evidence: And whereas the ablest counsel have been engaged on the other side, and this board being of opinion that, when claims to the amount of millions are pending, many of which are of doubtful and suspicious character, the interests of the United States should be better protected: Therefore,

Resolved, That General Henry S. Foote, of Jackson, and Colonel John Irvin, of Greensborough, Alabama, be requested to appear, with the Hon. Thomas J. Word, as agents and counsel for and in behalf of the United States, during the pending investigation; and this board will recommend the War Department to provide a suitable compensation for their services, either out of the contingent fund or by special appropriation of Congress.

The Hon. S. S. Prentiss addressed the board; and, on motion, submitted the following protest and documents; which were ordered to be entered upon the journal :

NOVEMBER 20, 1843.

S. S. Prentiss, on behalf of a portion of the Choctaw Indians, whose cases he represents as attorney, including some of those tried before the former board of commissioners, and most of those tried at Hopahka, and adjudicated and reported by the board to the department, shows: That since such report, and the suspension of final action thereon by the department, upon the recommendation of two members of the board, John

F. H. Claiborne sent to the editor of the "Sentinel," a newspaper published at "Vicksburg," the communication herewith filed, and marked A, which was published as editorial by virtue of a letter, a copy of which is herewith filed, marked B; and the said Claiborne, one of the said commissioners, being charged in open court as being the author of said article; and the correspondence (marked C) between the said editor of said "Sentinel" and said Prentiss being read in proof of said charge; and the said Claiborne thereupon having acknowledged himself the author of said letter, marked B, which is in his own handwriting; and, also, that he had copied the article marked A, and sent it to the editor as his own; and that he now assumed it, and asserted the facts and charges stated therein to be true: The said Prentiss, as attorney as aforesaid, objected to the said Claiborne's sitting or acting as a commissioner or judge in the matter of the charge of fraud against the claims already decided and reported, as aforesaid, on the ground that he had already prejudged the question, and also on the ground that said Claiborne had, by said publication and letter, acted corruptly, in violation of his duty and oath of office, and is therefore incapable and unfit to act in the premises; and he prays that this his protest, and the documents therein referred to, and the acknowledgments of the said Claiborne, may be entered upon the record of the court.

S. S. PRENTISS, *Attorney, &c.*

EXHIBIT A.

THE CHOCTAW CLAIMS.

Rumors are rife in relation to these claims, and the long-existing impressions that they are grossly fraudulent are strengthening every day. We have taken some pains to collect the facts. It seems that, while sitting at Hopahka, the board gave judgment in favor of a number of claims, and sent them on to Washington; none but Indian testimony was offered. After the board went to Yazoo, heavy charges of fraud were brought against the claim, by General Reuben H. Grant, a prominent citizen of Noxubee county, and on these charges Colonel Claiborne insisted on advising the department to suspend all the claims that had been sent on. An official letter to that effect was sent on. Subpœnas were issued for witnesses, and the third Monday in November set apart to commence the investigation. The board then adjourned. No sooner had this been done, than a grand council of the speculators was convened at Hopahka, and the following plans, it is said, adopted: The Indians were to be emigrated under the charge of John B. Forester, (the United States paying twenty dollars per head,) who was to accompany them, and then receive the whole of their scrip, one-half of which he was to retain, and the other half to lay out for the Indians, in goods, cattle, &c. To accomplish this plan, a crowd of speculators repaired to Washington, some going openly, others pretending that they were going to St. Louis only. Their object was to obtain from the War Department a confirmation of their suspended claims, thus forestalling the action of the board, and stifling the proposed investigation. They have been laboring for this scheme for weeks, and it is whispered have received aid from a quarter from which such aid cannot come without gross corruption. But, of this, more in a future number. We trust the Government has frowned

down this most monstrous proceeding. Influential men, members of Congress and others, have been engaged, at enormous fees, to effect this nefarious design of transferring these questions of fraud from the tribunal established by Congress to the department at Washington, where facts have been represented by interested persons only, and witnesses cannot have a hearing. Powerful agencies have been at work. Let the books of the Hopahka post office be compared with corresponding dates at Washington city office for the month of September, and it will be seen how many free letters have passed, and how many persons having the franking privilege have been engaged at Washington. We trust the department has not been deceived. A fraud of the grossest kind has been suspected; it has been positively charged at the department. The department notified the board of the charges. The board deemed it of sufficient importance to appoint an agent, at a salary equal to their own, to collect evidence. He has been for months engaged in so doing. Innumerable subpoenas have been issued; and the board refused to pass any more claims, and requested the department to suspend them all, and issue no scrip upon them, until the proofs concealed be obtained; and, after all this, these speculators covertly go to Washington, and employ members of Congress, and seek to induce the department to overrule the objections of the board and to pass claims to an enormous amount. This is really monstrous. The Hopahka claims, alone, thus sought to be passed, over the recommendations of the board, and in the teeth of the solemn protest of Colonel Claiborne, amount to some three hundred and fifty thousand acres, as we learn. Surely, such a decision cannot be had in Washington; if it has been, the office of commissioner cannot be held with honor. If such a judgment has been had, without the concurrence of the commissioners, they degrade themselves by holding office. If they, or any of them, have been instrumental in procuring such a decision, without the official sanction of his colleagues, he deserves eternal infamy. We cannot believe the department could be so deceived. It surely will not stifle the investigation itself recommended. It will hardly cut off General Grant from a hearing, and thus facilitate the most stupendous fraud upon the Government and robbery of the Indian that has ever been devised. It will take three millions of acres to satisfy these claims. There is not so much unsold land left in the country ceded by the Choctaws. The deficit is to be made up with scrip, payable to the Indian, and receivable at the land offices as gold and silver. Now, will it be credited, that these speculators have, by fraud and deception, obtained from the Indians absolute deeds of conveyance for the whole of their lands, and powers of attorney to receive their scrip, having given their bonds to pay over one-half of it to the Indian when the claim is closed! Incredible as this may seem, it is nevertheless so. And all this for what? Simply for undertaking to attend to the claim before the commissioners—an attention altogether superfluous, and which the commissioners are sent to attend to themselves—an attention, if necessary at all, certainly not worthy the enormous fee exacted of the poor Indian—one-half their lands or scrip absolutely, and the control and management of the other! Such contracts are, in their very essence, fraudulent. No court of equity would enforce them. The man who buys these lands from the speculator can never have a valid title. They will all be eventually ripped up, as frauds upon the Indian, ignorant of his rights; and the parties concerned will stink in the nostrils of the country. Report says that every acre of land yet patented

to these Hopahka Indians is held by one Forester, who has not paid a dollar. It is said he held 30,000 acres. Not a sale he has made under such contracts can stand, and every man who has purchased under him should withhold payment. This man made contracts. Contracts were made with the Hopahka Indians, by inducing them to believe that General Jackson desired it—General Jackson, who always denounced the whole claim as a fraud! If the agencies at work at Washington succeed, Forester will realize half a million at once, out of nothing. His claims passed the board by perjured testimony. The board suspended them, on suspicion of fraud; and if they pass now, it will be by corruption. He stood by and heard his witnesses perjure themselves, by swearing they had made no contracts, when he knew they had made contracts with himself, and with Gwin and Fisher, and Judge Wright, and others, before him. And Gwin and Fisher are now claiming their part of the land and scrip under their contracts, and their partners and coadjutors charge them with an attempt to defraud them out of their portion of the profits! And this is the vile scheme—this the perjured testimony on which their claims are sought to be passed, *secretly, at Washington*, by bribed and purchased influences, when there is a commission specially established for the purpose; when that commission has appointed an agent, collected evidence, summoned witnesses, and taken all the initiatory steps for a thorough examination. We have too much faith in the Government to credit the rumors that these speculators have succeeded. The covert nature of their movements should have damned them, if nothing else. Even at home, here, they have sought to bring politics to bear in favor of this fraud, by causing representations to be made, in certain quarters, that opposition to these claims would injure the Democratic party. Yes, a Whig speculator, it can be established, tried this effort in several quarters—tried it on candidates for the Legislature; and when it failed, used every exertion to defeat them. More of this hereafter. Good God! that parties and politics should be thus degraded! We are determined to unmask this thing, come what may, suffer who may. We have noticed events and collected items. We have a friend at Washington watching the speculators, and shall have one at Hillsborough eyeing the commissioners and United States agents and officers. We rely much on Colonel Claiborne. The obvious effort to intimidate him has moved him to do his duty. We are glad to hear of his determined bearing and noble defiance of his traducers. The contemptible reports set afloat, the low, mean, pitiful depths to which some of these men (but recently his eulogists) have descended to ruin him, because he suspended their claims, have excited the vigilance and sympathy of his friends throughout the State. We hear such feelings every day expressed. We speak advisedly when we say he will be sustained to the utmost by as many and as ardent friends as ever man had. We say to him, your position is the very one that a bold, resolute, and ambitious man would wish to occupy; you stand alone. By your single act you have postponed the issuing of half a million of scrip upon fraudulent claims, with which it was intended to sweep all the rich bayou lands of Louisiana at the late sales. You may defeat the payment of this scrip altogether. For this you have been assailed by a host of speculators, and their strikers and bullies will use every advantage against you. Men who have millions at stake always have mercenaries, and will hesitate at no means to destroy you. It is believed you are the only obstacle to their consummation of this tre-

mendous fraud. You have baffled them heretofore by your acknowledged resources and energies ; unequal as is the struggle of one against a host, you may defeat them. Be the result what it may, your position is a proud one. The community all see that a league, banded for plunder, are striking at one man. Be firm. If you shrink, you fall with dishonor ; if you sustain your ground, as we believe you will, you cover yourself with honor. We look to the issue with great interest. Your friends will stake their lives upon your firmness. If you explode this three million speculation, now sought to be carried by a combination of powerful men, you will have performed the highest duty a citizen can render his country. If you resist the artillery of systematized slander, directed by a man who stood by and heard two hundred Indian claimants, whose adviser he is, perjure themselves; if you persevere in defiance of threats against your personal safety, as we know you will, you will have achieved a pre-eminence worthy of all honor. The scrip, we learn, is in the hands of J. J. McRae, Esq., who has the reputation of being firm and honest. Mr. McRae knows the nature of these claims ; he knows it to be a fraud ; he knows the Indians are to be swindled out of their rights ; he has been frequently heard so to express himself, with becoming and virtuous indignation. We caution him not to be wheedled by designing men, whose frauds he is conscious of. We exhort you not to suffer the poor Indian to endorse over his scrip to white men, and thus be literally stripped. Great responsibility rests on you, and you will be held responsible. You may preserve the Government and the Indian from fraud. We believe and hope you will do so, despite of the influences brought to operate on you. We shall watch every man connected with this business, and if there be the slightest compromise with fraud, the least trafficking with justice, it shall be exposed before high Heaven. It was the design of Dr. Hagan to have unmasked this fraud. No man shall escape, from the commissioners down to the interpreter, who is a sworn officer, on whom much depends, and who should be above suspicion. We look to the commissioners to do their duty, in disregard of speculators, and lawyers employed by them. Mr. Tyler is the brother of the President ; he should look well around him. Every man in this country entertains suspicions on this subject ; no party ventures to saddle itself with such a burden ; it is a stupendous scheme, in the hands of a few men, to realize millions, which belong either to the Government or the Indians.

EXHIBIT B.

[Private.]

HILLSBOROUGH, *November 7, 1843.*

MY DEAR SIR : According to promise, I send you an article ; it is written in the strong terms necessary to be employed on such such subjects ; for the facts stated I can vouch. From my position, I cannot well appear as the author ; but if Mr. Forester calls, inform him that I will shoulder the responsibility, and hold myself responsible to *him*. I fear you will think me egotistical. My only excuse is the necessity for speaking of myself, and the necessity of letting the world see my position. I wish you would publish this in the daily and weekly, and send (at my expense) a daily *marked for copy*, to the "Free Trader," "Signal," "Mississippiian," "Southern

Journal," "Clarion," "Guard," "Columbus Democrat," and "Oxford Observer;" also, please send me 72 numbers, for all which I will pay you on my arrival.

It is rumored that Mr. Commissioner Graves is with the speculators in Washington; that they have jointly endeavored to have me removed, and that he has advised the department to issue scrip on the Hopahka cases. Whether this is so, time will determine.

Most respectfully, your friend,

JOHN F. H. CLAIBORNE.

J. A. RYAN, Esq.

Endorsed on the back :

To be opened only on the happening of a contingency known and specified to Mr. Prentiss.

J. A. RYAN.

HILLSBOROUGH, Miss., Nov. 7.

Paid.

25.

J. A. RYAN, Esq.,

VICKSBURG, Mississippi.

EXHIBIT C.

[From the Vicksburg Sentinel of the 13th November, 1843.]

CHOCTAW CLAIMS.

An article with the above heading appeared in our paper on the 10th, purporting to be editorial; its appearance has caused Colonel Forester to deem himself aggrieved, and make a formal demand on us for our author. Having full liberty from that gentleman to surrender his name, if called for, we felt it our duty to attach the responsibility to the party on whom it should properly devolve. Mr. Prentiss requests, as a matter of justice to Colonel Forester, to give publicity to the following communication :

VICKSBURG, November 11, 1843.

SIR : I am authorized by Colonel J. B. Forester to call upon you for the authority upon which the statements in your paper of the 10th instant, in an article headed "the Choctaw Claims," were made.

Very respectfully, your obedient servant,

S. S. PRENTISS.

J. A. RYAN, Esq.

VICKSBURG, November 12, 1843.

SIR : In reply to your note of yesterday, I take the liberty of stating that the Hon. J. F. H. Claiborne is the author of the article alluded to; and, by the following extract from his letter to me, it will be seen that he is per-

fectly willing to avow his authorship, and answer any responsibility which may attach, should Colonel Forester demand the author's name.

Respectfully, your obedient servant,

J. A. RYAN.

Hon. S. S. PRENTISS.

Extract from Mr. Claiborne's letter of authority.

"If Mr. Forester calls, inform him that I will shoulder the responsibility, and hold myself personally responsible to him."

Read in open court.

P. BAYLY, *Secretary.*

TUESDAY MORNING, November 21, 1843.

The board met pursuant to adjournment.

Present: Commissioners Claiborne, Graves, and Tyler.

Mr. Claiborne submitted the following document:

Protest of John F. H. Claiborne, read and filed before the board of commissioners, November 21, 1843.

The question raised by the counsel of certain speculators in Choctaw claims, as to my competency to sit as a member of this board, in consequence of an article under my authority in the "Vicksburg Sentinel," setting forth my opinion of the testimony upon which the claims examined at Hopahka had been adjudicated, is a question I deny the right or the power of my colleagues to decide, and is one which no man has a right to raise before them; and against all further proceedings under it I protest, as an assumption without shadow of authority, and in violation of my rights.

The two other commissioners, being a quorum, have a right to stop this investigation, to send back home the witnesses that have been subpoenaed at the expense and in behalf of the United States, and even to adjourn this board—a course to which (however, in my opinion, detrimental to the public interest) I shall interpose no obstacle, inasmuch as I court and challenge, in the proper place, and according to the laws of the land, the severest scrutiny into my official conduct. But, until that scrutiny shall be so had, and during the pleasure of the President of the United States, while this board remains in session, I shall exercise my rights and duties in the broadest latitude, not only as a commissioner and counsel for the Government, but as a citizen of the State, and as a reporter for the press; for it is my intention, over my own signature, to report the proceedings under this investigation, that all the aid and moral influence of public opinion may be brought to bear to sustain the rights and interests of Government. If it be determined to proceed with the appointed investigation, then I press my resolution for additional agents and counsel, to protect the interests of the Government and of the people of this State, believing, from circumstances that have come to my knowledge since the adjournment of the board at Yazoo Village, that it can be established:

1. That a large majority of the claimants examined at Hopahka, within five years from and after the ratification of the treaty, made contracts or assignments, or what were in effect contracts and assignments; that many of those contracts are yet in existence, and the parties are still claiming

under them; and that in swearing before this board that they had made no contracts, or "binding contracts," the Indians either swore falsely or ignorantly, or have no definite idea of the nature and obligation of an oath, or no adequate conception of a contract, and therefore incapable of contracting.

2. That many of the same Indians have subsequently been induced to make conveyances of their claims to the same or to other speculators, either in whole or in part, for a grossly inadequate consideration.

3. That these subsequent conveyances were made, in some instances, in bad faith to those who originally contracted with the Indians, and generally upon principles that would not be sustained in a court of equity, or by the authorities at Washington, if properly represented.

4. That large amounts of money, perhaps several hundred thousand dollars, have already been realized by certain speculators, by virtue of contracts made with the Indians.

5. That it may be established, by certain parties who now hold conveyances from the Indians tried at Hopahka, that most of them did actually make contracts within the five years, and that they themselves recently had it in contemplation to establish the illegality of those original contracts.

6. That evidence will be forthcoming to show that those contracts have had a tendency to keep the Indians in the country ever since the treaty, contrary to the views of the Government, and to the great injury of the people of Mississippi:

7. That every effort has been made, by certain parties interested; to prevent a full and fair investigation of these claims, or of the frauds alleged to have been practised under them.

8. That agencies and influences for this purpose are at work in various parts of the country and at Washington city.

9. That general evidence will be furnished of the history of this claim, its increasing magnitude from year to year, and other facts and circumstances showing the extraordinary means resorted to to sustain it—facts material to this board in forming its judgments, and which should be made to the Legislature, at its approaching session, and to the Congress of the United States.

10. That, although many of the claimants under the treaty are rightfully entitled to indemnity, yet that, when citizens of the State and members of this commission are denounced, as they have been denounced, and sought to be intimidated, for adopting precautionary measures upon suggestion of fraud, some weight should be attached to the following preamble and resolutions of the State of Mississippi, which passed by a unanimous vote in both Houses of the Legislature of Mississippi, and the evidence attached thereto, to wit:

[February 25, 1836.—Referred to Committee on Private Land Claims, and ordered to be printed.]

Resolutions of the State of Mississippi, complaining of the disadvantages resulting from certain reservations of land to Choctaw Indians under the treaty of Dancing Rabbit creek, and praying such title, when originating in fraud, may not be confirmed.

Whereas the United States, by a certain treaty held and made with the tribe of Choctaw Indians, residing for the time being within the limits of the State of Mississippi, to wit: the treaty of Dancing Rabbit creek, made and concluded on the twenty-eighth day of September, A. D. eighteen

hundred and thirty; and whereas, by the fourteenth article of said treaty, certain reservations of land were granted to such Indians as should remain on said land for five years next succeeding such treaty; and whereas such claimants were, by the fourteenth article referred to, compelled to signify their intention of claiming under the provisions of said treaty within six months after the ratification thereof, or forever forfeit the right thus acquired; and whereas it appears, from recent developments, that large claims to land have been preferred, conveying the richest and most valuable portions of the unsold Choctaw lands, and purporting to be founded on and growing out of the treaty above referred to, and on a part of which lands, thus claimed, no Choctaw Indian either does now or ever did reside; and whereas it is evident, from the facts of the case, that these claims are manifestly in their character oppressive in the result of their operation on the freemen of Mississippi, and calculated to secure no ultimate benefit to the Indians originally claiming, but in their consummation will have a direct tendency to impair the confidence which the good people of this State have in the correctness of the law, and in the honesty of the administration of our public institutions; and whereas this most iniquitous transaction will, if consummated, not only rob Mississippi of her just and inalienable right to her five per cent. on the amount which ought to accrue from the large portion of valuable land thus reserved; and whereas this body have satisfactory evidence of the fact, that a large portion of the claim to said land, under the provisions of the treaty already referred to, are set up and attempted to be sustained on the testimony of Indians, who are unacquainted with the nature of an oath, and utterly regardless of the obligations thus incurred, and on the testimony of other individuals wholly unworthy of the confidence of a moral and intelligent community; and whereas the permission of such abandoned and licentious profligacy would injure our community, disgrace our social and political compact, and license corruption and perjury to stalk at large through our land: Now, therefore,

Be it resolved by the Legislature of the State of Mississippi, That our Senators in Congress be instructed, and our Representatives be requested, to use the most speedy and efficient means to prevent the consummation of such of said titles to said lands as have originated in fraud, to the end that the aforesaid land may be disposed of in the regular way, and in accordance with the law in such cases made and provided.

Resolved, That his Excellency Charles Lynch be requested, at as early a date as may be possible, to furnish our Senators and Representatives in Congress with a copy of the foregoing preamble and resolutions, and with the testimony taken thereon, with a request that they may lay the same before both branches of Congress.

JOHN S. IRVIN,

Speaker of the House of Representatives.

JOHN A. QUITMAN,

President of the Senate.

CHARLES LYNCH.

B. W. BURSON, *Secretary of State.*

11. That the evidence taken by the board and the mode adopted for taking testimony and examining witnesses are defective in several particulars, and have conduced to erroneous adjudications.

12. That evidence will be forthcoming, from many citizens, to show that

the board has placed too high an estimate upon Indian testimony, and that they are liable, either ignorantly or by design, to make false statements under oath; all which, taken in connexion, will go to show to Congress the expediency of modifying the law and providing some other mode of securing to the Indian his indemnity.

With these views, I leave my colleagues to take the course they deem most advisable, protesting against their right, or the right of any agent or attorney, to challenge or dispute my competency here, or to file or enter any protest, paper, or proceeding of any kind, affecting my competency or official conduct, on the records of this commission, (such proceedings must be had before another tribunal;) and I protest against any such permission, or any such assumption, as was yesterday exercised by the counsel of certain speculators, as being in violation of my rights as a member of this board, and derogatory to the commission itself.

JOHN F. H. CLAIBORNE.

It is ordered, that the letter of John F. H. Claiborne (marked Exhibit B, and filed by the Hon. S. S. Prentiss on the 20th instant) be returned to the said Prentiss.

Read in open court.

P. BAYLY, *Secretary.*

WEDNESDAY, *November 22, 1843.*

The board met to-day.

Present: Commissioners Graves and Tyler.

The following letters were ordered to be entered of record upon the journal:

BOARD OF CHOCTAW COMMISSIONERS,

November 22, 1843.

SIR: At the conclusion of the reading of your protest yesterday, at the board, you read therefrom, or stated in immediate connexion with it, that you would withdraw from the board until the matters raised against you by the protest of the counsel of a portion of the Choctaw claimants could be decided by the proper tribunal at Washington. You did not file your protest immediately after reading it, but said you would (when inquired if you intended to file it) as soon as you transcribed it. This paper is now in the hands of the secretary of the board—placed there, we presume, by you, to be filed among the papers of his office, and in which there is nothing said that you had or would withdraw from the board until the matters of the protest to your sitting be tried before the proper tribunal at Washington. The object of this note is to ascertain from you if we are authorized to have entered on the journal of the board that you withdraw from it *until* the matters are tried before the proper tribunal at Washington.

Very respectfully, your obedient servants,

WILLIAM TYLER.
RALPH GRAVES.

JOHN F. H. CLAIBORNE, Esq.,

Commissioner of United States, &c., present at Hillsborough.

HILLSBOROUGH, November 22, 1843.

GENTLEMEN: The document furnished by me to the Secretary, yesterday evening, with my instructions to enter it on the journal, is a literal transcript of the original rough draught in my possession, and is word for word the protest read by me before the board. On reference to it, I find no such expressions as you allude to—"that I would withdraw from the board until the matters raised against me by the protest of the counsel of a portion of the Choctaw claimants could be decided by the proper tribunal at Washington."

The recording of the paper itself will show its meaning and its contents, and is the only entry authorized by me.

I remarked, after reading the protest, I would withdraw and leave my colleagues to pursue such course as they might deem proper, or words to that effect, denying at the same time their power to compromise or abridge any of my rights. This, of course, would form no part of the paper itself.

My meaning will more distinctly appear by reference to the following paragraphs in the body of the protest, to wit:

"The two other commissioners, being a quorum, have a right to stop this investigation, to send back home the witnesses that have been subpoenaed in behalf and at the expense of the United States, and even to adjourn this board—a course to which (however, in my opinion, detrimental to the public interest) I shall, from personal considerations, interpose no obstacles, inasmuch as I court and challenge, in the proper place, and according to the laws of the land, the severest scrutiny into my official conduct. But until that scrutiny shall be so had, and during the pleasure of the President of the United States, *while this board remains in session, I shall exercise my rights and duties in their broadest latitude,*" &c.

My personal absence from the board is a matter altogether personal to myself, and proceeds from no stipulation or concession on my part of my right to appear whenever I see fit to do so.

You will please have this letter duly recorded.

Very respectfully, your obedient servant,

JOHN F. H. CLAIBORNE,
United States Commissioner.

WILLIAM TYLER and RALPH GRAVES, Esqs.,
United States Commissioners, &c.

The following resolutions were ordered to be entered upon the journal:

Whereas the secretary of this board has heretofore drawn up the journal of the proceedings of this board in his own language, without the same ever being read to the board, said journal, therefore, has no other effect than as the private memorandum of said secretary. To give it the force and effect of a record recognised by the commissioners as an original body, be it

Resolved, That the secretary be required hereafter to read, every morning, in open court, the proceedings of the board of the preceding day, and to sign the same, stating first that it had been read in open court.

THURSDAY, November 23, 1843.

The board met to-day. Present: Commissioners Graves and Tyler. Pierce Bayly, secretary of this board, having, by letter, resigned his said office, and the board having accepted his resignation, it is

Ordered, That Joseph Grigsby be, and he is hereby, appointed secretary *pro tem.*, to enter the orders of the board, and take charge of the papers and documents of the commission for safe keeping, and to do all other things which appertain to the office of secretary, until a secretary is appointed, and inducted into office.

The board, upon full and mature consideration of the protest filed by S. S. Prentiss, Esq., counsel for some of the claimants, to the sitting of a member of this board, (to wit, John F. H. Claiborne,) and the papers and documents appertaining thereto, and the protest of said Commissioner Claiborne, all of which have been spread at large on the journal, do decide that Mr. Prentiss, as counsel for a portion of the claimants, has the right to file his protest, the same being considered by the board as similar to a plea to the jurisdiction of the board. But, in deciding that the said protest could be filed and spread upon the journal, the board disclaim all and every right to take or exercise jurisdiction of any charge in any way against one of its members, or to express any opinion as a board of, or to give any judgment on, any such charge. And as the said member (to wit, John F. H. Claiborne) persists in occupying his seat, and of acting upon all the cases which may come before the board, notwithstanding the said protest against him, and the great inconvenience which the witnesses in attendance and the claimants will sustain, the board, consisting of Messrs. Tyler and Graves, feel it a high and imperious duty, under all the circumstances of the case, to suspend all action on all the cases until the matters of complaint against the said John F. H. Claiborne can be inquired into by the proper tribunal at Washington, or until an order from said department, requiring the board to proceed, shall be obtained.

The board do therefore adjourn, and is hereby adjourned to the fourth Monday in next month, (December,) to meet at some place to be hereafter designated through the public press by the commissioners, or a majority of them, unless directed by the department to meet sooner, and at any certain point, of which due notice will be given.

J. GRIGSBY, *Secretary pro tem.*

I do certify that the above is a true transcript of the journal of the board of Choctaw commissioners, beginning on the 20th and ending on the 23d November, 1843.

Test:

JOSEPH GRIGSBY, *Secretary pro tem.*

HILLSBOROUGH, SCOTT COUNTY, MISSISSIPPI,

November 22, 1843.

The following is an extract from Messrs. Tyler and Graves's letter (two of the Choctaw commissioners) of this date, addressed to John F. H. Claiborne, Esq., one of the Choctaw commissioners, viz: At the conclusion of reading of your protest on yesterday, at the board, you read therefrom, or stated in immediate conclusion with it, that you would withdraw from the board until the matters raised against you by the protest of the counsel of a portion of the Choctaw claimants could be decided by the proper tribunal at Washington.

We, the undersigned, being present, do hereby certify that Mr. Commis-

sioner Claiborne did use the language in the above extract, as nearly as we can recollect, on retiring from the board yesterday.

W. Bingling Guion,
Benjamin J. Jackoway,
H. Harrison,
S. S. Prentiss,
A. F. Young,

Balie Peyton,
T. J. Word,
Joseph Grigsby,
John Johnson, sr.,
Hugh McDonald.

HILLSBOROUGH, MISSISSIPPI, *November 22, 1843.*

GENTLEMEN: On the opposite page you will find a certificate voluntarily prepared by signers thereto.

I have the honor to be, gentlemen, your obedient servant,

T. J. WORD.

MESSRS. TYLER and GRAVES.

A true copy from the original in the hands of Messrs. Tyler and Graves.
JOSEPH GRIGSBY, *Secretary pro tem.*

Endorsement on letter.

DECEMBER 11, 1843.

Respectfully referred to the Secretary of War, with the papers filed herewith, together with Mr. Claiborne's letter with that date, but postmarked 23d November last, and numbered on file 2,078, and the letter of G. R. Fall, Esq., of 24th November, 1843.

T. HARTLEY CRAWFORD.

Rr 1.

(Postmarked) HILLSBOROUGH, MISSISSIPPI, *November 23.*

SIR: You will doubtless be notified of the proceedings against me here, and the course the board has thought proper to adopt.

I am here, surrounded by a host of hostile influences, got up by the speculators, and my life itself in jeopardy.

I shall send on my defence from Natchez, until which I request you to suspend any opinion or judgment.

I have the honor to be, most respectfully, your obedient servant,

JOHN F. H. CLAIBORNE.

HON. T. H. CRAWFORD,

Commissioner of Indian Affairs.

Rr 2.

JACKSON, *November 24, 1843.*

SIR: Enclosed is an article from the *Mississippian*—the State paper—which is worthy of consideration. The documents from which the extracts are made are upon file in the General Land Office. I shall introduce

resolutions at the approaching session similar to those appended, and sustain them by a host of witnesses.

Colonel Claiborne has just been challenged by Colonel Forester, who is more deeply interested in those claims than any other person. In consequence of his opposition to the schemes of these speculators, his life is sought, and I have no doubt will be taken, if he is not fortunate. S. S. Prentiss, Esq., has entered a protest, in the name of some of the *agents of the Indians!* against his taking his seat as a commissioner; and the consequence is, that he has, for the present, retired from the board. Every press in the State is arrayed against these claims. Excitement is getting up in the country, and trouble will be the consequence.

Very respectfully,

G. R. FALL.

HON. SECRETARY OF WAR.

Rr 3.

CHOCTAW CLAIMS.

Extracts from letters from Samuel Gwin, register at Chocchuma, Mississippi, to the Commissioner of the General Land Office.

MAY 5, 1835.

I might also state that this delay of bringing the public lands in the Choctaw purchase into market is the *hotbed* that will bring forth thousands of fraudulent claims under the treaty; and you need not be surprised if it does not forever supersede another public sale, by sweeping off some six or seven hundred sections of the choicest lands, by claims *coined* to suit the times.

MAY 7, 1835.

These claims (Choctaw) are *not just*. Congress has failed to act on the subject, as was expected; and there is no good reason why the Government should not have the disposal of her domain until their claims are sustained by an act of Congress. They are held by speculators, and not by Indians; have been purchased at reduced prices; and the assignees were, at the last session of Congress, lobby members in Washington.

* * * * *

These lands are worth *fifty* times as much as the lands the Indians pretendedly (actually) lived upon. Those that had settlements (and they are not one in a hundred) lived on very poor land; and, if a strict examination was had, the very same lands, or lands of a similar quality, could be had in their immediate vicinity; and if they must have them, let them be taken there. There is no justice in their *floating* from the poor pine lands east of the Yallahusha to the richest river lands on the Mississippi. There are plenty of lands yet to be sold in that section to satisfy all *just* claims; but I query very much, if you keep the door open, whether there will be, in a short time, *enough in the Choctaw purchase* to satisfy the real and fictitious claims. * * * I have seen enough to know that any thing can be proved where *rich river lands* are in view. In

recommending the above, I have discharged my duty; and, let the result be as it may, I shall hereafter look on with indifference, as I have fallen heretofore between two fires—the speculators, the Government, and vile slanderers.

NOVEMBER 24, 1835.

I am more than ever satisfied that it is the settled purpose and determination of a set of speculators to sweep the lands of the Choctaw country under the *pretended* claims arising under the fourteenth article. * * * Under the order of the President to suspend some of the lands until the claims are investigated, he says: “Advantage has been taken, and this order, limited as it is on the face of it to the last Congress, is held up as authority for sweeping every acre of the remaining country, *under circumstances much more aggravated than the grand Yazoo speculation* some thirty-five years ago. Hordes of Indians, who have all *plain cases*, are now conjured up, and, under pretended purchases, a set of ravenous speculators are carrying every thing before them. Already have they blown up the sales at Columbus; and, after devouring that carcass, they have commenced here. I feel much embarrassed on this subject. Many of my warm friends are interested in them; some *few* (comparatively) of the claims themselves are good; and, in an attempt to stem this current, the odds are against me on every score but public duty. * * * The subject deserves the serious consideration of Congress, as *several* of that body are, either directly or indirectly, interested in these claims, whose influence, with the perseverance and importunities of the claimants, as lobby members, will, I fear, have the effect of forcing them through without reflection, or a strict regard to the interests of the United States. * * * It is apparent that, under a *very few* good cases, *one of the grandest schemes of fraud is now in progress, and near consummation, that has ever been started in this country.*

Compendium of testimony taken before the select committee, on the part of the House of Representatives of the State of Mississippi, to whom was referred the examination of the frauds charged to have been committed under the 14th article of the treaty of Dancing Rabbit creek, 30th January, 1836.

Colonel William Ward, United States agent for the Choctaws, at the time of the treaty aforesaid, being sworn, answered as follows: “That he knew of no company formed for the purpose of purchasing Choctaw lands; that he kept a registry of names, to register applicants under the 14th article; that he never refused to register any Indian claiming under that article, when application was made according to the treaty; that when one Indian applied for himself, he registered him; but when one applied for many, he refused, notifying him at the same time that each must apply for himself. He registered all these applications in a bound book, sent to the War Office. From three to six of these Indians, who had properly applied, were accidentally omitted on my register.”

General John Watts, of Jasper, being sworn, says: “A company was formed. He saw the agents of this company at ball plays, surrounded by several hundred Indians, making their marks for them on blank sheets of

paper, and apparently taking the number of their children, when the Indians did not themselves touch the paper; and the Indians, when he saw this, had no interpreter," &c.

James Ellis, member of the Legislature from Neshoba, concurs in the statement of General Watts, and also knows some of the Indians who went west, and have since returned or been brought back, and whose names are among those now presented [as] having a right to reservations; and that he was told by one of those agents, if he would introduce no resolution in the Legislature calculated to bring this fraud before Congress, he would not interfere with him in his county matters; that the Government had left the door open for fraud, and it was no harm to make use of it.

General Samuel Dale, member from Lauderdale, knows of locations having been made in his county, which locations, he presumes, were made under the 14th article, on which no Indian has ever lived, to his knowledge, and on which there is no mark of field or house, and on which he does not believe any Indian has lived for fifty years; and these floats were laid on lands on which white men were settled, who had, before they heard of the location of said floats, gone to Columbus to buy these lands at the public sales.

Hon. Samuel J. Gholson states that a company was formed to obtain Indian claims; that he heard a man, who called himself Fisher, say, at Columbus, that if the settlers residing on the lands located for the Indians would bind themselves not to oppose the claims, the company would convey the settler a quarter section, to include his improvement, at \$1 25 per acre, and the residue at \$3 per acre; and would not require pay till title was perfected. Said Fisher also stated that he had no doubt, if the company were let alone, they would be able to get title to land for all the Indians that had removed in the country, whether they had been registered or not; and that he did not believe that any other signification of intention, on the part of the Indians, to become citizens, would be required, than proof of their being in the country at that time. I heard D. H. Morgan say that he believed a great many Indians had gone west of the Mississippi in ignorance of their rights; that the company had an agent west, buying Indian claims and bringing the Indians back to the Choctaw nation. It is, said Morgan, a first-rate business, and I have an interest in it. Said Fisher stated that they were to get one-half the lands, and that they would cost the company some ten cents per acre.

G. W. Bonnell, editor of the Southern Argus, a Whig paper at Columbus, stated that there was great excitement against the company; to allay the opposition and excitement, it was proposed to take in one hundred popular men. I was spoken of, but, believing the claims fraudulent, refused to have any thing to do with them. Mr. L. N. Hatch was the projector of this plan. Mr. Bonnell said it was one of the most stupendous frauds that had ever been attempted, and could be easily blown up, &c.

William Dodd, member from Attala, said there was great excitement; that Colonel Boyd, of Attala, had informed him that certain propositions had been made to him to become interested; that it was the object of the company to get as many men of influence interested with them as possible, so that all could make a handsome profit; and that those popular men could allay the prejudice and opposition to those claims. Most of the land floated was first rate, and the Indians had never lived on it.

Isaac Jones, member from Winston, said he knew many Indians who

had left the country and went west with the other Indians, at the expense of the Government, and were gone about twelve months, and have returned to this State with the guns they received from the Government. Mr. Fisher told him he was locating agent for the Indians, and was among the Indians above alluded to; that many sections were reserved in Winston, on which, as he believed, no Indians ever lived.

General Stephen Cocke, Senator from Monroe, states that, from the reports and statements of others, he believes many and great frauds have been attempted; that Charles Fisher informed him that his company had obtained some two thousand sections from the Indians, of which they were to have one-half for their trouble; that the company consisted of said Fisher, William M. Gwin, A. F. Young, D. W. Wright, Wiley Davis, and one Porter, of Tennessee. Fisher said the Indians were to have one thousand sections, himself five hundred, and Gwin and the rest the balance. Fisher & Co. had got from the Indians an irrevocable power of attorney to all said one thousand sections for the Indians. Many of these lands were located, and on lands very superior to those the Indians lived on. He knows several Chickasaws that were passed off as Choctaws, and had lands located. General Falconer, Colonel Horne, and John C. Thomas, members of the Legislature, also testified.

Preamble and resolutions relative to the Choctaw treaty and certain alleged frauds.

Whereas the United States did, by a certain treaty held and made with the tribe of Choctaw Indians residing for the time being within the limits of the State of Mississippi, (to wit: the treaty of Dancing Rabbit creek,) made and concluded on the twenty-eighth day of September, A. D. eighteen hundred and thirty:

And whereas, by the 14th article of said treaty, certain reservations of land were granted to such Indians as should remain on such land for five years next succeeding such treaty:

And whereas such claimants were, by the 14th article in the treaty referred to, compelled to signify their intention of claiming, under the provisions of said treaty, within six months after the ratification thereof, or forever forfeit the right thus acquired:

And whereas it appears, from recent developments, that large claims to land have been preferred, conveying the richest and most valuable portions of the unsold Choctaw lands, and purporting to be founded on and growing out of the treaty above referred to, and on a part of which lands thus claimed no Choctaw Indian either does now or ever did reside:

And whereas it is evident, from the facts of the case, that these claims are manifestly unjust in their character, oppressive in the result of their operation on the freemen of Mississippi, and calculated to secure no ultimate benefit to the Indians originally claiming, but, in their consummation, will have a direct tendency to impair the confidence which the good people of this State have in the correctness of the law and in the honesty of the administrators of our public institutions:

And, whereas this body have satisfactory evidence of the fact that a large portion of the claims to said land, under the provision of the treaty already referred to, are set up and attempted to be sustained on the testimony of Indians, who are unacquainted with the nature of an oath, and

utterly regardless of the obligation thus incurred, and on the testimony of other individuals wholly unworthy of the confidence of a moral and intelligent community:

And whereas the permission of such abandoned and licentious profligacy would injure our community, disgrace our social and political compact, and license corruption and perjury to stalk at large through our land: Now, therefore,

Be it resolved by the Legislature of the State of Mississippi, That our Senators in Congress be instructed, and our Representatives requested, to use the most speedy and efficient means to prevent the consummation of such of said titles to said land as have originated in fraud, to the end that the aforesaid land may be disposed of in the regular way, and in accordance with the law in such case made and provided.

Resolved, That his Excellency Charles Lynch, be requested, at as early a date as may be possible, to furnish our Senators and Representatives in Congress with a copy of the foregoing preamble and resolution, and with the testimony taken thereon, with a request that they lay the same before both branches of Congress.

Ss.

NATCHEZ, November 30, 1843.

SIR: As it may be of some utility to you to know the names of the principal parties concerned in the Choctaw speculation, I herewith transmit a list, as far as I can remember them.

I understand that the board of commissioners has adjourned, to meet on the fourth Monday in December—at what place I do not know, as I was neither consulted nor conferred with, after Mr. Prentiss, a leading speculator, took his stand against me.

As I have been thus unceremoniously ruled out, I shall not rejoin the board until I hear the pleasure of the department.

If it be not improper, I propose, in the course of the winter, to lay a memorial before Congress, calling for my official correspondence, to show the condition of things here.

Any communication with which you may please to favor me can be addressed to this place.

I have the honor to be, with high respect, your most obedient servant,

J. F. H. CLAIBORNE,
United States Commissioner.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

List of persons interested in Choctaw claims, 14th article.

William M. Gwin, Edwin Cwin, Charles Fisher, A. A. Halsey, A. F. Young, D. W. Wright, R. A. Patrick, Benjamin J. Jackoway, Jesse Clements, Hugh Harrison, Hugh McDaniel, William Herbert, E. B. W. Kirksey, ——— Poindexter, William M. Hall, ——— Moseby, ——— Morris, ——— Cherry, Benjamin McIlvain, Joseph Grigsby, William Gordon, ——— Parker, John J. Smith, John B. Forester, S. S. Prentiss, John J. Guion, Richard Stewart, ——— Hurst, Joseph Hodges, ——— Lucky,

David Douglass, Munford Jones, John Johnson, A. Kelly, William P. Stone, ——— Barker, F. E. Plummer.

Besides these, there are many claiming by purchase from the speculators, scattered all over the Union.

Endorsement by the Commissioner of Indian Affairs.

DECEMBER, 16, 1843.—Respectfully referred to the Secretary of War.
T. HARTLEY CRAWFORD.

Tt.

NATCHEZ, November 30, 1843.

SIR: I have the honor to lay before you a statement of the late proceedings before the board of Choctaw commissioners, which I beg you to submit to the President of the United States and the Secretary of War.

If I have overstepped my duty in making, or causing to be made, the objectionable publication in the "Sentinel," I must plead, first, that it contains nothing but the truth; and, secondly, that I was indignant at having been deceived into erroneous adjudications.

The country is with me; and our Legislature will speak its opinion in emphatic tones. The resolutions of 1836 will be reaffirmed.

If charges are filed against me, I ask, as an act of justice, that I be immediately put in possession of them, with the name of my accuser and his witnesses. I am able to place my whole official course in the highest possible light, except where I have erred, as I confess I have erred, on the side of the Indian.

Should you deem it expedient to recommend to Congress a revival or repeal of the act of 1842, and order me to Washington, I can make disclosures important to the Government.

My opinion is, sir, as an officer of the United States, that the commission should be suspended until the course suggested by R. M. Gaines, Esq., in his letter of the 10th August, to the Secretary of War, could be tested.

In three months' riding through this State, if I had the authority, I could collect evidence to invalidate most of these claims, and to show, conclusively, that Indian testimony is not to be relied on. We have placed upon it entirely too high an estimate.

As I have been ruled out of the board rather unceremoniously, I shall remain here until I hear the pleasure of the department.

I have the honor to be, with high respect, your most obedient servant,
JOHN F. H. CLAIBORNE,
U. S. Commissioner.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

P. S. I beg leave to enclose, for your private eye, a letter from the editor of the Natchez Free Trader, which will show you the position assumed by the speculators.

It is time to cut their combs; and it can be best done by suspending the commission.

PROCEEDINGS OF THE BOARD OF CHOCTAW COMMISSIONERS.

Colonel Claiborne's statement.

The board of commissioners met at Hopahka in December last, and took testimony in some two hundred and fifty cases. The Indian claimants and their witnesses uniformly swore that they had entered into no contract, or binding contract, within five years after the ratification of the treaty, to sell or assign their claims, either in whole or in part. Upon this testimony, mainly, and in the absence of any proof to the contrary, some time thereafter, the board (Mr. Tyler being necessarily absent most of the time) rendered favorable judgments upon a number of claims, and transmitted them to Washington.

About this time a letter was received from the Commissioner of Indian Affairs, enclosing a communication from General Grant, of Noxubee. The Commissioner urged upon us "the necessity, which the information imposes, of the greatest vigilance to guard against the frauds which Mr. Grant says are attempted to be practised on the United States;" and recommended the employment of one or more agents to protect the interests of the claimants and the Government, particularly the latter. General Grant's letter stated that he was extensively acquainted among the Indians; that they did not pretend to have any claim until after the speculators went among them; that not ten in an hundred are entitled to any thing; that large numbers of Indians have returned from the west; that Indians, in the hands of speculators, will prove any thing; that, with proper exertions, two and a half millions of dollars may be saved to the Government; and, finally, that the cases reported by the board are mostly frauds, and should be remanded for further investigation. Upon the strength of these letters, although not then adopting many of the views of General Grant, I proposed to appoint Colonel Kincannon, of Columbus, a gentleman of sterling merit and capacity, agent. Mr. Graves insisted upon appointing a Mr. Brown, editor of a paper in Columbus; but, not agreeing, we finally compromised on the Hon. T. J. Word, who accepted the post, and entered upon its duties. He soon made a discovery of some contracts; after which, we addressed a letter to the department, and advised it to suspend all the cases transmitted, and to issue no more scrip upon them. We made this suggestion on general grounds, for nothing had then publicly transpired to implicate the Hopahka cases, further than the statement in General Grant's letter, that they should all be remanded for reviewal. It was supposed that new testimony could be discovered. The board then issued numerous subpoenas for witnesses in behalf of the United States, and adjourned to meet at Hillsborough on the first Monday in November, to review its adjudications, consider any new evidence that might be discovered, and inquire into the question of frauds and fraudulent assignments generally. No sooner had this suspension of the scrip been advised, than some of the parties interested began to assail me with slanders of a most atrocious character, and the lowest and most infamous means were resorted to by speculators in Leake county to destroy me.

On my arrival at Jackson, in the latter part of October, on my way to Hillsborough, I had confirmed the rumor, previously circulated, that a strong delegation of speculators had gone to Washington, to prevail on the department to issue the scrip, in disregard of the recommendation of the

board, and that efforts were making to prejudice me there. I suggested to a friend, who happened to be in the city, the propriety of writing an article setting forth the true state of things, and placing me in my proper position before the public; because, in contending with a combination so widespread, deep-rooted, and formidable, it was necessary to enlist all the moral influence of public opinion. He wrote the article, and put it at my disposal, with the understanding that he was not to be named in connexion with it. It was copied by me, and published, at my request, in the *Vicksburg Sentinel* of the 10th November; and so anxious was I to conceal the author, I left the impression on the mind of the editor that the article originated exclusively with me. I subsequently, however, published the certificate of a gentleman of high standing, showing that I was only the amanuensis, and not the *author* of the article.

I deny that, in making that publication, I prejudged any case. I merely stated a fact which I am competent to prove. My object was to attract public attention to the claims, to call forth witnesses, to elicit disclosures, to stimulate those who might dislike to come into collision with the rich, influential, and resolute men, who are managing these claims. To protect the public interest, somebody had to assume the responsibility. It was my duty, as counsel for the Government, to assume it; and though I made a strong charge in the publication, I believed myself then competent to establish it, and I believe so now.

As soon as the board met at Hillsborough, I offered the following resolution:

“Whereas the controversy about to be opened before this board, in relation to the Choctaw claims, their validity or illegality, and the frauds alleged to have been practised under them, is one of very serious consequence and great magnitude to the United States and to the people of Mississippi, and the defence will call for great skill, diligence, and care, as well as for full and exact information on the part of those appointed to protect the rights and interests of the United States, and will require the exaction of the strictest proof at every step in the deduction of the claimants' title, whose ground must be examined inch by inch, and subjected to the severest test of the technical rules of evidence; and whereas the ablest counsel have been engaged on the other side, and this board being of opinion that where claims to the amount of millions are pending, many of which are of doubtful or suspicious character, the interest of the United States should be better protected: Therefore,

“Resolved, That General H. Stuart Foote, of Jackson, and Colonel John Irvin, of Greensborough, Alabama, be requested to appear, with the Hon. T. J. Word, as agents and counsel for the United States, during the pending investigation.”

As soon as this had been read, Mr. Prentiss, who styles himself attorney for certain claimants, raised a preliminary question as to my competency to act, in consequence of the article in the “*Sentinel*.” I objected to his making any such question, and denied the right of the board to entertain it.

But, as he insisted, and promised to confine his remarks within the bounds of decorum, and my colleagues did not interpose, I *waived* my objection, and he proceeded to argue his point, and to assail me with great bitterness. Mr. Graves then remarked, that my proposition for counsel was a new one, requiring consideration; and the board adjourned.

The next day I presented the following protest:

“The question raised by the counsel of certain speculators in Choctaw claims, as to my competency to sit as a member of this board, in consequence of an article, under my authority, in the Vicksburg Sentinel, setting forth my opinion of the testimony upon which the claims examined at Hopahka had been adjudicated, is a question I deny the right or the power of my colleagues to decide, and is one which no man has a right to raise before them; and against all further proceedings under it I *protest*, as an assumption without shadow of authority, and in violation of my rights.

“The two other commissioners, being a quorum, have a right to stop this investigation, to send back home the witnesses that have been subpoenaed at the expense and in behalf of the United States, and even to adjourn this board—a course to which (however, in my opinion, detrimental to the public interests) I shall, from personal considerations, interpose no obstacle; inasmuch as I court and challenge, in the proper place, and according to the laws of the land, the severest scrutiny into my official conduct. But, until that scrutiny shall *so* be had, and during the pleasure of the President of the United States, while this board remains in session, I shall exercise my rights and duties in their broadest latitude, not only as commissioner and counsel for the Government, but as a citizen of the State and as a reporter for the press; for it is my intention, over my own signature, to report the proceedings under this investigation, *that all the aid and moral influence of PUBLIC OPINION may be brought to bear to sustain the rights and interests of the Government.*

“If it be determined to proceed with the appointed investigation, then I press my resolution for additional agents and counsel, to protect the interests of the Government and of the people of the State, believing, from circumstances that have come to my knowledge since the adjournment of the board at Yazoo Village, it can be established—

“1. That a large majority of the claimants examined at Hopahka, within five years from and after the ratification of the treaty, made contracts or assignments, or what were, in effect, contracts or assignments; that many of these contracts are yet in existence, and the parties are still claiming under them; and that, in swearing before this board ‘they had made no contracts, or binding contracts,’ the Indians either swore falsely or ignorantly, or have no definite idea of the nature and obligation of an oath, or no adequate conception of a contract, and are therefore incapable of contracting.

“2. That many of the same Indians have subsequently been induced to make conveyances of their claims to the same or to other speculators, either in whole or in part, for a grossly inadequate consideration.

“3. That these subsequent conveyances were made, in some instances, in bad faith to those who originally contracted with the Indians, and generally upon principles that would not be sustained in a court of equity, or by the authorities at Washington, if properly represented.

“4. That large amounts of money, perhaps several hundred thousand dollars, have already been realized by certain speculators, by virtue of contracts made with the Indians.

“5. That it may be established, by certain parties who now hold conveyances from the Indians tried at Hopahka, that most of them did actually make contracts within the five years, and that they themselves recently had it in contemplation to establish the illegality of those original contracts.

“6. That evidence will be forthcoming to show that these contracts have

had a tendency to keep the Indians in the country, ever since the treaty, contrary to the views of the Government and to the great injury of the people of Mississippi.

"7. That every effort has been made, by certain parties interested, to prevent a full and fair investigation of these claims, and of the frauds alleged to have been practised under them.

"8. That agencies and influences for this purpose are at work in various parts of the country and at Washington city.

"9. That general evidence will be furnished of the history of this claim, its increasing magnitude from year to year, and other facts and circumstances showing the *extraordinary* means resorted to to sustain it—facts material to this board in forming its judgments, and which would be made known to the Legislature at its approaching session, and to the Congress of the United States.

"10. That although many of the claimants under the treaty are rightfully entitled to indemnity, yet when citizens of the State and members of this commission are denounced, as they have been denounced, and sought to be intimidated, for adopting precautionary measures upon suggestions of fraud, some weight should be attached to the following preamble and resolutions of the Legislature of the State of Mississippi, (which passed by a unanimous vote of both Houses,) and the evidence taken at that time :*

“ Resolutions of the Legislature of Mississippi, complaining of the disadvantages resulting from certain reservations of land to Choctaw Indians, under the treaty of Dancing Rabbit creek, and praying such title, when originating in a fraud, may not be confirmed.—February 25, 1836.

“Whereas the United States did, by a certain treaty held and made with the tribe of Choctaw Indians, residing for the time being within the limits of the State of Mississippi, to wit: the treaty of Dancing Rabbit creek, made and concluded on the twenty-eighth day of September, A. D. eighteen hundred and thirty; and whereas, by the 14th article of said treaty, certain reservations of land were granted to such Indians as should remain on said land for five years next succeeding such treaty; and whereas such claimants were, by the 14th article in the treaty referred to, compelled to signify their intention of claiming under the provisions of said treaty within six months after the ratification thereof, or forever forfeit the right thus acquired :

“And whereas it appears, from recent developments, that large claims to land have been preferred, conveying the richest and most valuable portions of the unsold Choctaw lands, and purporting to be founded and growing out of the treaty above referred to, and on a part of which lands thus claimed no Choctaw Indian either does now or ever did reside; and whereas it is evident, from the facts of the case, that these claims are manifestly unjust in their character, oppressive in the result of their operation on the freemen of Mississippi, and calculated to secure no ultimate benefit to the Indians originally claiming, but, in their consummation, will have a direct tendency to impair the confidence which the good people of this State have in the correctness of the law, and in the honesty of the administrators of our public institutions :

* Mr. S. S. Prentiss was then in the Legislature.

“ ‘ And whereas this most iniquitous transaction will, if consummated, not only rob Mississippi of her just and inalienable right of her five per cent. on the amount which ought to accrue from the large portions of valuable land thus reserved :

“ ‘ And whereas this body have satisfactory evidence of the fact that a large portion of the claims to said land, under the provision of the treaty already referred to, are set up and attempted to be sustained on the testimony of Indians who are unacquainted with the nature of an oath, and utterly regardless of the obligation thus incurred, and on the testimony of other individuals, wholly unworthy of the confidence of a moral and intelligent community :

“ ‘ And whereas the permission of such abandoned and licentious profligacy would injure our community, disgrace our social and political compact, and license corruption and perjury to stalk at large through our land : Now, therefore,

“ ‘ *Be it resolved by the Legislature of the State of Mississippi*, That our Senators in Congress be instructed, and our Representatives requested, to use the most speedy and efficient means to prevent the consummation of such of said titles to said land as have originated in fraud, to the end that the aforesaid land may be disposed of in the regular way, and in accordance with the law in such cases made and provided.

“ ‘ *Resolved*, That his Excellency Charles Lynch be requested, at as early a date as may be possible, to furnish our Senators and Representatives in Congress with a copy of the foregoing preamble and resolutions, and with the testimony taken thereon, with a request that they lay the same before both branches of Congress.

“ ‘ JOHN L. IRVIN,

“ ‘ *Speaker of the House of Representatives.*

“ ‘ JOHN A. QUITMAN,

“ ‘ *President of the Senate.*

“ ‘ CHARLES LYNCH.

“ ‘ B. W. BENSON,

“ ‘ *Secretary of State.*

(See House Doc. No. 202, 24th Congress, 1st session.)

“ 11. That the evidence taken by the board, and the mode adopted for taking testimony and examining witnesses, are defective in several particulars, and have conduced to erroneous adjudications.

“ 12. That evidence will be forthcoming from many citizens to show that the board has placed too high an estimate upon Indian testimony, and that they are liable, either ignorantly or by design, to make false statements under oath.

“ All which, taken in connexion, will go to show to Congress the expediency of modifying the law, and providing some other mode of securing to the Indian his indemnity.

“ With these views, I leave my colleagues to take the course they deem most advisable, *protesting* against their right, or the right of any agent or attorney, to challenge or dispute my competency *here*, or to file or enter any protest, paper, or proceeding of any kind, affecting my competency or official conduct, on the records of this commission. Such proceeding must be had before another tribunal, and I protest against such permission; or any such assumption as was yesterday exercised by the counsel of certain

speculators, as being in violation of my rights as a member of this board, and derogatory to the commission itself.

“JOHN F. H. CLAIBORNE.”

I then left the office, and, as I understood, Mr. Prentiss proceeded to attack me before the board in the grossest terms, declared he would impeach me, and that if I was allowed to sit there he would not appear!

During this period great excitement existed. The speculators and their strikers were collected in great numbers. Threats and curses were lavished upon me by them in every crowd. My friends in the little village became alarmed for my safety. They offered to furnish me arms, and even to provide an armed escort for me to the office. I declined both. The following note was addressed to me by a highly respectable member of the Methodist church, the brother-in-law of a gentleman largely engaged in Indian claims:

“HILLSBOROUGH, November 21, 1843.

“There is great hostility to you among the speculators, because of your opposition to their schemes, and I believe your life is in danger. I have heard that even some Choctaws here have been exhorted to shoot you. Take care of yourself. The people are with you. I believe that nearly all these claimss are fraudulent. I would not credit any Indian on oath. I can produce evidence to destroy many of these claims.

“Your friend,

“J. K. RANKIN.”

“Colonel CLAIBORNE.”

Just before this, it was stated to me, upon affidavit now in my hands, that two white men, who were disappointed in getting scrip, had avowed their determination to shoot me. Anonymous letters, menacing me with death unless I resign, were written to my wife. I had at the same time a challenge on my hands from one speculator, and an intimation that it was to be followed by others, or by a street attack.

The following note was placed in my hands, written by a citizen of high standing:

“HILLSBOROUGH, November 23, 1843.

“DEAR SIR: I was last night informed, by John Johnson, that Colonel Ralph Graves (the commissioner) had said to him, that the board would do no business unless you retired from it; that if you took your seat it would break up, and if you did not the board would go on and probably try his Indian cases.

“WILLIAM CHAMBERS.

“Hon. J. F. H. CLAIBORNE.”

About the same time, Mr. John Dyass, a most worthy man, employed by J. J. McRae, Esq., to subsist the Indians, came to my room with Mr. Hancock, of Daleville, and cautioned me to be on my guard; that I would be set upon in the streets, and he feared for my life; that he had heard enough among interested parties to make it his duty to come and tell me not to expose myself or go about after dark. Ever since the reading of my pro-

test on the 21st instant, I had been absent from my place at the board, arranging my affairs preparatory to the meeting I had determined to give the gentleman who had challenged me. But, finding there was an evident determination to bully me out of my seat, and deprive me of an office conferred, without solicitation, by the President of the United States, and unanimously confirmed by the Senate, I resolved, on the morning of the 24th of November, to resume my place at the board. I took with me an elaborate legal argument on the question of fraud, to submit to the board, and also the following paper, both of which had been previously submitted to some personal friends :

“STATEMENT.

“The protest which I read on the 21st instant expresses, in strong terms, my right to exercise the duties of my office, so long as the board remains in session, and until I shall be removed or disqualified according to the laws of the land. After reading that protest, the original copy of which I now hold in my hand, as I was in the act of rising from my chair, I remarked that I would then *withdraw*, and leave my colleagues to act as they might see proper, or words to that effect. My friends, with whom I have consulted, concur in opinion that those were my expressions, and that they understood me as retiring temporarily only. Certainly I so intended to say. Any other meaning attached to my words would make my protest itself, and its declarations of right and of intention, an absurdity. In leaving the office at the time, I left my official books and papers in their usual place, and they have there ever since remained.

“Reasons personal altogether, and well known to others, operated to induce me to be absent since the reading of that protest, and it was my intention to have left here on yesterday, for a time, if I had not been disappointed in getting a conveyance; and I had subsequently arranged to leave to-morrow morning in the Jackson stage.

“Reasons and responsibilities, however, still more imperative, and which will be made known at the proper time, induced me to review and relinquish that intention.

“Those reasons and those responsibilities require me to resume my seat in the board, prepared, if I am not prevented by violence or by the adjournment of the board, to perform the duties of my office. Neither the indignities that I have been exposed to while sitting at the board, nor the abuse that has been lavished on me since before the board, without any interposition of its power to prevent it; neither the disadvantages under which I labor here, surrounded by so many interested parties, all or nearly all of whom are violently hostile to me for the course I have deemed proper to pursue as an officer of the Government; neither the threats of personal violence which have reached my ears from several authoritative sources, nor other circumstances to which I might allude—neither this, nor any of these, unpleasant, painful, and precarious as they render my position, shall deter me from an attempt to do my duty.

“I now resume my seat, to hold it during the sitting of the board, if I shall so please, or until I am disqualified, according to the laws of the land, or receive from the President of the United States an intimation that my retirement would promote the public service.

“And I move to take up my resolution for the employment of additional counsel to protect the interests of the United States.”

But I was not allowed to present these papers. It had previously been determined, out of doors, that there should be no investigation, for the parties interested well knew I could establish my charge. Mr. Tyler, who is an honorable man, was deceived, I doubt not, by their specious representations, as I myself had been in the early stages of the commission, and by the impression that men of *such high standing* could not be engaged in a suspicious transaction—an impression, by the way, which the history of banking and speculation shows to be exceedingly erroneous. He was surrounded, too, by influences entirely hostile to me. His room-mate, Mr. Commissioner Graves, is my implacable foe—my enemy before we ever saw each other, as I have evidence to establish; and his course had been such that I had long since refused to speak to him, except at the board. The same Mr. Prentiss, who, on a former occasion had grossly insulted Mr. Graves, and, in the presence of several gentlemen, *threatened to cut his ears off*, found now in this commissioner a willing adherent. As soon, therefore, as he came into the office, he read a paper announcing that the board would not decide upon my competency, but deemed it an imperative duty to adjourn until the authorities at Washington could be heard from, until which the board stood adjourned.

The order was peremptory. I had not been consulted, and acquiescence was a necessity. It must be obvious, from this statement of facts, that a fair investigation of these questions can never be had before this board of commissioners. The parties implicated menace every one with violence who attacks the fairness of their transactions. Men are in terror. People who could disclose much are afraid to interfere.

No human being now doubts that all these Indians have assigned their lands to different sets of speculators. There is abundant evidence to prove this. When they swore they had made no assignments, the men stood by who knew they had assigned; yet, for daring to announce that such was the case, I am put in daily jeopardy; my friends owning newspapers are menaced with a bloody revenge if they publish any thing in my defence, even as an *advertisement*, and the whole speculation is to be carried through by violence. Should not some other mode be adopted of settling this matter, and the commission be either suspended or broken up? R. M. Gaines, Esq., the able attorney for the United States for this district, in a recent official letter to the department, expresses the opinion "that many, if not all the claims were contracted to be sold within the five years specified in the 9th section of the act of 1842;" and he submits "whether a bill in chancery, in the name of the United States, could be sustained, to enjoin the commissioners from proceeding until a discovery could be had from the parties interested." The whole act should be remodeled.

I intend this paper merely as a simple statement of facts. When I am impeached, or formally attacked with specifications, my personal defence, supported by the documents in my hands, shall be made. I file, herewith, that part of the article from the *Sentinel* which has been objected to, and upon which the question as to my competency and the adjournment of the board was based.

JOHN F. H. CLAIBORNE,
U. S. Commissioner.

NATCHEZ, November 30, 1843.

P. S. I also file a copy of Mr. Bayly's certificate, showing that I am not the author of the article in the "*Sentinel*," though I adopt it as my own.

[From the Vicksburg (Mississippi) Sentinel.]

THE CHOCTAW CLAIMS.

Rumors are rife in relation to these claims, and the long-existing impressions that they are grossly fraudulent are strengthening every day. We have taken some pains to collect the facts. It seems that, while sitting at Hopahka, the board gave judgment in favor of a number of claims, and sent them on to Washington. None but Indian testimony was offered. After the board went to Yazoo, heavy charges of fraud were brought against the claims by General Reuben H. Grant, a prominent citizen of Noxubee, and on these charges Colonel Claiborne insisted on advising the department to suspend all the claims that had been sent on. An official letter to that effect was sent on; subpoenas were issued for witnesses, and the third Monday in November set apart to commence the investigation. The board then adjourned. No sooner had this been done, than a grand council of speculators was convened at Hopahka, and the following plans, it is said, adopted: The Indians were to emigrate, under the charge of John B. Forster, (the United States paying twenty dollars per head,) who was to accompany them, and then receive the whole of their scrip, one-half of which he was to retain, and the other half to lay out for the Indians in goods, cattle, &c. To accomplish this plan, a crowd of speculators repaired to Washington—some going openly, others pretending that they were going to St. Louis only. Their object was to obtain *from the War Department* a confirmation of their suspended claims, thus forestalling the action of the board, and stifling the proposed investigation.

They have been laboring for this scheme for weeks, and, it is whispered, have received *aid from a quarter* from which such aid cannot come without *gross corruption*. (But, of this, more in a future number.) We trust the Government has frowned down this most monstrous proceeding. Influential men—members of Congress and others—have been engaged, at enormous fees, to effect this nefarious design of transferring these questions of fraud from the tribunal established by Congress to the department at Washington, where facts have been represented by interested persons only, and witnesses cannot have a hearing. Powerful agencies have been at work. Let the books of Hopahka post office be compared with corresponding dates at Washington city office, for the month of September, and it will be seen how many *free* letters have passed, and how many persons having the *franking* privilege have been engaged at Washington. We trust the department has not been deceived. A fraud of the grossest kind has been suspected. It has been positively charged at the department. The department notified the board of the charges. The board deemed it of sufficient importance to appoint an agent, at a salary equal to their own, to collect evidence. He has been for months engaged in so doing. Innumerable subpoenas have been issued, and the board refused to pass any more claims, and requested the department to suspend them all, and issue no scrip upon them, until the proofs concealed be obtained. And, after all this, these speculators covertly go to Washington, employ members of Congress, and seek to induce the department to overrule the objections of the board, and to pass claims to an enormous amount! This is really monstrous! The Hopahka claims alone, thus sought to be passed, over the recommendations of the board, and in the teeth of the solemn protest of

Colonel Claiborne, amount to some three hundred and fifty thousand acres, as we learn. Surely such a decision cannot be had in Washington. If it has been, the office of commissioner cannot be held with honor. If such a judgment has been had, without the concurrence of the commissioners, they degrade themselves by holding office. If they, or any of them, have been instrumental in procuring such a decision, without the official sanction of their colleagues, they deserve eternal infamy. We cannot believe the department could be so deceived. It surely will not stifle the investigation itself recommended. It will hardly cut off General Grant from a hearing, and thus facilitate the most stupendous fraud upon the Government, and robbery of the Indian, that has ever been devised. It will take three millions of acres to satisfy these claims. There is not so much unsold land left in the country ceded by the Choctaws. The deficit is to be made up with scrip, payable to the Indian, and receivable at the land offices as gold and silver. Now, will it be credited that these speculators have, by fraud and deception, obtained from the Indians absolute deeds of conveyance for the whole of their lands, and powers of attorney to receive their scrip, having given their bonds to pay over one-half of it to the Indians when the claim is closed! Incredible as this may seem, it is nevertheless so. And all this for what? Simply for undertaking to attend to this claim before the commissioners—an attention altogether superfluous, and which the commissioners are sent to attend to themselves; an attention, if necessary at all, certainly not worthy of the enormous fee exacted of the poor Indian—one-half their lands or scrip absolutely, and the control of the other! Such contracts are in their very essence fraudulent. No court of equity would enforce them. The man who buys these lands from the speculator can never have a valid title. They will all be eventually ripped up, as frauds upon the Indian, ignorant of his rights; and the parties concerned will stink in the nostrils of the country. Report says, every acre of land yet patented to these Hopahka Indians is held by one Forester, who has not paid a dollar. It is said he held 30,000 acres. Not a sale he has made under such contracts can stand, and every man who has purchased under him should withhold payment. This man made contracts; contracts were made with the Hopahka Indians, by inducing them to believe that General Jackson desired it—General Jackson, who always denounced the whole claim as a fraud! If the agencies at work at Washington succeed, Forester will realize half a million at once, out of nothing. His claims passed the board by perjured testimony; the board suspended them, on suspicion of fraud; and if they pass, it will be by corruption. He stood by and heard his witnesses perjure themselves by swearing they had made no contracts, when he knew they had made contracts with himself, and with Gwin and Fisher, and Judge Wright and others, before him! And Gwin and Fisher are now clearing their part of the land and scrip under these contracts! and their partners and coadjutors charge them with an attempt to defraud them out of their portion of the profits! And this is the vile scheme, this the perjured testimony, on which these claims are sought to be passed, *secretly, at Washington*, by bribed and purchased influences, when there is a commission specially established for the purpose; when that commission has appointed an agent, collected evidence, summoned witnesses, and taken all the initiatory steps for a thorough examination. We have too much faith in the Government to credit the rumors that these speculators have succeeded. The covert nature of their movements should have damned them, if noth-

ing else. Even at home, here, they have sought to bring politics to bear in favor of this fraud, by causing representations to be made, in certain quarters, that opposition to these claims would injure the Democratic party! Yes, a Whig speculator, it can be established, tried this effort in several quarters—tried it on candidates for the Legislature; and, when it failed, used every exertion to defeat them. (More of this hereafter.) Good God! that parties and politics should be thus degraded!

HILLSBOROUGH, *November 19, 1843.*

Colonel Claiborne showed me the manuscript from which he copied the article about the Choctaw claims. I was present when he was transcribing it, and the handwriting is known to me, from having seen letters of the author to Colonel Claiborne.

P. BAYLY.

Endorsement on letter.

DECEMBER 16, 1843.—Respectfully referred to the Secretary of War.

T. HARTLEY CRAWFORD.

Uu.

NATCHEZ, *November 30, 1843.*

SIR: I take the liberty of enclosing a statement and a correspondence growing out of the faithful and independent discharge of my official duties, which I request you to lay before the President of the United States and the Secretary of War, as a document, though personal in its nature, material to the vindication of my course, which I shall have the honor to submit in a few days.

I have the honor to be, most respectfully, your obedient servant,

JOHN F. H. CLAIBORNE,

U. S. Commissioner.

HON. T. HARTLEY CRAWFORD,

Commissioner of Indian Affairs.

STATEMENT OF MR. CLAIBORNE.

Correspondence with Messrs. Peyton and Prentiss.

The Hon. Balie Peyton called on me at Hillsborough, where I was attending the board of commissioners, with a request that I would put him in communication with a friend to arrange preliminaries for a meeting with Colonel John B. Forester, growing out of an article published by my authority in the Vicksburg Sentinel. It was my intention to have accepted the invitation forthwith, and I requested him to call in the evening. I soon ascertained, however, that there were but two gentlemen whom I could properly apply to, at such a juncture; most of the persons present being concerned in the Choctaw speculation, and therefore hostile to me. Of these two, one was the mutual friend of both parties; the other posi-

tively objected to my holding myself personally responsible for my official acts. When Mr. Peyton called again, I informed him that, as soon as practicable, I would repair to Jackson, and put myself in consultation with my friends; and I requested him to call on me on Friday evening, the 24th of November, at the Mansion House, Jackson. Immediately thereafter, fearing a failure of the mail stage, I got my friend, Mr. Henry Chambers, to go twelve miles for a carriage to take me down, which, however, he failed to obtain. About the time Mr. Peyton delivered his message, Mr. Prentiss, Forester's partner in the Choctaw speculation, was attacking me in the court-house; objecting to my competency as a commissioner, and menaced me with *impeachment*—the highest threat that can be made against a public officer!

I was still resolved, however, on gratifying gentlemen; and on Friday evening I arrived in Jackson, and put myself in communication with my friends. Before entering into any details or explanations, I handed one of them a sealed letter, authorizing him, or either of two others therein named, to accept for me the invitation, leaving the subsequent arrangements for matter of conference. My friends, however, positively objected. It had been, as I was then informed, a matter of consultation among them for several days; and they had unanimously agreed that, acting as a public officer, in a great public cause, where I was liable to come into collision with numerous parties, and where one challenge, if not fatal in its results, would be followed by others, I was under no obligation to make any thing arising out of my public duties a personal matter, but, on the contrary, was bound to refuse to do so. This conclusion they had arrived at, even before hearing of the course pursued at Hillsborough towards me, placing my reputation in jeopardy at the moment a demand was made on me for personal satisfaction. They urged, therefore, my immediate refusal. This, however, I declined doing; having still a disposition to gratify Colonel Forester, as soon as I could with a proper regard to the higher obligations due to myself by the charges publicly made against me.

I accordingly addressed the following note to Mr. Peyton:

MANSION HOUSE,
Jackson, Friday evening, November 24.

SIR: I can take no specific step in the matter suggested by you to me at Hillsborough, *until* the necessary arrangements are made for the defence of my official character against the late unwarrantable proceedings against me before the board of commissioners—arrangements requiring my immediate return home, and which my friends here, whom I have consulted, urge me to make. *As soon thereafter as possible you shall hear from me.*

I have the honor to be your obedient servant,

JOHN F. H. CLAIBORNE.

HON. BALIE PEYTON.

Without waiting to rest, I started immediately home, and set about arranging materials for a full exposition of the Choctaw speculation, and my course towards it. I well knew the necessity of doing this *promptly*; because the same set of speculators who are seeking to engage me in personal conflict, and thus occupying my attention, are, at the same moment, straining every nerve to effect my removal at Washington by mis-

representation. But the gentlemen gave me only a short lease. Before I had recovered from three nights' travel in the stage—perhaps the very day after my arrival—Mr. Peyton, with Captain Guion, called at my house, and said he had received my note, but that it was his duty to insist on being referred to a gentleman to whom he might make a more definite proposition, and receive a definite reply. I expressed my regret that he had not considered my note as sufficient for the time being; that he was himself at Hillsborough, and must perceive the force of the circumstances alluded to by me, and, in my view, should at least have waited *a reasonable time*, until I reopened the correspondence. Mr. Peyton deemed that inadmissible, and went into some details as to the punctilio regulating these matters. I could only repeat my regret, and informed him that a friend would wait on him next day. Captain Guion then inquired if he would be at liberty to make a communication to the same gentleman, the nature of which he did not suggest; and he was answered in the affirmative.

In the evening I had a consultation with my friends, and they all concurred in ~~the opinion~~ of my advisers at Jackson, and recommended me to send a peremptory refusal, and on the same grounds recited above, and for still more imperative reasons growing out of documents I laid before them. The friend who waited on Mr. Peyton brought me from him the following note:

CONCORDIA, LOUISIANA, *November, 1843.*

SIR: An article, purporting to be editorial, appeared in the Vicksburg Sentinel and Expositor of the 10th instant, in which gross imputations are cast upon my character. Having avowed yourself the author of the said article,* I demand of you honorable satisfaction. I refer you to the Hon. Balie Peyton, as my friend in the matter.

I am, with due respect,

JOHN B. FORESTER.

HON. J. F. H. CLAIBORNE.

I returned the following answer:

NOVEMBER 29, 1843.

SIR: Acknowledging myself personally responsible for any injury I inflict that cannot otherwise be atoned for, I decline accepting the invitation given by you in behalf of your friend, Colonel Forester, because I must first vindicate my official character, and repel the infamous calumnies heaped upon me at the very moment you made your call at Hillsborough, and immediately subsequent thereto, by his friend and partner in the Choctaw speculation, and by others concerned with him. Those charges, now affecting my reputation, and, in a certain contingency, my memory, were made by one who was privy to your call, who knew the design of your visit to Hillsborough, who accompanied you thither, and who well knew the embarrassing position in which such a course would place me, of fighting in mortal combat one partner, with the threat of impeachment, made by the other partner, hanging over me. In either event, I was to be the loser. My life and reputation both at stake; if I lost the one, the other would be

* This is a mistake, I never so avowed myself.

stained with charges made, but not repelled. Such a course is entirely inconsistent with the *fairness* and *equality* which, it is understood, should exist in these matters. Those charges, and others, made by the copartners of your friend, in consequence of the course my sense of duty to the country compelled me to pursue in reference to the Choctaw speculation, have created responsibilities greater than any arising out of the responsibility I may owe to your friend. I have a public duty to discharge, of a high and grave character; in the course of that duty I have felt compelled to charge fraud upon your friend, who is largely concerned in claims I am appointed to investigate; that investigation has been prevented and broken up by the partner of your friend, accompanied with threats against my official character, uttered in the most vindictive spirit. Under *such* circumstances, I do not feel bound, as I otherwise might, to accept the challenge of Colonel Forester. And *he* himself, and his partner in a speculation I am competent to expose, *have interposed the chief obstacle to that acceptance themselves*. They themselves have released me from a responsibility that, under other circumstances, according to my note in the "Sentinel," I should have been prompt to shoulder, though contrary to the advice of every friend whom I have consulted. I regret, sir, that I am thus compelled to refuse any call made through you.

Very respectfully, &c.

JOHN F. H. CLAIBORNE.

HON. BALIE PEYTON.

On the same day I received a demand from another source, to which this was my answer:

NATCHEZ, November 29, 1843.

SIR: I have this day received your challenge, through your friend, Captain Guion. Whatever I have said and done, in reference to the Choctaw claims, has been said and done in my capacity of counsel for the United States, bound, by the most sacred obligations, to employ every means in my power, legal and moral, to expose any fraud, actual or presumptive, practised or in contemplation, upon the Government, the Indians, or the people of Mississippi. In discharging these high duties, I know no man, and acknowledge personal responsibility to no man or set of men. In the article in the "Sentinel," to which you take exceptions, I charge that the board of commissioners, of which I am a member, was deceived into favorable judgments upon some of the Choctaw claims, on the point of contracts, by perjured witnesses. I repeated the charge in your face at Hillsborough, and would have established it then before the board, if you and your coadjutors had not broken up the investigation, by alleging that I had prejudged the claims by the publication in the "Sentinel," and was therefore not competent to act, when you well knew I had merely called the attention of the people (who are deeply interested in the issue) to the fraud. The *single question* of fraud, and not the general merits of the claims, was to be inquired into. I say, I reaffirm the charge; and, so help me God, I mean to prove it, unless I am ambushed, or slain in the street, or removed from office by the intrigues and power of a combination extending in every direction, and whose displeasure I have dared to incur.

But, sir, *you* are the last man who should except to *my* course. You are deeply interested, report says to the amount of one or two hundred

sections. You should therefore court investigation, and not stifle it, by attempting to kill off or remove the individual who charges fraud. I have taken, and still do take, a broad and equitable view of these claims. I feel deeply for the impoverished and plundered Choctaw. We were born on the same soil, and under the same sky. I would remove him to the west, and shield him from the rapacity of the speculator. I have charged fraud only upon a single point. But you, sir, when a member of the Legislature, in 1836, acting under oath, after the examination of numerous witnesses of distinguished standing, pronounced a *sweeping verdict* against these claims, and charged fraud, and perjury, and profligacy, upon all concerned; and upon the strength of those charges, *supported by the influence of your name*, I refused to sustain them in Congress.

I have never adverted upon you in reference to these claims, having, until very recently, regarded you not as a speculator, but only as a lawyer, employed to prosecute them for speculators. But, whether you choose to be regarded as attorney or speculator, I deny the slightest accountability to you, or any one else, for any step I may choose to take to protect the public interest in the legitimate discharge of my duties. And, in resisting a combination so formidable, I feel perfectly justifiable in invoking to my aid, and to the aid of the country, the moral influence of the *press*, so far as the power and the threats of your associates have left the press free to act. A thousand frowns, and a thousand challenges, will not deter me from my duty, if I am permitted to discharge it. My blood will not acquit the parties implicated of the charge, nor wash out the suspicions that rest upon their transactions. Investigation, deep, broad, searching, and uninterrupted, can alone settle the point. Bullying and dragooning, and even assassination, will not do it.

As for your note, it is so rude and offensive, so much out of the tone adopted by gentlemen in applications of this nature, I herewith return it.

JOHN F. H. CLAIBORNE,
United States Commissioner.

S. S. PRENTISS, Esq.

It is impossible for me to predict how many more of these agreeable invitations to "coffee and pistols for two" I am to receive; but I am bound to believe that some of the parties concerned never intended there should be a formal meeting between Colonel Forester and myself, though they designed he should have all the glory of sending a challenge to a man *placed by their own act* in a position to forbid his acceptance. If they intended we should fight on fair and equal terms, why threaten me with *impeachment* at the moment of sending the challenge? And, if they design to impeach, why force me to *fight*, or distract my attention with challenges, until I had made preparations for defence? They have every advantage. They are a band of men associated for a gigantic speculation, with capitalists, lawyers, prompt and willing witnesses, and even their regular bullies, to back them. I am an officer of Government, opposing their schemes, exposed to their malice, all I say or do liable to be perverted, and my errors magnified into crimes. Surely, where there is so much disparity, the party having the advantage should resort to no unfair means to quash a scrutiny or put down an adversary.

I leave this matter in the hands of the country, for it was in its service I incurred the hostility of this band of speculators. In the early stages of

the commission, I was on intimate terms with some, on amicable terms with all of them, and was praised and applauded by them for the liberality and fairness of my course. This is notorious. But no sooner did the course of events, the communications from the department and from other quarters, satisfy me that our action had been too precipitate, and that it was my duty to atone for my error by advising a suspension of the scrip, than the whole pack opened in full cry upon me, and determined to frighten me out of office. If I had permitted the bandage to remain upon my eyes, and the plugs in my ears, or consulted my personal interests, my career would have been both peaceful and profitable. So much for these matters. As a public officer, I have my defence to make, whenever I am formally attacked. I trust in God it will be satisfactory; and my friends may be assured, great as are the odds of many against one, I will not shrink from any ordeal through which it may be my lot to pass.

JOHN F. H. CLAIBORNE.

NATCHEZ, *November 30, 1843.*

Endorsement.

Respectfully referred to the Secretary of War, December 16, 1843.

T. HARTLEY CRAWFORD.

Vv.

NATCHEZ, *December 1, 1843.*

SIR: I this day transmit two documents to the Commissioner of Indian Affairs, which I beg you to do me the favor to read.

They will show you the state of things existing here, and the necessity of making some alteration in the law adjusting these claims.

No board of commissioners can ever proceed with honor, or elicit the truth in these claims, if speculators are allowed to appear, with their lawyers, and interrupt and insult the board, or any member of it. If they choose to make arguments, let those arguments be filed, in writing, or made before the department, but they should be prohibited from appearing otherwise. I was recently, on two occasions, grossly insulted by an attorney, himself a speculator, and my only alternative was to bear it in silence, and thus preserve the dignity of my office, or to retire from the court room.

These men are determined to get rid of me, as they know I am capable of exposing their frauds.

My advice, sir, is, that the commission should be suspended; and, if you think fit to order me to Washington, I will lay before you information it is highly important your department should have.

The board, I understand, adjourned to meet again on the fourth Monday in December—the place unknown to me. I was not consulted as to the adjournment, nor as to any of the subsequent arrangements, though present in my place. It seemed to be taken for granted, in consequence of the opposition of the speculators, that I was no longer a member of the board.

As I have been thus unceremoniously ruled out, I shall not rejoin the

board until I hear your pleasure in the matter, and that of the President of the United States, before whom I beg you to lay this letter.

Unless I receive some intimation from the department to the contrary, I intend, during the present session, to submit all my official correspondence and papers, with a memorial setting forth the condition of things, to Congress.

Any communication which you choose to favor me with, please address to this place.

I have the honor to be, most respectfully, your obedient servant,
JOHN F. H. CLAIBORNE,
United States Commissioner.

HON. J. M. PORTER,
Secretary of War.

Ww.

LOUISVILLE, MISSISSIPPI, *December 4, 1843.*

SIR: We communicate to you copies of the separate opinions of Commissioners Claiborne and Graves, filed the 25th of February last, on several applications made by Messrs. Poindexter and Kirksey, who had filed a protest against the Choctaw claims.

We have the honor to be, very respectfully, your obedient servants,
RALPH GRAVES.
WILLIAM TYLER.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

Opinion of the commissioners on the application filed by Chapman Levy, Esq., in behalf of Messrs. Kirksey and Poindexter, delivered and filed 25th February, 1843.

The commissioners have considered the application made by James Poindexter and E. B. W. Kirksey, through their counsel, Chapman Levy, Esq., to be furnished with the names of all Indian claimants whose cases have been investigated by the commissioners, together with a copy of all the evidence adduced in support of each case. This application is said to be grounded on a suggestion, in the nature of a protest, heretofore filed in this office by the present applicants, alleging that many of these claims, brought and to be brought before this court for investigation, are fraudulent, and ought not to be allowed; and it is urged, by the distinguished counsel representing the applicants, that this application should be granted, to enable them to specify the particular cases and acts of a fraudulent character that may exist. We have, by the acts of Congress from which we derive our authority, been constituted a court of record, with all the powers necessary to compel the attendance of witnesses whose testimony may be necessary in the investigation of any case presented before us; and we consider it our duty not only to hear the testimony in favor of the claims of the Indians, but also to hear any testimony which may be adduced,

tending to prove any claims on application false and fraudulent, whenever a proper and sufficient showing is made to induce us to believe that false, fraudulent, and unfounded claims have been or are about to be set up for allowance. We consider ourselves, in relation to these claims, the legitimate guardians of the Government, and feel it to be a part of our duty to protect it against the perpetration of fraud upon its rights. Into our hands has been intrusted a full commission of these important interests of the United States, as is evident not only from the plenary powers with which we are invested, but from the fact that Congress, in maturing the act under which this commission is constituted, unanimously agreed to dispense with the services of the district attorney, who had been specially directed to represent the Government when the former commissioners were in session; and this commission, without exposing itself to the imputation of arrogance, and with a proper confidence in its own integrity and means of information, should feel that it is fully competent to protect the Government against the wholesale and sweeping frauds which, it is alleged, are about to be committed under the cover of the Choctaw claims. At the same time, they are willing, nay, anxious, to subject every claim to the severest scrutiny. Acting as agents of Government, they are determined to throw open the door of investigation as widely as practicable. They invite the co-operation of all good citizens, in the suggestion or discovery of existing or contemplated frauds. They have endeavored to give the utmost publicity to their proceedings by handbills, and by advertisements in every paper in the State. Their office, their records, and their course of procedure, are open to the inspection of any one who thinks fit to attend. They have postponed final action on cases where sufficient testimony has been collected to enable them to report to the supervising power, purposely that opportunity might be afforded for the production of antagonistical testimony, and they have all along been determined to give as wide a latitude to the course of investigation as may be warranted by the rights of the parties, and the long and universally recognised rules of proceedings in courts of justice; and the commissioners here feel bound to state that the Choctaws and their attorneys have attempted to interpose no obstacle in the way of these determinations. On the contrary, in their petitions now on file in this office, they have challenged scrutiny, and invited the commission to adjust all the preliminaries for a full and thorough investigation.

The commissioners will grant not only to the applicants in the present instance, but to every one desiring it, full and free inspection of the records, and of all the documents on file, having any connexion with the claims, with the privilege of transcribing any portion thereof deemed material; but they cannot so far suspend or embarrass their proceedings as to undertake to furnish a full transcript of the records of this court.

If they granted it in this instance to the applicants, they might be called on to-morrow, and the day [after,] and so on, till the close of the year, by other persons equally entitled, until the two years to which this convention is limited should have expired, without any substantial progress having been made in the important business which the commission is expected to conclude. The commissioners have been enjoined by the department to use all practicable *despatch* in the adjustment of their claims—claims the very magnitude of which demands they should be cautiously but speedily advanced. This is alike demanded by the views and expectations of the Government, and by the great and vital interests of the State of Mississippi;

for, until they be settled, a large portion of the titles to the real estate of the country must be held in abeyance ; doubt and uncertainty will hang over all the interior counties, retarding emigration, and diminishing the value of lands ; obstacles be interposed to that most material of all the elements of social prosperity—the free transfer and disposition of property—and a large number of our citizens be harassed by vexatious and expensive litigation. The whole scope and tenor of the law under which this board was organized was, to protect the bona fide purchaser of the public domain by pre-emption, and otherwise to establish, as promptly as may be, the claims of such of the Choctaws as shall be found to be just, to relieve the State of Mississippi of a population that contributes so little to the common wealth, and to do that justice which, by solemn treaty stipulations made twelve years ago, this powerful nation engaged to do to an unlettered and defenceless people—justice which they now come forward and pray to be performed, and which the commissioners believe it is the pride of their Government to render, even to the most humble of its citizens.

The commissioners repeat, that they will permit, to any one desiring it, full and free inspection of their records and such evidence as has been or may be taken before them. They will hear any respectful suggestions of fraud about to be attempted, or of fraud already practised, in the established rule of any claim, no matter by whom made ; but such suggestion must conform to the rules of proceeding recognised in all courts where frauds are the subject of investigation. It is an established rule of chancery proceeding, to which investigation of the character before us closely approximates, that allegations of fraud *must be specific*. This is a wise and salutary rule, intended to give the maligned party an opportunity to rebut the charge, and defend himself against the consequences. In applying this rule to suggestions made, or to be made, of frauds against the claims presented, or to be presented to us for investigation, we shall require, before or during a *special* examination, that all charges shall be *specified*, in relation to the character of the fraud and the *particular* case in which such fraud has been or may be about to be practised ; and suggestions must be verified by the affidavit of some credible witness. If we were to depart from this rule, this investigation would be protracted to an indefinite period. We might be called on every day to commence a new investigation of sweeping allegations of fraud, to be supported by a host of witnesses, subpoenaed at the expense of the Government, from every quarter of the Union. Applications for delay might be constantly filed, so as to frustrate the object of the commission entirely. The parties whose claims might be thus indiscriminately attacked would not be advised of the nature of the objections until after all the details had been disclosed ; and then they, in turn, would be entitled to demand time to collect and produce rebutting testimony. Every individual in the community prejudiced against the Choctaws or against the claims, whether from vagrant rumor or from interest, who conceived it his duty to protect the Government, or maliciously to defeat the rights of others, might file his general suggestions of fraud ; and, the precedent established in the present instance, we should be bound to listen to every such application, and during the term prescribed for our labors, in all probability, not 100 cases would be adjudicated. To adopt a rule, therefore, of this nature, or to acquiesce in the present application, would, in effect, suspend our functions, disappoint the expectations of the department, and, in fact, amount to a denial of jus-

tice to the claimants. We feel bound, therefore, to refuse the application filed by the counsel of Poindexter and Kirksey on the 20th instant; and in this view of the case we are fully sustained by the opinion of the War Department and Office of Indian Affairs, as will be shown by the following extract from a letter from the Commissioner, dated the 8th instant, in reply to our note covering copies of the protest of Poindexter and Kirksey, and the petitioners, in answer thereto, filed by the attorneys to the Choctaws.

The Commissioner says: "In reference to that branch of your suggestions, and inquiring if it would not be proper for the board to require of any person desiring witnesses to be summoned at the expense of the Government, that he shall *make affidavit, setting forth the facts* which he expects to prove by such witnesses, in order to show the materiality of his testimony, the Secretary (of War) and myself are of opinion *that this should be done by all means*, otherwise the Government may be burdened with *heavy expenses* for the summoning and attending of witnesses on behalf of the United States, whose testimony *would be wholly irrelevant*, and those *witnesses themselves incompetent*. To guard more effectually against *such an abuse*, I would suggest the propriety of *requiring the applicants to swear*, further, that the proposed witness or witnesses *are material, and not interested in the issue*. This, it strikes me, would be proper, because you will be probably often called on for subpoenas for witnesses in cases that you *have not reached* or examined at all, or but partially."

Endorsement by the secretary of the board.

"Opinion of Commissioner Claiborne upon the application of Kirksey and Poindexter, delivered 25th February, A. D. 1843, filed 25th February, 1843."

DECEMBER 3, 1843.

I do certify the above to be a true copy of a paper now on file in the office of the Choctaw commissioners, with the above endorsement on the back thereof.

Test:

JOSEPH GRIGSBY,
Secretary pro tem. to the Commissioners.

—
OPINION OF MR. GRAVES.

James Poindexter and E. B. W. Kirksey, Esqs., who have heretofore filed a suggestion charging fraud upon the claimants claiming under the 14th article of the treaty of Dancing Rabbit creek, and protesting against the establishment of said claims, now demand, through their attorney, C. Levy, Esq., and to that effect made a mark in writing—

1st. That they may be furnished with the name of each Indian claimant, and the evidence adduced in support of each claim, as well to those cases which have been presented to the commissioners as to those which may hereafter be presented. They state that the object of their demand is to be informed of the character of *each* claim, and the evidence to support it, that they may, by the introduction of evidence, be enabled to protect the Government against the establishment of fraudulent and unfounded claims.

They allege that they are prepared to prove a large proportion of the claims unfounded and false; and state that it is necessary for them to be furnished with the above information, to enable them to give the proper application to the evidence that can be adduced.

2d. Their second application is in substance the same as the first, with this addition; they request the investigation to be suspended until the evidence they asked for is furnished them, and ask that the attendance of witnesses may be enforced.

3d. They in their third application state, if their other applications fail, they *require* the right, by their own clerk, to take a copy of the cases already investigated, and to be investigated, and the evidence adduced, in order that they may be enabled to give the proper direction to the evidence that they are in possession of to prove that a large mass of the claims presented under the 14th article of the treaty of Dancing Rabbit creek are fraudulent and unfounded.

The chief difficulty in granting the first application (and the second being in substance the same) is the almost impossibility of the secretary of the board to perform the labors which would thus be required of him. If these gentlemen can make this demand of the commissioners of right, then any citizen or citizens of the State or United States can make a similar demand, and thus the labors of the secretary, nay, of a dozen secretaries, would be endless.

Is there any guarantee that the evidence required, if furnished, would be employed solely for the purpose of collecting opposing testimony? There ought to be some assurance that it would be employed in good faith for this purpose, and no other. These gentlemen are not officers of the Government, and should not be permitted to act informally as such, and require evidence to be furnished them, and witnesses to be summoned, at the expense of the Government, without showing that the evidence will be employed for the sole purpose of collecting opposing testimony to the claims, and without an affidavit showing the facts [they] would prove and the materiality of their testimony.

If the secretary of the board will undertake voluntarily to furnish the copies of the evidence required, I am entirely willing he should do so. I, as a commissioner, cannot require it of him.

As to the third application of the gentlemen, I feel no difficulty in granting it on my part, and do so cheerfully. The proceedings of the board of commissioners are public, and any citizen can attend who will, and take notes of its proceedings and of the evidence furnished. I am willing to grant to these gentlemen, and any others, the privilege of taking copies of the evidence already filed, or to be filed, in order to enable them to procure evidence in opposition to any claim which may come before the commissioners, and will afford them every facility which can reasonably be given or expected.

It is the duty of the commissioners to ferret out fraud, if they suspect its existence in any case which may come before them. They can summon witnesses, whom they may think can give important [information] in behalf of the Government of the United States, without waiting to be required to do so by any person; and it is their solemn duty to do so. They are therefore not only the judges between the claimants who come before them and their Government, but are especially the counsel and attorneys of the Government. They, however, earnestly desire the co-operation of

these gentlemen, and all others, in detecting and exposing all frauds which have been committed, or attempted to be committed, upon the Government of the United States by any Indian claimant or his agent or attorney, in any cases which have been or may come before them.

These gentlemen request a suspension of final action of this board in the cases before them until they can have an opportunity to give proper direction to the evidence in their possession, and request that the attendance of witnesses may be enforced.

They have had already a month or more to prepare their evidence, and have been summoned to attend before the commissioners, to testify in behalf of the United States, and to produce all the evidence they may have in their possession. They both failed to attend before the board. It is due to Mr. Poindexter to say, that, in a letter addressed to the commissioners, he states that he is prevented by indisposition from obeying the summons of the commissioners.

I am willing to give some further time, and am clearly of opinion that the attendance of Messrs. Poindexter and Kirksey at least should be required, and they be made to tell what they know in opposition to any of the claims under the 14th and 19th articles of the treaty, and to exhibit all the evidence which they have in their possession to enable the *commissioners to give a proper direction* to the evidence, and to judge of the propriety of appointing some agent to collect evidence in behalf of the Government, in pursuance of the power given them in section 3 of the act of 1838.

In relation to the question of interest, named by R. H. Grant, in his deposition, as a reason why he could not testify, it is my opinion that he should be required to testify further. He having an interest in some of the claims is no reason why he should not testify in relation to cases in which he has no interest, although they may depend upon similar evidence with those in which he has an interest. He has acquired a voluntary interest in this matter; and this objection ought not to come from him. It is an every-day practice in courts of chancery for persons to be called upon to answer, under oath, as to their own fraudulent practices. It is therefore no just ground of objection to his testifying adversely in relation to any claim which may come before this board.*

But, as he verbally requested the commissioners to allow him further time, to enable him to arrange his testimony, and to ascertain the cases in which he had an interest, and then to separate them from the balance, I am willing to grant him and others further delay, consistent with the interest of all parties and the proper despatch of business.

RALPH GRAVES.

FEBRUARY 25, 1843.

The above is a true copy from the original on file in the office of the commissioners, and marked on the back thereof by the secretary in these words: "Opinion of Commissioner Graves upon the application of Kirksey and Poindexter; delivered 25th February, 1843; filed 25th February, 1843."

Test:

JOSEPH GRIGSBY,

Secretary pro tem.

DECEMBER 2, 1843.

* Commissioner Claiborne, on the — of May, denied that an agent or party could not be compelled or required to testify in cases in which he had an interest. Mr. Graves dissented, and said he must testify in all cases.

Endorsement.

DECEMBER 16, 1843.—Respectfully referred to the Secretary of War.
T. HARTLEY CRAWFORD.

Xx.

LOUISVILLE, MISSISSIPPI, *December 4, 1843.*

SIR: We enclose you a copy of a letter of the 16th June, from Mr. McRae, addressed to the board of Choctaw commissioners, and the reply of the commissioners thereto. The letter of Mr. McRae will show when he commenced subsisting the Indians, and the reply of the commissioners the number probably [subsisted.]

We also enclose a copy of a letter of Mr. McRae, the emigrating agent, addressed to the commissioners on 17th July, and the reply thereto of the commissioners.

We have the honor to be, very respectfully, your obedient servants,
RALPH GRAVES.
WILLIAM TYLER.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

OLD YAZOO VILLAGE, *June 16, 1843.*

GENTLEMEN: My instructions from the department require me to furnish provisions "for subsistence of Choctaw claimants, and their Indian witnesses, during their attendance at the sitting of the commissioners appointed under the act to provide for the satisfaction of claims arising under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit creek." The commencement of the investigation of these claims at this place on the 8th instant rendered it necessary for me to enroll such as are present for that purpose, and to place them on the subsistence list. I accordingly did so, and placed on that list, on the succeeding day, at their earnest solicitation, twenty-seven heads of families, who, as they represented, and I doubt not truly, were in a starving condition, embracing in the aggregate one hundred and twenty-four persons. The number has continued to increase, from day to day, by new arrivals here, until it now amounts to thirty-seven heads of families, embracing, in the aggregate, two hundred and fifty-two persons; and others are here to enroll their names, who will necessarily have to be provided for in the rations of to-day.

The entire appropriation for subsistence is limited to the sum of \$15,000, and my instructions enjoin upon me the most rigid economy in its proper expenditure. Besides, the consideration of making this sum hold out for the entire subsistence is enforced upon me as the discharge of a public duty. To enable me to effect this important object, I have respectfully to request that your board will pass some order fixing upon the number of heads of families supposed necessary to be present in the progress of the investigation of their claims, or make such other arrangements upon this subject as your discretion may suggest, and that I may be advised of the same, and furnished with a list from your office, from time to time, of the names and number of claimants you may, in your judgment, deem necessary to be present; and also of the names and number of their Indian wit-

nesses. Without some concert of arrangement on this subject between the commissioners and the agent, it will be difficult for me to pursue this branch of my business with economy, and, at the same time, to ensure with certainty the detention here of the proper number of claimants, and the proper witnesses themselves to be in attendance upon the commissioners, as the investigation of the claims progresses.

I shall certainly be compelled myself to arrest the supplies to so great a number of the claimants, at one time, as, from present indications, I have evidence to believe, will present themselves for subsistence. I am disposed to extend every liberality, in the discharge of my business, towards these unhappy people, which is consistent with the benevolent object of the appropriation; in addition to this, my sympathy for the distresses of weak and oppressed humanity would lead me to bestow bounties where I have neither the means nor the power to confer them; but my instructions and my duty are paramount to all obligations to the performance of which my feelings *would* dispose me. They must be strictly pursued, and they enjoin upon me the necessity and propriety of this communication.

Very respectfully, your obedient servant,

JOHN J. McRAE,

Em'g and Sub'g Agent for removal of Choctaws now east.

Hon. JOHN F. H. CLAIBORNE,

RALPH GRAVES,

} *Choctaw Commissioners.*

A copy. Test:

JOSEPH GRIGSBY,

Secretary pro tempore.

—
BOARD OF CHOCTAW COMMISSIONERS,

June 17, 1843.

SIR: In reply to your letter of the 17th instant, we give it as our opinion that forty families per week are as many as you should subsist, and this number should include the claimants and their witnesses to be examined by the board. We shall probably average five cases per day; but the number suggested will give you sufficient latitude to include the witnesses that may be required. The parties can furnish you with a list of the claimants, on the first day of every week, to be brought before the board; and as fast as their cases are disposed of, they can be struck from the subsistence roll. A similar list of witnesses can be furnished you at the same time.

Our secretary will be requested to hand you, every evening, a list of the claimants and their witnesses that have appeared before the board, and whose attendance we may not require thereafter. These suggestions, we think, will enable you to make the appropriation go as far as possible, and to apply it, as it was evidently intended solely to be applied, to the subsistence of the Indians only, when they are required to be actually in attendance on the board.

Very respectfully, your most obedient servants,

RALPH GRAVES.

JOHN F. H. CLAIBORNE.

J. J. McRAE, Esq.,

Em'g and Sub'g Agent for the Choctaws east of the Mississippi.

A true copy from letter book.

JOSEPH GRIGSBY,

Secretary pro tempore to Commissioners.

OLD YAZOO VILLAGE, *July 17, 1843.*

GENTLEMEN: Under my instructions of the 12th ultimo, advising me of the final action of the Secretary of War and President of the United States on the report of Messrs. Murray and Vroom, former Choctaw commissioners, and accompanied by lists showing the different dispositions of the cases therein investigated, with certificates of scrip for those Indians to whom it has been awarded, I propose to hold a council, on the 31st instant, with the Cobb Indians, in the vicinity of Hopahka, on the subject of the final settlement of their interests by the Government, and the consequent emigration of those whose cases are entirely disposed of. The tenor of my whole instructions contemplates the co-operation of the commissioners with the removing agent in the business of emigration, and it would afford me much pleasure to have my movements seconded by your presence on that occasion.

My instructions of the 11th of April last suggested to me the propriety of securing the services of your interpreter on all important occasions which may seem to me to require the aid of his intelligence and skill. The subject of the emigration of the Indians to their western homes, as their interests are settled here, being one of paramount consideration with the Government, and the efficient prosecution of measures necessary to effect it being enforced upon me by the highest obligations of duty and my instructions, as I have to request the aid of the interpreter to the commissioners to explain fully, and without doubt, as communicated to me, the intention and desire of the Government towards those unfortunate and oppressed people, for whom we hope that our united co-operation, under the kindly influences directed to them by the present administration, will effect brighter hopes and better interests.

Hoping to be provided with the aid of your interpreter, and to be sustained by your presence at the council, in endeavoring to promote this cherished design of the Government, I have the honor to be, very respectfully, your obedient servant,

JOHN J. McRAE,

Em'g and Sub'g Agent for Choctaws now east.

MESSRS. JOHN F. H. CLAIBORNE, }
RALPH GRAVES, } *Choctaw Commissioners.*

A copy. Test:

JOSEPH GRIGSBY,

Secretary pro tem.

YAZOO OLD VILLAGE, *July 20, 1843.*

SIR: We have received your communication of the 17th instant, informing us that, in pursuance of instructions from the department of Indian Affairs of the 12th ultimo, you propose to hold a council on the 31st instant with "the Cobb Indians, in the vicinity of Hopahka, on the subject of the final settlement of their interests by the Government, and the consequent emigration of those whose cases are entirely disposed of. The tenor of my whole instructions contemplates the co-operation of the commissioners with the removing agent, in the business of emigration, and it would afford me much pleasure to have my movements seconded by your presence on that occasion."

The commissioners presume that the co-operation expected from them by the department is an efficient one—that of disposing of the cases which may come before them with that despatch which is consistent with justice to all the parties concerned, and to aid you, when they can conveniently, with the services of their interpreter. All this the commissioners will most cheerfully do, and anxiously desire. We would remark, that Hopahka is upwards of forty miles from this place, and that if our interpreter should leave us, the business before the board would unnecessarily be stopped for at least five days, and perhaps for one week, during which time the Indians now here would have to be fed by the Government. We understand you intend to hold a council, at some subsequent period, with the Six Towns Indians. We presume there will be the same necessity for the use of the interpreter to the board that there is on the occasion alluded to in your communication; there will necessarily be the same loss of time, if not more:

We would therefore respectfully suggest, that as you have supplies already at this place, and it being nearly a middle ground between the Indians east of Pearl river and the Six Towns, that you hold your council here, and let one council answer for all; at which time you can have the use of the interpreter to the commissioners, and when the commissioners will cheerfully render any aid which you may require of them.

We have the honor to be, very respectfully, your obedient servants,
 JOHN F. H. CLAIBORNE.
 RALPH GRAVES.

JOHN J. McRAE, Esq.

A copy of letter on letter book.

JOSEPH GRIGSBY,
Secretary pro tem. to Commissioners.
Endorsement.

Respectfully referred to the Secretary of War, December 16, 1843.
 T. HARTLEY CRAWFORD.

Yy.

LOUISVILLE, MISSISSIPPI, December 4, 1843.

SIR: We enclose copies of two letters of the Hon. Thomas J. Word, agent to collect testimony on behalf of the United States, dated 7th August last, addressed to the board of Choctaw commissioners, and the replies of the commissioners thereto.

We respectfully request a copy of the contract furnished to Commissioners Murray and Vroom, and referred to in the letter of Mr. Word. We would also ask to be furnished with a copy of the law of 1842, creating the board of commissioners, as the copy heretofore furnished has been lost or mislaid.

We have the honor to be, very respectfully, your obedient servants,
 RALPH GRAVES.
 WILLIAM TYLER.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

YAZOO OLD VILLAGE, August 7, 1843.

Honorable Board of Commissioners:

GENTLEMEN: Permit me to inquire whether it is the intention of your board to furnish me with instructions for the government of my action as agent to collect testimony on the part of the United States, in relation to the claims of the Choctaws now under investigation before you, or whether I am to be governed by my own construction of the acts of Congress and the duties of the office.

Your obedient servant,

T. J. WORD.

HON. J. F. H. CLAIBORNE, }
RALPH GRAVES, } Commissioners.

REPLY.

BOARD OF CHOCTAW COMMISSIONERS,

August 7, 1843.

SIR: We have received your note of this date, inquiring whether it is the intention of the board to furnish you with instructions for the government of your action as agent to collect testimony on the part of the United States, in relation to the claims of the Choctaws now under investigation before the board, or whether you are to be governed by your own construction of the acts of Congress and the duties of the office. In reply, we say, doubting the authority of the commissioners to control your action by any instructions, you being, like themselves, a sworn officer of the Government, and as capable, if not more so, to decide upon the legality and competency of evidence, that we do not design to give you any instructions. All the instructions in relation to the laws under which we are acting, and to the duties of the commissioners and yourself, are subject to your inspection, and will be furnished to you by the secretary whenever you may call for them. The rule which has been adopted by the board, at the suggestion of the department, requiring an affidavit in each case, whenever an application is made for the summoning of witnesses at the expense of the Government, to show what facts such witnesses are expected to prove, to show the materiality of his testimony, we consider to be applicable only to persons (calling for such a witness) who are not officers of the Government, and not applicable to the officers of the Government, and especially to those whose specific duty it is to hunt up evidence in behalf of the Government.

R. GRAVES,

J. F. H. CLAIBORNE,

United States Commissioners.

HON. THOMAS J. WORD.

The above and foregoing is a true copy of a letter on file from T. J. Word, and the answer from the board, found on letter book.

JOSEPH GRIGSBY,

Secretary pro tem.

YAZOO OLD TOWN, *August 7, A. D. 1843.*

GENTLEMEN: On examining the report of Messrs. Murray and Vroom, made 31st July, 1838, to the President, I find, at page 18 of that report, the following statement, viz: The board also file herewith a document, marked A, furnished and filed by Charles Fisher, Esq., of North Carolina, as a copy of a contract entered into with various Choctaw claimants, showing the terms on which himself and others were prosecuting their claims. This he stated to be, in substance, the same as all the other contracts entered into by himself and others, composing a company, with the Indians, for the purpose expressed in them.

The object of this communication is to ascertain whether the copy of contracts mentioned in the above extract has been furnished the present board by the department; if not, whether a copy or the contracts themselves have been furnished your board by Colonel Fisher, or any member of the company referred to in the above extract.

Your obedient servant,

T. J. WORD, *Agent, &c.*

Messrs. J. F. H. CLAIBORNE, }
RALPH GRAVES, } *Commissioners.*

A true copy.

JOSEPH GRIGSBY,
Secretary pro tem. to Commissioners.

YAZOO OLD VILLAGE,

Neshoba County, Mississippi, August 7, 1843.

SIR: We have this moment received your communication of this date, addressed to us, referring to the report of Messrs. Vroom and Murray, made the 21st July, 1838, to page 18 of the report, and inquiring if this board has been furnished with a copy of contracts mentioned in said report as having been furnished by Colonel Fisher, of North Carolina, to said commissioners, by the department; and if not, whether a copy or the contracts themselves have been furnished your (our) board by Colonel Fisher, or any member of the company referred to in the extract which you have made from that report. In reply to your note, we state that no copy of the contracts alluded to by you has been furnished this board by the department, nor have any copies or the contracts themselves been furnished this board by Colonel Fisher, or by any member of the company referred to in the report of Messrs. Murray and Vroom.

Very respectfully,

JOHN F. H. CLAIBORNE.
RALPH GRAVES.

HON. THOMAS J. WORD.

A copy from the letter book of the board of Choctaw commissioners.
Test: JOSEPH GRIGSBY,
Secretary pro tem.

Endorsement by the Commissioner of Indian Affairs.

Respectfully referred to the Secretary of War, December 16, 1843.
T. HARTLEY CRAWFORD.

Zz.

LOUISVILLE, MISSISSIPPI, December 4, 1843.

SIR : We communicate for your consideration the opinion of the superior court of chancery of this State, in the case of *Pickens vs. Harper et. al.*, involving the construction of the 14th article of the treaty of Dancing Rabbit creek. For other reasons in support of the decision of the chancellor, we respectfully refer you to the suggestions contained in our letter to you of the 15th of April last.

We have the honor to be, very respectfully, your obedient servants,
RALPH GRAVES.
WILLIAM TYLER.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

—
SUPERIOR COURT OF CHANCERY OF THE STATE OF MISSISSIPPI.

James Pickens vs. Logan Harper et al.

No. 2277.

The complainant states, in substance, that at the time of the ratification of the Dancing Rabbit creek treaty, made between the United States and the Choctaw tribe of Indians, he was at the head of a Choctaw family, having nine children, three over and six under the age of ten years; and that he was, by the terms of the 14th article of said treaty, entitled to contiguous sections of land out of the territory which formed the subject of said treaty, to wit: one section for himself and a half section for each child over ten years, and a quarter section for each one under that age. That at the time of the treaty he was residing in section 6, township 11, range 8 east; and that he applied to have that section, as also section 7 of same township, and sections 1 and 12 of township 11, range 7 east, reserved from public sale. That he fully complied with all the requirements of said 14th article of the treaty necessary to perfect his title to said sections of land. That the defendants have since acquired from the Government the legal title to different portions of section twelve, of which he prays they may be divested, and his title declared valid. The answers admit the material allegations of the bill, and simply refer to the court the general question whether the complainants are entitled to recover, without presenting or urging any particular ground of defence. This devolves upon me the necessity of looking generally into the nature of the complainant's claim; for the rule that a party must recover upon the strength of his own title, and not upon the weakness of his adversary's, holds equally in equity as at law.

It will be seen that the bill proceeds upon the assumption that the complainant, as the head of a Choctaw family, is not only entitled, in his own right, to the section reserved expressly to him, but also to the reservations in favor of each of his children. This, I conceive, is a misapprehension of the spirit, meaning, and intention of the treaty.

The treaty, after declaring that *such* Choctaw head of a family shall,

upon certain *conditions*, be entitled to a section of land, proceeds thus: "in like manner shall be entitled to half that quantity *for* each unmarried child which is living with him, over ten years of age, and a quarter section *to* such child as may be under ten years of age, to adjoin the location of the parent." Although this language is somewhat obscure and inartificial, it is clear, beyond doubt, that it was the purpose of the treaty to make substantive and distinct provisions for the children, independent of the father, although their title must be considered as following the conditions annexed to that of the father. The doubt with me is, whether the language referred to vests the technical legal title in the father to the portion reserved for the children, to be held for their use, or whether they take directly a clear unencumbered fee to their portions, independent of the father. I am not advised what construction, in practice, the Government of the United States has placed upon this article, in emanating titles under its provisions: whether the grant is to the father, for the use of the children, or directly to the children themselves.

It is true that no practical exposition of that kind could change any rights which exist by virtue of the treaty; it would show, however, the construction given by one of the parties to it, which I should be inclined to adopt. In the construction of a grant, it is the duty of the court to give effect, if possible, to the intention of the parties. This intention is to be collected from the words and expressions of the grant itself, and, where there is no doubt or obscurity, the construction will be most strong against the grantor, and in favor of the grantee. And, to that end, the court will fill up an ellipsis, and transpose clauses and sentences, so as to make it available. (*Loyd vs. Lay et al.*, Salk., 341; *Rusdale vs. Halfpenny*, 2 P. Wen., 151; *Darrell vs. Gunner*, William Jones, 206; *Hammond vs. Ridgely*, 5 Har. and John. Rep., 345; *Howard vs. Rogers*, 4 idem, 278.) I cannot conceive that there is the slightest pretext for saying that the father is exclusively entitled as well to the reservation in his favor as to that in favor of his children. This would violate every known rule of construction, and thwart the plain intention of the treaty. If it was intended that the extent of the reservation in favor of the father should be measured by the number of his children, we should expect to find either a regular and proportional increase, or a gross number of acres reserved to him, according to the number of his children; but we find a distinct reservation for the father, and then a separate but unequal provision for each child. I think, by filling up an ellipsis, and making a slight transposition, the plain reading of the article is, that there shall be [reserved] to each head of a Choctaw family one section of land, and, in like manner, there shall be reserved half that quantity for each child living with him over the age of ten years, and a quarter section to each child under that age. In the case of *Newman vs. Harris and Plummer*, (5 How. Rep., 564,) where this provision of the treaty was under discussion, the court strongly intimate an opinion against the right of the father beyond a single section. Referring to a charge given by the court below, Chief Justice Sharkey says: "If by this charge the court intended to convey the idea that the title to the whole 1,230 acres of land vested in Foster individually, and no portion of it to his children, or to him in trust for them, the propriety of the charge may be doubted."

If the construction which I place upon the language of the treaty be correct, it will follow that the father is neither vested beneficially nor in trust to any portion of the land reserved on account of the children.

Although there is something, from the awkward structure of the sentence, which gives color to the idea that the father is to take in trust for the children, yet the spirit and scope of the whole article on that subject is, I think, opposed to that construction.

I can see no solid reason in its favor. The treaty itself indicates no special or general purpose in favor of separating the legal from the equitable title as to the reservation in favor of the children; and, as it expresses none, I feel bound to presume that none such existed, and that it was not the intention to create such a distinction. The complainant shows that section six is the one to which he is individually entitled under the treaty, by reason of his residence thereon; and as he shows no title to section twelve, which is here in controversy, his bill must, according to the view I have taken of it, be dismissed. But as the defendants have allowed him to progress to a hearing on the merits, without taking the objection upon which the case turns, each party will be directed to pay his costs. Let a decree be prepared accordingly.

I, R. L. Dixon, clerk of the superior court of chancery of the State of Mississippi, do hereby certify that the four foregoing pages contain a true copy of the original opinion delivered by Chancellor Buckner in the suit of James Pickens against Logan Harper and others, lately pending in said court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at Jackson, the 11th day of August, 1843.

A copy. Test :

R. L. DIXON, *Clerk.*

Endorsement by the Commissioner of Indian Affairs.

DECEMBER 16, 1843.—Respectfully referred to the Secretary of War.

T. HARTLEY CRAWFORD.

AA.

NATCHEZ, December 5, 1843.

SIR: If the United States district attorney for this district, R. M. Gaines, Esq., could be ordered on to Washington, he could communicate important information relative to these Choctaw claims, and suggest measures, from his intimate knowledge of facts and the parties engaged, that would save thousands of dollars to the Government.

I have the honor to be, most respectfully, your obedient servant.

JOHN F. H. CLAIBORNE;

U. S. Commissioner.

HON. T. H. CRAWFORD,

Commissioner of Indian Affairs.

Endorsement.

DECEMBER 18, 1843.—Respectfully referred to the Secretary of War.

T. HARTLEY CRAWFORD.

This communication is connected with the papers sent to the President on 16th instant.

T. H. C.

BB.

DALEVILLE, MISSISSIPPI, *December 7, 1843.*

DEAR SIR: I have lived many years among the Choctaw Indians, and speak their language well enough to do ordinary business with them; have an extensive acquaintance with the early settlers among this people in Mississippi and Alabama, and have it in my power to procure much testimony to be laid before the board of Choctaw commissioners in behalf of the United States, and thereby, in some measure, defeat one of the most stupendous frauds ever attempted to be practised on this Government. This fraud is in progress by certain claimants under the 14th article of the treaty of Dancing Rabbit creek. If the Government will appoint me an agent to ferret out testimony of such character, and pay me a fair salary for my time and trouble, I am willing to serve it. I have written to Hon. T. H. Crawford and Hon. R. J. Walker more fully on this subject.

For my capability, business habits, &c., inquiry can be made of Hon. Jacob Thompson, member of House of Representatives from Mississippi, and Hon. W. W. Payne, member of Congress from Alabama.

Very respectfully,

J. B. HANCOCK.

Hon. J. M. PORTER,

*War Department, Washington.**Endorsement.*

DECEMBER 22, 1843.—Respectfully referred to the Secretary of War.
T. H. CRAWFORD.

CC.

NATCHEZ, *December 8, 1843.*

SIR: I have the honor to transmit to you, herewith, a copy of the argument prepared by me to submit to the board of Choctaw commissioners, at Hillsborough, upon the various descriptions and contracts made with the Indians, but which I was prevented from submitting by the determination of a majority of the board to adjourn.

With high respect, your obedient servant,

JOHN F. H. CLAIBORNE,

United States Commissioner.

Hon. T. HARTLEY CRAWFORD,

Commissioner of Indian Affairs.

Considerations on the contracts and assignments made by the speculators with the Choctaw claimants under the 14th article of the treaty of 1830.

In the cases now pending before the commissioners, it is assumed that most of the Indians, before the expiration of five years after the ratifica-

tion of the treaty, made to different white persons assignments, either in whole or in part, of their reservations, or made contracts, the object of which was to convey or assign their claims to those persons, and that since that time similar assignments or contracts have been made.

To operate against such assignments, and protect the Indians, the 9th section of the act of Congress of 1842 was adopted, as follows :

“SEC. 9. *And be it further enacted*, That no claim shall be allowed under the 14th article of said treaty, if the said commissioners shall be satisfied, by such proof as they may prescribe, that said claim had been, previous to the expiration of five years from the ratification of said treaty, assigned, either in whole or in part ; and in case of a partial assignment or agreement for an assignment thereof, the same shall be allowed so far only as the original Indian claimant was, at that date, the *bona fide* proprietor thereof.”

This section, it is contended by the assignees, is void, upon the ground that it cannot operate to destroy the rights of claimants acquired under the treaty; that the contracts attempted to be destroyed were made with persons capable of contracting and of being contracted with and were made in good faith, for an adequate consideration, and without any fraud.

The points arising upon this statement are to be examined. Here it is proper to remark, that the reservations created by the 14th article of the treaty are different from those created by other articles in the same treaty, and by the Cherokee treaties of 1817 and 1819. In the latter cases the reserves acquired in some instances a fee simple, and in others only a possessory right or estate *in presenti*, capable of being asserted in an action of ejectment. Here, however, it will be shown the Indian acquired nothing but a bare prospective possibility of a right, which might be entirely defeated by his failure to perform the conditions prescribed in the 14th article. This distinction must be kept in view throughout, as it is important in these cases.

Without intending to embark in the very dubious and extensive field of controversy as to legislative powers, and their operation on vested rights, I take it to be indisputably true, that if this be a subject upon which Congress has not only a declared but an exclusive right to legislate, the 9th section of the act must stand, no matter what it destroys.

Let us, then, first examine the attitude in which the Indians have always stood towards the Government of this country and its citizens. From the first discovery and settlement of the United States down to the present moment, there has been but one unvarying rule on this subject : that the title to the Indian domain resides in the Government, subject to the Indian right of occupancy ; and that no individual, subject, or citizen of the United States, can acquire title or any shadow of right to such lands, other than through and by consent of the Government. The very highest authority for this is to be found in the decision of the Supreme Court of the United States, (*Johnson vs. McIntosh*, 8 Wheat. Rep., 543 ; Condensed Rep., 565.) The court decided that a “title to lands under grants to private individuals, made by Indian tribes or nations northwest of the river Ohio, in 1773 and 1775, cannot be recognised in the courts of the United States ; that the exclusive right of the British Government to the lands occupied by the Indians has passed to the United States.” In the body of this opinion the court say : “The ultimate absolute title has been considered as acquired by discovery, subject only to the Indian right of occupancy, which title the

discoverers possessed the *exclusive* right of acquiring. The person who purchases lands from the Indians, within their territory, incorporates himself with them, and, as far as respects the property purchased, holds their titles under their protection, and subject to their laws. If they annul the grant, we know of no tribunals that can review and set aside their proceeding." In the course of this opinion it is shown that no grant or title has ever been acquired in the United States, in contravention of this principle. The *policy* of the United States is the same, founded upon our Constitution and laws. By the Constitution, Congress is invested with power "to regulate commerce with the Indian tribes." This power has always been regarded as *exclusive* in the United States, (2 Story's Com., 540;) and, when taken in connexion with the principles laid down in the case of *Johnson vs. McIntosh*, cited above, gives to the General Government full and exclusive control over all matters and things connected with Indian affairs. In pursuance of this authority and principle, Congress, by the 12th section of the act of 1802, to regulate trade, &c., with the Indians, declares, "that no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian or native, or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty or convention, entered into pursuant to the Constitution." (Laws United States, vol. 3, page 463.) And the policy of this early legislation is obvious; for without such a restraint, or the uniform condition annexed to the purchase of a reservation, to wit, the assent of the President of the United States, the ignorant Indian would constantly be exposed to the cupidity of speculators, buying up his territory, or, what is the same thing, his individual reservation, for a grossly inadequate price. This act of 1802 will be found very material, when we come to examine more critically the assignments or contracts made with the claimants.

The dependence of the Indian upon the Federal Government is further illustrated in the case of the Cherokee nation *vs.* the State of Georgia, (5 Peters's Rep., p. 1,) where the Supreme Court of the United States decided that "an Indian tribe was not a foreign nation. The relation of the Indians to the United States is marked by peculiar and cardinal distinctions, which exist no where else. They look to our Government for protection, rely upon its kindness and power, appeal to it for relief, and address the President as their Great Father. They are in a state of pupillage. Their relation to the United States resembles that of a ward to his guardian." For further confirmation of these views of the relation between the Indian and the Government, I refer to numerous opinions of several of the Attorneys General of the United States, "Part 2, Public Laws and Instructions," from which it will likewise appear, that under no circumstances can an Indian reserve, assign, or dispose of his land, without an authority in the treaty, or the consent of the President, obtained according to the regulations in relation to Indian conveyances. (*Ibid*, p. 74.) These regulations are very strict to guard the Indian against fraud, and are based on the same principle laid down by the court in the great Cherokee case, of the relation between guardian and ward. The same relation existed between the Indians and those States that had exclusive control over certain tribes antecedent to the Confederation, as may be seen in the case of *Goodell vs. Jackson*, (20 Johnson's Rep., p. 673.) In that case, if I read correctly, a grant had been made by the State of New York, in fee simple, to an In-

dian, for services rendered in the revolutionary war. The land subsequently descended to the son of the grantee, who sold it by a deed of conveyance in the usual way. Upon this title an action of ejectment was brought, and the court of errors of New York, to which the case had been ultimately referred, decided that the land descended to the Indian heir; yet the conveyance of the heir was void, without the assent of the State. How far this guardianship and supervision may cease upon the Indian becoming a *bona fide* citizen under the treaty, it is not necessary here to inquire. The statute of this State of 1830, conferring on the Indians certain rights of citizenship, by the guarded terms of the second section, waives any assertion of the extent of those rights, and by implication recognises the paramount authority and supervision of the Federal Government. Be this as it may, however, this authority certainly continues as long as he is a member of an Indian tribe. And, by parity of reasoning, the conclusion is inevitable, that so long as any thing under the treaty remains unexecuted and incomplete, or *in fieri*, this supervision and control continue as fully and completely as they existed previous to the treaty; because the Federal Government, being vested exclusively with the treaty-making power, must exclude all other action or authority until the treaty is executed.

From what is here shown, it appears to have been wholly unnecessary for Congress to enact the 9th section of the act of 1842, for the purpose of avoiding these assignments or contracts, because they were all null and void by previous law. Congress seems only to have prescribed it as a rule or guide for the commissioners to be appointed under that act; for it is a well-settled rule of law, that a contract, the subject matter of which is prohibited by law, is utterly null and void. The books are full of cases under this rule; but particular reference may be had to the decision of the high court of errors and appeals of this State against the validity of contracts for the sale of negroes brought into this State for sale, or merchandise, since the establishment of the new constitution.

But as it may be contended that (under the circumstances in which these Indians are placed, their long residence in the State since the expiration of the five years prescribed in the 14th article, and by virtue of the statute of 1830, purporting to confer on them certain rights of citizenship) they have acquired the right and capacity to assign and contract away their claims, it may be necessary to examine the point more minutely. Conceding, for the moment, that some of these claimants have become citizens by virtue of the treaty, still the attitude of the Federal Government remains unchanged; for land they were to get under the treaty, and land or scrip they are to get under the law, and it requires the affirmative power of the Government to give it to them—a power which the Government has reserved to itself, which it has exercised from its first organization, and which it can never surrender without abandoning the protection it owes to the helpless and uneducated Indian. This protection against the superior sagacity of the white man, which the United States had uniformly extended to the Indian, was one of the main considerations of the treaty. The treaty itself, by excluding white men from intruding upon the ceded territory for a limited time, discouraged contracts for the purchase of reservations; and the implication, running throughout that instrument, that all such purchases, to be valid, must have the concurrence of the President, shows that this just and benevolent principle of guardianship was duly understood and appreciated by both parties. Upon this point, I refer to the opinion of the

Attorney General of the United States, dated March 19, 1836, which lays it down, "that the Indian title was extinguished by the treaty, and that patents must issue under the 14th and 19th articles, to divest the title of the United States in the reservations." Moreover, that under the 14th article they can issue to *Indian* residents only; but that under the 19th article they may issue to the assignees. This of itself settles the question of the non-assignability of any claim under the 14th article. The present Chief Justice of the United States, when Attorney General, in an opinion on the Pottawatomie treaty, dated September 20th, 1833, went much further. He held that when a treaty was made with reservations, the *Indian* title as to those reservations was not extinguished; that the reservee could not convey to an *individual*, and that no valid sale or cession of them could be made but to the United States. "In my opinion," said this eminent jurist, "the original Indian title in these reservations was not extinguished on the ratification of the treaty. It ceded, by the first article, a certain tract of country to the United States; and, by the second article, reserved from the cession large quantities of land in favor of certain Indians named. These reservations are excepted out of the grant made by the treaty, and did not, therefore, pass by it—consequently, the title remains as it was before the treaty; that is to say, the lands reserved are still held under the original Indian title. The character of the title to these portions could not be affected by a grant which did not embrace them, and from the operation of which they are in express terms excepted; and as they are still held under the original Indian title, *the Indian occupants cannot convey them to individuals, and no valid cession can be made of their interest but to the United States.*" This opinion is supported by the legislation of Congress upon the Cherokee treaty of 1817 and the Creek treaty of 1814. By those treaties reservations were allowed to Con-a-les-kee, George Stiggins, and others, heads of Indian families, residing on the east side of the Mississippi river, in which they were to have life estates, with remainder in fee simple to their heirs, and with a proviso, that if a head of a family for whom these reservations were made should remove therefrom, the right should revert to the United States. Being some time thereafter desirous of removing west, and at their own charge, in order to avoid this reversion to the United States, Congress, at the session of 1830, upon petition, passed a special act in their favor, with this proviso: "That no conveyance or deed of the said lands, or any part of them, shall be valid or effectual, until every such conveyance or deed shall be submitted to one of the district attorneys for the district of Alabama, for his approbation; and if, after inquiry into the facts and circumstances attending the contracts for the sale of any of the said lands, he shall be satisfied that such contracts are fair, and that the consideration paid or agreed to be paid therefor is adequate, he shall endorse his approbation on each conveyance so approved, and thereafter the same shall be deemed valid and effectual." Many acts of Congress recognising the same principle and the same restrictions may be found. Chief Justice Taney, when Attorney General, held that the approbation of the President was necessary to make valid even the sales of reservations in the supplemental treaty. "Although this power," said he, "is not given in express terms by that instrument, yet the whole treaty must be construed together, as forming but one treaty. And it would seem, from the nature and character of the reserves made in the supplemental agreement, that it was the intention of the contracting

parties to place this on the same footing with the like reservations made before. The reserves in question are not made on the condition of remaining and becoming citizens, but are absolute, and made in favor of persons who may be expected to remove. The power to sell, therefore, although not expressly given to them, must in justice be implied, as the reservations would otherwise be of little value to the parties. And if the power to sell is implied, *the limitation on that power, which requires the approval of the sale by the President, ought to be implied with it, because it was introduced, I presume, for the protection of the Indians, and to prevent them from selling their property for a trifling or inadequate consideration.*"

In the State of Indiana, upon whose policy and jurisprudence, especially in relation to the red man, the lamented HARRISON strongly impressed his stern morality, benevolence, and justice, the courts exercise the same control over Indian reservations that they do over other lands—direct their sales under executions, make decrees of partition, grant letters of administration, and authorize the sale of the reservation by the administrator, to pay debts, &c. The same law of inheritance, of the settlement of intestate estates, of judgments and executions, and of all others for the protection and regulation of real property, are applied to individual property in real estate owned or inherited by Indians, as are enforced against white citizens. *But the practice of the courts in sanctioning the sales of Indian reservations, either by administrators or on executions, has been to approve of the same, and the deed of conveyance thereof, subject to the approval of the President.*

Under the treaty of 1826, with the Miamies, in the famous case of Le Gross, who devised his reservation in consideration of a *bona fide* debt, and whose only heir or known representative, dying soon after, made a similar devise to the same person, who had quiet possession of the premises, President Jackson decided that this devise passed no title to the devisee, and refused to approve it. It was not such a conveyance as the treaty contemplated, and it was held by Mr. Butler, Attorney General, "that the power of an Indian in these cases to convey by will is not only doubtful, but it is very obvious that a disposition by will is liable to greater objection than the ordinary transfer by deed, because it furnishes even greater facilities for fraud and imposition, and for the use of fabricated papers." The course then adopted, of rejecting all transfers by will, as fruitful of fraud, and designed generally to defeat the condition, express or implied, existing in all such treaties, that the President must be a party to any transfer or assignment of the Indian right—a condition arising out of the paramount title of the United States, and the nature of the grant to the Indian—has been ever since the rule of the department.

I am aware that the case of Newman *vs.* Doe, on demise of Harris & Plummer, decided by the high court of errors and appeals of this State, (4 How., 522,) may be held to conflict with the eminent authorities quoted. I might content myself with the closing remark of the court, when speaking to this point, to wit: "In either view, he (the reservee) can have no title without the five years' residence on the lands." It is impossible to see how, if the Indian reservee has no title without this five years' residence, he can have any thing susceptible of assignment or transfer. Although the court has passed no opinion upon the sale or the conveyance from

Foster (the Indian) to Harris & Plummer, yet I think it cannot be doubted such sale and conveyance were null and void.

In examining the 14th article of the treaty, and the questions arising under it, I shall take the rule derived from Vattel and Rutherford, laid down by Judge Chase in *Ware vs. Hitton et al.* (1 Condensed Rep., 1147).

The intention of the framers of the treaty must be collected from a view of the whole instrument, and from the words made use of by them to express their intention, or from probable or rational conjecture. If the words express the meaning of the parties, plainly, distinctly, and perfectly, there ought to be no other means of interpretation. In my view, this 14th article did not intend to vest the Indian with any right that could be the subject of assignment or transfer of any kind. The assignment mentioned in the act of 1842 certainly means any kind of transfer, contract, or act, on the part of the Indian, by which he parts with or gives up his rights or prospects of obtaining his reservation in fee simple. This is put beyond doubt by the concluding clause of the 9th section, viz: "The same shall be allowed so far only as the *original* Indian claimant was, at that date, the *bona fide* proprietor thereof." In order to make a valid grant or assignment, the grantor or assignor must have a present estate or interest in the thing or subject. (Comyn's Dig., title Grant C, Assignment A.) But a bare right or mere possibility cannot be assigned or devised. (*Same.*) So a personal privilege cannot be granted over to another. So an exclusive privilege of running a line of stages, granted by the Legislature, without the words "heirs or assigns," confers only a personal right, which cannot be assigned. If a way be granted to B for life, he cannot grant it to another; so a thing uncertain cannot be granted. A mere hope of succession, such as the heir has from the courtesy of his ancestor, cannot be assigned or granted; so a man cannot grant a thing which he has not, though he afterwards possess it—as if he grant a rent out of land, and afterwards purchase the same land, the grant is void. (Comyn, Grant D; see, also, 8 Johns., 154; 5 Jacobs's Dict.; 4 Kent's Com., 438; 14 Johns. Rep., 194; 4 Kent's Com., 261; Coke Litt., 264 a, and note 212 of Cowen, 18, 21; 1 Cowen, 618, 711; 1 Johns. Chan. Rep., 577; 4 Wend., 305.) These authorities show sufficiently what rights, estate, or interest, can be granted or assigned, and what cannot. I think it can be shown, that whatever interest the Indian had in the piece of land whereon he resided, under a claim of reservation, until he has resided on the same for five years, without abandoning it, as provided by the treaty, it is a bare personal right, not susceptible of transfer or assignment, or of being in any way dealt with but by the General Government. To solve any doubt arising out of this 14th article, we have a right to scan the whole or any part of the treaty. In the first place, then, it will appear by the 3d article "the Choctaw nation of Indians consent and hereby cede to the United States the entire country they own and possess west of the Mississippi river." This, it must be conceded, vests in the United States the absolute fee simple to all their land, divested of any right or claim of occupancy, or any higher or greater estate. This may be regarded as a fundamental article of the treaty, for it is the consideration received by the United States for the grant made to the Choctaws by the 2d article; and, as such, any subsequent indulgence, right, or interest, to the Indian, must be subordinate to or flow from it. It would certainly require a grant, in some shape or other, to carry the fee of any part of the land afterwards to the Indian. There are two other articles in this treaty, besides the 14th,

which provide reservations, to wit : the 15th, in which the words "there is granted a reservation," &c., are used. This vests an estate in fee simple, because the words amount to an estate *in presenti*. In the 19th article, the words used in providing the reservations are less formal; but there is a provision in the fifth section, applicable to them all, which may amount to a grant in fee simple. The several reservations secured under this article may be sold, with the consent of the President of the United States. Even under this provision, however, the Attorney General decided a patent from the United States was necessary. By the 19th article, estates in fee are granted, yet the fifth section requires the assent of the President to make valid any contract to sell that fee. If that assent is necessary where estates in fee are granted, how much stronger is the implication that that assent would be held necessary where no estate was granted except upon condition? And although no express provision is made for this assent in the 14th article, yet the absence of it is conclusive that the Indian had nothing to sell or assign until after the expiration of the five years, and his title should arise by patent. If any such right had been conceded to him, the framers of the treaty would have imposed the same restriction on him as in the other cases. On examining the 14th article, we are struck with one characteristic of it. It was the article, of all others, which addressed itself to the whole of the Choctaws, and its language and arrangement ought necessarily to be suited to their plain understanding. There is, therefore, an evident intention to state the objects to be obtained, and the means of obtaining them, in the order in which they would naturally take place. Had it been an agreement between civilized and enlightened parties, it is probable a different phraseology would have been employed. It is announced to the Indian, that if he is desirous to remain, and become a citizen of the United States, he shall be permitted to do so, and acquire, with his right of citizenship, a fee simple title in 640 acres of land. This is the boon held out to each head of a Choctaw family; and we, who so much prize our birthright as citizens of the Republic, know it was a boon of no common order. The means of obtaining it are clearly expressed. The Indian is to signify his intention to the agent within six months from the ratification of the treaty, and reside upon the land, intending to become a citizen, for five years after the ratification of the treaty. Now, these simple provisions were, doubtless, understood by both parties to the treaty. But, in construing the article, we are certainly not to fasten upon the first paragraphs an inflexible meaning, and then struggle with doubts and difficulties, the consequence of this, in order to come to a correct conclusion upon the remainder of the article. Scan the whole, and the conclusion seems obvious, that by it the Government intended to grant to the Indian, who signified his assent to it, the privilege of citizenship, with 640 acres of land, on his proving his intention to become a citizen by a residence of five years on the land, *at the end of which*, a grant in fee simple should issue. We now arrive at the important question, Did the United States part with any right or estate in the reservation, *until the end of five years*, or the issuance of the patent? It is suggested that the high court of this State, in the case already cited, has intimated that this article amounts to a grant to the Indian *in presenti*, with a condition subsequent, the non-performance of which defeats it. With the most profound respect for the opinion of that court, I cannot, nevertheless, bring my mind to the same conclusions.

I state this with diffidence, but, as its decisions before this commission

are entitled to only a persuasive influence, I cannot make them the rule of my decision. It is certainly true, that a grant may be made by a treaty as well as by other methods known to Governments; but it is equally true, that a Government can bestow no kind of privilege or interest but by grant in some shape or other. This is the common law of all civilized States. The practice most usually followed in the United States, and established by law, is to grant by patent. This is certainly what is meant here, from the words, and to wit: "*a grant in fee simple shall issue*;" and a patent from the President, according to the regulations of law, is the only kind of grants which can issue. And is it reasonable to suppose (as the intention of the parties) that, in so important a thing as a treaty, made by the President and Senate, these words, of known and important meaning, whenever they were used, were intended as mere useless verbiage, or only to answer the unimportant purpose of an acquittance of the condition; and that, to solve the doubts which thereby arise, we must go back to the uncertain and complicated common law doctrine of estates upon condition? What could the untutored Indian know about such constructions? Allow these words their full, plain, and legitimate meaning, and no well-founded doubt arises. Every one may perceive that, on the stipulated contingencies, the United States are to issue to the Indian a grant in fee simple, which will convey to him, not only the 640 acres of land, but the right of citizenship. Refuse this meaning, and doubts and difficulties begin to arise. In the first place, we are in doubt as to *what* estate the Indian has acquired; if any, how far he may dispose of or assert it in a court of justice; and, lastly, if this condition subsequent is adverse to the nature of the estate granted, is it to defeat the grant, or be itself adjudged void? These cannot be the "well-founded doubts" (referred to in the treaty) that should be decided in favor of the Indian; for all will admit he would be much more secure upon his land, reposing under the protection of the United States the requisite time to secure and consummate his claim, than in litigating these questions in the courts of the country, through the agency of speculators and barrators.

It may perhaps assist in a proper understanding of this subject, to ascertain what is meant by the word *grant*, when made use of in a legal sense, according to Blackstone, and adopted by the Supreme Court of the United States in the case of *Fletcher vs. Peck*, (2 Condensed Reports, 308:) "A grant is a contract executed; a contract executed is one in which the object of the contract is performed." And what is a contract? According to the same authority, and Kent's Com., (vol. 2, p. 499,) "an agreement, upon sufficient consideration, to do or not to do a particular thing." The high court of this State, in entering upon this question, say: "The only question therefore is, whether a grant has been actually made, or that which is equivalent to a grant." I suppose there can be no doubt that, if it be *equivalent* to a grant, it is one in fact and in effect. All will agree that, at some stage of the treaty, from its inception to its execution, or at its execution, a grant of an estate in fee simple is to be acquired by the Indian. When this grant may be legally said to issue or emanate, is, then, the question. Now, if what I have quoted from Blackstone, Chief Justice Marshall, and Chancellor Kent, is to be taken as law, this grant cannot issue or emanate until the passing of the consideration; and as the grant, when issued, is nothing but the contract founded on a consideration executed, its issuance or emanation is evidence incontestable that the consideration has passed to the party making it. It would be a singular grant, indeed,

which should issue or emanate before the consideration passed ; it would not suit the definition, as given by the Supreme Court, "that a grant is a contract executed," because the consideration is yet to pass, and leaves it in the power of the grantee to avoid it. This is wholly at variance with every idea of a grant as a contract executed. What, then, is the consideration for the grant here, and when is it to pass? The best evidence of this is what the treaty itself says. Let us dissect it. If we cut off the 14th article from the period ensuing the words "location of the parents," we should be driven to the conclusion, that the consideration passes completely on the claimant signifying his intention, within the six months, of becoming a citizen; and by electing his reservation, the grant would, by force of the treaty, be complete. But, if we allow the latter part of the article the influence and meaning which the words obviously import, we find the important inquiry, as to *what* the consideration is when it passes, and when the grant emanates, all plainly answered by these words, viz. : "If they reside upon said lands, intending to become citizens of the State, for five years after the ratification of the treaty, *in that case* a grant in fee simple shall issue." Who can read this article, and doubt the meaning of these words? For what other purpose were they inserted? The only purpose, as I understand the court to argue, was to make a condition *SUBSEQUENT*, and grant an acquittance upon performance. This is certainly putting as important a thing as a grant to a small purpose; for it is plainly to be inferred, from the opinion of the court, that, if the condition be performed, the estate becomes absolute, without this very important acquittance. The grant, in this view of the case, is perfectly useless, and is only evidence of that which could be established by oral testimony. This, to my mind, proves conclusively that the United States parted with nothing under the 14th article in the way of estate, until the issue of the patent at the end of five years; and that this residence and consequent acquisition of citizenship, instead of being a condition *subsequent*, is the consideration or condition *precedent* for which the grant emanates; for there *must* be a *consideration*, and, without this, we cannot find any thing in the shape of a *consideration* in any part or article of the treaty. And this comports better with the evident *intention* of the parties, and the plainest principles of law; for, if we admit this to be a grant with a condition subsequent, we have difficulty in escaping the conclusion that, as the condition is adverse to and inconsistent with the nature of the estate granted, instead of having the effect to defeat it, would be itself adjudged void. Let us give this part of the subject a further examination, and also the point of forfeiture spoken of by the court. What is a condition subsequent? "A condition subsequent is such as defeats an estate by some subsequent act. As if a fine be to the use of another, or a feoffment, &c., upon condition that, if such an act be afterwards performed, the estate shall be void." (Comyn's Dig., Cond. C.) What conditions subsequent are not good? "If it be repugnant to the grant, as a feoffment, &c., upon condition that he shall not take the profits, the estate remains absolute, and the condition is void. If it be repugnant to the nature of the estate, as a feoffment, grant, &c., upon condition that the feoffee or grantee shall not alien; or a gift in tail, upon condition that the wife shall not be endowed, or the husband shall not be entitled to courtesy, or that the donee shall not levy a fine or suffer a recovery." (Comyn, Cond. D.) In all such cases, the condition is held to be void, and, consequently, the estate granted remains absolute in despite of it.

See, also, Hobart's Reports, p. 170, where the same doctrine is maintained, and the reasons given, in these words: "A condition annexed to an estate granted is a divided clause from the grant, and therefore cannot frustrate the grant precedent; neither is any thing expressed, nor any thing implied, which is of its nature incident and inseparable from the thing granted."

Now, here, according to the opinion of the court, is an estate granted, and that of the highest nature known to the law, which carries with it the power of alienation, charging it with debts, the quality of inheritance, descent, and devise, and yet clogged with a *condition subsequent*, which cuts off in its effects and is repugnant to all these; for the condition confines the Indian to a single spot for five years, with one continued intention of becoming a citizen. If he fails in either of these, the condition is broken. He cannot exchange it for any other residence, for that would be a voluntary abandonment, and none but the individual Indian can perform the condition. He cannot charge it with debts, because, if so, on his abandonment of it, the Government would become liable. His body and volition are restrained—a condition totally inconsistent with the state of a party capable of contracting and being contracted with, and repugnant to the nature of an estate in fee simple. It is not reasonable to presume the United States, in making this treaty, intended to impose such restrictions on these untutored savages; of all natures, such restrictions are least compatible with his. The treaty certainly leaves the Indian perfectly free to become a citizen or not, as his choice or caprice may dictate. Until the expiration of the "five years' residence," up to the last moment, he may elect to go with his nation beyond the Mississippi, without a forfeiture of any thing beyond the personal privilege of becoming a citizen, derived from the first four lines in the 14th article. This, from its very nature, is personal, and becomes to him perfectly valueless the moment he determines to emigrate. He has a prospect of a home in the Choctaw nation, and his ~~loss~~ of the annuities, to compensate him for the loss of the prospect of his ~~residence~~. Here his volition is natural and unrestrained. But suggest to him that he has acquired an estate in his reservation which he must forfeit, and also be cut off from the chance of his annuity, he immediately finds himself under constraint, and begins to act with the dishonest view of remaining until the end of five years, then selling his land, and reclaiming in the Choctaw nation west the immunities of a Choctaw citizen. Can we suppose the treaty ever intended to encourage such dishonest purposes, plans, and feelings, in the minds of these unlettered and unhappy people?

It may throw some light on this matter to ascertain what is meant in the treaty by the words "claim under this article," "the privilege of a Choctaw citizen," and the "removal," spoken of in the last clause of the article. When can it be said, technically speaking, that an Indian *claims* under the 14th article? According to the doctrine of the court, he claims as soon as he signifies his intention and selects his reservation; if he forfeit this, then he also forfeits his annuity, though he saves his privilege of Choctaw citizenship. There can be no well-founded doubt about this last forfeiture, if the first proposition is true—the one being the necessary consequence of the other. If, however, he may be said to claim under the grant *issued at the end of five years*, he cannot by any act forfeit this, though he has lost his claim to annuity. He is *then* a citizen of the States, with a freehold estate of six hundred and forty acres of land—a character and condition which most of the inhabitants of modern Europe greatly envy. In addi-

tion to this, he also retains the privilege of again resuming his Choctaw citizenship. If a "well-founded doubt" arise, then, upon these two points of time, it is certainly "most favorable to the Choctaw" that the claim should be construed as being made when the Indian gets his grant and becomes a citizen. It comports with this view of the case to construe the "removal" spoken of as one that takes place after this time. This is also apparent from the words used in the treaty, "should ever remove." Thus we see a fair construction of this last paragraph of the 14th article establishes principles wholly inconsistent with the idea of this being a grant of an estate with a *condition subsequent*.

I will now examine *what* the Indian may be said to forfeit by a voluntary abandonment of the reservation. This leads to a consideration of what is a forfeiture, how and upon what it operates, coupled with an inquiry as to the interest, attitude, and position of the Indian from the time he signifies his intention to become a citizen until the expiration of the five years, and the attainment of his grant. Lord Coke quaintly defines a forfeiture to be "a thing against or without law or custom." (Coke Litt., 59 a.) "The omission or neglect of a duty which the party binds himself to perform, or to the performance of which he is enjoined by the law, is, upon the breach or neglect thereof, called a forfeiture; that is, the advantages accruing from the performance of the thing are, by this omission, defeated and determined." (3 Bacon's Abridgment, 729.) This suits the present case; for, by the omission to reside five years, &c., the Indian loses the *chance* of securing his land and citizenship. It cannot be said, however, that this forfeiture operates in any other way, or upon any other thing, but the bare personal privilege of the Indian. It cannot be said that his failing to get title, &c., is against law; for we have seen, in the first place, that he has acquired yet no interest in the land upon which forfeiture can operate; and, secondly, that there is no law binding or obligatory on him to become a citizen; that the whole matter is left open to his free volition to the very last moment of time. This law, and this permission to become a citizen, is well illustrated by Professor Lutherforth, in his Institutes, 2 and 3: "By making *obligation* a necessary part in our notion of a law, all *permissions* are, as they ought to be, excluded from being laws. Though permissions may come from the maker of the law, and may be established by his authority, yet they are rather negations of law than acts of it. Instead of being of the law, they are checks upon its operations." These "permissions" he describes as of two sorts—those which arise from the silence of the law, or from its express declarations. Here, then, is an express permission given to the Indians of becoming citizens of the States; and although this is a *law* to all persons charged with the execution of the treaty, yet, as regards the Indians, (the privileged persons,) they (in the language of Lutherforth) are, notwithstanding the law, at liberty to act in what manner they please; and ~~this~~ liberty and permission extend to the very last moment of the five years.

What right does the Indian acquire by signifying his intention to the agent? The article answers: "Permission to remain and become a citizen of the States." And this, it will be conceded, is a privilege of no light nature, it being possibly the only mode by which he could acquire citizenship, and is therefore peculiarly valuable to him, it being the only right under the treaty which he can forfeit prior to the issuance of the patent.

There is great force and plausibility in what the court say upon the sub-

ject of the technical meaning of the word "reservation," when standing in a clause by itself, and followed by nothing which limits or explains it, and the meaning which the Indians usually themselves attach to it. But it is submitted that here the character of the reservations in the 15th and 19th articles, and the latter clause of this 14th article, negative and repel the conclusions of the court. Nor is it reasonable to suppose that the Indians themselves, who intended to claim under this article, viewed the interest to be acquired by them, on signifying their intention to the agent, as equal to the reservations secured in the other parts of the treaty.

In the outset of these suggestions, I have attempted to show, from high authorities, the nature of the Government title to the land, the nature and extent of the Indian claim, and the attitude or relation in which they stand to each other and towards individuals, citizens of the United States and others. The Government has the ultimate domain to the land; the Indian only a right of occupancy, incapable of being extinguished or acquired by any other power but the Government; that the Indian is in a state of pupillage to the Government; that all persons are forbid by act of Congress, upon considerations of public policy, to contract with him for his land; that he is incapable of making any contract, cognizable in a court of justice; and that, in fact, he is but a ward under the guardianship of the United States.

Has this state of affairs been changed towards those who come in under this article? We have seen that, up to the time of getting his grant, and acquiring citizenship, the Indian has acquired no higher claim than his original occupancy; that he has come under no restraint, his volition being perfectly untrammelled. Within this time he neither loses his nationality nor forfeits his annuity. It would seem, then, that the only effect of the preliminary steps taken under the article is to separate the Indian from his nation, and give him individuality and locality, without altering the original attitude of imbecility and incapacity to contract on his part, and of guardianship and protection on the part of the Government. Instead of becoming less an object and probable victim of the white man's craft and policy, he becomes tenfold more so. The guardianship and protection of the Government, instead of being withdrawn, are demanded, for much stronger reasons. There is, then, nothing, on principle or reason, why this original state of things between the red man and the United States should cease or be withdrawn on his simply signifying his intention to become a citizen, and selecting his reservation. On the contrary, there is every reason why it should be more steadfastly retained and vigilantly exerted. Grave considerations of public policy, and humanity for an unfortunate race, long the unresisting victims of oppression, speculation, and plunder, require it.

I conclude, therefore, that, within five years from the ratification of the treaty, every act, assignment, transfer, or contract, by which the Indian undertakes to dispose of the reservation, either in whole or in part, *in presenti* or *in futuro*, is perfectly null and void, even without the prohibitory section of the act of Congress, and has no other effect than to prove his intention to abandon his claim, and, according to the law laid down in Bacon, defeats and determines the advantages which would have accrued from his residence of five years upon the land.

But there are other points in which this matter may be considered. Without reference to the policy of the country, to the relation between the United States and the Indian, or to the prohibitory section of the act of Congress,

it may be assumed that these contracts or assignments would not be enforced.

It is a settled principle of equity to relieve in all contracts where advantage has been taken of a party's ignorance, the weakness of his understanding; or the necessity of his situation. The statement of facts supported by the evidence connected with the contracts is very strong. The agent of the United States, it has been conceded, refused to register many of the 14th article applicants, (though his own statement, under oath, before a committee of the Legislature of Mississippi, directly rebuts this concession. (See Doc. H. R. U. S., 24th Congress, 1st sess., No. 202.) To make these reservations was, by the treaty, obligatory on the United States, upon application by the Indian. If he was willing to contract with speculators, his willingness to do so grew out of the *necessity* of his condition. The fact, that many of them, after the refusal of the United States agent, left the country, shows that they deemed their claim precarious; but there was nothing, in fact, to constitute the claim *desperate*, which the amount of fee or contract (one-half the land) would seem to imply; and their consent was therefore *extorted* by the *supposed exigency* of the case, and the *deceptive representations* of those who induced them to contract. If ever the misfortunes of a people, both national and individual, appealed to equity for relief, it is in the present instance. They may be considered a conquered nation, not by the sword, but by civilization. An inscrutable fate has compelled the child of ignorance and superstition to bow before the offspring of knowledge and truth. Ignorance of our language and laws, and the extent of their rights, ground down by poverty, looking up to the white man as a superior being, living among Christians, and yet almost beyond the pale of religious effort; a melancholy race, whose origin and destiny are alike shrouded in mist, and who, for all national purposes, may be considered as no longer on the roll of living men. In a few years, perhaps, not an individual in the wide world will speak their tongue, and their very names live only in song and tradition. The law will be tender of the rights of a plaintiff, such as this, seeking redress. It would ask a less showing, a less degree of proof, a briefer array of facts, to pronounce in his favor, or ward from him what would seem to be the last blow that the ancient misfortune of his race, *the rapacity of the white man*, had reserved.

A contract will not necessarily be rescinded upon proof merely of ignorance; but if advantage be taken of that ignorance or weakness, and imbecility of intellect, then the law will interpose. Two ignorant men may deal lawfully together, to the benefit of the one and the loss of the other. In such case, the arm of the law is not raised, because good faith at least was arbiter between the merchants. Besides the cases where an active influence has been exerted upon one party, to his injury, by the other, there are cases where the bare passive ignorance of the injured may be favorably listened to by a judicial tribunal. A mistake, or a total want of acquaintance with one's rights, *well known, however, and understood by the other*, has existed in contracts which have been set aside by the courts. The law delights to circumvent circumvention, and to raise its iron hand in the arrest of imposition. Any conveyance or contract obtained by misrepresentation, and which thereby produces an inequality in the contract, especially when the victim is a person of weak understanding, though not otherwise disqualified to contract, is relieved in equity. (Lord Douglas's case, 2 Ves., 409, 516.)

Upon the subject of inadequacy of consideration, several distinctions and relations must be kept in mind. A man may give away his estate, or sell it as cheaply as he pleases. The law does not interfere merely on account of gross inadequacy of price. But show that a party did not understand the bargain he made, or was so *harassed, deceived, or oppressed*, that he was glad to make it, knowing its inadequacy, and it may amount to a fraud. A hard bargain is a good bargain in the absence of fraud; but an unconscionable bargain, effected by deceiving those in their very nature susceptible of deception, proves a fraud which would destroy the contract. It has been decided, that an unreasonable bargain made with an heir expectant, for his expectancy, is void, not only on the ground of oppression, but for its pernicious tendency; and, by parity of reasoning, such a decision would meet favor wherever such expectation arose from any other reasonable or probable source. The rules of law and of equity in these matters are quite distinct. Lord Hardwicke (in 1 Atk., 352) lays it down, that a court of equity will relieve against *presumptive* frauds, and that to take advantage of one's necessity is as bad as to take advantage of his weakness. Lord Chancellor Eldon agrees with him, that there are many instances of fraud that would affect instruments in equity, of which the law could not take notice. (1 Vesey and Beames, 98.) It has been decided that inadequacy of consideration may be so gross as to furnish strong presumption of fraud, and avoid the sale; so mere inadequacy, connected with one's weakness or ignorance. It is not necessary, then, to show that, in making these contracts, *actual fraud* was committed. The *presumptions* are sufficiently strong. Lord Kenyon recognises this doctrine. (1 Vesey & Beames, 98.) Great inadequacy has every where been considered an evidence of unfairness. The civil law avoided all sales, if the property was sold for less than one-half its value, and that, too, where the parties were in every respect equal. By the French code, the venter may obtain a rescission of the contract of sale of real estate, if the property was not sold for five-twelfths its actual value, even though he had expressly *renounced* in the contract the action for the rescission. (4 Code Civ., 370.) In England and America it has been left to the courts to decide, in each particular case, upon the merits. They have never, as I am informed, decided that mere inadequacy will vitiate a contract; but, taken with other circumstances, with *misrepresentation* or concealment of facts, with the ignorance or necessity of one party, the decisions are numerous, and gross inadequacy is held of itself to be presumption of fraud. In the case before us, it seems to me, gross inadequacy exists, when we consider the *epoch* of the transaction, one of loose and extravagant speculation, when cotton lands were supposed to possess a value whose *maximum* the imagination of the wildest speculator had not calculated, and for the period they *did* possess an extraordinary value, especially, too, as it was estimated that they cost the company *only ten cents per acre*, (see Judge Gholson's testimony, Pub. Doc. before referred to,) and would immediately sell, without warranty of title, for perhaps ten dollars per acre. *Ten cents and ten dollars!* Such gross inadequacy cannot be reconciled with fair dealing; but when to this we add the ignorance, necessity, and dependence of the party on one side, and the intelligence, wealth, and influence, of the other, and the confidence reposed in them by the Indian, the presumption becomes still stronger. In the early days of English jurisprudence there was a distinction observed in setting aside contracts made with young heirs for estates in expectancy, on

grounds of public policy; but the rule in chancery has long been settled, and is now applied to every case where men of superior ability have obtained bargains at an enormous and unconscionable disproportion, from the ignorance, weakness, or necessity, of others. (*Chesterfield vs. Jansen*, 1 Atk., 301; *Gwynn vs. Heaton*, 1 Bro. C. C., p. 1; also, *Rutherford vs. Ruff*, 4 Equity Rep., 351; see, also, *Bang vs. Price*, 3 Wilson, 320, decided in the Exchequer, where relief was given, and an actual conveyance set aside, though the inadequacy did not exceed one-half the value; see, also, 2 Atk., 133, 1 Bro. C. C., 558.)

But, again, do not some of these agents stand towards the claimants in a fiduciary relation? Equity looks with suspicion on all contracts made by a trustee with his *cestui que trust*. In the case of *Proof vs. Hines*, (*Forrester*, p. 3,) the plaintiff was a poor illiterate man, who was supposed to be entitled to part of an estate; and he applied to the defendant to assist him in making out his descent, and getting such proofs as were necessary to make out his title to the estate. He advanced the plaintiff small sums of money, and took much pains in the affair; and a bond for £1,000 was given him, payable after the estate should be recovered. Lord Chancellor Talbot, in relieving the plaintiff, said that the bond was obtained from the plaintiff when under necessity, and that his poverty was to be taken into consideration. In *Mortlake vs. Butler*, (10 Vesey, 292,) Lord Eldon refused to decree specific execution of a contract for the sale of land, where the inadequacy did not exceed one-half the value, though there was no imputation on the conduct of the buyer; but the agent of the vendor had not communicated to him the survey and valuation, which would have shown the true value. Lord Alvanley refused to decree specific execution of a contract, in a case clear of all fraud, where the inadequacy was about half the value, and was held very gross. (10 Vesey, 300 and 301; 12 Vesey, 355; and 2 Atk., 25.) Let us test the contracts or assignments by these principles.

Here are a number of poor, necessitous, and untutored savages, whose rights under the treaty, from some cause not within their control, have never been perfected. The difficulties, however, are of such a nature that no power short of the Government can remove them. This it has been attempting to do by various acts of Congress and boards of commissioners, without any outlay or expense to the Indian. It may be alleged that the very ignorance of the Indian made these contracts necessary for the assertion of his rights. This, however, will be shown to be a plea without reason.

A combination of intelligent men, banded to speculate in Indian claims, is of itself suspicious, and calls for a close examination. The manner in which it was conducted was suspicious. They artfully commenced by a proffer of friendship to the dependent savage; called him their red brother; spoke of the ungenerous effort to remove him from the soil of his fathers, and of their power to prevent it; and suggested to his credulous ear the existence of a claim of which he knew nothing or but little. But, in their interviews with the Indian, either for explanation or bargain, they excluded every eye, and ear, and voice, which did not look and listen and speak to their interests. They had interpreters devoted to their views, and the witnesses to their contracts were of the same stamp. They consummated their scheme by invoking the name of *General Jackson* to their aid, which, next to the name of the *Great Spirit*, filled the mind of the savage with

awe, reverence, and confidence. They falsely represented themselves as *his* agents, authorized to contract, and to tender *his* assurances of protection and support. Their love of country, their desire to linger and to die amidst the graves of their fathers, the ruling passion of a people whose traditions teach that they have been re-created from the ashes of the dead, were appealed to, and solemn promises made that this feeling should be gratified. The contracts themselves shed a flood of light on this part of the proceeding. Thus prepared, the Indians were ready to believe all things, to fear all things, and to hope all things, which the fancy of the agent could suggest or his conscience permit him to promise. And what was the *pith* of the contract? One-half of the diminished heritage of the impoverished savage, and the privilege of purchasing the other half at \$1 25 per acre, when lands were estimated at five times that amount—a sweeping pre-emption law, secured by a set of speculators by their own act, when *our* hardy and suffering settlers were vainly appealing to Congress for a similar provision. And what services were the speculators to render for this exorbitant fee? The prosecution of a claim attended with little expense, and which, if just, the Government was bound to notice and indemnify. Such a contract, accompanied by the circumstances and considerations upon which it was founded, needs only to be stated to be vacated and annulled by a court of equity. What kind of a case does this present, even supposing it made by parties in all respects equal in point of condition? Here is first a contract executed, by which one party divests himself of half or the whole of his estate in favor of the other; and for what consideration? For no other, certainly, than the vague and uncertain one of getting back half the reservation. What would be thought of the fairness of a lawyer, and the rationality of his client, with whom such a contract as this should be made to prosecute a right, however doubtful? Why not, if it was fair, have left this half still vested in the Indian? Suppose the agent dies; why expose the Indian to the trouble, uncertainty, and expense of pursuing his claim on the executory contract for his half, in the courts of justice? How would *he* compete, in our courts of law or equity or probate, against purchasers, executors, and administrators, with all the pleas of purchase for a valuable consideration, without notice, fully administered, judgments outstanding and no assets for them, statutes of limitation, declarations of insolvency, and decrees in bankruptcy? Besides the possibility of his falling into the hands of some other person who would take the whole, or at least the half of the reserved half to prosecute the claim.

These are obstacles so numerous and formidable, as to deter even intelligent citizens from prosecuting suits on such contracts.

Does not this show, conclusively, that this covenant for reconveyance, though, technically speaking, consideration of some kind, for the previous contract executed, is, in the hands of the poor Indian, a mere shadow, depending for its performance substantially on the will of the agent?

But as to this consideration of paying expenses, prosecuting the claim, &c., what can these agents do which the Government itself has not provided for, and is perfectly competent to do? She has bound herself by treaty to certain stipulations, and no one has a right to presume she will not execute them in good faith. She has passed acts of Congress, and established commissions, to place justice within the reach of the Indian, without compelling him to resort to the ordinary tribunals, (if such a step

might be taken.) No forms are necessary before the commission. Let the wildest and most ignorant Indian present himself before this board, without counsel, and in his own tongue claim his reservation, and we are bound to investigate it, to take every step to ascertain its validity, and to subsist him while in attendance. We are prepared with an interpreter to explain and a secretary to write down his claim, without the necessity of his filing a single paper or expending a dollar in the employment of counsel. It may be well doubted, then, whether any lawful consideration can arise to support this contract, out of services rendered in prosecuting this claim. It would be frowned upon by a court of equity. If this view be correct, how is it possible to imagine any expenses, lawfully incurred, at all, or, at all events, of sufficient value to form a *consideration* for these contracts? Here, then, are contracts obnoxious to three unvarying rules of a court of equity :

In the first place, made without any lawful consideration, and therefore void.

In the second place, if there be any consideration, the inadequacy is so gross and palpable as to furnish strong presumption of fraud.

And, in the third place, accompanied by circumstances of fraud which, coupled with mere inadequacy of price, or even without that, makes it void.

It may be remarked, that there was a peculiarity in these reservations that made a tampering with the reserves a fraud upon the Government as well as upon the Indian. It has been the policy of the Government to remove these unfortunate people from the territories of the white man ; and these reserves were introduced into the treaty to furnish them, after the expiration of the five years, with the means of emigration, if they thought proper not to claim their privilege of becoming citizens of the States. Any contract, therefore, which, by diminishing the means and resources of the Indian, left him a pauper and a public burden, whether as a resident or emigrant, would be annulled as invalid, however strictly drawn up and legal in other respects, as being hostile to the general policy of the United States. (See Appendix, 15th Peters.)

I am aware that the assignments or contracts made *since* the expiration of the five years are attempted to be placed on different grounds. But to my mind they must, at all events, before this board, share the same fate, except so far as they are saved in favor of the Indian by the last clause of the 9th section of the act of 1842. This is still a *treaty unexecuted* between the United States and those Indians. It is not pretended that any others but the Indians are to derive any rights or benefit under it. The Executive of the United States is charged with its execution, and no tribunal or individual has a right to presume a want of good faith in either of the parties, or that it will be violated. Its non-execution is not its breach. It is true, it is a law of the land ; but, as long as any of its provisions remain to be carried out, no authority but that emanating from the Government of the United States has a right to interfere in its execution.

The act of Congress of 1842 declared void all contracts made with the Indians within five years after the ratification of the treaty. The passage of such an act well evinces the *scienter* of the Government that fraudulent contracts might be and had been forced from the Indian. Indeed, proofs of the fact had been laid before Congress, and resulted in the passage of the above-mentioned clause, which was intended to crush, with one blow, the whole transaction. In anticipation of this, and to evade it

new contracts were made with the Indians, of a character, in my view, wholly irreconcilable with fair dealing, and liable to greater objections than the original agreements. They are equally null on general principles, and more objectionable as to inadequacy of price. They were made against the known views of the Government, (the natural guardian of the Indians,) in evasion of law, and in bad faith to those who originally contracted, and with the view of avoiding their rights, if any they have. A more deliberate scheme of fraud upon the Government, of robbery of the Indian, of bad faith to copartners, and of corruption in all its parts, supported by such consummate art and doubtful testimony, has never, in my opinion, been devised. The very highest degree of censure should be visited upon such contracts. We behold wealth, ability, and opportunity, arrayed against poverty, weakness, and necessity; men, armed with all the weapons of civilization, assailing the unshielded and defenceless savage. How unequal the conflict! How certain and complete the conquest! Naked in mind and body, the poor Indian is at length, in his turn, lashed to the stake of a lingering and cruel death. Starvation, misery, and vice, fall upon him, and his Christian brother weaves, at last, the funereal pall of a once glorious and heroic race.

But it has been contended that these instruments are in the nature of a *contingent fee*, and cannot, therefore, properly fall within the terms of the law.

A wicked scheme cannot cover itself from the penetrating eye of the law, under the subtle guise of a false and deceptive denomination. A contract has a legal definition, and is recognised by the thing, and not the name. It is any agreement between two or more parties, upon a sufficient consideration, to do, or not to do, a particular thing. A contract is a matter of intention between parties, and not of mere phraseology. As an example: it is a contract between a lawyer and his client, when they agree upon the nature and price of the former's services. The lawyer may style it his fee, but, as between the two, the lawyer calls it and considers it a contract, and upon this principle alone can he enforce its fulfilment. Like other contracts, it is examined, interpreted, tested, and determined. It enjoys all the advantages and is subject to all the objections of an ordinary contract or agreement between man and man. It stands or falls by its own merits. To my mind, there is nothing gained by styling *this* assignment of the Indian of one-half of his land, *this* power of attorney to sell or dispose of it, *this* agreement to purchase the remaining half, or *this* absolute conveyance of the whole of his claim to the speculator, a *contingent fee*. The recipients of this "contingent fee" are to enjoy all the advantages. They have extorted it from the necessities of the Indian. They have taken advantage of his *ignorance*. They have *deceived* him by their representations, and have *charged a thousand fold* the value of their services. They have themselves thrown obstacles to the settlement of the claims by the suspicions of fraud their contract created—*suspicious* likely to stand, when we see men, without capital, suddenly swelling into vast landed proprietors, selling possibilities by wholesale, opposing and menacing Government agents, transferring Indians and Indian rights like bank stock, and employing all the strategy of legal talent, and the apparatus of slander and fraud, to prevent a full and fair investigation. I scout this notion of a *contingent fee*. The Government never has imposed such a necessity upon the poor Indian, to be stripped of half his claim to secure the other half. It

is contrary to all the principles of public policy to suppose it would put it into the power of a few men to plunder the defenceless claimants upon its bounty, and establish in this country of free and equal rights a great landed aristocracy. Let those deeds, contracts, assignments, or contingent fees, be sustained, and the titles in the whole Choctaw district of Mississippi will be for years unsettled. The assignee of the Indian disposes of lands, under these contracts, to white citizens; they expend their time and money in improving the property, and, years afterwards, the Indian may come into a court of equity and claim relief, on the ground of fraud, deception, and ignorance of his rights. Here, then, is a fruitful field of litigation—a harvest of ejection suits; and if the purchaser, after vast expense, is ousted of his land, where is his recourse? Back on the assignee of the Indian, who may have become insolvent, or discharged in bankruptcy. There is every reason, then, on principles of public policy, why these instruments should be received with distrust.

I conclude, therefore, that, as to those last assignments and contracts, the same state of relation yet exists between the United States and the Indian, with all its restraints, obligations, and consequences, which, we have seen, are applied to assignments made within five years, and with more force and effect. That no white person, under this treaty, by these acts of Congress, or any action of this board, can derive any rights; and that this 9th section, in all its force, must form the rule of our decisions.

And, in relation to both sets of contracts, I submit that the following propositions will hold:

1. The evidence of contracts actually made, both within and since the five years, has been produced, and the contracts themselves.

2. Fraud may be implied from the inadequacy of consideration, especially when coupled with the ascertained ignorance, weakness, and necessity of the Indian.

3. These contracts ought to be avoided, they being for land in expectancy, on the principle that equity avoids an unconscionable bargain, made with an heir for his inheritance.

4. Fraud is to be implied from the relations of the parties, the agents having contracted and purchased of the claimants, in many instances, while acting in the capacity of attorneys and trustees.

5. On the ground of *uncertainty*—the designation of the land contracted for being vague and indefinite, having no identity and locality.

6. The contracts ought to be declared void on all the foregoing grounds, taken in connexion, and strengthening each other.

JOHN F. H. CLAIBORNE,
United States Commissioner.

HILLSBOROUGH November 6, 1843.

A true copy from the original.

P. BAYLY,
Secretary Board Choctaw Commissioners.

HILLSBOROUGH, MISSISSIPPI, November 10, 1843.

Endorsement.

Respectfully referred to the Secretary of War. These papers are connected with several communications received from the Choctaw commis-

sioners lately, which were similarly referred, and which, I understand, have been laid before the President of the United States.

T. HARTLEY CRAWFORD.

DECEMBER 21, 1843.

DD.

NATCHEZ, December 9, 1843.

SIR: A few days since I had the honor to transmit to you a succinct statement of the proceedings of the board of Choctaw commissioners, with an account of the course adopted by the speculators in relation to myself, showing the utter impossibility of having such an investigation as the interests of the United States and of the Indians demand.

Subsequent transactions and reflections have satisfied me of this; and now, as a public officer, here on the ground, and minutely informed as to the state of things, I recommend the *suspension of the commission*. Its compulsory powers are openly derided and defied; its very legality, as a judicial tribunal, is disputed by some of these hybrid attorneys and speculators; its members are liable to be insulted at the board, and, for their official acts, to assassination in the public streets; the relations of two of the members of the board are hostile; and the result will be, a loss to the country, and a gain to the speculators, if the inquisition be persevered in on its present basis.

This is an auspicious moment to suspend the commission. It has been broken up, if not by violence, at least by the power and influence of speculators, under circumstances that have occasioned great excitement, and cast new odium upon a transaction long unpopular and suspicious. The witnesses that had been subpoenaed at great expense to the United States have all dispersed, and can only be collected again at a similar outlay; no place has been designated for the meeting of the board, and, when it does meet, new interruptions and new scenes of indecorum and violence will occur.

If the board be suspended, then, under such circumstances, the whole country will approve the order; and our Legislature, which assembles on the first Monday in January, composed of members recently elected, will express its opinion a second time in relation to this matter.

The *people* of Mississippi, embracing most of our public functionaries, desire to see this speculation crushed. We deny that these speculators and attorneys have the slightest interest in the claim. The Indians may be readily induced to compromise with the United States, and then to emigrate. If Colonel Armstrong and Mr. McRae, with one or two energetic assistants, and two or three influential interpreters, were here for three months, in the present state of feeling among the Indians, the alarm and distrust of their agents, he could induce two-thirds of them, for a reasonable bonus, to relinquish all claim to land, and emigrate at the charge of the Government; the bonus to be paid after the emigration, either in whole or by instalments, or, what would be still better, only the interest—the principal being funded. This bonus would amount to less than the Choctaw claims in land or scrip, and there would be thus near a million saved to the United States. And it would secure to the poor Indian his indemnity, and place him beyond the reach of speculators—

a result at which the whole country would rejoice. The awarding of scrip, as proposed by the act of 1842, will inure to the benefit of the gamblers in Indian claims only, and the defrauded savage will land a pauper in his western home; and doubtless many will return here, to linger out their lives, amidst the graves of their fathers, in wretchedness and vagabondism. Such an alteration in the law will also be exceedingly popular. It is well known now that the scrip is to be used by speculators (who have got one-half of it for nothing, and the control of the other half) to enter upon the rich *bayou* lands of Louisiana, Arkansas, and Mississippi, the best cotton lands in the world, and worth from five to ten dollars per acre in a state of nature. There are many actual settlers on these lands—a hardy and enterprising population, the bulwarks of our country in war, the pioneers of civilization in peace—who have paid out, or are making preparations to pay out, their pre-emptions, and will themselves, with their relatives and neighbors that follow them, purchase all those lands from the Government, pay for them out of the products of their labor, and thus ensure the *actual* settlement and cultivation of those most valuable but sparsely settled portions of the three States. With a million of this scrip, however, in the hands of speculators, the whole country will be swept at once; large districts be held for years, as it were, in *mortmain*; the pre-emptioner be confined down to his quarter section; emigration be retarded, and nothing paid into the public Treasury from the sale of lands for appropriation or distribution by Congress.

I do hope, then, sir, that you may deem it expedient to suggest a suspension of the commission, a revision of the law, and the employment of Colonel Armstrong. I pledge myself for his success. The Choctaws have more faith in him, as they should have, than in any other living man, and they universally distrust the men that now claim to manage their interests, and who gamble away their claims at the gaming table, bet them at horse races, and transfer the poor wretches, and their rights, from one to another, like ordinary chattels.

As for myself, having been ruled out of the commission, I decline rejoining it, until I hear the pleasure of the President and the department.

If you order me to Washington, I can make communications that will save the country a million of dollars.

Most respectfully,

JOHN F. H. CLAIBORNE,
United States Commissioner.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

Endorsement by the Commissioner of Indian Affairs.

Respectfully referred to the Secretary of War, December 23, 1843.

T. HARTLEY CRAWFORD.

EE.

NATCHEZ, December 13, 1843.

SIR: A day or two since I took the liberty of urging upon you the expediency of recommending the suspension of the Choctaw commission, for reasons fully stated.

It was not my intention to trouble you with any further communications, but a friend has just read me a letter from Dr. William M. Gwin, dated Vicksburg, December 9, 1843, and I beg to call your attention to the following extract.

I have the honor to be, most respectfully, your obedient servant,
JOHN F. H. CLAIBORNE.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

[EXTRACT.]

“The proceedings before the board will be a scene of strife, of vituperation, most probably attended by bloody broils, which precludes all hope of calm action and deliberation.”

P. S. Dr. Gwin resides at Vicksburg, the headquarters of the speculators, and well knows their views.

Endorsement of the Commissioner of Indian Affairs.

Respectfully referred to the Secretary, December 30, 1843.

T. HARTLEY CRAWFORD.

FF.

NATCHEZ, December 14, 1843.

SIR: It can be established, beyond question, that all the Choctaws whose cases were examined by the former board of commissioners made contracts or assignments with speculators, for a grossly inadequate consideration, within five years from and after the ratification of the treaty of 1830.

The former board did not go into the question of contracts, for reasons stated in the report of Messrs. Murray and Vroom.

I submit to you, whether the scrip now in the hands of Mr. McRae, removing and disbursing agent, as well as the *patents* issued, or to be issued, upon those cases, should not be withheld, as a just measure of protection to the Indians.

One-half of this land and scrip, awarded upon those cases, is now notoriously and publicly claimed by the parties who contracted with the Indians, or their assignees; and my opinion is, that arrangements have been made to use or procure the other half.

Referring you to my letter of the 9th instant, I have the honor to be your most obedient servant,

JOHN F. H. CLAIBORNE,
United States Commissioner.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs, Washington.

Endorsement of the Commissioner of Indian Affairs.

Respectfully referred to the Secretary of War.

The information communicated by Mr. Claiborne would seem to make it proper to arrest the further proceedings on the cases reported by Messrs. Murray and Vroom, the former commissioners; but I respectfully submit that there is no power to do so. The 6th section of the law of August 23, 1842, requires, if the President shall approve of the report of the commissioners, (the former,) that he shall cause scrip to be delivered, or land to be awarded, according to the provisions of the 3d section of the said law. There seems to be no discretion, when the confirmation has been once made. It has been done. An act of Congress could alone fix it as Mr. Claiborne suggests.

T. HARTLEY CRAWFORD.

DECEMBER 30, 1843.

GG.

NATCHEZ, *December, 14, 1843.*

SIR: It can be established, beyond question, that all the Choctaws whose cases were examined before the former board of commissioners made contracts or assignments with speculators, for a grossly inadequate consideration, within five years from and after the ratification of the treaty of 1830.

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One-half of the land and scrip awarded upon those cases is now notoriously and publicly claimed by the parties who contracted with the Indians or their assignees; and my opinion is, that arrangements have been made to use or procure the other half.

Referring you to my letter to the Commissioner of Indian Affairs of the 9th instant, I have the honor to remain, with high respect, your most obedient servant,

J. F. H. CLAIBORNE, *U. S. C.*

The SECRETARY OF WAR.

HH.

LOUISVILLE, MISSISSIPPI, *January 7, 1844.*

SIR: In one of the letters to the department of Mr. Claiborne, which I heard read last October, while in Washington, he claims the sole credit of detecting and exposing the attempt, on the part of some of the speculators, to reinstate before the present board of commissioners the cases which were examined by Commissioners Murray and Vroom, and which had been rejected by the department. He mentioned particularly the case of We-shock-sha-ho-mah, in which this effort was made. The copy of the enclosed letter of Colonel Fisher to me, and the statements thereto appended of Mr. Grigsby and of John Ellis, the interpreter to the board of

commissioners, will show how little Mr. Claiborne is entitled to the credit he claims—and indeed how far he is guilty of participating in the crime, if it be a crime, of the effort to reinstate the rejected cases.

His statements as to his efforts to ferret out fraud or discover contracts made by the Choctaws before the 24th February, 1836, are as little to be relied on.

I will in a few days answer his charges against me, contained in his letters of last May and June, although it seems almost unnecessary, since in his letter of the 7th November, to the department, he takes the whole blame to himself, and expresses a wish to atone for an official error in pressing prematurely the subject of adjudication.

I will prove, that while at Hopahka I urged upon him the necessity of appointing an agent to collect evidence in behalf of the Government, and he refused to concur—and that I expressed the opinion that the white agents of the Indians were competent witnesses, and ought to be examined, from which he dissented.

By one or the other of these means only could any contract be proved; yet Mr. Claiborne opposed both. The views and opinions which I had expressed in reference to this subject were the secret reason, I do sincerely believe, why Mr. Claiborne, before the examination of the protesters Kirksey and Poindexter even, so suddenly changed his determination, and urged upon me last March speedy adjudication, and before the arrival of the third commissioner—and hence, no doubt, his great desire to get me removed from the board. I have recently ascertained, that it was a common saying about this time among the speculators, what a splendid speculation they would make, if I were removed from the board. Mr. Claiborne never changed his views or opinions until he was exposed in some of his tricks by some of the speculators, and not until long after he must have received a communication addressed to the commissioners from the department, of the 6th of July, in reply to my letter of the 12th of June. This communication from the department, it seems, from the endorsement on it by the secretary of the board, he filed with the secretary on the 26th of August last, the day after the board of commissioners had adjourned at Yazoo, and I had left for Washington city. I saw it for the first time when I got to Washington, and instantly obtained a copy of it.

Mr. Claiborne's charge against me, that I had, while in Washington, advised the issuing of scrip upon the suspended cases, you can disprove. All his charges are of this character, the mere coinage of his own brain, without a shadow of truth. He had, I understood, about the 15th of November, furnished an article for the press, in which this charge against me was much elaborated; but the editor refused to publish it, or any other article from him, unless he furnished proof of what he said and alleged. He was, of course, at the end of his row. Mr. Tyler and myself opened the office here on the 25th ultimo. Mr. R. H. Brown, of Columbus, Mississippi, to whom the office of secretary was tendered immediately upon the resignation of Mr. Bayly, this day qualified and entered upon the duties of his office. Mr. Oakly also took the oath of office the same day. We are much pleased with him; and, with two such clerks as we now have, we can collect all the evidence in all the cases by the 1st of June.

I have the honor to be, with sincere respect, your obedient servant,

RALPH GRAVES.

Hon. J. M. PORTER,
Secretary of War.

P. S. The fact stated by Mr. Claiborne, in his recent pamphlet, that he had refused to speak to me except at the board, is entirely new to me—as also the threat which he says Mr. Prentiss made to me.

LOUISVILLE, December 27, 1843.

SIR: In your note of the present instant, you request me to state the circumstances that occurred before the board on the 19th of August, respecting the depositions of We-shock-sha-ho-mah and others. In answer, I have to state that Colonel J. B. Forester had drawn up the depositions, and requested me to read them before the board. I knew nothing of the contents but as I read them. After I had read through one, I handed it to you for cross-examination, or for the administration of the oath. You took it, and after pausing a while, you asked me whether the case of We-shock-sha-ho-mah had not been tried before the former board. I answered that it was. You then asked me if it had not been rejected at the department. I replied that I so understood. You then inquired whether it was one of the cases that had been sent back for reinvestigation; and on ascertaining that it was not, you said that the board could not take jurisdiction of it unless the department should send it back. It was urged by Colonel Forester that the object of these depositions was, to get the department to send the case back to this board; but you insisted that, as the matter now stood, the board had no jurisdiction, and you would not proceed in the business.

Colonel Claiborne said nothing during all this time, but in the end agreed with you in your decision.

Yours, respectfully,

CHARLES FISHER.

Colonel RALPH GRAVES.

I was present in court when the deposition of We-shock-sha-ho-mah and others was read, and concur fully in the statement above made by Colonel Fisher.

JOSEPH GRIGSBY.

I was the interpreter on the occasion of the reading of the deposition of We-shock-sha-ho-mah, spoken of by Colonel Fisher, before the board of commissioners, and concur fully in the above statement made by him as to what then occurred. I do also further state that, some eight or ten days before this deposition was read in court, We-shock-sha-ho-mah and Nock-i-chuco-mah came to Yazoo, and waited on Colonel Claiborne, when We-shock-sha-ho-mah told Colonel Claiborne that he understood that his claim had been rejected by the department, when Colonel Claiborne told him that he would have his case reinstated for him, and that he and others whose cases were similarly situated with his own must come over in a few days and attend the board, when he (Colonel Claiborne) would have the whole of their cases reinstated before the board for them.

I acted as interpreter between Colonel Claiborne and We-shock-sha-ho-mah on that occasion.

JOHN ELLIS.

I hereby certify that the foregoing are true copies of the originals in the possession of Colonel Graves.

Given under my hand, this 1st day of January, 1844.

RICHARD HENRY BROWN, *Secretary.*

II.

HERMITAGE, *January 19, 1844.*

DEAR SIR : I have received this morning, by mail, the enclosed pamphlet. I refer to page 11 of said pamphlet for my — enclosing it to you. There my name is used. Now, I state, without fear of contradiction, that there was no one, as my agent, ever purchased a foot of land from the Choctaws. These purchases, I have always believed, were the most stupendous frauds ever perpetrated upon the Government. I think so still, and, if properly investigated, will, I have no doubt, be fully established. To prevent fraud, the Choctaw treaty conferred reservations to include the Indian improvement. Instead of approving these sales, I always viewed them as frauds of the blackest kind, and do still ; and believe that there is not one of them ought to be confirmed to a white man.

Scarcely able to wield my pen, I have thought it right to say thus much to you, in your situation ; and am, very respectfully, your most obedient servant,

ANDREW JACKSON.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

The following is extracted from the pamphlet (page 11) referred to in the above:

OFFICE CHOCTAW COMMISSIONERS,
Hillsborough, Scott Co., Miss., November 7, 1843.

SIR : It is currently reported that certain interested persons are endeavoring to induce the department to believe that the Hopahka cases do not fall within the provisions of the 9th section of the act of 1842, as all the contracts have been made subsequent to the expiration of the five years ; and, upon this showing, that they are asking for the scrip.

It is my duty, as an officer of the Government appointed to investigate these claims, to notify you that this representation, if any such has been made, is false. All those Indians contracted *within* the five years ensuing the ratification of the last treaty, with persons who represented themselves as the agents of General Jackson, as I am credibly informed. It is true, in order to evade the aforesaid 9th section, new instruments have been executed by those Indians to John B. Forester and others, but the original contracts are still in existence ; parties are claiming under them ; and Forester is pledged to enforce those old contracts, in the division of the spoils, in many instances. He has made the same agreement with Colonel Alexander F. Young, one of the original partners, as Young informed me this day. Judge Wright and others, who have not had the same understanding with Forester, are threatening to get out an injunction to stay the payment of the scrip, if it should have been paid out on the Hopahka cases.

* * * * *

I have the honor to be, &c.

JOHN F. H. CLAIBORNE.

HON. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.