45TH CONGRESS, 2d Session. } SENATE. { MIS. DOC. No. 82.

MEMORIAL

OF

DELEGATES FROM THE INDIAN TERRITORY,

PROTESTING

Against the passage of the bill to organize the Territory of Oklahoma

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JUNE 12, 1878.—Referred to the Committee on Territories and ordered to be printed.

To the Senate and House of Representatives of the United States:

The undersigned delegates representing the Cherokee, Choctaw, Chickasaw, Creek, and Seminole Nations of Indians, respectfully call attention to the several bills and other propositions now before Congress to establish a Territorial government for the Territory owned and occupied by their people and other Indian tribes, and having for their object in whole or in part—

First. The opening to white settlers of country set apart by law and treaty exclusively for Indians.

Second. The extension of the laws of the United States and of the jurisdiction of its courts to all causes of action, civil or criminal, on the part of one Indian against the person or property of another Indian.

Third. The abolition of tribal relations and the adoption of Indians as citizens of the United States.

Fourth. The change of land-titles from a national tenure in common to an individual tenure in severalty.

All of which propositions are in violation of numerous treaty stipulations and guarantees, especially of the fourth article of the Choctaw treaty of 1830, and the fourth article of the Cherokee treaty of 1835, which provide that no part of the lands granted to either nation shall ever be included, without their consent, in the limits of any State or Territory, and secure to them forever the right to be governed by their own laws.

The fourth article of their treaty of 1856 contains a similar guarantee to the "Creek and Seminole tribes of Indians."

The guarantees to the Choctaws are repeated in the seventh article of the Choctaw and Chickasaw treaty of 1855, which secures the "unrestricted right of self-government and full jurisdiction over persons and property within their respective limits," and provides for the exclusion of all persons not "citizens or members of either tribe found within their limits."

The same guarantee in nearly the same words is given to the Creeks and Seminoles in the fifteenth article of their treaty of 1856.

The first article of the Cherokee treaty of 1846 provides that the Cherokee lands "shall be secured to the whole Cherokee people for their common use and benefit."

The Choctaw lands were ceded by the United States to the Choctaw Nation (second article treaty 1820, 7 Statutes, 211). The Chickasaws having subsequently acquired an interest therein, the first article of the Choctaw and Chickasaw treaty of 1855 guarantees the lands embraced within their limits "to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal, undivided interest in the whole."

The country of the Creeks and Seminoles was originally granted to the "Creek Nation of Indians" by the third article of the treaty of 1833, to be theirs "so long as they shall exist as a nation and continue to occupy."

The third article of the Creek and Seminole treaty of 1856 repeats the same guarantee to the Creeks, and to the Seminoles who had acquired part of the Creek country.

The third article of the two treaties, one with the Creeks and the other with the Seminoles, in 1866, contains similar provisions. Their lands are to be held by each nation, in the one case "as a home for said Creek Nation," and in the other as the "national domain of the Seminole Indians."

All the treaties of 1866 with the five nations referred to in this memorial, reaffirm the provisions of former treaties not inconsistent therewith.

The twenty-sixth and twenty-seventh articles of the Cherokee treaty of 1866 provide for the exclusion from their country of those who are "not citizens of the Cherokee Nation." The seventh article of the Choctaw and Chickasaw treaty of 1855 and the fifteenth article of the Creek and Seminole treaty of 1856 contain provisions of like character.

No one of the Indian nations embraced in the foregoing guarantees has asked for any change in its relations with the United States. They have all done well under the system of self-government, isolation, and tenure in common intended to be secured in their treaties. Under that system they were growing in wealth and strength in their former homes. Disease and exposure, consequent upon removal and change of climate, cut off on an average one-third of each tribe. When thoroughly acclimated they again increased in numbers, and were increasing and otherwise improving when the war checked their progress and again heavily reduced them; more than a third of the Cherokees, Creeks, and Seminoles having perished during the contest and the two or three ensuing years. After that they again began to increase, and are now increasing in population. That they are in other respects doing well under the present system is abundantly proved by the official statements, not only of government agents specially in charge, but also of heads of bureaus and of the Board of Indian Commissioners.

The report of that board for 1872, page 12, gives the comparative statistics of the Territories, ten in number, showing that the Indian Territory, in the language of the commissioners, "in population, number of acres cultivated, products, wealth, valuation, and school statistics, is equal to any organized Territory of the United States and far ahead of most of them."

The detailed statement on page 14 shows that the foregoing remarks apply chiefly to the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles, as distinguished from twenty-one other enumerated bands, constituting more than one-fourth of the population; the proportion of wealth, acres cultivated, grain produced, schools, teachers, and scholars, being overwhelmingly in favor of the five nations, and that, too, notwithstanding the fact noted by the commissioners on page 13, that they

'had their lands devastated and their industries paralyzed during the war of the rebellion, in the same relative proportion as other parts of the South, and have not fully recovered from the effects."

They add that "the partially-civilized tribes (the five nations), numbering about fifty thousand souls, have in proportion to population more schools and with a larger average of attendance, more churches, church members, and ministers, and spend far more of their own money for education than the people of any Territory of the United States. Life and property are more safe among them and there are fewer violations of law than in the other Territories."

The undersigned request that the foregoing statements, and others of like tenor in the annual reports of the Indian Office, may be compared with the official accounts of those Indians upon whom the experiments of the United States citizenship, tenure in severalty, and contact with white settlers have heretofore been tried.

With out going into details, it is sufficient for the purpose of this paper to refer to two of these accounts.

One is in the treaty, on pages 839-852 of the revision. Previous treaties having made the Wyandottes and Ottawas citizens, with allotments in Kansas, the preamble virtually declares the experiment a failure, the object of the treaty, so far as they are concerned, being to restore them to their former tribal condition as Indians, and to provide homes for them in the Indian Territory, to be held, not as individuals in severalty, but as tribes in common.

The other is the summing up, by the Commissioner of Indian Affairs, in his report for 1876, page 25, of the results in the case of the Pottawatomies, "who, after becoming citizens, squandered their substance, and have now returned as Indians, depending upon the bounty of the government."

It is the conviction that disastrous consequences would result from the proposed changes which causes the nearly unanimous opposition to such measures on the part of the five nations. Their own experience tells them exactly what the system of allotment and citizenship means. Provisions for that purpose were made in the treaties of 1817 and 1819 with the Cherokees, of 1830 with the Choctaws, and of 1832 with the Creeks. Hundreds of Indians entitled to patents for lands under those treaties have never secured a single acre. Many more, whose rights were recognized by the government, were shamefully wronged by the whites and have to this day been unable to obtain relief or redress.

The mischievous working of that system under those three treaties induced President Jackson to prohibit the introduction of similar features in other treaties made during his administration; and it is believed that no treaties containing such provisions were made under his successors until the accession of President Pierce. Since then the experiment has been frequently repeated with results in the main such as those above indicated in the case of the Wyandottes, Ottawas, and Pottawatomies. Another serious objection to the proposed system of allotment and citizenship is found in the litigation which, in case it is adopted, must necessarily result from the land-grants to railroads running through the Indian Territory, to take effect "whenever the Indian title shall be extinguished by treaty or otherwise."

The Indian title is held by each nation over whose lands the railroads pass. It will, of course, be contended—

First. That when any one of these nations, by the dissolution of its tribal relations, ceases to exist; or,

Second. When its title is transferred from the nation holding in com

mon to individual members holding in severalty who have become citizens of the United States, and have thus practically ceased to be Indians, that the "Indian title" will necessarily be extinguished.

While deprecating any action that might lead to such litigation, the undersigned wish to place on record the conviction universally prevailing among their people that the Indian title rests on too firm a basis to permit them to doubt the ultimate result of a judicial test. It is true that they regard the railroad land-grants as a perpetual menace to the owners of the soil, and feel that they have been the main cause of the majority of the territorial bills introduced during the last ten years. That the grants do harm rather than good the companies claiming them have begun to discover, and have signified their willingness to have them repealed. The undersigned trust that they will be, and that Congress will relieve their people from further risk of annoyance on that account.

But whether those grants are repealed or not, the undersigned feel confident that the courts will never decide that the Indian owners can be deprived of the soil without their own consent.

Whatever words may have occasionally been used in describing the Indian title, on carefully sifting the controlling decisions they will be found to concur in the opinion that the government interest in Indian lands is simply a right of pre-emption, or rather of purchase, and the history of the country from its earliest settlement shows that such lands have almost invariably been acquired by purchase from the original owners.

The transfer of the main body of the southern nations to their present homes was preceded by the act of Congress of May 28, 1830, authorizing an exchange of territory based upon the idea of perpetual possession with the assurance to the "tribe or nation making the exchange that the United States will forever secure and guarantee to them and their heirs and successors the country so exchanged."

The same idea runs through the treaties made immediately before and after that act. The preamble to the treaty of 1828 expresses the "anxious desire" of the government to secure to the Cherokees "a permanent home which shall, under the most solemn guarantees, remain theirs forever." Its second article agrees "to guarantee it to them forever."

The preamble to the Creek treaty of 1833 states its object to be to establish boundaries which will "secure a permanent home to the whole Creek Nation and to the Seminoles," and the same idea is expressed in the third and fourth articles of the treaty. The Choctaw title rests on the same basis of perpetuity, though its history is materially different.

Their country was acquired by the second article of the treaty of 1820, which makes an unqualified grant, without limitation or restriction of any kind. (7 Statutes, 211.) In 1837 they sold an undivided interest in the same to the Chickasaws.

In 1855 a treaty was made between the Choctaws, the Chickasaws, and the United States, by which the title was changed. The grant of 1820 was from the United States to the Choctaw Nation. The treaty of 1855 "forever secures and guarantees their lands to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole." (11 Stat., 612.)

Before this transfer to the "members of the Choctaw and Chickasaw tribes" two patents had been issued to the Choctaw Nation, one by President Jackson, the other by President Tyler, under the treaty of 1830, which provides for a special conveyance of the country previously

granted in 1820. These patents conform to the treaty under which they were issued, in describing a smaller area, and in certain restrictions not in the original grant; but they had no effect in injuring the Choctaw title, as the binding force and superior validity of the treaty of 1820, which was made under authority previously given by Congress, and under which the higher grade of title was acquired, was in various ways acknowledged both by Congress and the treaty-making power, down to 1855, when the convention between the Choctaws, the Chickasaws, and the United States, by its 21st article, was made to supersede and take the place of all former treaties. Fortunately, that convention is so framed, that, while providing for and recognizing to the fullest extent the national existence and government of both Choctaws and Chickasaws, their title is placed beyond the reach of interference in the event and because of tribal dissolution, should any such calamity befall them. So long as a single Choctaw or Chickasaw is left, or the heir or successor of a Choctaw or Chickasaw, and occupies the country described in the treaty of 1855, east of the ninety-eighth meridian, so long will the courts recognize and enforce the right to hold that country against all adverse claimants.

The qualifying words in the Choctaw and Chickasaw treaty and in the other treaties herein referred to, as applied to their title, obviously mean nothing more than the general principle under which, in the absence of legal representatives, land always reverts to the State, and by which it may be lost through a failure to occupy. The history of Indian legislation from the first settlement of the country shows that the restrictions upon alienation were meant for the benefit of the Indian, having their origin in the desire to guard against danger from the designs of evil-disposed white men. The wisdom of retaining those restrictions and the ancient safeguards of tenure in common as a protection against fraudulent devises, the undersigned cannot doubt will be appreciated by every member of Congress who carefully examines the subject. Such examination cannot fail to show the evils of the allotment system, and of the proposed disintegration by making citizens of such tribal members as may desire it, which can only serve to stimulate efforts on behalf of a few individuals to divide national funds held for the good of the whole.

The Indians constituting the five leading tribes have felt that the various evils pointed out in this paper could be made known, and by making them known could be averted only through the active agency of delegations at Washington. The expense incurred, however heavy it may be, counts for nothing in their estimation compared with the ruin threatened in the bills annually introduced in Congress.

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