51ST CONGRESS, 2d Session. } SENATE. { MIS. DOC. No. 38.

IN THE SENATE OF THE UNITED STATES.

JANUARY 6, 1891.—Referred to the Committee on Indian Affairs and ordered to be printed.

Mr. PLUMB presented the following

MEMORIAL OF THE DELEGATES OF THE CREEK NATION OF INDIANS PRAYING FOR THE PASSAGE OF THE BILL (H. R. 6849) PROVIDING FOR THE PAYMENT OF AWARDS MADE TO CREEK INDIANS WHO ENLISTED IN THE FEDERAL ARMY, LOYAL REFUGEES, AND FREEDMEN:

To the Senate and House of Representat ives of the United States of America:

The undersigned delegates of the Creek Nation are charged by those Creeks who enlisted in the Federal Army, loyal refugees and freedmen, with the duty of presenting and urging upon the attention of and settlement by Congress of the claims of those individuals against the Government of the United States, and in doing so we respectfully beg leave to invite your attention to the following facts, which will be stated as briefly as possible, consistent with the rights and interests involved:

THE FACTS IN THE CASE.

In 1861 a portion of the Creek Indians entered into a treaty with the so-called Confederate States, but a very large minority of the nation refused to join in that treaty, but relying in good faith upon the guaranties of their treaties with the United States, separated from their brothers, leaving their homes, property, and country, and sought the lines of the Federal Army for that protection which they had failed to secure at home. All the able-bodied men who went North joined the Federal Army, leaving the old men, women, and children to be cared for by the agents of the United States.

The Creeks had been in their home in the Indian Territory for a long time and were in an advanced state of civilization. They had good houses and large farms inclosed with good fences; they had immense herds of cattle and horses, and all the comforts and many of the luxuries of civilized life. Their houses were burned, their fences destroyed, and fields laid waste by those who were hostile to the Government of the United States and opposed to their going North, and their vast herds of cattle and horses were stolen and driven to Kansas and sold or taken to feed the United States Army, and to cattle brokers who speculated and fattened upon their misfortunes. These facts are substantiated by the records of the Interior and War Departments and would be referred to here if it were not for their prolixity.

Prominent men, merchants, military officers, Indian agents, traders, and others were charged as being implicated in this nefarious traffic. The fact that these open and glaring frauds had been committed upon these Indians by prominent people was one of the main causes which brought about the "treaty of cession and indemnity" of 1866 between the Creeks and the United States, and one of the objects of which was to indemnify these people for their losses; and this brings us to the consideration of the provisions of that treaty and certain antecedent treaty provisions and acts of Congress bearing upon the question.

TREATY OF 1866, ARTICLE 3, 14 STATUTES, 786.

By the third article of the treaty of 1866 the Creek Nation ceded, for the purposes therein stated, the western half of their entire domain, and the consideration therefor was to be disposed of as set forth therein, $100,000 of which was to be paid to the soldiers who enlisted in the Federal Army and the loyal refugees, Indians, and freedmen who were driven from their homes by the rebel forces, to reimburse them in proportion to their respective losses. The fourth article of said treaty reads as follows, to wit:

> Immediately after the ratification of this treaty the United States agree to ascertain the amount due the respective soldiers who enlisted in the Federal Army, loyal refugee Indians, and freedmen, in proportion to their several losses, and to pay the amount awarded each in the following manner, to wit: A census of the Creeks shall be taken by the agent of the United States for said nation, under the direction of the Secretary of the Interior, and a roll of the names of all soldiers who enlisted in the Federal Army, loyal refugee Indians, and freedmen, be made by him: The superintendent of Indian affairs for the southern superintendency and the agent of the United States for the Creek Nation shall proceed to investigate and determine from said roll the amounts due the respective refugee Indians, and shall transmit to the Commissioner of Indian Affairs for his approval, and that of the Secretary of the Interior; their awards so made shall be duly approved; said awards shall be paid from the proceeds of the sale of said lands within one year from the ratification of this treaty, or so soon as said amount of one hundred thousand dollars ($100,000) can be raised from the sale of said land to other Indians.

The provisions of that article were carried out, and General W. B. Hazen, U. S. Army, Superintendent of Indian Affairs, and Capt. F. A. Field, United States Indian agent, made final report under date of April 30, 1870, accompanied by abstract of claims and awards, with the evidence upon which their action was based.

Claims were presented to them amounting in the aggregate to $5,090,808.50, and the sum total of their allowance was $1,836,830.41, and thereafter the Secretary of the Interior paid the $100,000 to the claimants in proportion to their respective losses, each person receiving a fraction over 5 cents on the dollar of the amount found due him, and this 5 cents on the dollar was paid to them out of their own funds.

At the time the treaty of 1866 was made the $100,000 item was explained to them as only a payment in part. The fourth article was explained to and understood by them as providing a means of ascertaining the amount of their loses, for which they should be paid in full; that the eleventh article had reference to annuities which had been diverted, under the joint resolution of February 22, 1862 (12 Statute, 614), the act of July 5, 1862 (Id., 528), the act of March 3, 1863 (Id., 793), and the act of June 24, 1864 (13 Statute, 180), and other claims of a national character, and that article 12 confirmed all their rights under article 18 of the treaty of 1856; and under these circumstances the representatives of our people signed the treaty of 1866.

ARTICLE 18, TREATY OF 1856, 11 STATUTE, 704.

Now, we desire to invite your attention to the eighteenth article of the treaty of 1856 between the United States and the Creeks and Seminoles, whereby it was agreed that—

> The United States shall protect the Creeks and Seminoles from domestic strife, from hostile invasion, and from aggression from other Indians and white persons not subject to their jurisdiction and laws; and for all injuries resulting from such invasion or aggression full indemnity is hereby guarantied to the party or parties injured, out of the Treasury of the United States, upon the same principles and according to the same rules which white persons are entitled to indemnity for injuries or aggressions upon them committed by Indians.

This article brought the Creek and Seminole Indians within the provisions of the seventeenth section of the act of June 30, 1834, and known as the intercourse laws, which provides, in substance, that when a white person shall have property stolen or destroyed by Indians, such white person shall receive full payment therefor out of the annuities of the nation or tribe of Indians to which the Indians committing the depredations belong; but if such tribe or nation has no annuity, then the amount to be paid out of the Treasury of the United States. The last clause of this act was repealed by the 8th section of the act of February 28, 1859 (11 Statute, 401), but the liability of the United States in this class of claims was again recognized by the last clause of section 7 of the act of May 29, 1872, which provides that no payment on account of such claims shall be made without a specific appropriation therefor by Congress, and the Government of the United States has at various times since adjudicated and paid claims of this class.

DEPREDATION AGAINST THE PERSON AND PROPERTY OF INDIANS.

Claims of Indians for depredations committed by white persons come within the purview of sections 2154 and 2155 of the United States Revised Statutes, which provide, in substance, that when a white person shall be convicted of the commission of any crime or offense in the Indian country, and by reason of such crime or offense the property of any friendly Indian is taken, injured, or destroyed, he shall pay a sum equal to twice the value of the property so taken, injured, or destroyed, and if such offender can not be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury.

There is an item in the act of July 5, 1862 (12 Statutes, 528), which provides:

> That in case where the tribal organization of any Indian tribe shall be in actual hostility to the United States, the President is hereby authorized, by proclamation, to declare all the treaties with such tribe to be abrogated by such tribe, if, in his opinion, the same can be done consistently with good faith and legal national obligations.

Now, as a matter of fact, that great wise man and noble-hearted President, Abraham Lincoln, seeing that "good faith and legal and national obligations" toward a very large minority of the Creek Nation of Indians who were loyal to the Government of the United States, would be violated by the exercise of the authority vested in him, never issued the required proclamation, in consequence of which all treaty provisions with the Creek Nation remained in full force and effect. We desire to invite particular attention to the fact that the proclamation was never issued, as we shall take occasion to refer to it further on.

The matter of the claims of these Indians was before the Court of Claims (Thomas Connor, *et al. v.* The United States, 19 Court of Claims, 675), in which case, relying on an imperfect statement of the facts, the

court "decided as a conclusion of law that all claims which the petitioners had against the United States for damages and losses growing out of the late rebellion were adjusted, settled, and released by the treaty of 1866, and the payment thereunder of $100,000, as provided in article 3, and that the claimants, having received that sum are not entitled to be paid any further amount," and further the court says:

> The course of procedure taken by the Commissioner of Indian Affairs and the Secretary of the Interior in relation thereto, were in strict conformity with the treaty obligations, and the claimants, having received each his proportion according to his losses of the money awarded for that purpose, they are entitled to no more.

If there should have been added to the sentence just quoted the words "out of the funds of the Creek Nation," we could not question the conclusions of the court, for that was the only fund mentioned in the treaty and the only one under consideration by the court.

The court again says it is true that the twelfth article of the treaty of 1866 does declare—

> The United States reaffirms and reassumes all obligations with the Creek Nation entered into before the treaty of said Creek Nation with the so-called Confederate States, July 10, 1861, not inconsistent herewith.

But the effect of that provision was clearly to renew the former treaties from that date, and nothing more. It would be an unreasonable interpretation to put upon it that the United States agreed to be responsible for all obligations on their part contained in the treaties during the time the Creek Nation was, with other public enemies, at war with them, and yet, while making a new treaty, they provided the means of settling such obligations in part, as contended by the claimants.

The eleventh article of the treaty of 1866 expressly declares that—

> The stipulations of this treaty are to be in full settlement of all claims of said Creek Nation for damages and losses of every kind growing out of the late rebellion.

It is urged by the claimants that this provision applies only to national claims, while their demands are individual and personal. But that position is not warranted by the law or facts in the case. The claims of individual members who bring this action were claims of the nation within the rules of international law. (Great Western Insurance Company, case 206, *ante*.) Moreover, their payment as agreed upon was provided for by the treaty itself.

Now, we desire to show that the reasons and rulings of the court are inconsistent with the law and facts in the case.

First. The court held that the provisions of article 12 of the treaty of 1866, reaffirming and reassuming former treaty obligations, was to "renew" such obligations "from that date." This, we submit, is in violation of all rules of construction. The President of the United States never having issued his proclamation abrogating the treaties with the Creeks, all treaty provisions theretofore made were still in full force and effect at the date of the treaty of 1866, and no provision of treaty was "renewed" from that or any other date. The United States simply reaffirmed and reassumed certain obligations. It was an agreement that the former treaty stipulations not inconsistent with those of the treaty of 1866 should still remain in force. Nothing more and nothing less. The twelfth article of the treaty of June 14, 1866, specially confirms all previous treaty obligations not inconsistent with that one. (H. R. Report 78, Forty-second Congress, third session, page 302.)

Second. We believed the court erred in its construction of the eleventh article of the treaty of 1866 in holding that these claims were claims of the nation. The very article of the treaty under consideration

by the court contradicts this construction. That article recognizes and defines these claims as individual and personal and not national. The assertion of the claimants that the eleventh article of the treaty of 1866 relates to national claims is correct. That article says, "all claims of the Creek Nation," and not claims of individuals.

It seems very plain to us that the object of the treaty of 1866 was to ascertain the amount of the losses sustained by these people to the end that they might receive their pro rata share, in proportion to their losses, of the $100,000 chargeable against the general Creek fund, and that the balance of the amount should be a charge against the United States under the 18th article of the treaty of 1856, and it was so explained to them at the time. Rules of interpretation favorable to the Indian tribes are to be adopted in construing our treaties with them (U. S. Supreme Court, 7 Wall., 737), and we submit that under that article, which is still in full force and effect, without at all considering the third and fourth articles of the treaty of 1866, the United States is bound to these people for every dollar of the losses sustained by them.

We further submit that, without considering any provision of treaty between the United States and the Creek Nation, the United States are bound to these people for the amount awarded them by virtue of the same laws, and in the same sense of justice and equity, under which the United States has assumed and paid like losses sustained by white men.

The sum of $1,836,830.41 awarded to these people would not, by a large amount, cover the value of their cattle taken to subsist the United States Army.

The United States Supreme Court, in the case of Wright *vs.* Tibbitts (91 U. S. R., 252), held that a commission appointed under the Choctaw and Chickasaw treaty of 1866, for a purpose similar to that for which General Hazen and Captain Field were designated under the Creek treaty of 1866, was a *quasi* court. It was, in no material respect, for all the purposes of this controversy, different from the "Court of Commissioners of Alabama Claims," of the "Southern Claims Commission," or "the Mexican Claims Commission," or "Spanish Claims Commission," which have been called together, in pursuance of treaty stipulations or otherwise, to settle and adjust disputed claims, for the purpose of their ultimate payment and satisfaction.

This case is particularly applicable to the claims of the persons we represent. When the Commission, the "quasi court," passed upon these claims, they assumed the nature of an ascertained debt, "for the purpose of their ultimate payment and satisfaction."

What a travesty on justice, reason, and common sense it would be for the United States to say to these people:

"You were loyal; you were patriotic; you were driven from your homes; your houses were burned and your stock stolen and driven off; you served in the Army of the United States at the time of the Government's greatest need; you sacrificed home and country, and espoused the cause of the Union, and by reason of all this you lost property to the value of more than $5,000,000, accumulated by long years of thrift and industry, and a large amount of which was taken to subsist the Army in which you battled for the rights of the Government of the United States. Now the United States will purchase a portion of your lands, owned absolutely by you, and out of the consideration to be paid therefor, your own money, too, the Government will take $100,000 and pay you that amount for the $5,000,000 worth of property lost by you. You shall suffer this loss as a penalty for your loyalty, your patriotism,

and your service to the Government of the United States. That is the settlement the Government will make with you. The persons who were legally appointed and constituted to investigate your losses scaled them down from $5,000,000 to $1,800,000; the Government will further scale them down to $100,000, and then pay you that sum out of your own money."

We do not believe that your sense of honor and justice will permit you to take this view of the matter, but that in the consideration of these claims you will adopt that broader, more humane, more comprehensive, and more dignified policy which should be adopted by a great Government toward an inferior and wronged people, who, while owing it no allegiance, were second to none of your best citizens in loyalty, patriotism, and devotion to your Government. We further believe that in dealing with the rights of these people you will deal with them as you would deal with the rights of other persons, according to a reasonable, just, and fair interpretation of the contract made with them, constantly bearing in mind that your Government occupies to these claimants the relation of guardian to ward, and that you will carefully and jealously guard, adjust, settle, and pay the amount of the awards to these people, made in conformity with solemn treaty stipulation.

Since the happy and fortunate hour in which these claimants were released from military duties, in consequence of peace restored and the creation of the treaty of 1866, under which these awards were made, the men who served in the Army of the United States have in the ordinary course of nature been passing to the stillness of the grave. Let those who still survive receive your benediction of justice before they pass to "that undiscovered country from whose bourne no traveler returns."

Your petitioners and memorialists therefore respectfully and most earnestly pray that as a means of settlement of these legal claims, as well as a matter of justice, equity, and good faith, your honorable bodies will enact into a law House bill No. 6849, entitled "A bill providing for the payment of awards made to Creek Indians who enlisted in the Federal Army, loyal refugees, and freedmen."

D. M. HODGE,
A. P. MCKELLOP,
his
THOMAS + KNIGHT,
mark.
National Delegates and Agents of the Loyal Creeks.