52D CONGRESS, 1st Session. SENATE. MIS. DOC. No. 95.

IN THE SENATE OF THE UNITED STATES.

MARCH 14, 1892.—Referred to the Committee on Indian Affairs and ordered to be printed.

The VICE-PRESIDENT presented the following

MEMORIAL OF THE CHOCTAW NATION RELATIVE TO THE PRESIDENT'S MESSAGE, DATED FEBRUARY 17, 1892.

To the Senate and House of Representatives
of the United States in Congress assembled:

Your memorialists respectfully submit the following:

In the message of the President transmitted to Congress February 17, 1892, we learn that he has felt "bound to postpone any executive action" in a matter of the greatest importance to the Choctaw Nation, until certain facts could be submitted to Congress.

Your memorialists have carefully examined the message and accompanying documents, in order to learn what these facts were which justified the postponement of the execution of the act of Congress.

The act referred to makes an appropriation to the Choctaws and Chickasaws, to be immediately available, to pay for a certain portion of their leased district occupied by the Cheyenne and Arapahoes, upon condition that a release and conveyance to the United States of all the right, title, interest, and claim of said respective nations of Indians should be executed "in manner and form satisfactory to the President of the United States."

Under the last clause providing that these deeds of conveyance should "in manner and form satisfactory to the President" he claims authority "to look into the whole matter," including certain things relative to the domestic self-government guarantied by treaty to the Choctaws and Chickasaws as well as the wisdom of the Congress passing the act.

The act was not hasty, sudden, or without usual care, but was considered with unusual care; was based upon an elaborate, favorable report of the Indian office of September 13, 1890, transmitted by the Interior Department to the chairman of the Committee on Indian Affairs of the House of Representatives for the information of Congress; upon a favorable and unanimous report of the Indian Committee of the House (House Report No. 3147), Fifty-first Congress, first session, as well as the favorable and also unanimous action, as your memorialists believe, of the Indian Committee of the Senate; upon the printed briefs and maps of the Choctaw and Chickasaw delegation, with numerous authorities there cited, and oral and printed arguments before the committees of both Senate and House of Representatives.

The right of the Choctaws and Chickasaws was presented, not only before the Indian committees, but also before the Committees on Territories of both Houses and before the subcommittee and full Committee on Appropriations of the Senate. Nor was it presented "piecemeal." The claim was clearly stated to the leased district, and bills introduced in both Houses to pay the Choctaws and Chickasaws for their rights therein. It was on that, the bill to pay the Choctaws for the leased district as an entirety, excepting Greer County, in dispute (House Report No. 12106, Fifty-first Congress, first session) the favorable and unanimous report of the Committee on Indian Affairs of the House of Representatives, No. 3147, was made. This bill treating the leased district as an entirety was debated in the House of Representatives on December 6, 1891 (see Record), but not disposed of for want of time in the short session.

Various agreements made with the Pottawatomies, Absentee Shawnees, Cœur d'Alêne, Arickarees, Gros Ventres and Mandans, Sisseton and Wahpeton Sioux, Crows, also the agreement with the Cheyennes and Arapahoes, approved and submitted to Congress by the Executive Department, were placed upon and ratified by the Indian appropriation act of March 3, 1891, and appropriations made therefor.

By the Cheyenne and Arapahoe agreement, contained in said act, provision was made to throw open to white settlement a portion of the Choctaw and Chickasaw leased district held in trust by the United States, and on which the Cheyennes and Arapahoes had only a temporary right of occupancy (Senate Report No. 708, Forty-sixth Congress, second session, p. 2), and no legal right whatever.

It would have been clearly unjust to the Choctaws and Chickasaws to throw these lands open to settlement without payment, and an amendment was therefore introduced by the Committee on Indian Affairs of the Senate for this purpose, which was referred to the Committee on Appropriations. It was debated at length and voted on as an independent item in each House, and passed by an overwhelming vote in both Senate and House of Representatives.

The debate in the Senate was participated in by Senator George, Senator Teller, Senator Jones, of Arkansas, Senator Dawes, Senator Allison, Senator Stewart, and Senator Cockrell, its merits denied by none and openly avowed by nearly every one of those mentioned (see Cong. Record, 1891, pp. 3814 to 3836; see also Exhibit 12).

In the House of Representatives it was supported by Mr. Perkins, then chairman of Committee on Indian Affairs; Mr. Peel, present chairman of Committee on Indian Affairs; Mr. Barnes, Mr. Springer, Mr. Culberson, Mr. Breckinridge, of Arkansas, and others (see pp. 3919 to 4267, Cong. Record, 1891; see also Exhibit 12).

It became a law March 3, 1891, by the signature of the President of the United States.

The legislature of the Choctaw Nation and that of the Chickasaw Nation were each called in special session to consider the question of accepting the consideration proposed by Congress for their lands in the leased district, and authorizing the releases and conveyances desired.

Each legislature passed an act accepting the terms proposed by Congress, authorized special delegates to execute the releases and conveyances "in manner and form satisfactory to the President," and directed their national treasurers to receive and receipt for the funds appropriated.

The representatives of each nation offered to execute releases and con-

veyances in whatever manner and form would be satisfactory to the President. Forms were prepared exactly like the form of the deed executed by the Seminole Nation that had previously been found satisfactory to the President himself in this precisely similar case.

Forms of release were prepared in the Indian Office upon the written request of the Choctaw chief made to the President, but the Secretary of the Interior withheld them on the ground that "the manner in which this business has been conducted in the Choctaw Nation" might make it unnecessary to execute the law at all.

Two memorials submitted by the Choctaw Nation to the President, which we deem of great importance to a proper understanding of the position of the Choctaw Nation in this matter, were not transmitted with the other papers accompanying the message, we therefore attach them hereto, respectfully calling attention to them and requesting a careful perusal. (See Exhibits 1 and 2.)

The reasons suggested by the message justifying the postponement of the execution of the law appear to be:

First. That the Choctaw Nation had "entered into an agreement with three citizens of that tribe to pay to them as compensation 25 per cent of any appropriation that might be made by Congress," which is characterized as "extortionate exaction."

Second. That Robert J. Ward, one of the citizens aforesaid, had "presented to the President an affidavit," dated April 4, 1891, "from which it appears that the action of the Choctaw council in this matter was corruptly influenced." The opinion being expressed that regardless of whether fraud had been committed, the Congress of the United States should not so legislate as to give effect to such a contract if the Choctaws were wards of the Government.

Third. That the Choctaw Nation had excluded the freedmen and white intermarried citizens from any participation in the distribution of this fund.

Fourth. That the Chickasaws had steadfastly refused to admit the freedmen to citizenship as they stipulated to do in the treaty of 1866.

Fifth. That the President does not believe that the lands which this money is to be paid for were "ceded in trust by article 3 of the treaty between the United States and said Choctaw and Chickasaw nations of Indians which was concluded April 28, 1866," as declared by Congress.

The Choctaw Nation, answering more fully hereinafter on each of these points, is constrained to enter a specific denial of the correctness of every point taken.

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

Second. The Nation's legislature was not corruptly influenced to contract the contingent fee, but the contract made by the legislature of 1889 has been by two subsequently elected legislatures confirmed and approved since the appropriation by Congress.

Third. The Choctaws did not commit error in excluding the freedmen from the proposed per capita payment, and had a legal right to exclude the adopted United States citizens.

Fourth. The Chickasaws acted strictly in accordance with the treaty in declining to adopt the freedmen in their nation. They did not stipulate to adopt them in the treaty of 1866, or any other treaty.

Fifth. We insist that the President is mistaken in the opinion that Congress was in error in declaring the leased district held as a trust.

And now, answering these points more fully but in serial order, your memorialists respectfully state:

First. As to the contingent fee, we respectfully state that it was not the first intention of the Choctaw Nation to employ any agents on a contingent fee to secure their rights, which they honestly believed would be cheerfully acknowledged and settled on the same basis as that of their neighbors—the Creeks, Seminoles, and Cherokees.

On November 5, 1889, the Choctaw council appointed commissioners, at $6 per day and mileage, to attend to the leased district matter. (See Exhibit 3.)

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

The Choctaw commissioners, though greatly discouraged by this action, called upon the United States Commission in person, and insisted that the United States Commission should negotiate with the Choctaws and Chickasaws.

The commission refused to negotiate, and the Choctaws from other sources learned that the honorable Secretary of the Interior had issued secret instructions to said commission so instructing them.

The Choctow commissioners returned home.

A special council was called to hear their report.

The Choctaws were greatly disappointed to learn that the Executive Department had decided against them without a hearing on a matter of such vital importance, and they believed that the greatest efforts would be, under the circumstances, necessary to obtain justice.

The Choctaws have always had peculiar difficulty in collecting anything from the United States.

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

The Choctaw Nation in passing the act of December 24, 1889 (see Exhibit 5), exercised its best judgment and explained its reasons in the act itself, to wit:

That bills had been introduced in Congress to open the leased district without compensation to the Choctaws. That the United States had set up absolute title to this land, ignoring the history and common understanding of the treaty and had refused to negotiate with the Choctaw Nation. That the Choctaw Nation not being willing to expend what they anticipated might be a heavy draft on their annual

income, needed for the ordinary expenses of the government, the Choctaw law of December 24, 1869, itself recites that—

Desiring to engage the services of a delegation willing to pay all expenses incurred; and whereas the Choctaw Nation wishes to support said delegation in the employment of competent counsel and a large and able corps of assistants to push the equitable rights of the Choctaw Nation upon the attention of the Executive Department of the United States and upon Congress, in order that the rights of the Nation now ignored may be recognized.

The law enacts a contingent fee of one-fourth the recovery.

It being distinctly understood that said delegation shall bear all expenses in conducting this business, and that they shall not call on or expect any appropriation whatever in this connection. * * * In case of failure said delegation shall bear the loss of their expenses, labor, and time.

This question of excessive compensation, however, is not new. It was debated in the House of Representatives of the Fifty-first Congress, and was urged against the appropriation, and the objection was overruled by the vote of the House.

This act of December 24, 1889, the President never learned of till after the act of March 3, 1891, was passed by Congress, and he seems to think it a discovery. This act, however, was published with the acts of the session of 1889, and scattered broadcast for public information, and copies doubtless sent, as usual, to the Indian Office for its information.

The Choctaw laws are matters of public record, about which is never any concealment, but on the contrary the widest publicity is given them.

These delegates thus appointed and their western attorneys and counsel, after spending thousands of dollars in expenses of three winters in Washington and making very many trips from distant Indian Territory to the capital, have succeeded in overcoming every obstacle, in securing an act of Congress appropriating the money and the approval of the President, which is a full, final, and complete recognition of the rights of the Choctaws, though, unfortunately for them, it still remains unexecuted.

Second. The message states that "R. J. Ward presented to the President an affidavit," dated April 4, 1891, "from which it appears that the action of the Choctaw council was corruptly influenced" by Ward himself to authorize the contract of December 24, 1889.

The records submitted with the message demonstrate a number of errors in this statement.

(1) The so-called affidavit of April 4, 1891, is not an affidavit at all.

(2) It was not presented by Ward to the President.

(3) It was not presented by Ward to anyone, but was prepared and presented to Ward for his signature on the 4th day of April, 1891, by an Indian agent, Leo E. Bennett, acting under special instruction of the Secretary of the Interior, and was by Bennett presented to the Secretary himself.

Neither J. S. Standley nor H. C. Harris, whose names were involved, although at Tushka Homma, the capital of the Choctaw Nation, were advised that the Indian agent was in the country for the purpose of investigation, or knew of the existence of the writing signed by Ward till November, 1891. Indeed, although the chairman of the delegation was frequently in the Interior Department and had an interview with the Secretary of the Interior upon the subject of the Choctaw appropriation, not the slightest intimation was ever given that any writing or so-called affidavit ever existed, attacking their integrity or the honor of the Choctaw Nation.

As soon as the purport of this alleged affidavit was made known to Standley, both he and Harris filed their affidavits in contradiction (see Exhibit 6), and Ward himself on his oath vindicates Harris and Standley from any knowledge of or connection with any corrupt influence, and contradicts the only material point in the so-called affidavit. (See Exhibit 7.) This explanatory affidavit is not noticed in the message, although presented to the President by the chairman of the Choctaw delegation, and is submitted as one of the accompanying documents to the President's message.

Ward swears on January 7, 1892, in the only affidavit he has made in this case, that the Choctaw council was not corruptly influenced by him in the matter of the contract. He swears his action in giving the notes and signing the names of Standley and Harris was done to defeat a blackmailing scheme directed against his own confirmation, and explains the previous statement prepared for his signature by the Indian agent.

The agreement to compensate the delegates for their expenses and services, however, does not rest alone on the act of December 24, 1889. A new Choctaw council was elected in August, 1890. It met in special session and on April 10 and April 11, 1891, in two acts (see Exhibits 8 and 9), immediately after the appropriation of March 3, 1891, by Congress, with the full knowledge of all the facts, confirmed and ratified the agreement. The legislature was composed of new members, not one of those alleged to have the notes from Ward being a member of either house.

In August, 1891, a new council was again elected, and on December 11, 1891, this legislature again indorsed the contract of December 24, 1889 (see Exhibit 10).

This contract has therefore been made and indorsed by three different legislatures in four different acts, and as far as we know and believe without a dissenting voice. It has the support and approval of the Choctaw people, who knew it was not obtained by fraud, but was judicious and proper.

Third. In regard to the third point, that the Choctaws were unjust to the freedmen and intermarried whites in the proposed per capita distribution, the Choctaws respectfully state that the Commissioner of Indian Affairs himself decided this identical question against the freedmen in June, 1891. That in article 3 of the treaty with the Choctaws of April 28, 1866 (pp. 769–777, U. S. Stat., Vol. 14), it was provided that if "the legislature of the Choctaw and Chickasaw nations, respectively," thought fit to adopt the freedmen, that they should give the adopted freedmen "all the rights, privileges, and immunities, including the right of suffrage of citizens of said nations, except in the annuities, moneys, and public domain, claimed by or belonging to said nations, respectively."

On this basis the Choctaws adopted the freedmen, and have been magnanimous and generous beyond any other community in the United States to these people, giving them all the land they wanted to cultivate; forty free public schools and a special high school, with free board and tuition, and other privileges coequal with the Choctaws themselves, without the tax of a dollar. This was more than the treaty contemplated, and more than any State in the Union has given.

The question as to the right of the adopted whites to participation in the Choctaw funds was referred to Hon. W. H. H. Miller, the Attorney-General of the United States, on this very case, and he has declared that the question of what persons were "entitled to such distribution, the evidence necessary to establish their claims, and the manner of such

distribution are all matters to be regulated by the laws of the Choctaws and Chickasaws, respectively." (See Exhibit 11.)

Fourth. The fourth point made by the President, that the Chickasaws have steadfastly refused to admit the freedmen to citizenship, as they stipulated to do in the treaty referred to, is abundantly answered by the third article of the treaty of 1866. The Chickasaws did not stipulate to admit the freedmen to citizenship.

In answer to the first four points made by the President, that the Choctaw Nation had allowed excessive compensation, that its legislature had been subjected to corrupt influences by R. J. Ward, and had been unjust in the proposed per capita distribution, and that the Chickasaws had not adopted the freedmen, your memorialists beg leave to observe that these statements, if they were true, constitute a part of the domestic affairs of the Choctaw Nation and Chickasaw Nation with which the United States has nothing to do. (6 Peters, 515–582; U. S. R., 119, 28.)

The Choctaws have been recognized as a treaty-making power for over one hundred years. They have exercised the right of self-government in all civil and criminal matters affecting their own people from the time "whereof the memory of man runneth not to the contrary." This right of self-government is distinctly recognized and declared in article 4, treaty of 1830 (p. 333, U. S. Stats., 7), and in article 7 of the treaty of 1855 (p. 612, U. S. Stats., 11), wherein the language appears that—

> The Choctaws and Chickasaws shall be secured in the unrestricted right of self-government, and full jurisdiction over persons and property within their respective limits.

The recognition of this right of self-government of the civilized tribes has been passed on by the Supreme Court of the United States.

The court says:

> All rights which belong to self-government have been recognized as vested in them. * * * In the management of their internal concerns they are dependent on no power. (5 Peters, 16; 6 Peters, 580; Choctaw Nation *vs.* United States, U. S. R. 119, pp. 28, 38.)

The Attorney-General of the United States himself has so advised in this very case, July 28, 1891 (Exhibit 11), as to the right of the Secretary of the Interior to interfere in the distribution of this fund. After quoting the act he says:

> This language plainly has reference to the payment of these moneys in bulk to the representatives of the Choctaw and Chickasaw Nations, and imposes no duty upon the Secretary of the Interior with reference to the individual distribution of the same. The persons entitled to such distribution, the evidence necessary to establish their claims, and the manner of such distribution, are all matters to be regulated by the laws of the Choctaw and Chickasaw Nations, respectively, subject, doubtless, to the rule that such laws must not be in conflict with the Constitution and laws of the United States.
>
> It is not apparent, therefore, that any question is presented to the honorable Secretary of the Interior for decision requiring an opinion from the Attorney-General, under section 356 of the Revised Statutes. *Any decision by the Secretary, or opinion by the Attorney-General, would be wholly inconclusive, and, as I conceive, outside of duties imposed by law, scarcely less so than if we should attempt to determine what should be done with the moneys paid to the several States under the act providing for the refunding of direct taxes.*

These treaties fully answer the points made by the President since the questions whether or not the Choctaw legislature promised excessive compensation, was corrupted by R. J. Ward, or was unjust to certain citizens in the proposed per capita distribution, or whether the

Chickasaws declined to adopt the freedmen, are matters relating to their self-government alone.

Fifth. Answering the fifth point made by the message that Congress was in error in its legislation, the Choctaws confidently refer to House Report 3147, Fifty-first Congress, first session (see Exhibit 12), which is an elaborate reply to the views expressed in the message both by the Indian committee of the House of Representatives and by the Commissioner of Indian Affairs; by the various authorities stated therein too numerous to mention, and by the debates in Congress which we have above referred to. The message omits very many facts essential to the proper understanding of this case, which were before the Commissioner of Indian Affairs, before the Committees, and before Congress, and many statements are made strangely at variance with these records.

The Choctaw Nation begs leave to present however, a brief history, with citation of authority.

On October 18, 1820 (Sec. 2, p. 211, U. S. Stat., 7), the United States ceded for valuable consideration to the Choctaw Nation a tract of country between the Arkansas and Red rivers, extending—

> Up the Arkansas to the Canadian fork and up the same to its source, thence due south to the Red River, thence down the Red River, etc.

This tract of country extended to the Rocky Mountains in New Mexico, containing over 6,000,000 of acres west of the one hundredth meridian.

By the treaty with Spain ratified by the United States in 1821 (Art. 3, p. 255, U. S. Stat., 8), the boundary line between the United States and Spain was fixed at the one hundredth degree of longitude west from London, thus ceding to Spain the immense tract of country containing about 6,589,440 acres, exclusive of fractional townships, lying between the Red River and the Canadian River, west of the one hundredth degree, and extending to the Rocky Mountains, which had just previously been, by the treaty of 1820, conveyed to the Choctaw Nation.

In 1855 the Choctaw Indians (see Articles 9 and 10, treaty of 1855, p. 613, U. S. Stat., 11), absolutely and forever quitclaimed and relinquished to the United States, all their right, title, and interest, in and to the lands west of the one hundredth degree of west longitude, containing, at a low estimate, not less than 6,589,440 acres of land ceded them in 1820 as stated, and in the same article of the same treaty.

The Choctaws and Chickasaws leased to the United States all that portion of their common territory between the ninety-eighth and the one hundredth degree of west longitude, 7,713,239 acres, for the permanent settlement of certain Indians south of the Arkansas River, provided that the territory so leased *should remain open to settlement by the Choctaws and Chickasaws as theretofore.*

The consideration of $800,000 named by this tenth article for the relinquishment of 6,589,440 acres west of the one hundredth degree to which the Choctaws had just claim, is certainly sufficiently small. At 12 cents an acre for this land the $800,000 would be consumed, allowing the Choctaws and Chickasaws nothing whatever for the valuable lease of the Leased District.

The Choctaws insist that not a dollar of this $800,000 can be charged rightfully against the Leased District, because entirely inadequate in equity to pay for the land the Choctaws owned but which the United States ceded to Spain, west of the one hundredth degree; and Congress so construed it (26 U. S. Stat., 1025); that the United States should have paid the Choctaws much more than $800,000 for this enormous and valuable tract.

The United States, however, obtained the use of the Leased District from 1855 to 1866, eleven years (indeed the Government has used this land up to the year 1892, or for thirty-seven years), and at 1 cent an acre per annum a marshaling of accounts in 1866 would have consumed the $800,000, allowing the Choctaws nothing for the land west of the one hundredth degree. It is apparent that the Choctaws and Chickasaws approached the treaty of 1866 under no debt to the United States for payments made on account of the Leased District in 1855.

The message states—

> That the boundary line between the Louisiana purchase and the Spanish possessions by the treaty of 1819 with Spain, as to these lands was fixed upon the one-hundredth degree of west longitude. That our treaty with the Choctaws and Chickasaws made in 1820 extended only to the limits of our possessions.

Here are three important errors:

(1) The treaty with Spain was not ratified in 1819, but on February 19, 1821. (U. S. Stat., vol. 8, p. 252.)

(2) The treaty was not made with the Choctaws and Chickasaws, but with the Choctaw Nation alone. (U. S. Stat., vol. 7, p. 211, art. 2.)

(3) The Choctaw country by this treaty was extended not to the limit of the possessions of the United States, but to the head waters of the Canadian River in the Rocky Mountains. (U. S. Stat., vol. 7, p. 211, art. 2.)

The inadequate consideration of the treaty of 1855 should be kept clearly in mind in considering the treaty of 1866.

By article 3, of the treaty of 1866 (p. 769, U. S. Stat., 14), the Choctaws and Chickasaws ceded to the United States the leased district of nearly 7,713,000 acres for $300,000, with the provision that if they did not adopt the freedmen within two years the United States would move them from the Choctaw and Chickasaw Nations and give the freedmen the $300,000. In other words, if the freedmen moved out the Choctaws and Chickasaws should receive not a dollar for the cession of this enormous tract of fertile country, and, in fact, the Chickasaws have never gotten a dollar for the alleged cession of 7,713,000 acres, which had been patented in fee simple on March 23, 1842. (Vol. 1, p. 43, Records of the General Land Office.)

The Chickasaws state this point well, and say:

> This article of the treaty of 1866, standing alone, shows a cession by the Choctaws and Chickasaws to the United States of 7,713,239 acres of land, unsurpassed in point of fertility by any body of land of equal area in the United States. If the sum of $300,000, named in this article, constituted the sole consideration for the conveyance, and the United States became the sole owners of the land in their own right, and not the mere grantees of a trust estate therein, then the remarkable spectacle is presented of a purchase by the great Republic of the United States from their feeble and dependent wards, of 7,713,239 acres of land, then worth in money more than $10,000,000 and now worth more than $40,000,000, for the nominal consideration of $300,000, which sum of $300,000 was to remain the property of the United States if the freedmen should not be removed from the Chickasaw and Choctaw Nations or become citizens of those Nations, but was to be paid to the freedmen if they should be removed, and was only to be paid to the Choctaws and Chickasaws in the event that they should confer citizenship upon the freedmen, and the freedmen should not be removed.
>
> Was such a bargain ever before made between a powerful republican government and a dependent Indian tribe? Was such a bargain ever made between an honest guardian and a helpless "ward?" It has often happened that unscrupulous traders have persuaded Indians to exchange property of great value for worthless trinkets, but the acquisition by the United States from the Choctaws and Chickasaws of 7,713,239 acres of land for a merely nominal consideration, which nominal consideration was not to pass to the Choctaws and Chickasaws at all, unless they should make citizens of the freedmen and the freedmen should refuse to emigrate, would have been a juggle of such proportions as to overshadow all the petty knavery perpetrated

by individual Indian traders on the Choctaws and Chickasaws for the last hundred years.

In order to support this forced construction of a treaty between so-called "wards of the nation" and their guardian, not only are all doubtful questions solved in favor of the guardian against the "ward," but the clearest statements of the treaty are misunderstood. To the unsophisticated Chickasaws it seems strange indeed that the President should manifest such solicitude to save the "wards of the nation" from the payment of a part of their moneys to attorneys and, at the same time, should be so zealous to force upon the treaty of 1866 a hard and grinding construction, which would deprive the "wards of the nation" of the whole of their moneys. If the Choctaws and Chickasaws are to be robbed, they would rather be robbed of 25 per cent of their moneys by their attorneys than of a 100 per cent by the United States; they would rather take their risks at the spigot than at the bung.

The Choctaws insist upon it that this cession to the United States was in trust for the settlement of other Indians, and this is demonstrated by the records of the United States Indian Office and the terms of the treaty itself. The Commissioner of Indian Affairs (annual report of 1864, pp. 33, 34) *declares this policy*, and says that—

The Cherokees, Creeks, Choctaws, and Chickasaws should be required to receive within the limits of their country west other tribes with whom they are on friendly relations. Under these circumstances I feel that I can not too strongly urge the importance of preserving the Indian country *for the use of the Indians alone, and in all treaties or other arrangements which may hereafter be made with its former owners insisting upon and, if necessary, enforcing such terms as will secure ample homes within that country for all such tribes as from time to time it may be found practicable and expedient to remove thereto.*

The Commissioner of Indian Affairs, in his annual report of 1865 (pp. 34, 312), gives an elaborate history (we pray those who doubt the meaning of the treaty of 1866 and that the leased district is held as a trust to read this history with care) of the dealings of the United States commission with all these tribes of Indian Territory at the council of Fort Smith, September 8, 1865, among others with the Choctaws and Chickasaws. He says that the commission stated that they were empowered to *enter into treaties on the following seven propositions.*

The first four relate to the maintenance of peace and the abolition of slavery.

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

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

Seventh. That no white person, except Government employés and officers or employés of internal-improvement companies authorized by the Government, will be permitted to reside in the country unless incorporated with the several nations.

Printed copies of the address of the Commissioner involving the above propositions were placed in the hands of the agents and the members of the tribes, many of whom were educated men.

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

The Commissioner of Indian Affairs in his report quotes the following letter as a part of the record:

Robert Patton, on behalf of loyal Choctaws, then submitted the following in reply to the Commissioner's address:

Honorable Commissioners of the United States:

We, the delegates on the part of the loyal element of the Choctaw people. * * * In answer, therefore, to your propositions to the several tribes of Indians, *we say that the first, second, third, fourth, fifth, and sixth articles meet our approval.* We respectfully suggest that the seventh article may be changed to read thus:

"No white person, except officers, agents, and employés of the Government or of any internal-improvement company authorized by the Government of the United States; also no persons of African descent, except our former slaves or free persons of color who are now or have been residents of the Territory, will be permitted to reside in the Territory, unless formally incorporated with some tribe according to the usages of the band."

WILLIAM S. PATTON.
ROBERT PATTON.

It was with this understanding that the treaty of 1866 was entered into. The Choctaws and Chickasaws rightfully understood that the leased district was ceded for Indian occupation only.

Parol proof is admissible to show a resultant trust in a deed absolute on its face (19 Howard, 289, and cases there cited; 4th Kent, 12th edition, 142, and cases there cited; Boyd *vs.* McLane, 1 Johns, 582), and the United States' own records as well as the Choctaw witnesses establish this trust.

Treaties are to be construed as understood by the parties to them and Indian treaties "should never be construed to the prejudice of the Indian" declares the United States Supreme Court, and—

How the words of the treaty were understood by these unlettered people rather than their critical meaning should form the rule of construction (6 Peters, 515 to 582; 119 U. S. Supreme Court Reports, p. 27; 5 Wallace, 760).

The tenth article of the treaty of 1866 reaffirms all obligations arising out of the treaty stipulations not inconsistent with the treaty itself, and thus was reaffirmed by necessary implication the obligation of the United States that the land embraced in the Choctaw patent should not be embraced within the limits of any State or Territory, or open to white settlement, but for Indian settlement only, as agreed in article 9, treaty of 1855.

Articles 43 and 45 of the treaty of 1866 are substantially to the same effect.

The eighth article of the treaty of 1866 sets up a complete scheme of Indian federated government for Indian Territory, for Indians alone, excluding whites. This article clearly shows the purposes of all parties to retain this country for Indian occupation only.

Not only have the Indians so understood the treaty of 1866, *but this view has been the uniform construction of the officers of the United States ever since.*

The Secretary of the Interior, the Hon. Carl Schurz, May 1, 1879, declares relative to the leased district, that—

The lands ceded by the Choctaws and Chickasaws were by article 9 of the treaty of June 22, 1855, leased to the United States, and that the treaty of 1866 substituted a direct purchase *for the lease, but did not extinguish or alter the trust.*

President Hayes, February 12, 1880, by proclamation, declared Indian Territory subject to occupation *only by Indian tribes.*

February 17, 1883, Hon. Samuel J. Kirkwood, Secretary of the Interior, transmitted to the Senate a report of M. C. McFarland, Commissioner of the General Land Office, setting out at length—

That the Choctaw and Chickasaw cession of April 28, 1866, are by the 10th article thereto *made subject to the conditions of the contract of June 22, 1855,* by the 9th article of which it was stipulated that the lands should be appropriated for the permanent *settlement of all bands of Indians as the United States might desire to locate thereon,* etc.

And further—

The title of the United States to lands in Indian Territory is, as heretofore stated, *subject to specific trusts,* and it is not within the power of either the legislative or executive departments of the Government to annihilate such trusts or to avoid the obligations arising thereunder.

Hon. H. M. Teller, Secretary of the Interior, January 3, 1883, addressed the President of the Senate of the United States, a letter most forcibly setting forth the rights of the Indian people under their patents, to which reference is respectfully made.

On the 14th of February, 1884, Hon. H. M. Teller, Secretary of the Interior Department, addressing the President of the United States Senate, stated as follows, to wit:

> These lands were acquired by treaties with the various Indian nations or tribes in that Territory in 1866, *to be held for Indian purposes* and to some extent for the settlement of former slaves of some of said nations. Such are the provisions on which said lands are being held, *according to the common understanding and the object of the treaties by which they were acquired.*

In United States *vs.* D. L. Payne, the famous Oklahoma boomer, this matter is set forth quite plainly by United States District Judge I. C. Parker.

Many other authorities might be cited if it were necessary, but these are deemed sufficient.

The purposes of the treaties of 1866 with the Five Civilized Tribes—the Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws—were identical; that is, to secure parts of their western lands for the purpose of providing homes for other Indians.

None of these treaties intended to put the fee in the Government, except as a trust.

The history, the language of the treaty, the understanding of the Indians and United States officers, and the unbroken line of authorities demonstrate this in the most convincing manner.

The Creeks were paid by the Congress of the United States for their lands ceded in 1866 as a trust for Indian settlement, by agreement of January 19, 1889, under the policy of opening these western lands, inaugurated by Hon. William F. Vilas, then Secretary of the Interior.

Congress decided the Creek lands were held in trust.

Congress decided the Seminole lands were held in trust, and paid for them March 2, 1889.

The Cherokees have now an agreement pending to pay them about $1.42 an acre, made under authority of Congress of act of March 2, 1889, by the Cherokee Commission.

Congress, on March 3, 1891, made an appropriation to pay the Choctaws and Chickasaws, deciding their western lands were, like the others, held in trust, but the Choctaws, after waiting anxiously an entire year, now learn from the message of the President of the United States that *the reason for not paying them is due to the alleged unwise exercise by the Choctaw Nation of its guarantied right of self-government on the one part, and the alleged unwise excercise of the same right by the Congress of the United States on the other part.*

The message urges substantially that Congress should, if they paid anything at all, have driven a closer bargain with the Choctaws, and thinks that the Government has been required to pay too much for that portion of the "Leased District" occupied by the Cheyennes and Arapahoes.

In point of fact, the Government, after requiring the Choctaws and Chickasaws to furnish gratis to 600 Cheyennes and Arapahoes there resident, as stated by United States Indian Agent Charles F. Ashley, esq., at 160 acres each, 96,000 acres, then proposes to sell at $1.50 an acre the residue, 2,393,159.84 acres, bought of the Choctaws and Chickasaws at $1.25 an acre, making a net profit of $598,289.96.

A statement of prices paid for this Cheyenne executive order reser-

vation land and prices for which it will be sold by act of March 3, 1891, shows that the United States will make a net gain of nearly $1,000,000 after paying the Choctaws and Chickasaws, or a net gain of nearly $4,000,000 if the Choctaws and Chickasaws are not paid, and this, too, after requiring the Creeks, Seminoles, Choctaws, and Chickasaws to furnish gratis 529,520 acres in allotments to the Cheyennes and Arapahoes and pay them $250,000 in cash out of proceeds of sales from these lands.

Statement relative to the Cheyenne and Arapaho Executive Order Reservation of August 10, 1869, as to acreage, cost, deductions on account of Indian occupancy, how to be disposed of, etc.

	Number of acres.	Cost of land.	Deductions made on account of Cheyenne and Arapaho occupancy at 20 cents an acre.	Date of purchase by act of Congress.	Authorities for statements.
United States bought of Creeks, at $1.05 an acre.	619,450.59	$650,423.11	$123,890.11	Mar. 1, 1889	Senate Ex. Doc. No. 78, Fifty-first Congress, first session, pp. 21, 22, 28.
United States bought of Seminoles, at $1.05 an acre.	1,189,194.15	1,248,653.35	237,838.83	Mar. 2, 1889	Senate Ex. Doc. Nos. 98 and 122, Fiftieth Congress, second session.
United States bought of Choctaws and Chickasaws.	2,489,159.84	2,991,450.00	*120,006.00	Mar. 3, 1891	
United States paid Cheyenne and Arapahoes on this account.	.....	250,000.00	.....	.....	
Total	4,297,804.58	5,140,526.46	480,728.94	.....	
Total acres patented to 3,372, Cheyennes and Arapahoes, at 160 acres each.	539,520,00	.....	.....	.....	
Balance for entry of United States citizens.	3,758,284.58				
Worth, at $1.50 per acre, to the United States Treasury by sales in land office			5,638,426.87	.....	
Cash total put in and saved to Treasury of United States			6,119,155.81	.....	
Deducting total cost			5,140,526.46	.....	
Net gain to United States Treasury in this transaction			978,629.35	.....	
If, now, payment of appropriation of Mar. 3, 1891, is refused to Choctaws and Chickasaws, the further sum will be saved of			2,991,450.00	.....	
Making total in this speculation on defenseless Indians in defiance of treaties and solemn pledges			3,970,079.35	.....	

* Value of 96,000 acres, at $1.25 an acre.

This statement of account is even more liberal than the facts warrant, as no part of the sum paid the Cheyennes and Arapahoes or their allotments should be deducted in determining the gain in this transaction by the United States, because the Cheyennes and Arapahoes had no title whatever to the lands occupied by them under Executive order (pp. 21, 22, 28, Sen. Ex. Doc. No. 78, Fifty-first Congress, first session).

The Cheyennes and Arapahoes by treaty of September 17, 1851,

owned and occupied about 30,000,000 acres between the rivers Platte and Arkansas from Red Butte to the main range of the Rocky Mountains. (Rev. Ind. Treaties, p. 1049.)

This they ceded to the United States on or about October 14, 1865 (14 Stat., U. S., 704), acquiring title to 7,000,000 acres in Kansas and 1,600,000 acres in Cherokee Outlet.

They then ceded the Kansas land to the United States October, 1867 (15 Stat., U. S., 594), receiving title by treaty to 5,207,000 acres in the Indian Territory.

They were then placed on their present reservation without title, at the option of the United States, by Executive order as tenants at will.

The United States got the 30,000,000 acres in Kansas, Nebraska, and Colorado in 1865.

The United States got the 7,000,000 acres in Kansas in 1867, and in 1891 secures relinquishment from the Cheyennes and Arapahoes of all their rights for the sum of $1,500,000 in money and 539,520 acres in allotments.

The consideration to these people as the net result of these several treaties seems small enough, but when it is perceived that the United States has not paid the land consideration, but has required the Creeks, Seminoles, Choctaws, and Chickasaws, without consideration, to furnish the land, and that the President now insists that the interests of the United States be further protected by requiring the Choctaws and Chickasaws to be charged with enough to pay the balance of $1,500,000 in money due the Cheyennes and Arapahoes by the United States, the climax of economical administration of government is attained.

Your memorialists do not believe it to be the purpose of our common Constitutional Government, much less the disposition of Congress, of the officers, or of the people of the United States to speculate at the expense of any class of men for the benefit of the Treasury, whether they are Indians and defenseless or powerful States capable of defense, and do therefore rely upon this marshaling of figures and facts to make clear rights otherwise obscured by many treaties and agreements inaccessible to the casual observer.

Your memorialists, having now plainly and dispassionately presented the facts in the matter to which the message relates, respectfully but firmly insist upon their rights.

The Congress of the United States, the high and only body authorized to act, with full knowledge of all the facts, after giving the case extraordinary examination and painstaking scrutiny, sustained by the treaties, the history, and a long array of authorities in the Executive, Judicial, and Legislative Departments of the United States by its act of March 3, 1891, solemnly and formally settled the questions involved; and we now appeal to the good faith and justice of the Government to make effective that act.

The CHOCTAW NATION,
By J. S. STANDLEY,
Chairman of the Delegation.

EXHIBIT 1.

WASHINGTON, D. C., *January 18, 1892.*

The PRESIDENT:

We have the honor to present herein seriatim certain reasons which we trust you will find sufficient to remove possible objections, unofficially suggested to us as having occurred to you in regard to the item appropriated to pay the Choctaws and

Chickasaws for that portion of their Leased District assigned to the use of the Cheyennes and Arapahoes.

First. That the legislation was hasty and based to some extent on guesswork.

Answer. The legislation was based on accurate figures furnished to the Indian Committee of the House of Representatives through the Department of the Interior on September 16, 1890, by Hon. George Chandler, Acting Secretary, by Indian Office Report (see page 14, House Report No. 3147, Fifty-first Congress, first session), wherein it stated that "the existing reservation occupied by the Cheyennes and Arapahoes and Apaches under Executive order August 10, 1869 comprised within its limits of said Leased District 2,489,160 acres. From this was deducted 600 allotments for the Cheyenne and Arapaho Indians south of Canadian River (on authority official letter of Charles F. Ashley, United States Indian Agent for the Cheyennes and Arapahoes, stating there were only 600 of these Indians on the leased district), 96,000 acres, leaving a net balance of 2,393,160 acres, which, at $1.25 per acre, produces $2,991,450, which was the amount appropriated in the item referred to.

We beg to insist that this matter in the first case was elaborately argued orally and by printed briefs before the United States Commission by the Choctaws. Owing to a doubt on the part of the said Commission of its authority to negotiate with the Choctaws under the law, and by its courteous permission, the Choctaws brought the matter on March 31, 1890, by memorial (copy herewith, House Report No. 3147, Fifty-first Congress, first session, p. 16) before the Senate and House of Representatives in Congress assembled, and where it was referred to the proper committees. The Choctaws and Chickasaws submitted printed briefs (copies herewith) and oral arguments to said committees. By the Committee on Indian Affairs of the House it was referred to the Indian Office for a report, which was elaborately prepared and returned on September 13, 1890, by the Commissioner of Indian Affairs (copy herewith, House Report No. 3147, p. 6), and on September 22, 1890, a favorable and unanimous report was submitted to Congress by the Committee on Indian Affairs of the House of Representatives (copy herewith).

The matter was also elaborately argued before Congress in both Houses, and the Choctaw and Chickasaw item was singled out and discussed and voted upon separately in each House, and carried by a nearly two-thirds vote. (Marked copies of the Congressional Record herewith, with index of debate.)

This record abundantly shows that the aforesaid item was carefully considered and based on full, accurate, and properly authorized information; was thoroughly understood by the Senate and House of Representatives, and their judgment expressed by a very decisive vote.

Second. That the matter was not germane to the Indian appropriation bill.

Answer. This objection might be urged and was urged to all of the agreements viz: Pottawatomie, Absentee Shawnees, Cheyennes and Arapaho, Cœur d'Alênes, Arickaree, Gros Ventres and Mandans, Sisseton and Wahpeton Sioux, and Crows; but it was decided in both the Senate and the House of Representatives that these several agreements carrying appropriations, made as they were in pursuance of existing law, were germane and not subject to points of order.

It was determined in both Houses of Congress, as the debates show, that it would have been unfair to the Choctaws and Chickasaws, and a violation of the trust under which this land was held by the United States and a breach of good faith, to have thrown open to settlement this land, as proposed by the Cheyenne and Arapaho agreement, without having paid for the interest of the Choctaws and Chickasaws and obtained their consent to this departure from the original trust under which this land was held.

Third. That there were more than 600 Cheyennes and Arapahoes south of the Canadian River.

Answer. We have no evidence of the impeachment of the United States Indian agent, Charles F. Ashley, on this point, and must insist that his statement, as the United States officer in charge, is entitled to credit.

We humbly submit in this connection that the compensation proposed is entirely inadequate without deduction, the debates showing that the land is worth $5 an acre instead of $1.25, and insist that no deduction should be made on this account, the act itself proposing to sell this land for $1.50 an acre. We are willing, however, if on consideration of the matter the President deems it just, to stipulate that the difference, if any appears in this particular, shall be left in the United States Treasury, subject to the action of Congress.

Fourth. Discrimination against the intermarried whites in the per capita distribution of the money by the Choctaws.

Answer. The Choctaws have not understood by the thirty-eighth article of the treaty of 1866 that the right of participating in their national funds was given to intermarried whites. This right is even denied by treaty to a Chickasaw by blood who married a Choctaw, and *vice versa*. It is understood that the children of such marriages participate in the funds, while the white parent has political rights only.

The opinion of the Attorney-General of the United States, however, on this very point (copy herewith) states that the act of Congress "imposed no duty upon the Secretary of the Interior with reference to the individual distribution of the money, and that the persons entitled to such distribution, the evidence necessary to establish their claims, and the manner of such distribution, are matters to be regulated by the laws of the Choctaw and Chickasaw nations, respectively, subject, doubtless, to the rule that such laws must not be in conflict with the Constitution and laws of the United States."

If, however, the President does not agree with the opinion of the Attorney-General and thinks the Choctaws construe the treaty erroneously, the Choctaws are ready to accede to his views and issue the per capita to the intermarried whites in the same manner as to the Choctaws by blood.

Fifth. That it was not necessary for the Choctaws to offer so large a part of their claim against the United States for its collection.

Answer. The Choctaws have always had peculiar difficulty in collecting claims against the United States. The Choctaws in the net proceeds case, based, as it was, on clear treaty right, many times favorably reported by committees of Congress and never adversely, ultimately declared by the Supreme Court of the United States to be justly due, cost the Choctaws fifty years of labor and patient waiting, the life service and fortunes of some of their best men, and 50 per cent of the claim itself before it was ever collected.

The Indian nations surrounding the Choctaws have a similar experience.

The Choctaws, on November 5, 1889, passed a law (copy herewith) sending commissioners to negotiate with the United States Commission, proposing no percentage but only a per diem of $6. But the United States Commission utterly discouraged the Choctaws by refusing to negotiate with them and stating that the United States claimed it had full title to the leased district (copy of letter herewith).

The Choctaws could not expect the delegation to bear all the expenses and take up a case so full of evident difficulties with the history of similar cases before them, and with the expectation of the case consuming a possible lifetime and the fortunes of those who undertook it, unless the contingent fee were made proportionately great and large enough to offer handsome contingent fees to attorneys of high standing, whose services could be secured by such a delegation; and a large number of such persons were so engaged.

It was a voluntary offer on the part of the Choctaw authorities and accepted in good faith. The expenses have been heavy, the labor continuous, and in spite of the merits of the case, acknowledged by Congress and formulated into law, the matter remains unsettled. Is it a wonder that the contingent fees must be large to attract support under such circumstances?

Under the act of December 11, 1891, the treasurer of the Choctaw Nation is authorized to receive the whole amount due the Choctaw Nation. No deduction is made by the officer of the United States to pay the delegation of 1889 or its attorneys nor any responsibilities assumed by them, and the Choctaw Nation can see no reason why the United States should interfere and defeat them in the appropriation secured after so much difficulty or interfere with their contracts.

The delegation and their attorneys are willing to rely on the Choctaw Nation and its officers for fair treatment in the premises. They are unable to understand why they should be forcibly subjected to guardianship contrary to their treaty right of managing their own affairs and, as they believe, to their serious detriment.

Sixth. It has been suggested that a fraud appeared to have been practiced on the Choctaw council to procure authority to prosecute this claim.

It is understood that this unkind suspicion is due to certain promises to pay, issued by R. J. Ward, a member of the delegation of 1889.

In answer, the facts are stated sustained by the affidavit of R. J. Ward himself, made before Hon. Isaac C. Parker, United States district judge, by the affidavit of H. C. Harris and Jas. S. Standley, already submitted.

There was no fraud practiced for the purpose of securing authority to prosecute this claim. R. J. Ward's action related alone to his own confirmation, and was unknown to the other delegates. The Choctaws have repeatedly confirmed this act of December, 1889, since, to wit, April 11, 1891, and December 11, 1891.

It is clear that since the law authorizing the contract was identical with the law that authorized the principal chief of the Choctaw Nation to nominate a delegation of three competent, sober men to be confirmed by the Senate, the delegation subsequently to be so nominated and confirmed could not have contracted before their birth and were incapable of prenatal fraud.

GREEN MCCURTAIN,
THOMAS D. AINSWORTH,
DAVID W. HODGES,
Choctaw Delegation of 1891.
JAMES S. STANDLEY,
Chairman, Choctaw Delegation of 1889.

EXHIBIT 2.

[In the matter of the right of African citizens by adoption to participate in the Choctaw and Chickasaw funds.]

WASHINGTON, D. C., *February 2, 1892.*

The PRESIDENT:

By article 3 of the treaty with the Choctaws and Chickasaws of April 28, 1866 (pp. 769, 7707 U. S. Stat., vol. 14), it was provided that on certain conditions—

"The legislatures of the Choctaw and Chickasaw nations, respectively, might make such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nations at the date of the treaty of Fort Smith, and their descendants heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively."

The Chickasaws declined to adopt the negroes.

The Choctaws did adopt them, and have been magnanimous and generous beyond any other community in the United States to these people, giving them all the land they wanted to cultivate or use, with free public schools coequal with the Choctaws themselves, and all civil and political privileges without the tax of a dollar. This was more than the treaty contemplated. The Congress of the United States on May 17, 1882 (p. 73, U. S. Stat., vol. 22), specially authorized the Choctaws to adopt their freedmen on the basis of the treaty of 1866. The undersigned begs to remark that he was at that time the Choctaw delegate, and presented this matter to the committee and subcommittee of the United States Senate, on both of which your excellency was a member.

On May 21, 1883, and on the basis of the treaty of 1886 above quoted, and in pursuance of the act of Congress of May 17, 1882, the Choctaws adopted their freedmen (copy herewith Exhibit A), expressly excluding them from participation "in the annuity, moneys, and the public domain of the nation."

This act was formally accepted by Hon. H. M. Teller, then Secretary of the Interior, as a substantial compliance with said statute of May 17, 1882, and said third article of the treaty of 1866.

The question of their right to share in the appropriation of March 3, 1891, on account of the leased district, in its distribution by the Choctaws, arose immediately after the passage of the act and was decided adversely to the freedmen by the honorable Commissioner of Indian Affairs.

The question as to what persons were "entitled to such distributions, the evidence necessary to establish their claims, and the manner of such distribution, are all matters to be regulated by the laws of the Choctaws and Chickasaws, respectively," declared the Attorney-General of the United States in an opinion on this very subject, solicited by the Interior Department upon the suggestion of Hon. George Shields, Assistant Attorney-General of the United States (copy herewith page 15, Exhibit B).

With sentiments of the most distinguished consideration, I have the honor to remain,

Your very obedient servant,

JAMES S. STANDLEY,
Chairman Choctaw Delegation of 1889.

EXHIBIT 3.

[Extract from the laws of the Choctaw Nations, passed at regular session of general council, 1889, and published 1890.]

AN ACT authorizing the appointment of three commissioners to treat with United States commissioners in reference to the leased district, and for other purposes.

Whereas, by act of Congress May 28, 1830, the President of the United States was authorized to set apart a certain country, now the Indian Territory, and solemnly assure the tribes to whom it was assigned that their heirs or successors might forever possess and occupy it; and, whereas, pursuant to this act of Congress the President of the United States, the following September, did make a treaty with the Choctaw Nation assigning to it a tract including their present country, which was subsequently patented to them; and, whereas, by the ninth article of the treaty of 1855, the Choctaws leased to the United States all that portion of their common ter-

ritory west of the ninety-eighth degree of longitude for the Wichita and such other tribes or bands of Indians as the Government might desire to locate thereon, reserving, however, the right to the Choctaws and Chickasaws to settle thereon; and, whereas, on the 9th of September, 1865, Hon. D. N. Cooley, Commissioner of Indian Affairs, Hon. Elijah Sells, superintendent southern superintendency, Thomas Wister, of the Society of Friends, Brigadier-Genera lW. S. Harney, U. S .Army, and Colonel Ely S. Parker, of General Grant's staff, appointed by the President of the United States, as a board of commissioners, did, as the declared and acknowledged representatives of the President of the United States duly empowered, declare to the commissioners of the Choctaw Nation that the new treaty must contain among other things the following stipulations, to wit:

(5) That a portion of the lands hitherto owned and occupied by the Choctaws and Chickasaws must be set apart for the friendly tribes then in Kansas and elsewhere, and on the further stipulation—

(7) That no white person, except officers, agents, and employés of the Government, or any internal improvement authorized by the Government, would be permitted to reside in the Territory unless formerly incorporated with some tribe according to the usages of the bands; and, whereas, on the representations of the said United States commissioners that the lands west of the ninety-eighth degree of west longitude, on which the Choctaws and Chickasaws had still the right to settle, would all be needed for the use of friendly Indians and the colonization of the negro freedmen in the Chickasaw and Choctaw nations, unless otherwise adopted by the Choctaws and Chickasaws, the Choctaw and Chickasaw nations did, by the third article of the treaty of 1866, cede the lands west of the ninety-eighth degree of west longitude to the United States, in trust, for the purposes aforesaid, and under the conditions of the existing laws and treaties of the United States hereinbefore mentioned.

And whereas by act of Congress of March 1, 1889, the United States departed from the long established policy of holding the lands of the Indian Territory for Indian settlement, by purchase of the lands of the Creeks and Seminoles, which had been sold to the United States for the same purposes as in the case of the Choctaw cession of the lands west of the ninety-eighth degree of west longitude;

And whereas the United States by act of Congress of March 2, 1889, in pursuance of this new line of policy, authorized the President of the United States to appoint three commissioners to negotiate with all Indians owning or claiming lands lying west of the ninety-sixth degree of west longitude in the Indian Territory for cessions to the United States of all their title, claim, or interest, of every kind or character in and to said lands;

And whereas the Choctaw people recognize the changes which have taken place in the policy of the United States, and the desire of the Government to establish a Territorial government in the western part of the Indian Territory, and the need to use the lands west of ninety-eighth degree of west longitude for a different purpose than the holding in trust for friendly Indians, as by the cession of 1866;

And whereas the Choctaws have ever been willing and anxious to conform to the wishes of the United States consistently with the interests of their own people: Now, therefore,

SECTION 1. *Be it enacted by the general council of the Choctaw Nation assembled,* That the principal chief of the Choctaw Nation is hereby authorized and directed to appoint by and with the advice of the senate, three competent, sober men, who shall constitute a commission to represent the Choctaw Nation in reference to the rights of the nation in the lands lying between the ninety-eighth and one hundredth degrees of west longitude, and between the Red and Canadian rivers, comprising an area of 7,713,230 acres.

SEC. 2. Said commissioners are hereby authorized and directed to conduct negotiations with the United States commissioners in accordance with the act of Congress of March 2, 1889, or with other proper authorities of the United States, for the cession to the United States of all the claim, interest, and title of the Choctaw Nation in and to the lands lying west of the ninety-eighth degree of west longitude. Said commissioners are hereby instructed to actively and strenuously oppose and resist any attempt to include these lands within the limits of the proposed Oklahoma Territory until the Choctaw Nation shall have their rights therein properly recognized and secured.

SEC. 3. Said commissioners are also hereby instructed to invite the coöperation of the Chickasaw Nation in the purpose of this act, and to report at once to the principal chief any agreement arrived at with the authorities of the United States; *Provided, however,* That no agreement of the said commission shall be binding until duly ratified by the general council, and it shall be the duty of the principal chief to immediately convene the general council on receiving notice that an agreement has been reached by the commission herein provided for.

SEC. 4. Said commissioners shall be allowed for their service six dollars per day,

and milage of ten cents per mile while on this national business, payable on their own certificate, approved by the principal chief, and a sum sufficient to defray such expenses is hereby appropriated out of any money in the Treasury not otherwise appropriated.

Be it further enacted, That this act shall take effect and be in force from and after its passage.

Approved November 5, 1889.

EXHIBIT 4.

UNITED STATES COMMISSION,
Tahlequah, Ind. T., November 26, 1889.

DEAR SIR: Referring to your letter of the 15th instant, and Judge Wilson's reply of the 20th, I have the honor to say to you, for the commission, that, as heretofore intimated, we will be glad to meet the commissioners on the part of the Choctaws and Chickasaws immediately after the conclusion of pending negotiations with the present Cherokee council.

This commission has been unofficially informed that the Choctaw and Chickasaw commission is authorized to negotiate regarding the lands west of the ninety-eighth meridian only.

It is proper to say to you that the United States claims that it has now full title to that land, and that we are not authorized to negotiate for such lands. This Commission hopes that the Commission we are to meet will be authorized to open negotiations for the cession to the United States of the lands west of the ninety-sixth and east of the ninety-eighth degree.

This Commission will, however, hear at that time whatever your Commission wish to present regarding lands west of the ninety-eighth degree.

You will be notified at the earliest possible day of the date of the arrival of this Commission at Atoka.

I have the honor to be, respectfully, yours,

LUCIUS FAIRCHILD,
Chairman United States Commission.

Hon. B. F. SMALLWOOD,
Principal Chief, Choctaw Nation, Lehigh, Ind. T.

EXHIBIT 5.

AN ACT contracting to the delegation appointed to negotiate with the authorities of the United States one-fourth of the recovery out of the "leased district," so called, etc.

Whereas the United States has bought out the Indian interest in Oklahoma and settled it with United States citizens, and thus departed from the policy established and maintained since 1830 of reserving the Indian Territory to be occupied by Indians alone; and

Whereas bills have been introduced in Congress to incorporate said "leased district" into the Territory of Oklahoma, without any reference to the rights of the Choctaws and Chickasaws, which shows an attitude of the United States towards the Choctaws and Chickasaws different to that taken toward the Creek, Seminoles, and Cherokees in reference to their western lands; and

Whereas the principal chief of the Choctaw Nation has been advised in a formal manner by the United States Commissioners, appointed under act of Congress of March 2, 1889, to negotiate with all Indians in the Territory for the cession to the United States of all their righs, claims, or interest in and to the lands west of the ninety-sixth degree of longitude; that the United States has now full title to the lands between the ninety-eighth and one hundredth degree of west longitude ceded to the United States by the Choctaws and Chickasaws in 1866, and that said United States Commissioners were not authorized to even negotiate with the Choctaw Nation relative thereto, and the Choctaw Nation is not willing to expend any money on the prosecution of this claim, but desires to engage the services of a delegation willing to pay all expenses incurred; and

Whereas the Choctaw Nation wishes to support said delegation in the employment of competent counsel and a large and able corps of assistants to push the equitable rights of the Choctaw Nation upon the attention of the Executive Department of the United States and upon Congress, in order that the rights of the nation now ignored may be recognized: Now, therefore,

SECTION 1. *Be it enacted by the general council of the Choctaw Nation assembled,* That the delegation appointed under "An act providing for the disposition of the interest of the Choctaw Nation in the lands west of the ninety-eighth degree of west longitude," or their assigns, are hereby guaranteed and pledged twenty-five per cent of the recovery to the Choctaw Nation, in consideration of the facts above recited, it being distinctly understood that said delegation shall bear all expenses in conducting this business, and that they shall not call on or expect any appropriation whatever in this connection, except as contracted herein, to wit, twenty-five per cent of the recovery, in case they do, their authority shall cease, and in case of failure said delegation shall bear the loss of their expenses, labor, and time. Said delegation or its assigns are hereby authorized, in the name of and on behalf of the Choctaw Nation, to make requisition on the proper authorities of the United States for twenty-five per cent of whatever appropriations Congress may hereafter make on account of such so-called "leased district" aforesaid, and to execute proper receipts therefor, and all acts or parts of acts in conflict herewith are hereby repealed, and this act shall take effect and be in force from and after its passage.

Approved December 24, 1889.

B. F. SMALLWOOD,
P. C. C. N.

AN ACT providing for the disposition of the interest of the Choctaw Nation in the lands west of the ninety-eighth degree of west longitude.

Whereas by act of Congress, May 28, 1830, the President of the United States was authorized to set apart a certain country, now the Indian Territory, and solemnly assure the tribes to whom it was assigned that they, their heirs or successors, might forever possess and occupy it; and

Whereas pursuant to this act of Congress the President of the United States the following September did make a treaty with the Choctaw Nation, assigning to it a tract including their present country, which was subsequently patented to them; and

Whereas by the ninth article of the treaty of 1855 the Choctaws and Chickasaws leased to the United States all that portion of their territory west of the ninety-eighth degree of west longitude for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government might desire to locate thereon, reserving, however, the right to the Choctaws and Chickasaws to settle thereon; and

Whereas on the 9th day of September, 1865, Commissioner of Indian Affairs Hon. Elijah Sells; Superintendent Southern Superintendency Thomas Wistar, of the Society of Friends; Brigadier-General W. S. Harney, U. S. Army, and Col. Ely S. Parker, of Gen. Grant's staff, all appointed by the President of the United States as a Board of Commissioners, did, as the declared and acknowledged representatives of the President of the United States, duly empowered, declare to the commissioners of the Choctaw Nation that the new treaty must contain, among other things, the following stipulation, to wit:

(5) That a portion of the lands hitherto owned and occupied by the Choctaws and Chickasaws must be set apart for the friendly tribes then in Kansas and elsewhere, and on the further stipulation:

(7) That no white person, except officers, agents, and employés of the Government, or of any internal improvement authorized by the Government, would be permitted to reside in the Territory, unless formerly incorporated with some tribe according to the usage of the bands; and whereas on the further representation of the said Board of the United States Commisioners that the lands west of the ninety-eighth degree of west longitude, on which the Choctaws and Chickasaws had still the right to settle, would all be needed for the use of friendly Indians and colonization of the negro freedmen in the Choctaw and Chickasaw Nations, unless otherwise adopted by the Choctaws and Chickasaws, the Choctaws and Chickasaws did, by the third article of the treaty of 1866, cede the land west of the ninety-eighth degree of west longitude to the United States in trust for the purposes aforesaid and under the conditions of the existing laws and treaties of the United States hereinbefore mentioned; and

Whereas by act of Congress of March 1, 1889, the United States departed from the long-established policy of holding the lands of the Indian Territory for Indian settlement by purchase of the Creeks and Seminoles, which had been sold to the United States for the same purpose as in the case of the Choctaw cession of the lands west of the ninety-eighth degree of west longitude; and

Whereas the United States by act of Congress of March 2, 1889, in pursuance to this new line of policy, authorized the President of the United States to appoint Commissioners to negotiate with all Indians owning or claiming lands lying west of

the ninety-sixth degree west longitude, in the Indian Territory, for the cession to the United States of all their title, claim, or interest of any kind or character in and to said lands; and

Whereas the Choctaw people recognize the changes which have taken place in the policy of the United States, and the desire of the Government to establish a Territorial government in the western part of the Indian Territory, and the need to use the lands west of the ninety-eighth degree of west longitude for a different purpose than the holding in trust for friendly Indians as by the cession of 1866; and

Whereas the Choctaws have ever been willing and anxious to conform to the wishes of the United States, consistently with the interest of their own people: Now, therefore,

SECTION 1. *Be it enacted by the general council of the Choctaw Nation assembled,* That the principal chief of the Choctaw Nation is hereby authorized and directed to appoint, by and with the advice of the senate, three competent, sober men, who shall constitute a delegation with full authority to represent the Choctaw Nation in reference to the rights of the nation in the lands lying between the ninety-eighth and one hundredth degrees of west longitude, and bounded to wit: Beginning at a point on Red River where the meridian of the ninety-eighth degree of west longitude crosses the same, thence up said river to the point where the meridian of the one hundredth degree of west longitude crosses the same; thence north along said meridian to the main Canadian River; thence down said river to the point where the meridian of the ninety-eighth degree of west longitude crosses the same; thence south along said meridian to the place of beginning. And said delegation is hereby authorized to negotiate and make agreement with the proper authorities of the United States for the absolute relinquishment of all right, claim, and interest of the Choctaw Nation in and to the lands lying west of the ninety-eighth degree west longitude, above described, better known in the Choctaw Nation as the "leased district," and refer the same back to the general council for ratification, as required by the act of Congress of March 2, 1889.

SEC. 2. Said delegation are hereby authorized to make a full report to the next session of the general council, and if any vacancies should occur in said delegation, by death or otherwise, the principal chief is hereby authorized to fill it by appointment. All acts or parts of acts in conflict herewith repealed, and this act shall take effect and be in force from and after its passage.

B. F. SMALLWOOD,
P. C., C. N.

Approved December 24, 1889.

EXHIBIT 6.

The PRESIDENT:

I have been informed that you have in your possession information of some kind tending to show that I used improper means to secure the passage of an act by the general council of the Choctaw Nation approved December 24, 1889, contracting one-fourth of the recovery of the leased district to a delegation of three persons, to be nominated by the principal chief and confirmed by the senate of the Choctaw Nation.

I inclose herewith a sworn statement made by Mr. Henry C. Harris, a co-delegate, and myself in reference to the matter.

The general council of the Choctaw Nation, which was in special session at the time, adjourned *sine die* on December 24, 1889, and on the afternoon of that day Henry C. Harris, Robert J. Ward, and myself were nominated by the principal chief and confirmed by the Choctaw senate as delegates under acts authorizing a delegation, and giving them authority to use and have 25 per cent of the recovery from the leased district.

I inclose herewith a pamphlet, which was published publicly by the Choctaw Nation under a general law for public distribution and information as soon after the adjournment of the council as it could be done, containing copies of the acts referred to.

The law appropriating 25 per cent must have become a law (as hereby I aver it did) before any delegation was authorized. Any promises alleged to have been made by the delegation could only have been made or accepted as of any value at a time subsequent to the passage of the act and the nomination and confirmation of the delegation because until that moment arrived it was impossible to say who would constitute the delegation.

There are two acts, both approved the same day. The fact that those acts were passed and approved previous to the nomination and confirmation of the delegation should acquit the delegation of having used or promised any sum or sums out of the percentage to procure the passage of the act.

I never sought nomination, directly or indirectly, and had no reason to believe that I would be nominated until the nomination had been made. I never spoke to a single senator about my confirmation. I desire to renew my statement that I never promised a single member of the council anything, and that I never heard or knew of anything of the kind having been done by Mr. Ward until after that council had adjourned.

The percentage has been repeatedly recognized since and confirmed, notwithstanding the annual election of the council members and change of political parties in the Nation. The general council of 1890 left the matter undisturbed after considering it. After the appropriation by Congress of March 3, 1891, the general council, in special session, on April 9, 10, and 11, 1891, confirmed and recognized the right of the delegation in several acts (see pamphlet inclosed herewith), and also on December 11, 1891 (see copy of act inclosed herewith).

Respectfully submitted.

J. S. STANDLEY,
Choctaw Delegation.

We, James S. Standley and Henry C. Harris, duly authorized delegates of the Choctaw Nation of 1889, being duly sworn, on our oaths solemnly state that we have been advised there is in the hands of the President of the United States some information imputing to our delegation corrupt means in securing the passage of an act contracting to us one-fourth of the recovery of the "Leased District." We solemnly declare that we did not in any way use any improper means in this matter; that we did not sign or authorize any one to sign our names to any promises alleged to have been given by Mr. R. J. Ward, and if it was done it is a forgery. We have never confirmed any such contracts or promises alleged to exist. We denounced Ward's action when we heard he had made such promises and signed our names, and openly and repeatedly repudiated such promises. We will never recognize the fraud and we solemnly protest against being connected with it.

J. S. STANDLEY.
H. C. HARRIS.

I hereby certify that James S. Standley and H. C. Harris, after being duly sworn, stated that the above and foregoing statement is true.

Given under my hand and seal this 23d day of December, 1891.

[SEAL.] JOHN G. FARR,
Notary Public, Second Division, Indian Territory.

EXHIBIT 7.

I, R. J. Ward, having been duly sworn, on my oath depose and say: In 1889 I was nominated by the principal chief as a delegate to secure the values of the leased district. I was very ambitious to be on this delegation, and George Thibeau, United States citizen, of Paris, Tex., worked a scheme up on me by which he got certain senators to refuse to confirm me unless I would secure a subcontract for them. I knew I could not do this, and I met the devil with fire and agreed to their blackmailing terms by giving them promises to pay, and signed the names of the delegation without the knowledge or consent of H. C. Harris or J. S. Standley, and they have never confirmed such promises as far as I know, and I have never talked to them about it for obvious reasons. I went to the chief, W. N. Jones, in 1890, when this matter was up and told him the plain truth. A mean trick was worked up on me and my ambition yielded to the temptation to defeat them by this trick in return.

The Choctaw general council, in contracting with the delegation of 1889 the percentage fixed were not influenced in any way except by the consideration of the probable difficulties alone. The promises I made were in reference to my confirmation alone. Standley and Harris are entirely innocent of any knowledge or connection with this matter. I told various people what the facts were, and, among others, Mr. Leo E. Bennet, United States Indian agent. I think he wrote down what I said to him and I signed it.

R. J. WARD.

This day personally appeared before me Robert J. Ward, to me well known, who having been duly sworn to tell the truth, the whole truth, and nothing but the truth, declared the above statement to be the truth and signed the same in my presence.

Given under my hand this 7th day of January, 1892.

I. C. PARKER,
United States District Judge.

EXHIBIT 8.

AN ACT authorizing settlement with the delegation for services rendered in the prosecution of the claim of the Choctaw Nation in the leased district.

Be it enacted by the general council of the Choctaw Nation assembled, That the national treasurer is hereby authorized and directed (as soon as practicable after the receipt of the leased district money) to make a settlement with the delegation as *per act of the general council of the Choctaw Nation, approved December 24, 1889,* and to pay over to them such sum or sums as may be due them; and that this act shall take effect and be in force from and after its passage.

Approved April 10, 1891.

W. N. JONES,
P. C., C. N.

—

Extracts from the laws of the Choctaw Nation passed at special session of general council in 1891.]

AN ACT authorizing a release of all the title and interest that the Choctaws have in the Cheyenn and Arapahoe lands lying south of the Canadian River and west of the ninety-eighth degree of west longitude, and making conveyance thereof.

Be it enacted by the general council of the Choctaw Nation assembled, That the delegation of 1889, to wit: J. S. Standley, H. C. Harris, and R. J. Ward, and Green McCurtain, national treasurer, and some one to be appointed by the principal chief with the advice and consent of the senate, and commissioned by the principal chief, are hereby empowered, authorized, and directed to proceed to Washington, D. C., and, as delegates specially authorized thereto, execute releases and conveyances and transfer to the United States all the right, title, and interest of the Choctaw Nation to their lands lying west of the ninety-eighth degree of west longitude and south of the Canadian River and now occupied by the Cheyenne and Arapahoe tribe of Indians, for the payment of which an act of Congress of the United States was approved March 3, 1891, and this act take effect and be in force from and after its passage.

Approved April 9, 1891.

W. N. JONES,
P. C., C. N.

—

AN ACT making requisition for the sum of $2,243,587.50 due the Choctaw Nation under an act of Congress approved March 3, 1891.

Be it enacted by the general council of the Choctaw Nation assembled, That the delegation of 1889, *the national treasurer of the Choctaw Nation,* and some one to be selected by the principal chief, with the advice and consent of the senate, are hereby authorized and directed to proceed to Washington, D. C., and make a requisition on the Government of the United States in such manner and form as may be satisfactory to the proper authorities of the United States, for the sum of $2,243,587.50, *being three-fourths of the sum of* $2,991,450 appropriated by the act of Congress of the United States approved March 3, 1891, in payment of the interest of the Choctaw and Chickasaw Nations in the lands west of ninety-eighth degree of west longitude; and the national treasurer shall deposit the same in some responsible bank or banks, subject to the order of the Choctaw Nation, and such bank or banks to give a bond payable to the Choctaw Nation in a sum equal to the amount so deposited; such bond to be approved by the national treasurer and to be recovered by the national treasurer for the use and benefit of the Choctaw Nation, and conditioned as other bonds are conditioned for like purposes; and this act shall take effect and be in force from and after its passage.

Approved April 9, 1891.

W. N. JONES,
P. C., C. N.

EXHIBIT 9.

AN ACT authorizing distribution per capita of the money due to the Choctaw Nation for the sale of a portion of the leased district under act of Congress approved March 3, 1891.

SECTION 1. *Be it enacted by the general council of the Choctaw Nation assembled,* That the sum of one million six hundred and fifty-seven thousand six hundred and ninety-one dollars, being the balance *after deducting delegates' per cent,* and twenty-five thou-

sand and five dollars, for necessary expense in procuring and distributing the same, shall be paid out per capita among Choctaw citizens by blood residing in the Choctaw and Chickasaw Nation at the date of this act.

SEC. 2. That for properly executing section 1 of this act it shall be the duty of the principal chief to appoint three commissioners for each county in the the Choctaw Nation and three for the Chickasaw district, whose duty shall be to enroll all the names on rolls to be prepared for the purpose under order of the chief, the beneficiaries under this act. When said rolls are completed, which shall be done as speedily as possible, they shall be carried by one of the commissioners to Tashka Homma and delivered to a committee consisting of the principal chief, secretary, auditor, and treasurer, who shall ascertain exactly the amount due each person, whereupon the treasurer shall proceed to disburse the same, commencing in the second district, the payment to be made at the district court ground of each district. The auditor shall accompany the treasurer and verify the payments. The Light Horse shall also attend as a guard. The principal chief, if he desires, may superintend the disbursement in person.

SEC. 3. The commissioners shall be sworn by some county judge, which oath shall be indorsed on their appointment, and shall complete their work in not less than twenty days. They shall meet at the most public place for convenience of the people in their respective counties and shall receive the sum of $150 each for their services.

SEC. 4. The principal chief shall notify the commissioners when to begin work, soon after receiving the money; and this act take effect and be in force from and after its passage.

Approved April 11, 1891.

W. N. JONES,
P. C., C. N.

EXHIBIT 10.

AN ACT authorizing the settlement with the delegation for services rendered in the prosecution of the claim of the Choctaw Nation in the leased district.

Be it enacted by the General Council of the Choctaw Nation assembled, That the national treasurer is hereby authorized and directed (as soon as practicable after the receipt of the leased district money) to make a settlement with the delegation as per act of the general council of the Choctaw Nation, December 24, 1889, and pay over to them such sum or sums as may be due them, and that this act shall take effect and be in force from and after its passage.

Proposed by R. J. Ward.

Approved December 11, 1891.

W. N. JONES,
P. C., C. N.

This is to certify that the foregoing is a true and correct copy of the original act of the general council of the Choctaw Nation, now on file in my office.

Witness my hand and the great seal of the Choctaw Nation this the 23rd day of December, A. D. 1891.

[SEAL.]

J. B. JACKSON,
National Secretary, Choctaw Nation.

EXHIBIT 11.

DEPARTMENT OF JUSTICE,
Washington, D. C., July 28, 1891.

SIR: The Commissioner of Indian Affairs left at this Department a few days since an opinion prepared by Mr. Assistant Attorney-General Shields, touching the question of the rule of individual distribution among the Choctaw and Chickasaw Indians of the appropriations made by last Congress (26 Statutes at Large, 1025), with an oral request for an opinion from this Department touching that subject matter.

The act of Congress, after making the appropriation, provides:

"That three-fourths of this appropriation be paid to such person or persons as are or shall be duly authorized by the laws of said Choctaw Nation to receive the same, at such times and in such sums as directed and required by the legislative authority of said Choctaw Nation, and one-fourth of this appropriation to be paid to such person or persons as are or shall be duly authorized by the laws of said Chickasaw

Nation to receive the same, at such times, and in such sums, as directed and required by the legislative authority of said Chickasaw Nation."

This language plainly has reference to the payment of these moneys in bulk to the representatives of the Choctaw and Chickasaw Nations and imposes no duty upon the Secretary of the Interior with reference to the individual distribution of the same. The persons entitled to such distribution, the evidence necessary to establish their claims, and the manner of such distribution are all matters to be regulated by the laws of the Choctaw and Chickasaw Nations, respectively, subject, doubtless, to the rule that such laws must not be in conflict with the Constitution and laws of the United States.

It is not apparent, therefore, that any question is presented to the honorable Secretary of the Interior for decision requiring an opinion from the Attorney-General under section 356 of the Revised Statutes. Any decision by the Secretary or opinion by the Attorney-General as to who are the proper distributees of this fund would be wholly inconclusive and, as I conceive, outside of duties imposed by law, scarcely less so than if we should attempt to determine what should be done with the moneys paid to the several States under the act providing for the refunding of direct taxes or fix the rule for the distribution of decedents' estates in one of the Territories.

At any rate this request contains no statement of facts and formulates no question of law for my consideration.

Under the circumstances, therefore, the papers are returned without the opinion asked.

Very respectfully,

W. H. H. MILLER,
Attorney-General.

The SECRETARY OF THE INTERIOR.

[Congressional Record, March 2, 1891.]

EXHIBIT 12.—*Remarks on Choctaw and Chickasaw appropriation.*

IN THE SENATE.

Senator Jones, Arkansas, pages 3814, 3815, 3816, 3820, 3827.
Senator Allison, pages 3814, 3816, 3817, 3818, 3836.
Senator Teller, pages 3818, 3819, 3820.
Senator George, pages 3819, 3820, 3821.
Senator Dawes, pages 3819, 3820.
Senator Blackburn, page 3820.
Senator Edmunds, page 3820.
Senator Plumb, page 3828.
Senator Stewart, page 3829.
Senator Cockrell, page 3829.
Vote in the Senate, pages 3825, 3826, 3833, and 3836.

DEBATE IN THE HOUSE.

Mr. Perkins, pages 3919, 3920, 4263, 4264.
Mr. Peel, pages 3920, 3921, 3922, 3923.
Mr. Peters, pages 3924, 3925.
Mr. Barnes, pages 3925, 3926.
Mr. Cannon, pages 3921, 3922, 3923, 3924, 3927.
Mr. Springer, pages 3921, 3922.
Mr. Culberson, Texas, pages 3923, 3924.
Mr. Breckinridge, Arkansas, pages 4264, 4265, 4266, 4267.
Mr. Mansur, pages, 4071, 4072, 4266, 4267.
Vote in the House, pages 3927, 4062.

○