52D CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 82.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1892.—Referred to the Committee on Indian Affairs and ordered to be printed.

Mr. TELLER presented the following

MEMORIAL OF THE CHICKASAWS RELATING TO THE PRESIDENT'S MESSAGE OF FEBRUARY 17, 1892.

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

Your memorialists respectfully submit the following statement:

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

> After a somewhat careful examination of the question I do not believe that the lands for which this money is to be paid were, to quote the language of section 15 of the Indian appropriation bill, already set out, "ceded in trust by article 3 of treaty between the United States and said Choctaw and Chickasaw nations of Indians, which was concluded April 28, 1866."

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

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

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

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

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

should be invested with citizenship, and should refuse to leave the Choctaw and Chickasaw nations, then, and only then, was the money to be paid to the Choctaws and Chickasaws. The purpose of this provision, relating to the $300,000, was not wholly nor mainly to pay for the land. Its object was to cover the cost of the removal of the freedmen, if the Choctaws and Chickasaws should not admit them to citizenship. This sum was fixed at $300,000 because the number of the freedmen was estimated at 3,000, and it was agreed that each freedman should receive, for the expenses incident to emigration, the sum of $100.

The Choctaws admitted their freedmen to citizenship and received their share of the sum of $300,000, less $7,200 paid to freedmen who promised to emigrate from the Choctaw Nation. But the freedmen in the midst of the Chickasaws included the Chickasaw freedmen, many of the Choctaw freedmen, a large number of colored soldiers from the States who had been members of a regiment of United States troops which was mustered out of service at Fort Sill, and a large number of colored people from the States who had been attracted to this African stronghold in the Chickasaw Nation. And the Chickasaws, finding that these people outnumbered the Chickasaws, and, if made citizens, would take possession of their government, were compelled to refuse, and did refuse, to confer upon them Chickasaw citizenship, and therefore failed to receive any part of the stipulated sum of $300,000. On the contrary, a part of that sum, which was loaned to the Chickasaws in 1866, in pursuance of article 46 of the treaty, has been reported, and correctly reported, by the Indian office as a charge against the trust fund of the Chickasaw Nation. And so it happens that all of said sum of $300,000 not earned and received by the Choctaws and freedmen is now the property of the United States.

The Choctaws and Chickasaws claimed that their position was like that of the Creeks and Seminoles, who have already been paid under the acts of March 1 and 2, 1889, for their interest the lands ceded by the treaties of 1866. But the President, referring to the leased district, says:

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

This statement, if material to the questions now at issue, means, first, that by the treaty of 1855 the Government acquired the right to locate upon these lands *any* Indian tribes which it might be convenient for the Government to locate thereon, without restriction or limitation, and, secondly, that the Government, by the treaty of 1855, acquired the right to allot these lands in severalty to such Indians. On both of these points the President is mistaken. The treaty of 1855 secured to the Government the right to locate on the lands in controversy those Indian tribes whose homes and ranges were within certain designated limits, and no others. The following is the text of the treaty:

> The Choctaws and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude, for the permanent settlement of such other tribes or bands of Indians as the Government may desire to locate therein; excluding, however, all the Indians of New Mexico, and also all those whose usual ranges at present are north of the Arkansas River, and whose permanent locations are north of the Canadian River, but including those bands whose permanent ranges are south of the Canadian, or between it and the Arkansas.

Moreover, the treaty of 1855 did not grant, or purport to grant, to the United States any right to allot those lands in severalty to individual

owners, or to transfer the ownership of the lands. As to these lands the treaty of 1855 was not a deed in fee simple but only a lease from the Choctaws and Chickasaws to the United States. It empowered the United States, not to convey, but only to sublet the lands.

The words of the treaty are:

The Choctaws and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude.

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

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

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

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

If this be not true, if the Choctaw and Chickasaw deed of 1866 was an absolute deed, while those of the Creeks and Seminoles were only deeds in trust, then gross injustice was practiced upon the Choctaws and Chickasaws by the United States in 1866, for the Creeks then received $325,362 for a deed in trust of only 2,169,080 acres of land, and the

Seminoles received $975,168 for a deed in trust of only 3,250,560 acres; but for 7,713,239 acres of land, which had been previously held by the United States under a gratuitous lease for thirty-six years, the Choctaws and Chickasaws received not a single penny, unless the $300,000 provided for the freedmen be erroneously reckoned as compensation to the Choctaws and Chickasaws for the grant. And now the President having, in 1889, paid the Creeks for the same lands the additional sum of $2,280,857, and having, in the same year, paid the Seminoles for the same lands an additional sum of $1,912,942.02, has, for almost twelve months, refused to pay the Choctaws and Chickasaws the amount appropriated by the act of March 3, 1891.

The following is the text of the third article of the treaty:

ART. III. The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the ninety-eighth degree west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States at an interest not less then five per cent., in trust for the said nations, until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made 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; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulations, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations, in the proportion of three-fourths to the former and one-fourth to the latter, less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as, within ninety days after the passage of such laws, rules, and regulations, shall elect to remove and actually remove from the said nations, respectively. And should the said laws, rules, and regulations not be made by the legislatures of said nations, respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said Territory, in such manner as the United States shall deem proper—the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining, or returning after having been removed from said nations, to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

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 within the limits of the United States. If the sum of $300,000, named in this article, constituted the sole consideration for the conveyance, and the United States became the absolute owners of the land in their own right, and not the mere grantees of a trust estate therein, then the remarkable spectacle is presented of a purchase by the 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 the so-called "wards of the nation" and their guardian, not only are all doubtful questions solved in favor of the guardian and 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 rob 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 100 per cent by the United States; they would rather take their risks at the spigot than at the bung.

The President's construction of the Choctaw and Chickasaw treaty of 1866 is disproved, not only by the text of the treaty itself, but also by the official acts of the executive authorities of the United States preceding and following the ratification of the treaty. The report made to Congress in this case by the Indian Office September 13, 1890, contains the following statements:

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

* * * * * * *

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

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

ritory, will be permitted to reside in the Territory unless formally incorporated with some tribe according to the usages of the band."

Later, in the progress of the council, about the 18th of September, the commissioners of the southern factions of the Choctaw and Chickasaw tribes accepted the propositions suggested by the commissioners, and before the final adjournment of that council, the 21st of September, all of the delegates of the tribes represented signed a treaty of peace between themselves and the United States. (These proceedings will be found in the Annual Report of the Indian Bureau, 1885, p. 105, etc.)

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

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

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

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

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

The Secretary of the Interior, in an official communication to the Secretary of War, dated May 1, 1879, said:

The lands ceded by the Choctaws and Chickasaws were, by article 9 of the treaty of June 22, 1855, leased to the United States, for the permanent settlement of the Wichitas, and such other tribes or bands of Indians as the Government may desire to locate therein. The treaty of 1866 substituted a direct purchase for the lease, but did not extinguish or alter the trust.

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

The Choctaw and Chickasaw cession of April 28, 1866 (14 Stat., 769) was, by the tenth section thereof, made subject to the conditions of the compact of June 22, 1855 (11 Stat., 613), by the ninth article of which it was stipulated that the land should be appropriated for the permanent settlement of such tribes or bands of Indians as the United States might desire to locate thereon. The lands embraced in the Choctaw and Chickasaw cession were also included in a definite district, established by the stipulations of the treaty of 1855, pursuant to the act of Congress of May 28, 1830, the United States reëngaging, by the seventh article of the said treaty, to remove and keep out from that district all intruders.

In pursuance of the stipulations of the foregoing compacts, and in the exercise of the trusts assumed by the United States, under the several treaties, and in accordance with specific provisions of law and the lawful orders of the President, all the lands in the Indian Territory to which the United States has title have been permanently appropriated or definitely reserved for the uses and purposes named. The

title of the United States to lands in the Indian Territory is, as heretofore shown, subject to specific trusts, and it is not within the lawful power of either the legislative or executive departments of the Government to annihilate such trusts, or to avoid the obligations arising thereunder. Such trusts are for the benefit of Indian tribes and Indian freedmen.

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

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

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

These lands were acquired by treaties with the various Indian nations or tribes in that territory in 1866, to be held for Indian purposes and to some extent for the settlement of the former slaves of some of said nations, or portions thereof.

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

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

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

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

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

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

The boundary between the Louisiana purchase and the Spanish possession, by our treaty of 1819 with Spain, was, as to these lands, fixed upon the one hundredth degree of west longitude. Our treaty with the Choctaws and Chickasaws, made in 1820, extended their grant to the limit of our possessions. It followed, of course, that these lands were included within the bounds of the State of Texas, when that State was admitted to the Union, and the release of the Choctaws and Chickasaws, whatever it was worth, operated for the benefit of the State of Texas, and not of the United States.

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

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

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

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

The territory of the Choctaws west of the one hundredth meridian contained 286 full townships, excluding fractional townships, amounting to more than 6,589,440 acres of land. At 12½ cents per acre it amounted to more than $823,680. But in the treaty of 1855 the sum of $800,000 constituted the entire consideration, not only for the reconveyance of 6,589,440 acres of land west of the one hundredth meridian, but also for the perpetual lease of 7,713,239 acres between the ninety-eighth and one hundredth meridians. The President thinks

that a large part of this consideration must have applied to the lease. He says:

> It seems probable that a very considerable part of this consideration must have related to the leased lands, because these were the lands in which the Indian title was recognized and the treaty gave to the United States a permanent right of occupation by friendly Indians.

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

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

The President says:

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

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

The President thinks that if an Indian nation, being the owner of a tract of land purchased from the United States and fully paid for, cedes the land back to the United States by a conveyance in trust, the terms

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

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

But this is only one of the errors into which the President has fallen on this subject. He thinks that all or a large part of the money promised to the Cheyennes and Arapahoes, in the agreement of 1891, is to be paid as compensation for their interest in lands within the leased district. This is a mistake. The facts are as follows:

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

By an Executive order, dated August 10, 1869, the President set apart, for the Cheyennes and Arapahoes, the country between the thirty-fifth and thirty-seventh parallels of north latitude, and between the eastern line of Texas and the western line of Oklahoma. This country contains 4,270,771 acres of land. (Commissioner's report, 1888, p. 89.) Of this land, 1,781,611 acres lie north of the Canadian River and outside of the leased district, and 2,489,160 acres lie south of the Canadian River and

within the leased district. The authority for the Executive order setting this land apart for the Cheyennes and Arapahoes was not conferred by any specific constitutional or statutory provision. Its origin is nebulous, and its origin and nature are not yet well defined.

When, by virtue of the Executive order of August 10, 1869, the Cheyennes and Arapahoes were located in the country north and south of the Canadian River, they already held, under a treaty duly ratified by the Senate, the tract of 5,207,000 acres between the Arkansas and Cimarron rivers. And yet the President is of the opinion that it was competent for the executive authorities of the United States to substitute a reservation set apart by Executive order for a reservation set apart by a duly ratified treaty, with the effect of investing the Cheyennes and Arapahoes with such a title to the 2,489,160 acres south of the Canadian River that a quitclaim of their interest therein to the United States will extinguish not only their own interest, but also that of the Choctaws and Chickasaws. He thinks that to pay the Choctaws and Chickasaws, after paying the Cheyennes and Arapahoes, would be to pay twice for the same land.

The Choctaws and Chickasaws think that this Excutive order was not effective to vest in 3,000 Cheyennes and Arapahoes such a title to 4,270,771 acres of land, in addition to the 5,207,000 previously set apart by treaty between the Arkansas and Cimarron rivers, as to make the quitclaim of the Cheyennes and Arapahoes effective, not only to extinguish their own interest, but also that of the Choctaws and Chickasaws.

But your memorialists respectfully ask that Congress will not lose sight of the real character of the Cheyenne and Arapahoe agreement of 1890. By that agreement the Cheyennes and Arapahoes quitclaimed to the United States, not only the 2,489,160 acres of land within the leased district, but also the 1,781,611 acres north of the Canadian River, and the 5,207,000 between the Arkansas and Cimarron rivers, in all 9,837,771 acres. Of this aggregate amount only one-fourth was within the leased district. And yet although 96,000 acres of land within the leased district are given to the Cheyennes and Arapahoes, in severalty, the President is of the opinion that the sum of $1,500,000 promised to the Cheyennes and Arapahoes in the treaty of 1890 is to be paid mainly, not for the 7,348,611 acres outside of the leased district, but for the 2,489,160 acres within that district. Your memorialists think that this opinion is not warranted by any facts in the case.

The President objects to paying for the Cheyenne and Arapaho Reservation, on the ground that the United States may hereafter be called upon to pay for Greer County and for the Wichita Reservation. But the Chickasaws think that if the United States owe the Choctaws and Chickasaws for these three tracts of land they ought not to refuse payment for the former in order to evade payment for the latter. If a Chicasaw, having purchased three horses, should refuse to pay for one, on the ground that he might be called upon to pay for the other two, he would be ostracized by his fellow-citizens as a transgressor alike of their code of laws and of their code of morals; he would be promptly consigned to the limbo of fraudulent debtors, which is one of the lowest "circles" in the "Infernology" of the Chickasaws.

The President makes the following statement:

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

This statement is full of the gravest errors. The Chickasaws never stipulated in the treaty of 1866, or in any other treaty, to admit the freedmen to citizenship. It was provided in the treaty of 1866 that if the Choctaws and Chickasaws should elect to admit to citizenship the freedmen, certain specified arrangements should be made, and that if they should elect not to admit them to citizenship, then certain other specified arrangements should be made. There was no promise, express or implied, by either nation to confer citizenship upon the freedmen. Nor has either of these two nations failed to comply with a single stipulation of the treaty of 1866, or of any other treaty relating to the freedmen. Nor is the condition of the freedmen in either nation such as to call for, or justify, any intervention by Congress on their behalf, to the prejudice of the Choctaws and Chickasaws. The Choctaws admitted their freedmen to citizenship. They were able to do this with safety, because the freedmen constituted only an insignificant minority of the population of the nation. But, for reasons already stated, the Chickasaws declined to confer citizenship upon their freedmen.

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

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

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

The President seems to think that the freedmen ought to participate in the distribution of the moneys of the Choctaws and Chickasaws appropriated by the act of March 3, 1891. But the proposition which was suggested by the United States, in the treaty of 1866, for the consideration of the Choctaw and Chickasaw legislatures was, not that the Choctaws and Chickasaws should admit the freedmen to citizenship, and also admit them to a participation in their moneys, but that the Choctaws and Chickasaws should admit them to citizenship, and exclude them from participation in their moneys.

So fortunate has been their lot in the Chickasaw Nation, that although the treaty of 1866 secured to each freedman who would settle in the leased district the sum of $100, not a single Chickasaw freedman could be induced to go. Of the Choctaw freedmen only 72 consented to be removed, and your memorialists believe that, after receiving their money (in the aggregate $7,200), these Choctaw freedmen all remained in or found their way back to the Choctaw and Chickasaw nations.

The President seems to think that he is authorized to refuse to execute the law of March 3, 1891, making compensation to the Choctaws and Chickasaws for their interest in the land in question, by that clause of the act which requires their releases to be satisfactory to him.

Soon after the passage of that act the Choctaws and Chickasaws prepared two forms of release and two other forms were prepared in the Indian Office. The Choctaws and Chickasaws gave formal notice to the United States that they were ready to execute releases in either or any of these four forms, or in any other form satisfactory to the President; but the President, instead of approving or disapproving these releases, has conceived it to be within his province to approve or disapprove the act itself. Your memorialists have understood that under the Constitution of the United States the power of the President to approve or disapprove an act of Congress was to be exercised when the act was presented for his official signature, and they are greatly surprised and aggrieved to learn that an act of Congress involving their rights has been vetoed after the lapse of eleven months from the date of its passage.

The zealous opposition of the Secretary of the Interior to this measure during its pendency in Congress and after it became a law, and the persistent refusal of the President to execute the law since its enactment, seem to your memorialists not only to demonstrate the necessity for the employment of counsel in this case to defend the "nation's wards" against their "guardian," but also to go far to justify the rate of compensation fixed by the Choctaw legislature.

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

For a period of eleven months the executive authorities of the United States have failed to pay any part of the money so appropriated for the extinguishment of the interest of the Choctaws and Chickasaws in these lands; but meantime they have proceeded to make the preliminary arrangements necessary to prepare the land for public settlement, and have asked and obtained from the Congress now in session an appropriation for the completion of such arrangements, with the avowed purpose of speedily throwing the lands open to occupation by citizens of the United States.

If an attempt shall be made to convert the said trust estate of the United States into an absolute estate, without compensation to the Choctaws and Chickasaws for their interest in said lands, and to transfer the lands to citizens of the United States, the Chickasaws will be constrained to regard such action on the part of the United States as a forfeiture of the trust estate now held by the United States therein, and will assert the right of the Choctaws and Chickasaws to resume the full ownership and actual possession of said lands; and they will be compelled reluctantly to resort to such measures as shall be proper to contest the validity of any transfers of said lands to white men made or attempted by the executive department of the Government.

For protection and relief in the premises the Chickasaws appeal to the Congress of the United States.

B. C. BURNEY,
OVERTON LOVE,
Chickasaw Delegates.

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