
CHOCTAW AND CHICKASAW FREEDMEN.

L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING,

IN RESPONSE TO RESOLUTION OF THE SENATE OF DECEMBER 18, 1897, COPY OF A COMMUNICATION FROM THE COMMISSIONER OF INDIAN AFFAIRS CONTAINING A FULL STATEMENT IN REGARD TO THE CHOCTAW AND CHICKASAW FREEDMEN.

JANUARY 24, 1898.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 22, 1898.

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate, dated December 18, 1897, in the following words:

That the Secretary of the Interior be, and he hereby is, directed to report to the Senate, as early as practicable, the present status of the Choctaw and Chickasaw nations, Indian Territory, of the freedmen—former slaves and their descendants—of the Choctaw and Chickasaw Indians; also his suggestions and recommendations, with those of the Commissioner of Indian Affairs, as to the further legislation by Congress, if any, deemed necessary to properly adjust and establish their status in either of said nations, and to settle their just and equitable claims arising under and growing out of the stipulations of the treaty of 1866, by the United States with the Choctaw and Chickasaw nations, and the failure heretofore of the fulfillment thereof.

In response thereto I transmit herewith a copy of a communication of the 19th instant, from the Commissioner of Indian Affairs, which contains a full statement in regard to the Choctaw and Chickasaw freedmen.

The Commissioner says, in regard to the Choctaw freedmen, that those who have not elected to remove from the nation are citizens of the nation, with all the rights and privileges and immunities contemplated by the treaty of 1866, and that no legislation by Congress is now necessary to adjust and establish their status in the nation, and especially is this so since they have now access to the United States courts to enforce their rights in the nation.

In regard to the Chickasaw freedmen, he says it will be seen that their status depends upon the question of whether or not the Chickasaw law of 1873, approved by the eighteenth section of the act of 1894, had been repealed before its approval, and that that question is one for

judicial determination. If the said law had been repealed the Chickasaw freedmen are not citizens of that nation, and it is not seen that Congress could, by any act passed by that body, make them such without the consent of the said nation, and it would appear that any relief given them must be at the expense of the Government, so far, at least, as the funds necessary for the purpose may exceed what would be the proportionate share of the Chickasaw Nation in the \$300,000 provided for in the third article of the treaty of 1866. If, on the other hand, they are citizens of the nation by virtue of the act of the Chickasaw legislature of 1873 and the eighteenth section of the act of Congress of 1894, it would seem to be in the power of Congress, by proper legislation, to enforce their rights as such, and he suggests that the matter might be more expeditiously disposed of if Congress would authorize the institution of a suit by said Chickasaw freedmen in the Court of Claims, with right of appeal to the Supreme Court.

The Commissioner also states that if in the meantime any agreement with the Choctaw and Chickasaw nations be presented to Congress for its consideration and recommendation, it would seem proper for that body to insert therein such amendments as will appear necessary to adjust the difficulty and fix the freedmen of the Chickasaws in such rights and privileges in the nation as justice may demand.

Very respectfully,

C. N. BLISS, *Secretary.*

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 19, 1898.

SIR: I am in receipt by Department reference for immediate report and recommendation of a resolution of the Senate dated December 18, 1897, directing the Secretary of the Interior to report as to the status of the Choctaw and Chickasaw freedmen, as follows, viz:

Resolved, That the Secretary of the Interior be, and he hereby is, directed to report to the Senate as early as practicable, the present status in the Choctaw and Chickasaw nations, Indian Territory, of the freedmen—former slaves and their descendants—of the Choctaw and Chickasaw Indians; also his suggestions and recommendations, with those of the Commissioner of Indian Affairs, as to the further legislation by Congress, if any, deemed necessary to properly adjust and establish their status in either of said nations, and to settle their just and equitable claims arising under and growing out of the stipulations of the treaty of 1866, by the United States with the Choctaw and Chickasaw nations, and the failure heretofore of the fulfillment thereof.

In reply I have the honor to say that the stipulations of the Choctaw and Chickasaw treaty of 1866 (14 Stats., 769) which relate to the freedmen of the Choctaw and Chickasaw Indians are contained in articles 3 and 4 thereof, which are as follows, viz:

ARTICLE 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 98° 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 than 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.

ARTICLE IV. The said nations further agree that all negroes, not otherwise disqualified or disabled, shall be competent witnesses in all civil and criminal suits and proceedings in the Choctaw and Chickasaw courts, any law to the contrary notwithstanding; and they fully recognize the right of the freedmen to a fair remuneration on reasonable and equitable contracts for their labor, which the law should aid them to enforce. And they agree, on the part of their respective nations, that all laws shall be equal in their operation upon Choctaws, 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 be 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, it being understood that in the event of the making of the laws, rules, and regulations aforesaid the forty acres aforesaid shall stand in place of the land cultivated as last aforesaid.

The forty-sixth article of the treaty provides among other things that "of the moneys stipulated to be paid to the Choctaws and Chickasaws under this treaty for the cession of the leased district, and the admission of the Kansas Indians among them," the sum of \$150,000 shall be advanced and paid to the Choctaws, and \$50,000 to the Chickasaws, through their respective treasurers, as soon as practicable after the ratification of this treaty, to be repaid out of said moneys or any other moneys of said nations in the hands of the United States.

Pursuant to this provision, Congress appropriated by the act of July 26, 1866 (14 Stats., 259) \$150,000 "to be advanced to the Choctaws for the cession of the leased district, and the admission of the Kansas Indians," also \$50,000 "to be advanced to the Chickasaws for the cession of the leased district, and the admission of the Kansas Indians." The act also appropriated the sum of \$15,000 for interest at 5 per centum per annum upon the amount paid for certain lands ceded by the Choctaws and Chickasaws to the United States, due them under the third and forty-sixth articles of the treaty, and the sum of \$11,250, being three fourths of \$15,000, and the proportionate share of the Choctaws thereof, was paid to that nation, while the sum of \$3,750, being one-fourth of \$15,000 and the proportionate share of the Chickasaws, was paid to that nation.

By the act of April 10, 1869 (16 Stats., 39), a further sum of \$15,000 was appropriated for "interest due the Choctaws and Chickasaws August 8, 1868, on \$300,000 held in trust for said Indians under the third article" of the said treaty.

Three-fourths of this amount, \$11,250, was paid to the Choctaw Nation, and one-fourth, \$3,750, was paid to the Chickasaw Nation.

In the meanwhile the Chickasaw legislature had by an act of November 9, 1866, declared it to be the unanimous desire of the legislature that the United States should keep their share of the \$300,000 for the benefit of the negroes, and requested the governor of the Chickasaw Nation "to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation for the Government to remove said negroes from the limits of the Chickasaw Nation, according to the said third article of the treaty of April, 1866," and make provision for the appointment of commissioners to confer with the Choctaws and make preliminary arrangements for carrying out the third and eleventh articles of the treaty.

In December following this action by the Chickasaw legislature the freedmen of the Chickasaw Nation memorialized the Government of the United States, setting forth that the bitter feeling of the Chickasaws toward them, and their willingness to give up their portion of the \$300,000 rendered them (the freedmen) anxious to leave that nation and to settle upon any land that might be designated by this Government, and asking that transportation be provided for them and their families, and supplies be furnished sufficient to enable them to make a start in their new homes. As far as the files and records of this office show, no action was taken on this petition. On June 27, 1868, the freedmen again petitioned this Government to the same effect as above set forth. In this petition the freedmen set forth that inasmuch as the Chickasaw council in November, 1866 (*supra*), passed an act refusing to grant them and their people the rights mentioned in the third article of the treaty of 1866, and as the Choctaw council "at its last session," had taken similar action, they pray that they be removed from the nations, and that the \$300,000 provided for in the treaty be expended in such manner as the Government may deem best for their use and benefit, and further that a delegation be permitted to visit Washington to consult with this office in regard to their future. This petition was laid before Congress, but no action was taken thereon.

Nearly two months later, under date of August 17, 1868, Messrs. Holmes Colbert and Sampson, Folsom, representing the Choctaw and Chickasaw nations, urged this Government to carry out its pledges and remove the freedmen from said nations.

In February, 1869, a delegation of freedmen came to Washington at the expense of the Government and submitted a memorial urging the fulfillment on the part of the Government of their treaty stipulations in regard to their people. Nothing resulted from this.

In a letter dated August 18, 1869, the governor of the Chickasaw Nation transmitted a copy of the act of the council of that nation passed on November 9, 1866, and stated that it still expressed the sentiments and wishes of the people.

Up to this time it appears that all parties interested had been desirous only of the removal of the freedmen from the Choctaw and Chickasaw nations; but in a letter dated August 19, 1869, Capt. George T. Olmstead, jr., United States agent for said nations, reported that the freedmen, influenced by advice from outside parties, were somewhat divided in opinion, but generally willing to abide by the wishes and decisions of the Government, relying entirely on its action and expressing themselves as being as well treated by the Indians as they could wish or expect, and as preferring, if possible, to remain with those among whom they have been raised. In his annual report dated Sep-

tember 21, 1869 (Annual Report Commissioner of Indian Affairs, 1869, p. 408), he further stated on this subject that the freedmen decided in a body to remain, if possible, and that they were desirous of living under the protection of the United States, as they were afraid to be left solely under the control of the Indian tribes or of any State or community where they would be deprived of a direct appeal to the Government on every question involving their interests. He also reported the Choctaws as being in favor of having the freedmen remain, while the Chickasaws, at first desiring their removal, appeared to be waiting the action of the Government in the matter, and suggested that steps be taken to negotiate a supplemental treaty with the Indians by which the freedmen could be fairly settled and established as citizens of the nations, considering this method of settling the question necessary in view of the failure of the Government to fulfill the stipulations of the treaty of 1866.

In his next annual report, dated September 15, 1870 (Annual Report Commissioner of Indian Affairs, 1870, p. 291), Captain Olmstead stated that the unsettled condition of the freedmen and their uncertainty as to the final action of the Government rendered some of them dissatisfied; but that those who had energy to labor for themselves and their families lived as well as the Indians, and that these freedmen as a class were better able to take care of themselves and were in reality in a more prosperous condition than the majority of their race in the Southern States. He also declared that the rumors and reports regarding their illtreatment by the Indians were almost entirely without foundation, but that he considered it becoming every day more and more evident that it would not be compatible with their interests to be received as citizens of the nations or to live under Indian laws, as the Chickasaws had refused them the rights of citizenship and the Choctaws had taken no action whatever in the matter. He therefore recommended that unless the Choctaw Nation took some action at the then approaching session of its council the Government remove or make other provisions for them as soon as possible.

In a communication dated November 25, 1870, Mr. Sampson Folsom, who had been the national attorney for the Choctaws, stated that the Choctaw and Chickasaw nations differed widely regarding the status of the freedmen, and requested the Commissioner of Indian Affairs to inform himself without delay of the true condition of affairs, either by a personal visit or through a trusty commission.

Under date of January 8, 1871, the United States Indian agent reported some agitation among the freedmen caused by a rumor that the Chickasaws were about to require them, if they remained, to obtain permits, for which the sum of \$1 per capita was to be charged. He stated that the freedmen were anxious to obtain homes of their own, to build schoolhouses, etc., and to send a delegation to this city for the purposes of conference. At the time of writing this report the agent appears to have recognized the right of the Chickasaw Nation to impose the taxes and restrictions described upon the freedmen; but in a subsequent report dated January 21, 1871, with which he forwarded a copy of the proclamation of the governor of the Chickasaw Nation requiring the freedmen to obtain permits, he inclosed a copy of a letter written by himself to the governor, suggesting that the enforcement of his proclamation would be in contravention of the fourth article of the treaty of 1866. The proclamation was not enforced and it does not appear from the records of the office that any very determined effort was made to carry it into effect.

In a report dated February 1, 1870, Maj. S. N. Clark, a special agent of the Bureau of Refugees, Freedmen and Abandoned Lands, reported to Gen. O. O. Howard, the Commissioner of that Bureau, concerning the freedmen of the Choctaw and Chickasaw nations, stating, among other things, that in September, 1869, said freedmen in convention adopted several resolutions in substance setting forth:

- (1) That they did not consider themselves bound by the stipulations of the treaty of 1866, the Indians having (as stated in the preamble) failed to fulfill their obligations;
- (2) That they considered themselves full citizens of the nations and entitled to all rights as such;
- (3) That they desired to remain in the Indian country;
- (4) That they desired the sectionizing and allotment of lands in severalty;
- (5) That they favored the opening of the Territory to white immigration, and the sale of lands to such immigrants for the benefit of the whole people; and
- (6) They elect three trusty delegates to attend to their interests.

Major Clark submitted that these people were entitled to all they claimed in the second resolution, especially a share of the tribal funds and of the amount devoted to educational purposes, of the benefits of which they were deprived, and recommended further Congressional action to enable them to enjoy these privileges.

In 1873 an act was passed by the Chickasaw legislature "to adopt the negroes of the Chickasaw Nation." This act declared all negroes belonging to the Chickasaw Nation at the time of the adoption of the treaty of Fort Smith and resident in the nation at the date of that treaty, with their descendants, to be adopted in conformity with the third article of the treaty of 1866, provided that the proportional part of the \$300,000 specified in said article, with accrued interest thereon, should be paid to the Chickasaw Nation for its sole use and benefit; further, that the adopted negroes should not be entitled to any part of the said \$300,000, nor to any benefits from the principal and interest of invested funds, nor to any share in the common domain except 40 acres of land provided for in the treaty, nor to any privileges or rights not covered by the treaty. And, further, that said adopted negroes should be subject to the jurisdiction and laws of the Chickasaw Nation just as though said negroes were Chickasaws. This act was to have full force and effect only from and after its approval by the proper authorities of this Government. It was transmitted to Congress by the Secretary of the Interior February 10, 1873, with the recommendation that such legislation should be had by Congress as would extend the time, in all respects, for the execution of the provisions of the third article of the treaty of 1866 for the term of two years from the 1st of July, 1873. The matter was referred to the Committee on Freedmen Privileges February 13, 1873, and ordered to be printed. No action appears to have been taken on this act by Congress at the time. (Annual Report for 1882, p. 57, and House Ex. Doc. No. 207, Forty-second Congress, third session.)

The action on this subject by the authorities of the Chickasaw Nation since the passage of the act above referred to has looked toward the removal of the freedmen.

In March, 1875, Hon. J. P. C. Shanks was appointed a commissioner to investigate and report upon the status of the freedmen among the Choctaws and Chickasaws, and on December 30, 1875, he submitted his report, in which he strenuously opposed the removal of the freedmen and recommended that the United States take measures to secure their recognition as citizens of the nations in which they were resident.

In 1876 the Chickasaw council provided for the election of commissioners to confer with commissioners from the Choctaw Nation to consider and agree upon some plan for the disposition of the freedmen question by the removal of the freedmen and their descendants from the nations.

In 1879 another commission was provided for to meet a like commission from the Choctaws to confer on the freedmen question and report in writing to the legislature.

The Choctaws had in the meantime manifested a willingness to adopt their freedmen, but as it had been held that under the treaty the joint or concurrent action of both nations was required to make the adoption by either nation valid, and as it appears that the Chickasaw Nation refused to agree to any plan of adoption into that nation of the freedmen belonging therein, the Choctaw national council on November 2, 1880, memorialized Congress, expressing their willingness to accept their freedmen as citizens and asking for legislation that would enable them to do so. The only result of this memorial seems to have been a Senate bill, which, however, was never reported. Two years later, in 1882, a clause was inserted in the Indian appropriation bill, act of May 17 of that year (22 Stats., 72), providing for the appropriation of the sum of \$10,000 out of the \$300,000 reserved by the third article of the treaty above referred to for the purpose of educating freedmen in the Choctaw and Chickasaw nations to be expended under the direction of the Secretary of the Interior, three-fourths for the freedmen among the Choctaws and one-fourth for the freedmen among the Chickasaws, with the proviso that either of said nations might before the expenditure of the money so appropriated adopt and provide for the freedmen in the said nations, respectively, and in such case their proportion of the money appropriated should be paid over to such nation. Under this provision the Choctaws, by act approved May 21, 1883 (copy herewith), adopted their freedmen, and the balance of the share of that nation in the \$300,000 was placed to its credit on the books of the United States Treasury by act of March 3, 1885 (23 Stats., 367). One-fourth of the \$10,000, however, was expended for the benefit of the freedmen in the Chickasaw Nation, the authorities of that nation taking no action looking to their adoption into the tribe.

The act of the Choctaw council adopting the freedmen of that nation provides, as will be seen, in

SEC. 1. That the freedmen described in the treaty and their descendants resident in the Choctaw Nation "are hereby declared to be entitled to and invested with all the rights, privileges, and immunities, including the right of suffrage, of citizens of the Choctaw Nation, except in the annuities, moneys, and the public domain of the nation;" in

SEC. 2. That they shall be allowed the same rights of process, civil and criminal, in the several courts of the nation as are allowed to Choctaws, "and free protection of person and property" is guaranteed; in

SEC. 3. That they are declared to be entitled to "forty acres each of the lands of the nation, to be selected and held by them under the same title and upon the same terms as the Choctaws;" in

SEC. 4. That they shall "be entitled to equal educational privileges and facilities with the Choctaws so far as neighborhood schools are concerned;" in

SEC. 5. That all who "elect to remove and do actually and permanently remove from the nation," should be entitled to one hundred dollars *per capita* as provided in article three of the treaty; in

SEC. 6. That all who shall decline to become citizens of the nation,

and do not elect to remove permanently from the nation, are declared to be intruders on the same footing as other citizens of the United States resident in the nation, and subject to removal for similar causes; in

SEC. 7. "That intermarriage with such freedmen of African descent who were formerly held as slaves of the Choctaws, and have become citizens, shall not confer any rights of citizenship in this nation, and all freedmen who have married, or who may hereafter marry freedwomen, who have become citizens of the Choctaw Nation, are subject to the permit laws, and allowed to remain during good behavior only."

Section 8 was repealed by act of October 26, 1883 (copy herewith), and section 9 provided for the furnishing of a certified copy of the act to the Secretary of the Interior.

As the Senate resolution requires a report of the status of the freedmen of the Choctaw and Chickasaw nations with recommendations both by the Department and this office of what, if any, further legislation by Congress is "deemed necessary to properly adjust and establish their status in either of said nations, and to settle their just and equitable claims arising under and growing out of the stipulations of the treaty of 1866," it would seem proper here to discuss briefly the correspondence of this office and the Department, which discloses the view taken at the time of the scope and effect of the act of the Choctaw Nation adopting their freedmen, and as to whether it was a compliance with the terms of the third article of the said treaty of 1866.

On the receipt in this office of the said act of the council of the Choctaw Nation, Mr. Campbell Leflore, the Choctaw delegate in this city, was communicated with in a letter dated June 18, 1883, in which he was advised that after due consideration the office made no objection to the act, except to the seventh and eighth sections.

The objections to section 7 were set out in the letter to Mr. Leflore as follows, viz:

The seventh section of the act under consideration is in violation of the rights guaranteed the freedmen by treaty, in that it declares:

First. That intermarriage with freedmen and freedwomen shall confer no right of citizenship upon persons so intermarrying, while the act of 1875 confers the right of citizenship on any citizen of the United States or foreign government who intermarries with a Choctaw citizen. This is discriminating against the freedmen and making a "distinction affecting" them.

Second. It debarb from citizenship persons who have heretofore intermarried with Choctaw freedmen or freedwomen. This is also discriminating against the freedmen and making a "distinction affecting" them, especially so since the act of 1875, and the law to that extent is *ex post facto*. If a person by marriage with a Choctaw acquires rights of citizenship, a person who marries a Choctaw freedman or freedwoman must be secured in the same rights.

These freedmen, if adopted at all, must be adopted with all the "rights, privileges, and immunities of native Choctaws," which they would have had if the "rules and regulations" had been passed within the two years limited by the treaty.

That part of this section which provides that "all freedmen who have married or who may hereafter marry freedwomen, who have become citizens of the Choctaw Nation, are subject to the permit laws," etc., is susceptible of two constructions. The word freedmen may have reference to freedmen generally outside of those Choctaw freedmen referred to in the third article of the treaty of 1866, or it may have reference to freedmen of the Choctaw Nation who may or who may not become citizens thereof under the present act.

If the former construction be adopted, Choctaw freedwomen forfeit their rights of citizenship by intermarriage with freedmen other than Choctaw freedmen, and of course the person with whom they intermarry obtain no rights.

This is discriminating against these freedwomen. If the latter construction be adopted then these freed people are prohibited from intermarriage with each other under penalty of forfeiting their rights of citizenship.

The objections to section 8 were not to the substance, but to the form, and as said section was repealed it is not necessary to further discuss it.

Said letter of June 18, 1883, to Mr. Leflore concluded with the following paragraph, viz :

As the act itself, in its entirety, is not such a law as is calculated and necessary to give all persons of African descent residents in the Choctaw Nation, at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery, "all the rights, privileges, and immunities of citizens of the Choctaw Nation," as provided in the third article of the treaty of 1866, and as the Choctaw council only can repeal the objectional sections of said act, I must decline to recommend the approval of this act, or that any portion of the appropriation of \$10,000 to be expended for the freedmen of the Choctaw Nation shall be paid over to the Choctaw Nation for that purpose, as provided in the Indian appropriation act of May 17, 1882 (22 Stat., p. 72).

From the conclusions reached by the office in the above-noted letter Messrs. J. S. Standley and Campbell Leflore, representing the Choctaw Nation, appealed to the Secretary of the Interior, who, in a carefully prepared and elaborate opinion dated February 26, 1884 (which opinion, as will be seen from a copy herewith, bears the initials of Hon. J. K. McCammon, the then Assistant Attorney-General for this Department, showing that it had been considered and approved by the law officers of the Department), overruled the opinion of this office as to section 7 (section 8 had been repealed) and held that the act of the Choctaw Nation "conforms in all its substantial parts to the requirements of the third article of the treaty, and grants to them (the freedmen) all the rights, privileges, and immunities thereby required;" also that, as amended by the repeal of section 8, it was "a reasonable, substantial, and sufficient compliance with the provisions made therefor in the act of May 17, 1882 (22 Stats., 73) and of the third article of treaty therein referred to."

As a part of the detail of the adoption by the Choctaw Nation of their freedmen, I mention a resolution passed by the council on May 22, 1883, providing for their enrollment by a commission. As the inquiry of the Senate does not involve the identification of the persons, it would not seem necessary for any extended reference to the matter of the enrollment further than to say that two rolls were made in accordance with said resolution, one embracing all who would remain in the nation as citizens, and the other those who preferred to accept \$100 per capita and permanently remove, and to each of whom the sum mentioned was paid.

In 1885, the Chickasaw council passed an act urging the removal of the freedmen and refusing specifically to accept or adopt them. (Compiled laws, Chickasaw Nation, 1890, p. 171, copy herewith.)

In 1887 the delegates of the Chickasaw Nation addressed a memorial to the President in which, after reciting the provisions of the treaty of 1866 with the Choctaws relating to the freedmen in that nation and the action of the Chickasaws thereunder, they earnestly requested that the United States fulfill the treaty stipulations by removing without delay to the leased district west of the ninety-eighth meridian of longitude, or to the Oklahoma country ceded by the Creek treaty of 1866, or elsewhere, the freedmen who should consent to such removal, and by placing all those who should refuse to go upon the same footing as other citizens of the United States in the Chickasaw Nation.

During the year 1887, and in years subsequent thereto, many complaints have been received by this office from the freedmen in the Chickasaw Nation relative to the denial of rights claimed by them, and particularly as to the utter lack of educational facilities.

Under date of October 4, 1887, the Chickasaw legislature passed a memorial in which they recited the facts concerning their freedmen and resolved "that the nation shall refund to the United States the sum of \$55,000, to be used in removing the freedmen in the Chickasaw Nation

to their new home, as provided under the third and fourth articles of the treaty of 1866, made between the United States and the Chickasaw and Choctaw nations of Indians."

Under date of February 12, 1890, Agent Bennett submitted a report to this office on the condition of the freedmen in the Chickasaw Nation, in which he stated that "I venture to assert that these Chickasaw freedmen are the worse mistreated and most shamefully abused people on earth to-day. They are fearfully oppressed, ignorant, distressed, and sorely afflicted. The records of this agency and the facts will show that in very many cases they do not enjoy the right of use of land; that because they seemingly have no redress they are trampled upon and pushed aside by the Chickasaw Indian or his leaser." He also stated that the "position to-day is that the Chickasaws have refused to adopt the freedmen; that some of these freedmen, despite frequent difficulties with the Chickasaws, have managed to improve farms varying from 10 to 100 acres, and it is not practical for the United States to at this time move these freedmen."

The reason that has been assigned by the Chickasaws for persistently refusing to adopt the freedmen in their nation is that their numbers are nearly equal to, if not in excess of, the Chickasaws, and that they fear that the freedmen would be able to control the schools of the nation and its government.

The Chickasaw national council adopted a new permit law, which was approved October 9, 1891; and, as it were, to emphasize their opposition to the adoption of the freedmen section 8 of this law provides as follows:

Be it further enacted, That the freedmen now living in this nation shall be required to get permits under citizens of this nation as other noncitizens of this nation, and as provided for by this act.

Without discussing the right of the Chickasaw Nation to pass and enforce such a provision as this, it is sufficient to say that so far as this office is advised no permit taxes have been collected from the freedmen, and their status has not been affected thereby. The law is referred to, however, as a part of the history of the matter, and as showing the attitude of the Chickasaws toward the question of making their freedmen citizens.

In 1892 Messrs. Charles Cohee and Marcus Hamilton, two Chickasaw freedmen, were selected at a convention of the freedmen of the Chickasaw Nation held on January 25, 1892, to visit this city in an effort to secure action by the Government to relieve them of their condition. A letter of introduction was given them by the then Indian agent, Mr. Leo E. Bennett, in which he recommended that the Department take up their cause and endeavor to secure Congressional action for their relief. With this letter of introduction Messrs. Cohee and Hamilton filed a petition, numerously signed, praying that the Government take some action looking to the incorporation of the colored people into and their recognition as citizens of the Chickasaw Nation.

A bill had been introduced in the Fifty-second Congress (S. 2023) which contemplated the removal of these freedmen and their settlement upon any unoccupied lands within Oklahoma; but its consideration does not appear to have been pressed, probably in view of the statements of Messrs. Cohee and Hamilton, as appears to have been made to this office, and Senator Dawes that the freedmen did not desire to be removed from the Chickasaw Nation, but wished first of all to exhaust every effort to secure their incorporation into the said nation as citizens before looking to other expedients for their relief.

At this point it would seem to be proper to mention as a part of the history of this question, and as showing what was then thought to be the best solution of the difficulty, that the office transmitted with a report dated May 8, 1888, a form of legislation to be submitted to Congress providing for the removal of the Chickasaw freedmen into the then unoccupied lands in the Indian Territory, which had been obtained by cessions from the Creek and Seminole nations. (See Senate Ex. Doc. No. 166, Fiftieth Congress, first session.)

So far as the foregoing shows the history of these people there could be no difference of opinion as to their status with relation to citizenship in the Chickasaw Nation. There was no obligation to adopt their freedmen; they were given full discretion in the premises, and the promise was made that if they did not adopt them the Government would make other provisions for their welfare, at the expense of the nation. With the single exception of the act of January 10, 1873, the nation has uniformly refused to adopt them, and asked for their removal. There can, therefore, be no question that at least prior to the act of August 15, 1894 (28 Stats., 336), the status of the Chickasaw freedmen in that nation was that of noncitizens maintained in their residence therein by the Government without any legal rights there, political or otherwise.

By section 18 of the act of August 15, 1894 (*supra*), it is provided— that the approval of Congress is hereby given to “An act to adopt the negroes of the Chickasaw Nation,” and so forth, passed by the legislature of the Chickasaw Nation and approved by the governor thereof January tenth, eighteen hundred and seventy-three, particularly set forth in a letter from the Secretary of the Interior transmitting to Congress a copy of the aforesaid act, contained in House Executive Document numbered two hundred and seven. Forty-second Congress, third session.

The act of the Chickasaw Nation, referred to in the above section, is mentioned on page 11 of this report and is as follows:

AN ACT to adopt the negroes of the Chickasaw Nation, etc.

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That all the negroes belonging to the Chickasaws at the time of the adoption of the treaty of Fort Smith, and living in the Chickasaw Nation at the date thereof, and their descendants, are hereby declared to be adopted in conformity with the third article of the treaty of 1866, between the Choctaws, Chickasaws, and the United States: *Provided, however*, That the proportional part of the \$300,000 specified in article third of the said treaty, with the accrued interest thereon, shall be paid to the Chickasaw Nation for its sole use and benefit: *And provided further*, The said adopted negroes of the Chickasaw Nation shall not participate in any part of the said proportional part of the said \$300,000, nor be entitled to any benefit from the principal and interest on our invested funds or claims arising therefrom, nor to any part of our common domain, or the profits arising therefrom (except the forty acres per capita provided for in the third article of the treaty of 1866), nor to any privileges or rights not authorized by treaty stipulations: *And provided further*, That the said adopted negroes, upon the approval of this act, shall be subject to the jurisdiction and laws of the Chickasaw Nation, and to trial and punishment for offenses against them in every case just as if the said negroes were Chickasaws.

SEC. 2. *And be it further enacted*, That this act shall be in full force and effect from and after its approval by the proper authority of the United States. And all laws or parts of laws in conflict with this act are hereby repealed.

Approved January 10, 1873.

CYRUS HARRIS, *Governor*.

Attest:

W. H. BOURLAND,
National Secretary, Chickasaw Nation.

I do hereby certify that the above copy is a true and authenticated copy from the original now on file in my office, this January 10, 1873.

W. H. BOURLAND,
National Secretary, Chickasaw Nation.

As stated above, the status of the Chickasaw freedmen prior to the passage of the eighteenth section of the act of 1894 was that of non-

citizens maintained in their residence in the nation by the Government, without any legal rights there. In other words, they were intruders with certain indefinite privileges by reason of the circumstances of their residence, but no rights. The question now is, Was that status changed by the said eighteenth section? This is a judicial question that it seems to me can only be authoritatively determined by the courts.

I will state, however, that notwithstanding the uniform opposition since 1873 of the Chickasaw Nation to giving these freedmen rights of citizenship in the nation, I have been unable to find, and the attorneys representing the Chickasaws have been unable to cite me, to any law of the nation specifically repealing the act of January 10, 1873. If therefore said act of 1873 had been repealed on August 15, 1894, it must have been by implication, and whether or not the subsequent acts of the Chickasaw Nation cited (*supra*) in this report, especially the act of 1885, urging the removal of the freedmen and authorizing the Government to recoup itself out of Chickasaw moneys for the appropriations made for the Chickasaw Nation, out of the \$300,000 provided for in the third article of the treaty of 1866 (*supra*), and the eighth section of the permit law of 1891, operated as a repeal by implication of the act of 1873, is a question for the courts to decide in a proper case.

As the said eighteenth section of the act of 1894 does not purport to do more than to give the approval of Congress to the act, it could not be of any force to affect the status of the freedmen if the act approved had been repealed before its passage. And should the courts decide that said act of 1873 had been repealed prior to August 15, 1894, then the eighteenth section of the act of Congress of that date would have no influence over the subject.

I will add that the question appears from correspondence in this office to have been to some extent considered by the court for the southern division of the Indian Territory. In a letter dated October 19, 1895, Mr. R. H. West, an attorney at Ardmore, Ind. T., advised the Department that in a case then recently brought before Judge Kilgore, he decided that the eighteenth section of the act of August 15, 1894, admitted all the Chickasaw freedmen to citizenship in the nation, and that an offense committed by one Chickasaw freedman against another Chickasaw freedman was within the jurisdiction of the courts of the nation, and therefore not in the jurisdiction of his court. Mr. West expresses the belief that Judge Kilgore was in error in holding as he stated, for the reason that, as he said, the Chickasaw legislature repealed the act of 1873 shortly after its passage. In view of the opinion of Judge Kilgore and the attitude of the Chickasaw authorities, who refuse to acknowledge the rights of the freedmen to citizenship, Mr. West stated that said freedmen are without any law, and are therefore a menace to themselves and to society in general. He therefore recommended that the Department make some proper recommendation to Congress in the premises.

Under date of October 29, 1895, this office wrote Mr. West on the subject and asked him to furnish the office with a copy of Judge Kilgore's decision holding that the Chickasaw freedmen had been admitted to citizenship in the nation by the act of 1894, and also a citation to the act of the Chickasaw legislature repealing the act of 1873, and such other documents or reference to laws as would enable the office to consider the matter intelligently with a view to doing justice to all parties concerned.

Mr. West replied to this letter under date of November 18, 1895, stating that the act of the Chickasaw Nation to which he had referred as repealing the act of 1873 was passed October 22, 1885, and found on page 171 of laws of the Chickasaw Nation published in 1890; that while this law does not repeal the act of 1873 by referring to it specifically, it certainly does so by implication, as it specifically rejects the freedmen. He also stated that Judge Kilgore rendered no written opinion in the case referred to by him, but the question was raised of the citizenship of the Chickasaw freedmen charged with murder, by motion on the part of defendants' counsel, and the court simply sustained the motion and discharged the defendant.

In a report dated November 25, 1895, the office submitted the matter to the Department with remarks and suggestions as follows, viz:

This act (1885) would seem to be entirely inconsistent with the act of 1873, but whether or not that had been repealed by it, is a question for the courts to decide. It is also a question for the courts whether or not, the said section 18 of the act of August 15, 1894, operates as giving to the Chickasaw freedmen full rights of citizenship in that nation. If the court of the United States for the southern district of the Indian Territory has decided, as it seems it has, that the effect of the eighteenth section of the said act of 1894 was to give the Chickasaw freedmen rights of citizenship in the nation, that decision would seem to be binding until it is overruled by a court of superior jurisdiction. Unfortunately there is no jurisdiction given the courts of the United States to compel the courts of the Chickasaw Nation to recognize these freedmen as citizens of the nation, and if Judge Kilgore's decision is correct, it would be necessary for Congress to pass further legislation before the situation can be relieved of the embarrassments pointed out by Mr. West in his letter to you.

In view of the length of time that elapsed between the passage by the Chickasaw Nation of the act of 1873 proposing to adopt their freedmen and the passage by Congress of the act of August 15, 1894, approving said act, and of the fact that all the acts of the Chickasaw legislature since the said act of 1873 have been so positive in refusing to adopt the freedmen and in demanding their removal from the nation, the office is not prepared, notwithstanding Judge Kilgore's decision as to the scope and effect of the said eighteenth section of the act of 1894, to recommend any legislation to Congress which would compel the Chickasaw Nation to accept these people as citizens.

On the other hand, if Judge Kilgore's decision is correct, and the freedmen of the Chickasaw Nation have rights in that nation, it would seem that some legislation should be passed under which those rights could be enforced in some proper tribunal; and I know of no tribunal that could be more properly intrusted with this function than the courts of the United States for the Indian Territory.

In view of the importance of this question, it has occurred to me that it should be referred to the Five Civilized Tribes Commission for consideration in connection with their report of their proceedings in the Indian Territory. These gentlemen are familiar with the conditions in all of the Five Civilized Tribes, and would doubtless be able to make such recommendation to Congress as would do justice to all parties concerned.

Under date of December 26, 1895, Mr. West again wrote this office, stating that the status of the freedmen in the Chickasaw Nation had materially changed since the former correspondence (above cited), and explained that the party who was released by Judge Kilgore for lack of jurisdiction in the case before mentioned immediately took advantage of the situation by appropriating to himself 24 head of cattle belonging to another Chickasaw freedman, which fact seems to have changed Judge Kilgore's views of the law as to his jurisdiction, for when the party came up for trial he held jurisdiction, and on conviction sentenced him to the penitentiary.

While, therefore, the question of the status of the Chickasaw freedmen as affected by the eighteenth section of the act of 1894 has been considered by the courts, nothing definite can be said to have been determined, as we have rulings of the same court on both sides of the question; but as the last ruling was against the citizenship of the freedmen, it

might be held to set aside the former decision holding them to be citizens but for the fact of the peculiar circumstances under which the court held the prisoner to be within its jurisdiction.

In *Talton v. Mayes* (163 U. S., 376) the Supreme Court held that the questions of whether a law of the Cherokee Nation had been repealed by a subsequent law of the nation, and what was the law of the nation applicable to a certain question at a given time, were for determination by the courts of the nation. As the status of the Chickasaw Nation with respect to self government does and has not materially differed from that of the Cherokee Nation, it would appear that, if prior to January 1, 1898, the Chickasaw courts have held that the act of 1873, adopting the freedmen when approved by the Government, had been repealed by the act of 1885 (*supra*) or any other act of the nation, or shall hereafter, in deciding any case instituted before January 1, 1898, hold that said act was repealed, before the passage of the said section 18, the Government would be bound thereby.

I am not informed whether the Chickasaw courts have ruled on the question or whether there is pending in said courts any suit or suits that will so involve the question as to make a ruling thereon necessary; but it will be seen from the provisions of the act of June 7, 1897 (30 Stats., 83), giving the United States courts for the Indian Territory original and exclusive jurisdiction of all civil causes instituted after January 1, 1898, that the situation has materially changed since the date of office report of November 25, 1895, in which the question was discussed as above set forth, and that the United States courts now have such a jurisdiction as will enable them to take cognizance of suits in which the question can be properly determined.

The resolution of the Senate calls for a statement of the status of the freedmen of the Choctaw and Chickasaw nations and recommendations as to what, if any, legislation is necessary to give them the rights in the nations contemplated in the treaty of 1866.

It will be seen from what is set forth in this report that by act of May 21, 1883, the Choctaw Nation adopted their freedmen who desired to remain in the nation and become citizens, and that the Secretary of the Interior, in passing on that act, held that it "conforms in all its substantial parts to the requirements of the third article of the treaty, and grants to them (the freedmen) all the rights, privileges, and immunities thereby required." If, therefore, the position of the Department on this question is correct, and I can see no reasonable grounds for doubting it, it would appear that the Choctaw freedmen who have not elected to permanently remove are citizens of the nation, with all the rights, privileges, and immunities contemplated by the treaty of 1866, and that no legislation by Congress is now necessary to adjust and establish their status in the nation. Especially is this so since they now have access to the United States courts to enforce their rights in the nation.

As to the Chickasaw freedmen, it will be seen that their status depends upon the question of whether or not the Chickasaw law of 1873, approved by the eighteenth section of the act of 1894, had been repealed before its approval, and that that question is one for judicial determination. If the said law had been repealed the Chickasaw freedmen are not citizens of that nation, and it is not seen that Congress could by any act passed by that body make them such without the consent of the said nation, and it would appear that any relief given them must be at the expense of the Government, so far at least as the funds necessary for the purpose may exceed what would be the proportionate share of the Chickasaw Nation in the \$300,000 provided for in the third

article of the treaty of 1866. If, on the other hand, they are citizens of the nation by virtue of the act of the Chickasaw legislature of 1873, and the eighteenth section of the act of Congress of 1894, it would seem to be in the power of Congress by proper legislation to enforce their rights as such.

As I have said, the jurisdiction of the United States courts for the Indian Territory is now such as to give them the authority to determine the status of these people in any proper suit that may be hereafter instituted; but as it would be manifestly unjust to ignore their condition until the courts now having jurisdiction shall, by chance more or less remote, have decided the question, it is suggested that it might be more expeditiously disposed of if Congress would authorize the institution of a suit by said Chickasaw freedmen in the Court of Claims, with right of appeal to the Supreme Court. Besides the advantage of an early and certain determination of the question, this course will also afford to Congress advice on the subject from the highest judicial tribunals of the country, and enable that body to give the matter consideration in the light of that advice and determine upon the wisest and most equitable form of relief to be given these people.

In the meantime should any agreement with the Choctaw and Chickasaw nations be presented to Congress for its consideration and ratification it would seem proper for that body in its wisdom to insert therein such amendments as will appear necessary to adjust the difficulty and fix the freedmen of the Chickasaws in such rights and privileges in the nation as justice may demand.

In conclusion, I have to state here for convenient reference that appropriations have been made for the benefit of the Choctaw and Chickasaw nations out of the fund of \$300,000 provided for in the third article of the treaty of 1866, as follows, viz:

PAYMENTS TO THE CHOCTAWS.

Appropriation of July 26, 1866 (14 Stats., 259), under forty-sixth article of treaty	\$150,000
Appropriation July 26, 1866 (14 Stats., 259), interest	11,250
Appropriation April 10, 1869 (16 Stats., 39), interest	11,250
Appropriation May 17, 1882 (22 Stats., 72), education of freedmen, paid to Choctaw Nation on adoption of them by that nation	7,500
Appropriation March 3, 1885 (23 Stats., 366), to be placed to the credit of the Choctaws on the books of the Treasury, computed as follows:	
Balance of principal due Choctaws	\$67,500
Deduct overpayment of interest 1867	7,500
Deduct for same in 1868	7,875
	<u>15,375</u>
	52,125
Total	232,125

PAYMENTS TO CHICKASAWS.

Appropriation July 26, 1866 (14 Stats., 259), under forty-sixth article of treaty	\$50,000
Appropriation July 26, 1866 (14 Stats., 259), interest	3,750
Appropriation April 10, 1869 (16 Stats., 39), interest	3,750
Appropriation May 17, 1882 (22 Stats., 72), used for education of Chickasaw freedmen	2,500
Total	60,000

It will be observed from the foregoing statement that a final settlement has been had with the Choctaw Nation on account of its interest

in the fund arising under the third article of the treaty of 1866, and that out of the proportion of the Chickasaw Nation there has been expended for the benefit of the freedmen the sum of \$2,500; and also that \$57,500 has been paid to the Chickasaw Nation for which the nation is liable unless some provision is made for the adoption of the freedmen of that nation if they are not already citizens thereof.

The Senate resolution is herewith returned.

Very respectfully, your obedient servant,

A. C. TONNER,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

[House Ex. Doc. No. 207, Forty-second Congress, third session.]

NEGROES OF THE CHICKASAW NATION.

Letter from the Secretary of the Interior, transmitting an act passed by the legislature of the Chickasaw Nation entitled "An act to adopt the negroes of the Chickasaw Nation," etc.

FEBRUARY 13, 1873.—Referred to the Committee on Freedmen's Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 10, 1873.

SIR: I have the honor to transmit herewith copy of a communication from the Acting Commissioner of Indian Affairs, dated the 4th instant, inclosing a communication to him from Douglas H. Cooper of the Chickasaw Nation, dated the 23d ultimo, together with a letter, addressed to the President of the United States by Cyrus Harris, governor of said nation, dated the 10th ultimo, transmitting an act of the Chickasaw legislature, providing for the adoption of negroes in the Chickasaw country, referred to in the third article of the treaty with the Choctaws and Chickasaws, concluded April 28, 1866. (Stat. L., vol. 14, p. 769.)

A careful examination of these communications exhibits the fact that the third article of the treaty referred to remains unexecuted. Neither the Choctaws nor Chickasaws have made such rules and regulations as were contemplated in said article in regard to persons of African descent residing in their respective nations within two years after the ratification of the aforesaid treaty. The Choctaw Nation has never, at any time, attempted the execution of this treaty in regard to said persons, and what has been done by the Chickasaw Nation was done after the expiration of the two years in which their action was limited by the treaty aforesaid.

Deeming it important that the provisions of said treaty be carried out, I have respectfully to recommend that such legislation be had during the present session of Congress, if possible, as will extend the time in all respects for the execution of the provisions of the third article of the treaty before referred to for the term of two years from the first day of July, 1873.

Very respectfully, your obedient servant,

C. DELANO,
Secretary.

Hon. JAS. G. BLAINE,
Speaker House of Representatives, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., February 4, 1873.

SIR: I have the honor to submit herewith a communication from Douglas H. Cooper, of the Chickasaw Nation, dated the 23d ultimo, together with a letter addressed to the President by Cyrus Harris, governor of said nation, dated the 10th ultimo, transmitting an act of the Chickasaw legislature providing for the adoption of the negroes in the Chickasaw country, referred to in the third article of the treaty concluded with the Choctaw and Chickasaw Indians April 28, 1866. (Stat. L., vol. 14, p. 769.)

In view of the expiration of the term of two years from the ratification of the treaty, within which it is stipulated that the laws, rules, and regulations referred to

in the third article of the treaty aforesaid shall be made by the Choctaw and Chickasaw nations, and believing it to be for the best interests of the Indians, as well as of the negroes, that the latter should remain where they now are and that the money referred to in said article should be paid to said nations, I respectfully recommend that Congress be asked to provide by legislation that the limit to the time mentioned in said third article be extended three years from the 1st of July, 1873, or until July 2, 1876.

Very respectfully, your obedient servant,

H. R. CLUM,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

WASHINGTON, D. C., *January 25, 1873.*

SIR: I have the honor herewith to hand you a letter from Cyrus Harris, governor of the Chickasaw Nation, dated at the executive office, Tishomingo, Chickasaw Nation, January 10, 1873, and directed to the President of the United States, inclosing an act of the legislature of the Chickasaw Nation, approved on the date of said letter, entitled "An act to adopt the negroes of the Chickasaw Nation," etc., and requesting "that the President will transmit the same to Congress for such action as that honorable body may deem proper;" and I respectfully request that you will transmit the said letter and act to the President, through the honorable Secretary of the Interior, at your earliest convenience.

I am, sir, your obedient servant,

DOUGLAS H. COOPER,
Of the Chickasaw Nation.

Hon. H. R. CLUM,
*Acting Commissioner, Office of Indian Affairs,
Department of the Interior.*

EXECUTIVE OFFICE,
Tishomingo City, Chickasaw Nation, January 10, 1873.

SIR: I have the honor to inclose a copy of an act passed by the legislature of the Chickasaw Nation, and approved this day, entitled "An act to adopt the negroes of the Chickasaw Nation," etc., and respectfully request that you will transmit the same to the Congress of the United States for such action as that honorable body may deem proper at the earliest day possible.

I am, sir, your obedient servant,

CYRUS HARRIS,
Governor of the Chickasaw Nation of Indians.

The PRESIDENT OF THE UNITED STATES,
Washington, D. C.

AN ACT to adopt the negroes of the Chickasaw Nation, &c.

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation, That all the negroes belonging to the Chickasaws at the time of the adoption of the treaty of Fort Smith, and living in the Chickasaw Nation at the date thereof, and their descendants, are hereby declared to be adopted in conformity with the third article of the treaty of 1866, between the Choctaws, Chickasaws, and the United States: Provided, however, That the proportional part of the \$300,000 specified in article third of the said treaty, with the accrued interest thereon, shall be paid to the Chickasaw Nation for its sole use and benefit: And provided further, The said adopted negroes of the Chickasaw Nation shall not participate in any part of the said proportional part of the said \$300,000, nor be entitled to any benefit from the principal and interest on our invested funds or claims arising therefrom, nor to any part of our common domain, or the profits arising therefrom (except the forty acres per capita provided for in the third article of the treaty of 1866), nor to any privileges or rights not authorized by treaty stipulations: And provided further, That the said adopted negroes, upon the approval of this act, shall be subject to the jurisdiction and laws of the Chickasaw Nation, and to trial and punishment for offenses against them in every case just as if the said negroes were Chickasaws.*

SEC. 2. *And be it further enacted, That this act shall be in full force and effect from*

and after its approval by the proper authority of the United States. And all laws or parts of laws in conflict with this act are hereby repealed.

Approved January 10, 1873.

CYRUS HARRIS, *Governor.*

Attest:

W. H. BOURLAND,
National Secretary, Chickasaw Nation.

I do hereby certify that the above copy is a true and authenticated copy from the original now on file in my office this January 10, 1873.

W. H. BOURLAND,
National Secretary, Chickasaw Nation.

AN ACT entitled an act to adopt the freedmen of the Choctaw Nation.

Whereas, by the third and fourth articles of the treaty between the United States and the Choctaws and Chickasaw nations, concluded April 28th, 1866, provision was made for the adoption of laws, rules, and regulations necessary to give all persons of African descent, resident in said nations at the date of the treaty of Fort Smith, Sept. 13, 1865, and their descendants, formerly 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 lands of said nations on the same terms as Choctaws and Chickasaws, to be selected on the survey of said lands, until which said freedmen shall be entitled to as much land as they may cultivate for the support of themselves and families; and,

Whereas the Choctaw Nation adopted legislation in the form of a memorial to the United States Government in regard to adopting freedmen to be citizens of the Choctaw Nation, which was approved by the principal chief November 2nd, 1880, setting forth the status of said freedmen and the inability of the Choctaw Nation to prevail upon the Chickasaws to adopt any joint plan for adopting said freedmen, and notifying the United States Government of their willingness to accept said freedmen as citizens of the Choctaw Nation in accordance with the 3rd and 4th articles of the treaty of 1866 as a basis; and

Whereas a resolution was passed and approved November the 5th, 1880, authorizing the principal chief to submit the aforesaid proposition of the Choctaw Nation to adopt their freedmen to the United States Government; and

Whereas a resolution was passed and approved November 6th, 1880, to provide for the registration of freedmen in the Choctaw Nation, authorizing the principal chief to appoint three competent persons in each district, citizens of the nation, whose duty it shall be to register all freedmen referred to in said third article of the treaty of 1866 who desire to become citizens of the nation in accordance with said treaty, and, upon proper notification that the Government of the United States had acted favorably upon the proposition to adopt the freedmen as citizens, to issue his proclamation notifying all such as desire to become citizens of the Choctaw Nation to appear before said commissioner for identification and registration; and

Whereas, in the Indian appropriation act of Congress, May 17th, 1862, it is provided that either of said tribes may adopt and provide for the freedmen in said tribe in accordance with said third article; now, therefore—

SEC. 1. *Be it enacted, by the General Council of the Choctaw Nation assembled, That* all persons of African descent resident in the Choctaw Nation at the date of the treaty of Fort Smith, Sept. 13, 1865, and their descendants, formerly held in slavery by the Choctaws or Chickasaws, are hereby declared to be entitled to and invested with all the rights, privileges, and immunities, including the right of suffrage, of citizens of the Choctaw Nation, except in the annuities, moneys, and the public domain of the nation.

SEC. 2. *Be it further enacted, That* all said persons of African descent as aforesaid, and their descendants, shall be allowed the same rights of process, civil and criminal, in the several courts of this nation as are allowed to Choctaws; and free protection of person and property is hereby granted to all such persons.

SEC. 3. *Be it further enacted, That* all said persons are hereby declared to be entitled to forty acres each of the lands of the nation, to be selected and held by them under the same title and upon the same terms as the Choctaws.

SEC. 4. *Be it further enacted, That* all said persons aforesaid are hereby declared to be entitled to equal educational privileges and facilities with the Choctaws, so far as neighborhood schools are concerned.

SEC. 5. *Be it further enacted*, That all said persons as shall elect to remove, and do actually and permanently remove from the nation, are hereby declared to be entitled to one hundred dollars per capita, as provided in said 3rd article of the treaty of 1866.

SEC. 6. *Be it further enacted*, That all said persons who shall decline to become citizens of the Choctaw Nation, and who do not elect to remove permanently from the nation, are hereby declared to be intruders on the same footing as other citizens of the United States resident herein, and subject to removal for similar causes.

SEC. 7. *Be it further enacted*, That intermarriage with such freedmen of African descent, who were formerly held as slaves of the Choctaws, and have become citizens, shall not confer any rights of citizenship in this nation, and all freedmen who have married, or who may hereafter marry freedwomen, who have become citizens of the Choctaw Nation, are subject to the permit laws, and allowed to remain during good behavior only.

SEC. 8. *Be it further enacted*, That all such persons of African descent, who have become citizens of the Choctaw Nation, shall be entitled to hold any office of trust or profit in this nation, except the office of principal chief, and district chiefs.

SEC. 9. *Be it further enacted*, That the national secretary shall furnish a certified copy of this to the Secretary of the Interior.

And this act shall take effect and be in force from and after its passage.

Approved May 21st, 1883.

J. F. McCURTAIN,
Principal Chief, Choctaw Nation.

I hereby certify that foregoing transcript is a true and correct copy from the original.

In witness whereof I have hereto set my hand and affixed the seal of the Choctaw Nation this 21st day of May, A. D. 1883.

[SEAL.]

THOMPSON MCKINNEY,
National Secretary, Choctaw Nation.

AN ACT to repeal section eight of a freedmen bill, approved May 21, 1883.

Be it enacted by the General Council of the Choctaw Nation assembled, That section eight of "An act entitled an act to adopt the freedmen of the Choctaw Nation," passed at a special session of the General Council, and approved May 21, 1883, is hereby repealed; and this act shall take effect and be in force from and after its passage.

Approved October 26, 1883.

J. F. McCURTAIN,
Principal Chief, Choctaw Nation.

AN ACT rejecting the adoption of the freedmen in the Chickasaw Nation.

Whereas the 3d article of the treaty of 1866, between the United States and the Choctaw and Chickasaw nations stipulates that the territory lying west of the 98th degree of west longitude, known as the Leased District, be ceded to the United States Government for (\$300,000.00) the consideration of three hundred thousand dollars, which sum shall be held in trust by the United States for said nations, at a certain rate of interest, until each respective nation elects within two years after the ratification of said treaty, to make certain laws, rules, and regulations giving the freedmen once held as slaves by said nation the rights, privileges, and immunities of citizens of said nations, except in their annuities and public domain, etc.; and

Whereas it provides further that if said laws, rules, and regulations are not made within two years by said nations from the ratification of aforesaid treaty, then the United States Government promises to remove within ninety days from the expiration of the two years such of said freedmen as are willing to remove from said nations, using the aforesaid three hundred thousand dollars for the use and benefit of said freedmen in their removal, etc., and those choosing to remain or who might return after removing to receive no part or benefit from the said three hundred thousand dollars, and shall be upon the same footing as other citizens of the United States; and

Whereas the United States has failed to remove said freedmen agreeable to the stipulations of said treaty and left them here among us for a long time, recognized by us as occupying the same status as other United States citizens; and

Whereas the Chickasaw people in justice to their posterity have not made said laws, rules, and regulations as provided for in the aforesaid article of said treaty for the following reasons, to wit:

1st. That the Chickasaw people can not see any reason or just cause why they

should be required to do more for their freed slaves than the white people have done in the slaveholding States for theirs.

2nd. That it was by the example and teaching of the white man that we purchased, at enormous prices, their slaves and used their labor, and were forced by the result of their war to liberate our slaves at a great loss and sacrifice on our part, and we do not hold or consider our nation responsible in nowise for their present situation: Therefore,

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That the Chickasaw people hereby refuse to accept or adopt the freedmen as citizens of the Chickasaw Nation upon any terms or conditions whatever, and respectfully request the governor of our nation to notify the Department at Washington of the action of the legislature in the premises.

SEC. 2. *Be it further enacted*, That the governor is hereby authorized and directed to appoint two competent and discreet men of good judgment and business qualifications to visit Washington, D. C., during the next session of Congress and memorialize that body to provide a means of removal of the freedmen from the Chickasaw Nation to the country known as Oklahoma in the Indian Territory, or to make some suitable disposition of the freedmen question, so that they be not forced upon us as equal citizens of the Chickasaw Nation.

SEC. 3. *Be it further enacted*, That the delegation is further authorized to apply to the Indian Department in Washington for an investigation and settlement of the orphan, incompetent, misapplied, and other claims of the Chickasaws against the United States Government, and any and all funds paid on account of said claims shall be received and receipted for the same as other moneys coming into the treasurer's hands from the United States Government.

SEC. 4. *Be it further enacted*, That the delegation is also authorized to represent the Chickasaws in any and all measures that might be presented or come before any branch of Congress, or the Indian Department, whereby the interest of our country and people may be involved, and use prudence and discretion in their deliberations upon such matters, and report the result of their mission at the next legislature.

SEC. 5. *Be it further enacted*, That for each delegate the sum of fifteen hundred dollars (\$1,500) be, and the same is hereby, appropriated out of any moneys in the treasury not otherwise appropriated, as a full compensation for their services on this mission; and the auditor is hereby authorized to issue a warrant for the same; and this act take effect from and after its passage.

Approved, October 22, 1885.

JONAS WOLF, Governor.

DEPARTMENT OF THE INTERIOR,
Washington, February 26, 1884.

SIR: I have considered your report of February 6, 1884, on the subject of a statute enacted by the Choctaw Nation of Indians in the Indian Territory entitled "An act to adopt the freedmen of the Choctaw Nation," which comes up on an appeal of the Choctaw delegates from your decision of June 18, 1883, declaring that the statute referred to does not meet the requirements of the provisions of the treaty of April 28, 1866. (14 Stat., 769-770.)

The statute of the Choctaw Nation under consideration, a copy of which accompanied your report, was enacted in pursuance of the authority granted by the act of Congress of May 17, 1882 (22 Stat., 73), which appropriated \$10,000 out of the \$300,000 reserved by the third article of the treaty with the Choctaws and Chickasaws concluded April 8, 1866, for the purpose of educating freedmen in said tribes, and which provided "that either of said tribes may, before such expenditure, adopt and provide for the freedmen in said tribes in accordance with said third article."

The third article of the treaty referred to provided that said \$300,000, the price agreed upon for certain lands ceded by said treaty, shall be invested and held in trust for 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."

The third article contains other provisions relating to land for said freedmen and the disposition of said freedmen and of the said \$300,000 upon failure of the Choctaw and Chickasaw nations to make the laws, etc., required.

In the fourth article of said treaty it is provided "that all laws shall be equal in their operation upon Choctaws, Chickasaws, and negroes, and that no distinction affecting the latter shall at any time be made."

It was claimed for the Choctaws that they have always been desirous of making the laws, rules, and regulations required by the treaty, but that they could not secure the cooperation or concurrent action of the Chickasaws in the matter; hence Congress made provision in the law of May 17, 1882, above referred to, which enables either of said nations to comply with the treaty.

The statute enacted by the Choctaws on the subject provides that the freedmen and their descendants referred to in the treaty are hereby entitled to all the rights, privileges, and immunities, including the right of suffrage, of citizens of the Choctaw Nation, except in the annuities, moneys, and the public domain of the nation; to equal rights in the courts and free protection of person and property; to 40 acres of land, to be selected and held under the same title and upon the same terms as the Choctaws; to equal educational privileges and facilities in neighborhood schools; and that all of said persons who do actually remove from said nation shall be entitled to \$100 per capita, as per the third article of the treaty of 1866; and that such as decline to so remove or to become citizens of the Choctaw Nation shall be held as intruders on the same footing as other citizens of the United States resident in the nation, and subject to removal for similar causes.

The portions of the law against which objections are made by your office are the seventh and eighth sections thereof, which read as follows:

"Sec. 7. *Be it further enacted*, That intermarriage with such freedmen of African descent who were formerly held as slaves of the Choctaws and have become citizens shall not confer any rights of citizenship in this nation, and all freedmen who have married or who may hereafter marry free women, who have become citizens of the Choctaw Nation, are subject to the permit laws, and allowed to remain during good behavior only.

"Sec. 8. *Be it further enacted*, That all such persons of African descent who have become citizens of the Choctaw Nation shall be entitled to hold any office of trust or profit in this nation except the office of principal chief and district chiefs."

Your objection to the seventh section of said statute is that it is in violation of the provisions of the fourth article of the treaty of 1866 above quoted, in that it declares that intermarriage with freedmen and free women shall confer no rights of citizenship upon persons so intermarrying, while the act of 1875 confers the right of citizenship on any citizen of the United States or foreign government who intermarries with a Choctaw citizen.

A further objection urged is that said statute debars from citizenship persons who have heretofore intermarried with Choctaw freedmen or free women.

On these two points you report that the statute discriminates against the freedmen and makes a "distinction affecting" them. Also that the clause "all freedmen who have married or who may hereafter marry free women who have become citizens of the Choctaw Nation are subject to the permit laws," etc., is ambiguous, in that it may mean the freedmen referred to in the treaty or freedmen generally not within the Choctaw Nation, and in either case it discriminates against the Choctaw freedmen and their descendants.

By reference to the Choctaw statute of November 9, 1875, a certified, though apparently imperfect, copy of which is with the accompanying papers, it is found to "require that any white man or citizen of the United States or of any foreign Government desiring to marry a Choctaw woman citizen of the Choctaw Nation, shall obtain a license from the designated judicial officers, make proof that he has not a surviving wife from whom he has not been lawfully divorced, produce certificate of good moral character, signed by at least ten respectable Choctaw citizens by blood, shall take a prescribed oath to defend and submit to the Choctaw constitution," etc.; and "that should any man or woman, a citizen of the United States or of any foreign country, become a citizen of the Choctaw Nation by intermarriage and be left a widow or widower shall continue to enjoy the rights of citizenship, unless he or she shall marry a white man or white woman, or person, as the case may be, having no rights of Choctaw citizenship by blood; in that case, all his or her rights acquired under the provisions of this act shall cease," and that "every person who shall lawfully marry under the provisions of this act and afterwards abandon his wife shall forfeit every right of citizenship and shall be considered intruders."

The delegates of the nation in their appeal lay down "as a fundamental principle, upon which the Choctaw government rests, that nothing but the blood on one side or the other can confer citizenship by intermarriage." That the general law of intermarriage with white persons is found in the thirty-eighth article of the treaty of 1866, which reads as follows:

"Every white person who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw nations according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects as though he was a native Choctaw or Chickasaw."

They claim that intermarriage with no one but a Choctaw or Chickasaw by blood or nativity can confer rights of citizenship under said article of the treaty; and that a white person securing Choctaw citizenship by such intermarriage can not confer citizenship upon outsiders; that as no provision was made in the thirty-eighth or any other article of the treaty about intermarriage of Choctaw freedmen is sufficient evidence that nothing of the kind was intended, and that, in the absence of any treaty provision therefor, no freedmen other than a Choctaw freedman can become a citizen of the Choctaw Nation.

I am not satisfied that this is the correct interpretation of the treaty. That treaty left it optional with the Choctaw and Chickasaw nations whether or not they would make such laws, rules, and regulations as may be necessary to give their late freedmen and their descendants "all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations;" that option was attended with such conditions that said freedmen, in any event would, in a measure, be provided for. The absence of any provision in the treaty on the subject of intermarriage by said freedmen with outside persons is due, most probably, to the fact that their status, whether in the nation or out of it, was not then permanently fixed, but was left to future determination by the Choctaws and Chickasaws, or by the United States Government as the treaty provides.

There is room for doubt whether the restriction of the Choctaw statute of May 21, 1883, upon non-Choctaw citizens who shall marry said Choctaw freedmen and their descendants is a denial to said freedmen and their descendants, of any such rights, privileges, and immunities of Choctaw citizens as are contemplated by the provisions of the treaty. Is the question of marriage or of citizenship by intermarriage reasonably within the term "rights, privileges, and immunities including the right of suffrage of citizens of said nations" as used in the treaty? If not, then there can be no objection under the treaty to the provisions of the seventh section of said statute.

If, however, such question is within the meaning and intent of the treaty, it will be necessary to consider whether the restriction of the statute is strictly upon said freedmen and their descendants. Are they prohibited from marrying noncitizens of the Choctaw Nation? No such prohibition is imposed by the statute. The restriction is upon such noncitizens as shall intermarry with said freedmen, in that it denies to them—the noncitizen—any right, by reason of such intermarriage, of citizenship in said nation.

It may, however, be claimed that the statute denies said freedmen the same right or privilege of conferring a qualified citizenship in the Choctaw Nation upon outside persons with whom they may intermarry that are permitted to the Choctaw citizens by blood or nativity, and hence that it discriminates against said freedmen and abridges their "rights, privileges, and immunities." To ascertain whether such denial is an abridgment of their guaranteed rights, etc., it will be necessary to look back to the condition of affairs which made the treaty necessary and find for what purpose it was made.

The friendly relations between these Indians and the United States had been interrupted and their rights under previously existing treaties thereby impaired. The result of the war had compelled them to seek a renewal of obligations by the United States. A new treaty was necessary, and the condition of the persons until then held in slavery by these Indians had to be considered and defined. One purpose of the treaty was no doubt to accomplish for those late slaves the same or equal civil rights that were then being provided and secured by amendments to the Constitution of the United States for the persons recently held in slavery in certain of the States of the United States, such as their freedom from slavery, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppression of those who had formerly exercised unlimited dominion over him. (See Slaughter House cases, 16 Wall., 71.)

The term "rights, privileges, and immunities, including the right of suffrage, of citizens of said nations" means and is intended to comprehend such as are fundamental and which belong of right to all citizens of all free governments, such as may be termed the civil rights of said citizens.

The civil rights of a citizen of a State have been defined to be "protection by the Government, either the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject nevertheless to such restraints as the Government may prescribe for the good of the whole." (Ibid., 76.)

These are not only not denied to the said freedmen and their descendants by the statute under consideration, but that statute, in my opinion, conforms in all its substantial parts to the requirements of the third article of the treaty, and grants to them all the rights, privileges, and immunities thereby required.

It is also urged by you that the statute of May 21, 1883, debar from citizenship persons who have heretofore intermarried with Choctaw freedmen, as well as those who may hereafter so intermarry, and that it thus discriminates against the freed-

men and makes a distinction affecting them contrary to the express provision of the fourth article of the treaty above quoted.

To this I reply that the third article of the treaty designates the persons for whose benefit the laws, rules, and regulations are required to be made as "all persons of African descent, residents in said nations at date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations."

The laws, etc., of the nation are not required by the treaty to provide for any other negroes or freedmen than those thus specifically described. Nothing in the statute prohibits any of those specified "persons of African descent" from marrying a non-Choctaw citizen.

As before stated, the restriction of said statute is not upon the Choctaw freedmen, but upon the non-Choctaw citizen, and I am therefore of the opinion that said statute makes no distinction affecting the freedmen or negroes referred to in the treaty.

As the Choctaw delegates have, since the date of your report, filed in this Department a copy of the law of the nation approved October 26, 1883, repealing the eighth section of the statute of May 21, 1883, no further consideration of that branch of the subject is considered necessary.

This matter of these freedmen has been pending since 1866. The Choctaws have always professed willingness and readiness to comply with the treaty provisions, but claim that they have failed to secure the required cooperation of the Chickasaws; they have promptly availed themselves of the statutory privilege for separate action, and I am of the opinion that the statute now under consideration, as amended by the subsequent law referred to, is a reasonable, substantial, and sufficient compliance with the provision made therefor in the act of May 17, 1882 (22 Stat., 73), and of the third article of treaty therein referred to.

Your decision of June 18, 1883, is therefore overruled.

All the papers are herewith returned.

Very respectfully,

H. M. TELLER,
Secretary.

THE COMMISSIONER OF INDIAN AFFAIRS.